

115TH CONGRESS
2D SESSION

S. 2283

To amend the Small Business Act to strengthen the Office of Credit Risk Management within the Small Business Administration, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 9, 2018

Mr. RISCH (for himself and Mrs. SHAHEEN) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To amend the Small Business Act to strengthen the Office of Credit Risk Management within the Small Business Administration, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business 7(a)
5 Lending Oversight Reform Act of 2018”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act, the terms “Administration” and “Admin-
8 istrator” mean the Small Business Administration and the
9 Administrator thereof, respectively.

1 **SEC. 3. CODIFICATION OF THE OFFICE OF CREDIT RISK**
 2 **MANAGEMENT AND THE LENDER OVERSIGHT**
 3 **COMMITTEE.**

4 (a) IN GENERAL.—The Small Business Act (15
 5 U.S.C. 631 et seq.) is amended—

6 (1) by redesignating section 47 as section 49;

7 and

8 (2) by inserting after section 46 the following:

9 **“SEC. 47. OFFICE OF CREDIT RISK MANAGEMENT.**

10 “(a) ESTABLISHMENT.—There is established within
 11 the Administration the Office of Credit Risk Management
 12 (in this section referred to as the ‘Office’).

13 “(b) DUTIES.—The Office shall be responsible for su-
 14 pervising—

15 “(1) any lender making loans under section
 16 7(a) (in this section referred to as a ‘7(a) lender’);

17 “(2) any participant in a lending program of
 18 the Office of Capital Access of the Administration;
 19 and

20 “(3) any small business lending company or a
 21 non-Federally regulated lender without regard to the
 22 requirements of section 23.

23 “(c) DIRECTOR.—The Office is headed by the Direc-
 24 tor of the Office of Credit Risk Management (in this sec-
 25 tion referred to as the ‘Director’), who shall—

1 “(1) be a career appointee in a Senior Execu-
 2 tive Service position (as defined in section 3132 of
 3 title 5, United States Code); and

4 “(2) be responsible for oversight of the lenders
 5 and participants described in subsection (b), includ-
 6 ing by conducting periodic reviews of the compliance
 7 and performance of those lenders and participants.

8 “(d) SUPERVISION DUTIES FOR 7(a) LENDERS.—

9 “(1) REVIEWS.—With respect to 7(a) lenders,
 10 an employee of the Office shall—

11 “(A) be present for and supervise any re-
 12 view of a 7(a) lender that is conducted by a
 13 contractor of the Office on the premises of the
 14 7(a) lender; and

15 “(B) supervise any review of a 7(a) lender
 16 that is not conducted on the premises of the
 17 7(a) lender.

18 “(2) REVIEW REPORT TIMELINE.—Notwith-
 19 standing any other requirements of the Office or the
 20 Administrator, the Administrator shall develop and
 21 implement a review report timeline which shall—

22 “(A) require the Administrator to—

23 “(i) deliver a written report of the re-
 24 view to the 7(a) lender not later than 60

1 business days after the date on which the
 2 review is conducted; or

3 “(ii) if the Administrator expects to
 4 submit the report after the end of the 60-
 5 business-day period described in clause (i),
 6 notify the 7(a) lender in writing of the ex-
 7 pected submission day of the report and
 8 the reason for the delay; and

9 “(B) if a response by the 7(a) lender is re-
 10 quested in a report submitted under subpara-
 11 graph (A), require the 7(a) lender to submit a
 12 response to the Administrator not later than 45
 13 business days after the date on which the 7(a)
 14 lender receives the report.

15 “(e) ENFORCEMENT AUTHORITY AGAINST 7(a)
 16 LENDERS.—

17 “(1) INFORMAL ENFORCEMENT AUTHORITY.—

18 The Director may take an informal enforcement ac-
 19 tion against a 7(a) lender if the Director finds that
 20 the 7(a) lender has violated a requirement under
 21 section 7(a) or any requirement in a Standard Oper-
 22 ating Procedures Manual or Policy Notice related to
 23 a program or function of the Office of Capital Ac-
 24 cess.

