

Suspend the Rules And Pass the Bill, H.R. 4743, with An Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

115TH CONGRESS
2^D SESSION

H. R. 4743

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 HOUSE OF REPRESENTATIVES

JANUARY 9, 2018

Mr. CHABOT (for himself and Ms. VELÁZQUEZ) introduced the following bill; which was referred to the Committee on Small Business

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”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act, the terms “Administration” and “Admin-
3 istrator” mean the Small Business Administration and the
4 Administrator thereof, respectively.

5 **SEC. 3. CODIFICATION OF THE OFFICE OF CREDIT RISK**

6 **MANAGEMENT AND THE LENDER OVERSIGHT**

7 **COMMITTEE.**

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

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

11 and

12 (2) by inserting after section 46 the following

13 new sections:

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

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

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

20 “(1) any lender making loans under section
21 7(a) (in this section referred to as a ‘7(a) lender’);

22 “(2) any Lending Partner or Intermediary par-
23 ticipant of the Administration in a lending program
24 of the Office of Capital Access of the Administra-
25 tion; and

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

4 “(c) DIRECTOR.—

5 “(1) IN GENERAL.—The Office shall be headed
6 by the Director of the Office of Credit Risk Manage-
7 ment (in this section referred to as the ‘Director’),
8 who shall be a career appointee in the Senior Execu-
9 tive Service (as defined in section 3132 of title 5,
10 United States Code).

11 “(2) DUTIES.—The Director shall be respon-
12 sible for oversight of the lenders and participants de-
13 scribed in subsection (b), including by conducting
14 periodic reviews of the compliance and performance
15 of such lenders and participants.

16 “(d) SUPERVISION DUTIES FOR 7(a) LENDERS.—
17 With respect to 7(a) lenders, an employee of the Office
18 shall—

19 “(1) be present for and supervise any such re-
20 view that is conducted by a contractor of the Office
21 on the premise of the 7(a) lender; and

22 “(2) supervise any such review that is not con-
23 ducted on the premise of the 7(a) lender.

24 “(e) ENFORCEMENT AUTHORITY AGAINST 7(a)
25 LENDERS.—

1 “(1) INFORMAL ENFORCEMENT AUTHORITY.—

2 The Director may take an informal enforcement ac-
3 tion against a 7(a) lender if the Director finds that
4 the 7(a) lender has violated a statutory or regulatory
5 requirement under section 7(a) or any requirement
6 in a Standard Operating Procedures Manual or Pol-
7 icy Notice related to a program or function of the
8 Office of Capital Access.

9 “(2) FORMAL ENFORCEMENT AUTHORITY.—

10 “(A) IN GENERAL.—With the approval of
11 the Lender Oversight Committee established
12 under section 48, the Director may take a for-
13 mal enforcement action against any 7(a) lender
14 if the Director finds that the 7(a) lender has
15 violated—

16 “(i) a statutory or regulatory require-
17 ment under section 7(a), including a re-
18 quirement relating to credit elsewhere; or

19 “(ii) any requirement described in a
20 Standard Operating Procedures Manual or
21 Policy Notice, related to a program or
22 function of the Office of Capital Access.

23 “(B) ENFORCEMENT ACTIONS.—An en-
24 forcement action imposed on a 7(a) lender by
25 the Director under subparagraph (A) shall be

1 based on the severity or frequency of the viola-
2 tion and may include assessing a civil monetary
3 penalty against the 7(a) lender in an amount
4 that is not greater than \$250,000.

5 “(3) APPEAL BY LENDER.—A 7(a) lender may
6 appeal an enforcement action imposed by the Direc-
7 tor described in this subsection to the Office of
8 Hearings and Appeals established under section 5(i)
9 or to an appropriate district court of the United
10 States.

11 “(f) REGULATIONS.—Not later than 1 year after the
12 date of the enactment of this section, the Administrator
13 shall issue regulations, after opportunity for notice and
14 comment, to carry out subsection (e).

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

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

23 “(1) IN GENERAL.—The Director shall annually
24 conduct a risk analysis of the portfolio of the Ad-

1 ministration with respect to all loans guaranteed
2 under section 7(a).

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

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

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

13 “(C) without identifying individual 7(a)
14 lenders by name, a consolidated analysis of the
15 risk created by the individual 7(a) lenders re-
16 sponsible for not less than 1 percent of the
17 gross loan approvals set forth separately for the
18 year covered by the report by—

19 “(i) the dollar value of the loans made
20 by such 7(a) lenders; and

21 “(ii) the number of loans made by
22 such 7(a) lenders;

23 “(D) steps taken by the Administrator to
24 mitigate the risks identified in subparagraphs
25 (A), (B), and (C);

1 “(E) the number of 7(a) lenders, the num-
2 ber of loans made, and the gross and net dollar
3 amount of loans made;

4 “(F) the number and dollar amount of
5 total losses, the number and dollar amount of
6 total purchases, and the percentage and dollar
7 amount of recoveries at the Administration;

8 “(G) the number and type of enforcement
9 actions recommended by the Director;

10 “(H) the number and type of enforcement
11 actions approved by the Lender Oversight Com-
12 mittee established under section 48;

13 “(I) the number and type of enforcement
14 actions disapproved by the Lender Oversight
15 Committee; and

16 “(J) the number and dollar amount of civil
17 monetary penalties assessed.