25 “(2) FORMAL ENFORCEMENT AUTHORITY.—

1 “(A) IN GENERAL.—With the approval of
2 the Lender Oversight Committee established
3 under section 48, the Director may take a for-
4 mal enforcement action against any 7(a) lender
5 if the Director finds that the 7(a) lender has
6 violated—

7 “(i) a requirement under section 7(a),
8 including a requirement relating to credit
9 elsewhere, or any regulation implementing
10 such section; or

11 “(ii) any requirement described in a
12 Standard Operating Procedures Manual or
13 Policy Notice related to a program or func-
14 tion of the Office of Capital Access.

15 “(B) ENFORCEMENT ACTIONS.—

16 “(i) IN GENERAL.—Any enforcement
17 action taken with respect to a 7(a) lender
18 by the Director under subparagraph (A)—

19 “(I) shall be based on the sever-
20 ity or frequency of the violation; and

21 “(II) may include assessing a
22 civil monetary penalty against the
23 7(a) lender in an amount that is not
24 greater than \$250,000.

1 “(3) APPEAL BY LENDER.—A 7(a) lender may
 2 appeal an enforcement action imposed by the Direc-
 3 tor described in paragraph (2) to the Office of Hear-
 4 ings and Appeals established under section 5(i) or to
 5 an appropriate district court of the United States.

6 “(f) REGULATIONS.—Not later than 1 year after the
 7 date of enactment of the Small Business 7(a) Lending
 8 Oversight Reform Act of 2018, the Administrator shall
 9 issue regulations, after opportunity for notice and com-
 10 ment under section 553 of title 5, United States Code,
 11 to carry out subsection (e).

12 “(g) SERVICING AND LIQUIDATION RESPONSIBIL-
 13 ITIES.—During any period during which a 7(a) lender is
 14 suspended from participating under section 7(a), or if a
 15 7(a) lender is prohibited from making loans under section
 16 7(a), the 7(a) lender shall remain obligated to maintain
 17 all servicing and liquidation activities delegated to the
 18 lender by the Administrator, unless otherwise specified by
 19 the Director.

20 “(h) PORTFOLIO RISK ANALYSIS OF 7(a) LOANS.—

21 “(1) IN GENERAL.—The Director shall annually
 22 conduct a risk analysis of the portfolio of the Ad-
 23 ministration with respect to all loans guaranteed
 24 under section 7(a).

1 “(2) REPORT TO CONGRESS.—On December 1,
2 2018, and every December 1 thereafter, the Director
3 shall submit to Congress an annual report con-
4 taining the results of each portfolio risk analysis
5 conducted under paragraph (1) during the fiscal
6 year preceding the submission of the report, which
7 shall include—

8 “(A) an analysis of the overall program
9 risk of loans guaranteed under section 7(a);

10 “(B) an analysis of program risk, set forth
11 separately by industry concentration;

12 “(C) without identifying individual 7(a)
13 lenders by name, a consolidated analysis of the
14 risk created by the individual 7(a) lenders re-
15 sponsible for not less than 1 percent of the
16 gross loan approvals by dollar and amount of
17 loans for the year covered by the report;

18 “(D) steps taken by the Administrator to
19 mitigate the risks identified in subparagraphs
20 (A), (B), and (C);

21 “(E) the number of 7(a) lenders, the gross
22 and net number of loans made, and the gross
23 and net dollar amount of loans made;

1 “(F) the number and dollar amount of
 2 total defaults and total repurchases, and the
 3 percentage and total amount of recoveries;

4 “(G) the number and type of enforcement
 5 actions recommended by the Director;

6 “(H) the number and type of enforcement
 7 actions approved by the Lender Oversight Com-
 8 mittee established under section 48;

9 “(I) the number and type of enforcement
 10 actions disapproved by the Lender Oversight
 11 Committee; and

12 “(J) the number and dollar amount of civil
 13 monetary penalties assessed.

14 “(i) BUDGET SUBMISSION AND JUSTIFICATION.—Ef-
 15 fective for the first fiscal year occurring after the date of
 16 enactment of the Small Business 7(a) Lending Oversight
 17 Reform Act of 2018, and each fiscal year thereafter, the
 18 Director shall provide, in writing a budget submission and
 19 justification for the submission to the Administrator,
 20 which shall—

21 “(1) include the salaries and expenses of the
 22 Office and lender oversight fees;

23 “(2) be submitted at or about the time of the
 24 budget submission by the President under section
 25 1105(a) of title 31, United States Code; and

1 “(3) be maintained in an indexed form and
 2 made available for public review for a period of not
 3 less than 5 years beginning on the date of submis-
 4 sion.

5 **“SEC. 48. LENDER OVERSIGHT COMMITTEE.**

6 “(a) ESTABLISHMENT.—There is established within
 7 the Administration the Lender Oversight Committee (in
 8 this section referred to as the ‘Committee’).

9 “(b) MEMBERSHIP.—The Committee shall consist of
 10 11 members appointed by the Administrator, of whom—

11 “(1) 3 members shall be voting members, of
 12 whom 2 shall be career appointees serving in a Sen-
 13 ior Executive Service position (as defined in section
 14 3132 of title 5, United States Code); and

15 “(2) 8 members shall be nonvoting members
 16 who shall serve in an advisory capacity on the Com-
 17 mittee.

18 “(c) DUTIES.—The Committee shall—

19 “(1) review reports on lender oversight activi-
 20 ties;

21 “(2) review formal enforcement action rec-
 22 ommendations of the Director of the Office of Credit
 23 Risk Management with respect to any lender making
 24 loans under section 7(a) and any participant in a

1 lending program of the Office of Capital Access of
2 the Administration;

3 “(3) in carrying out paragraph (2) with respect
4 to a formal enforcement action taken under sub-
5 section (d) or (e) of section 23, vote to recommend
6 the action or vote to not recommend the action to
7 the Administrator or a designee of the Adminis-
8 trator;

9 “(4) in carrying out paragraph (2) with respect
10 to any other formal enforcement action not other-
11 wise specified in subsection (d) or (e) of section 23,
12 vote to approve, disapprove, or modify the action;

13 “(5) review in an advisory capacity any lender
14 oversight, portfolio risk management, or program in-
15 tegrity matters brought by the Director of the Office
16 of Credit Risk Management; and

17 “(6) take such other actions and perform such
18 other functions as may be delegated to the Com-
19 mittee by the Administrator.

20 “(d) MEETINGS.—

21 “(1) IN GENERAL.—The Committee shall meet
22 as necessary, but not less frequently than on a quar-
23 terly basis.

24 “(2) REPORTS.—The Committee shall submit
25 to the Administrator a report detailing each meeting

1 of the Committee, including if the Committee does
2 or does not vote to recommend a formal enforcement
3 action of the Director of the Office of Credit Risk
4 Management with respect to a lender.”.

5 (b) TRANSFER OF FUNCTIONS.—

6 (1) OFFICE OF CREDIT RISK MANAGEMENT.—

7 All functions of the Office of Credit Risk Manage-
8 ment of the Administration, including the personnel,
9 assets, and obligations of the Office of Credit Risk
10 Management, as in existence on the day before the
11 date of enactment of this Act, shall be transferred
12 to the Office of Credit Risk Management established
13 under section 47 of the Small Business Act, as
14 added by subsection (a).

15 (2) LENDER OVERSIGHT COMMITTEE.—All

16 functions of the Lender Oversight Committee of the
17 Administration, including the personnel, assets, and
18 obligations of the Lender Oversight Committee, as
19 in existence on the day before the date of enactment
20 of this Act, shall be transferred to the Lender Over-
21 sight Committee established under section 48 of the
22 Small Business Act, as added by subsection (a).