18 “(i) BUDGET SUBMISSION AND JUSTIFICATION.—
19 The Director shall annually provide, in writing, a fiscal
20 year budget submission for the Office and a justification
21 for such submission to the Administrator. Such submis-
22 sion and justification shall—

23 “(1) include salaries and expenses of the Office
24 and the charge for the lender oversight fees;

1 “(2) be submitted at or about the time of the
2 budget submission by the President under section
3 1105(a) of title 31; and

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

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

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

12 “(b) MEMBERSHIP.—The Committee shall consist of
13 at least 8 members selected by the Administrator, of
14 which—

15 “(1) 3 members shall be voting members, 2 of
16 whom shall be career appointees in the Senior Exec-
17 utive Service (as defined in section 3132 of title 5,
18 United States Code); and

19 “(2) the remaining members shall be nonvoting
20 members who shall serve in an advisory capacity on
21 the Committee.

22 “(c) DUTIES.—The Committee shall—

23 “(1) review reports on lender oversight activi-
24 ties;

1 “(2) review formal enforcement action rec-
2 ommendations of the Director of the Office of Credit
3 Risk Management with respect to any lender making
4 loans under section 7(a) and any Lending Partner
5 or Intermediary participant of the Administration in
6 a lending program of the Office of Capital Access of
7 the Administration;

8 “(3) in carrying out paragraph (2) with respect
9 to formal enforcement actions taken under sub-
10 section (d) or (e) of section 23, vote to recommend
11 or not recommend action to the Administrator or a
12 designee of the Administrator;

13 “(4) in carrying out paragraph (2) with respect
14 to any formal enforcement action not specified under
15 subsection (d) or (e) of section 23, vote to approve,
16 disapprove, or modify the action;

17 “(5) review, in an advisory capacity, any lender
18 oversight, portfolio risk management, or program in-
19 tegrity matters brought by the Director; and

20 “(6) take such other actions and perform such
21 other functions as may be delegated to the Com-
22 mittee by the Administrator.

23 “(d) MEETINGS.—

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

4 “(2) REPORTS.—The Committee shall submit
5 to the Administrator a report detailing each meeting
6 of the Committee, including if the Committee does
7 or does not vote to approve a formal enforcement ac-
8 tion of the Director of the Office of Credit Risk
9 Management with respect to a lender.”.

10 (b) SUPERVISION DUTIES FOR 7(A) LENDERS.—Ef-
11 fective January 1, 2019, subsection (d) of section 47 (as
12 added by subsection (a)) is amended to read as follows:

13 “(d) SUPERVISION DUTIES FOR 7(A) LENDERS.—

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

16 “(A) be present for and supervise any such
17 review that is conducted by a contractor of the
18 Office on the premise of the 7(a) lender; and

19 “(B) supervise any such review that is not
20 conducted on the premise of the 7(a) lender.

21 “(2) REVIEW REPORT TIMELINE.—

22 “(A) IN GENERAL.—Notwithstanding any
23 other requirements of the Office or the Admin-
24 istrator, the Administrator shall develop and

1 implement a review report timeline which
2 shall—

3 “(i) require the Administrator to—

4 “(I) deliver a written report of
5 the review to the 7(a) lender not later
6 than 60 business days after the date
7 on which the review is concluded; or

8 “(II) if the Administrator expects
9 to submit the report after the end of
10 the 60-day period described in clause
11 (i), notify the 7(a) lender of the ex-
12 pected date of submission of the re-
13 port and the reason for the delay; and

14 “(ii) if a response by the 7(a) lender
15 is requested in a report submitted under
16 subparagraph (A), require the 7(a) lender
17 to submit responses to the Administrator
18 not later than 45 business days after the
19 date on which the 7(a) lender receives the
20 report.

21 “(B) EXTENSION.—The Administrator
22 may extend the time frame described in sub-
23 paragraph (A)(i)(II) with respect to a 7(a)
24 lender as the Administrator determines nec-
25 essary.”.

1 (c) TRANSFER OF FUNCTIONS.—

2 (1) OFFICE OF CREDIT RISK MANAGEMENT.—

3 All functions of the Office of Credit Risk Manage-
4 ment of the Small Business Administration, includ-
5 ing the personnel, assets, and obligation of the Of-
6 fice of Credit Risk Management, as in existence on
7 the day before the date of the enactment of this Act,
8 shall be transferred to the Office of Credit Risk
9 Management established under section 47 of the
10 Small Business Act, as added by subsection (a).