23 (c) DEEMING OF NAME.—

24 (1) OFFICE OF CREDIT RISK MANAGEMENT.—

25 Any reference in a law, regulation, document, paper,

1 or other record of the United States to the Office of
 2 Credit Risk Management of the Administration shall
 3 be deemed a reference to the Office of Credit Risk
 4 Management of the Administration established
 5 under section 47 of the Small Business Act, as
 6 added by subsection (a).

7 (2) LENDER OVERSIGHT COMMITTEE.—Any ref-
 8 erence in a law, regulation, document, paper, or
 9 other record of the United States to the Lender
 10 Oversight Committee of the Administration shall be
 11 deemed a reference to the Lender Oversight Com-
 12 mittee of the Administration established under sec-
 13 tion 48 of the Small Business Act, as added by sub-
 14 section (a).

15 (d) TECHNICAL AND CONFORMING AMENDMENTS.—
 16 The Small Business Act (15 U.S.C. 631 et seq.) is amend-
 17 ed—

18 (1) in section 3(r)(2) (15 U.S.C. 632(r)(2))—

19 (A) in this paragraph heading, by striking
 20 “SBA”; and

21 (B) in the matter preceding subparagraph
 22 (A), by striking “SBA”; and

23 (2) in section 18 (15 U.S.C. 647), by striking
 24 subsection (b) and inserting the following:

1 “(b) As used in this Act, the term ‘agricultural enter-
 2 prises’ means those small business concerns engaged in
 3 the production of food and fiber, ranching, and raising of
 4 livestock, aquaculture, and all other farming and agricul-
 5 tural related industries.”.

6 **SEC. 4. DEFINITION OF CREDIT ELSEWHERE.**

7 The Small Business Act (15 U.S.C. 631 et seq.) is
 8 amended—

9 (1) in section 3 (15 U.S.C. 632), by striking
 10 subsection (h) and inserting the following:

11 “(h) The term ‘credit elsewhere’ means—

12 “(1) for the purposes of this Act (except as
 13 used in section 7(b)), the availability of credit on
 14 reasonable terms and conditions to the individual
 15 loan applicant from non-Federal, non-State, or non-
 16 local government sources, considering factors associ-
 17 ated with conventional lending practices, including—

18 “(A) the business industry in which the
 19 loan applicant operates;

20 “(B) whether the loan applicant is an en-
 21 terprise that has been in operation for a period
 22 of not more than 2 years;

23 “(C) the adequacy of the collateral avail-
 24 able to secure the requested loan;

1 “(D) the loan term necessary to reasonably
 2 assure the ability of the loan applicant to repay
 3 the debt from the actual or projected cash flow
 4 of the business; and

5 “(E) any other factor relating to the par-
 6 ticular credit application, as documented in de-
 7 tail by the lender, that cannot be overcome ex-
 8 cept through obtaining a Federal loan guar-
 9 antee under prudent lending standards; and

10 “(2) for the purposes of section 7(b), the avail-
 11 ability of credit on reasonable terms and conditions
 12 from non-Federal sources taking into consideration
 13 the prevailing rates and terms in the community in
 14 or near where the applicant small business concern
 15 transacts business, or the applicant homeowner re-
 16 sides, for similar purposes and periods of time.”;
 17 and

18 (2) in section 7(a)(1)(A)(i) (15 U.S.C.
 19 636(a)(1)(A)(i)), by inserting “The Administrator
 20 has the authority to direct, and conduct oversight
 21 for, the methods by which lenders determine whether
 22 a borrower is able to obtain credit elsewhere.” before
 23 “No financial assistance”.

1 **SEC. 5. AUTHORITY FOR ADMINISTRATOR TO INCREASE**
 2 **AMOUNT FOR GENERAL BUSINESS LOANS.**

3 Section 20 of the Small Business Act (15 U.S.C. 631
 4 note) is amended—

5 (1) by redesignating subsection (j) as sub-
 6 section (f); and

7 (2) by adding at the end the following:

8 “(g) **AUTHORITY TO INCREASE AMOUNT OF GEN-**
 9 **ERAL BUSINESS LOANS.—**

10 “(1) **IN GENERAL.—**With respect to fiscal year
 11 2018 and each fiscal year thereafter, if the Adminis-
 12 trator determines that the amount of commitments
 13 by the Administrator for general business loans au-
 14 thorized under section 7(a) for a fiscal year could
 15 exceed the limit on the total amount of commitments
 16 the Administrator may make for those loans under
 17 this Act, an appropriations Act, or any other provi-
 18 sion of law, the Administrator may make commit-
 19 ments for those loans for that fiscal year in total
 20 amount equal to not more than 115 percent of that
 21 limit.

22 “(2) **APPROVAL REQUIRED BEFORE EXER-**
 23 **CISING AUTHORITY.—**

24 “(A) **IN GENERAL.—**Not later than 30
 25 days before the date on which the Adminis-
 26 trator intends to exercise the authority under

1 paragraph (1), the Administrator shall submit
2 notice of the intent of the Administrator to ex-
3 ercise the authority to—

4 “(i) the Committee on Small Business
5 and Entrepreneurship and the Sub-
6 committee on Financial Services and Gen-
7 eral Government of the Committee on Ap-
8 propriations of the Senate; and

9 “(ii) the Committee on Small Busi-
10 ness and the Subcommittee on Financial
11 Services and General Government of the
12 Committee on Appropriations of the House
13 of Representatives.

14 “(B) APPROVAL.—The Administrator may
15 not exercise the authority under paragraph (1)
16 unless the exercise of authority has been ap-
17 proved, in writing, by the Committee on Appro-
18 priations and the Committee on Small Business
19 and Entrepreneurship of the Senate and the
20 Committee on Appropriations and the Com-
21 mittee on Small Business of the House of Rep-
22 resentatives.

23 “(3) LIMITATION.—The Administrator shall not
24 exercise the authority under paragraph (1) more
25 than once during any fiscal year.”.

1 **SEC. 6. DISCLOSURE OF WAIVERS.**

2 (a) IN GENERAL.—If the Administrator exercises
3 statutory or regulatory authority to waive a regulation re-
4 lated to a program or function of the Office of Capital
5 Access of the Administration—

6 (1) the waiver shall be in writing and shall
7 specify the grounds for approving the waiver; and

8 (2) the Administrator shall notify the public of
9 all waivers of regulations approved by the Adminis-
10 tration, which notice shall—

11 (A) be published in the Federal Register
12 not less than annually;

13 (B) cover the period beginning on the date
14 after the last day covered by the previous no-
15 tice;

16 (C) describe the nature of the requirement
17 that has been waived and specify the regulation
18 involved;

19 (D) include a brief description of the
20 grounds for approval of the waiver; and

21 (E) state how more information about the
22 waiver and a copy of the request and the ap-
23 proval may be obtained.

24 (b) NO NEW WAIVER AUTHORITY.—Nothing in sub-
25 section (a) shall be construed as creating new authority

1 for the Administrator to waive regulations of the Adminis-
2 tration.

3 (c) GAO STUDY ON STANDARD OPERATING PROCE-
4 DURES MANUAL OR POLICY NOTICE WAIVER PROCESS.—
5 Not later than 1 year after the date of enactment of this
6 Act, the Comptroller General of the United States shall
7 submit to the Committee on Small Business and Entrepre-
8 neurship of the Senate and the Committee on Small Busi-
9 ness of the House of Representatives a report evalu-
10 ating—

11 (1) the methods and specific processes used by
12 the Administration to waive requirements in the
13 Standard Operating Procedures Manual or Policy
14 Notices relating to loans made under section 7(a) of
15 the Small Business Act (15 U.S.C. 636(a)); and

16 (2) the number of waivers described in para-
17 graph (1) granted during the period of 5 fiscal years
18 preceding the date of enactment of this Act.

○