11 (2) LENDER OVERSIGHT COMMITTEE.—All

12 functions of the Lender Oversight Committee of the
13 Small Business Administration, including the per-
14 sonnel, assets, and obligations of the Lender Over-
15 sight Committee, as in existence on the day before
16 the date of the enactment of this Act, shall be trans-
17 ferred to the Lender Oversight Committee estab-
18 lished under section 48 of the Small Business Act,
19 as added by subsection (a).

20 (d) DEEMING OF NAME.—

21 (1) OFFICE OF CREDIT RISK MANAGEMENT.—

22 Any reference in a law, regulation, guidance, docu-
23 ment, paper, or other record of the United States to
24 the Office of Credit Risk Management of the Small
25 Business Administration shall be deemed a reference

1 to the Office of Credit Risk Management, estab-
2 lished under section 47 of the Small Business Act,
3 as added by subsection (a).

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

12 (e) TECHNICAL AMENDMENT.—Section 3(r)(2) of the
13 Small Business Act (15 U.S.C. 632(r)(2)) is amended by
14 striking “regulated SBA lender” each place it appears in
15 heading and text and inserting “regulated lender”.

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

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

19 (1) by striking section 3(h) (15 U.S.C. 632(h))
20 and inserting the following:

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

22 “(1) for the purposes of this Act (except as
23 used in section 7(b)), the availability of credit on
24 reasonable terms and conditions to the individual
25 loan applicant from non-Federal, non-State, or non-

1 local government sources, considering factors associ-
2 ated with conventional lending practices, including—

3 “(A) the business industry in which the
4 loan applicant operates;

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

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

10 “(D) the loan term necessary to reasonably
11 assure the ability of the loan applicant to repay
12 the debt from the actual or projected cash flow
13 of the business; and

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

19 “(2) for the purposes of section 7(b), the avail-
20 ability of credit on reasonable terms and conditions
21 from non-Federal sources taking into consideration
22 the prevailing rates and terms in the community in
23 or near where the applicant business concern trans-
24 acts business, or the applicant homeowner resides,
25 for similar purposes and periods of time.”; and

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

7 (b) **TECHNICAL AMENDMENT.**—Section 18(b) of the
8 Small Business Act (15 U.S.C. 647(b)) is amended to read
9 as follows:

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

15 **SEC. 5. AUTHORITY FOR ADMINISTRATOR TO INCREASE**
16 **AMOUNT FOR GENERAL BUSINESS LOANS.**

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

19 (1) by redesignating subsection (j) as sub-
20 section (f); and

21 (2) by adding at the end the following new sub-
22 section:

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

1 “(1) IN GENERAL.—Subject to paragraphs (2)
2 and (3) and with respect to fiscal year 2018 and
3 each fiscal year thereafter, if the Administrator de-
4 termines that the amount of commitments by the
5 Administrator for general business loans authorized
6 under section 7(a) for a fiscal year could exceed the
7 limit on the total amount of commitments the Ad-
8 ministrator may make for those loans under this
9 Act, an appropriations Act, or any other provision of
10 law, the Administrator may make commitments for
11 those loans for that fiscal year in an aggregate
12 amount equal to not more than 115 percent of that
13 limit.

14 “(2) NOTICE REQUIRED BEFORE EXERCISING
15 AUTHORITY.—Not later than 30 days before the
16 date on which the Administrator intends to exercise
17 the authority under paragraph (1), the Adminis-
18 trator shall submit notice of intent to exercise the
19 authority to—

20 “(A) the Committee on Small Business
21 and Entrepreneurship and the Subcommittee on
22 Financial Services and General Government of
23 the Committee on Appropriations of the Senate;
24 and

1 “(B) the Committee on Small Business
2 and the Subcommittee on Financial Services
3 and General Government of the Committee on
4 Appropriations of the House of Representatives.

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

8 **SEC. 6. ESTABLISHING A PROCESS FOR WAIVERS.**

9 (a) IN GENERAL.—If the Administrator exercises
10 statutory or regulatory authority to waive a regulation or
11 a requirement in the Standard Operating Procedures
12 Manual or Policy Notice related to a program or function
13 of the Office of Capital Access of the Administration, the
14 waiver shall be in writing and be maintained in an indexed
15 form.

16 (b) NO NEW WAIVER AUTHORITY.—Nothing in sub-
17 section (a) shall be construed as creating new authority
18 for the Administrator to waive regulations of the Adminis-
19 tration.

20 **SEC. 7. REPEAL OF SMALL BUSINESS LOAN LOSS REPORT.**

21 Subsection (b) of section 10 of the Small Business
22 Act (15 U.S.C. 639(b)) is repealed.