

117TH CONGRESS
1ST SESSION

S. 2245

To amend the Small Business Act to enhance the Office of Credit Risk Management, to require the Administrator of the Small Business Administration to issue rules relating to environmental obligations of certified development companies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2021

Mr. YOUNG (for himself, Ms. KLOBUCHAR, and Mr. BOOKER) 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 enhance the Office of Credit Risk Management, to require the Administrator of the Small Business Administration to issue rules relating to environmental obligations of certified development companies, 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 “504 Credit Risk Man-
5 agement Improvement Act of 2021”.

1 **SEC. 2. ENHANCEMENTS TO THE OFFICE OF CREDIT RISK**
 2 **MANAGEMENT.**

3 Section 47 of the Small Business Act (15 U.S.C.
 4 657t) is amended—

5 (1) by striking subsection (b) and inserting the
 6 following:

7 “(b) DUTIES.—The Office—

8 “(1) shall be responsible for—

9 “(A) supervising—

10 “(i) any lender making loans under
 11 section 7(a) (in this section referred to as
 12 a ‘7(a) lender’);

13 “(ii) any Lending Partner or Inter-
 14 mediary participant of the Administration
 15 in a lending program of the Office of Cap-
 16 ital Access of the Administration;

17 “(iii) any small business lending com-
 18 pany or a non-Federally regulated lender
 19 without regard to the requirements of sec-
 20 tion 23; and

21 “(iv) any certified development com-
 22 pany described under the program estab-
 23 lished under title V of the Small Business
 24 Investment Act of 1958 (15 U.S.C. 695 et
 25 seq.) (referred to in this section as a ‘cer-

1 tified development company’), as provided
 2 in subsection (k); and

3 “(B) conducting file reviews with respect
 4 to loan closings under the program established
 5 under title V of the Small Business Investment
 6 Act of 1958 (15 U.S.C. 695 et seq.), as pro-
 7 vided in subsection (j); and

8 “(2) may—

9 “(A) take formal and informal enforcement
 10 actions against a certified development com-
 11 pany, as provided in subsection (l); and

12 “(B) charge a certified development com-
 13 pany a fee, as provided in subsection (m).”; and

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

15 “(j) LOAN CLOSING FILE REVIEWS.—With respect
 16 to a loan closing under the program established under title
 17 V of the Small Business Investment Act of 1958 (15
 18 U.S.C. 695 et seq.), the Office shall be responsible for the
 19 following:

20 “(1) Conducting a complete file review of a ran-
 21 dom selection of all loan closings, the number, fre-
 22 quency, and conduct of which shall be at the discre-
 23 tion of the Office, to ensure program integrity, in-
 24 cluding a review of the items listed on the Checklist

1 for Complete File Review contained in the appro-
2 priate form of the Administration.

3 “(2) Not later than 60 days after the date on
4 which each complete file review conducted under
5 paragraph (1) is completed, preparing a written re-
6 port documenting the results of that review, which
7 the Office shall send to—

8 “(A) the applicable certified development
9 company;

10 “(B) the designated attorney that closed
11 the loan for the certified development company;
12 and

13 “(C) the Commercial Loan Service Center.

14 “(3) If a complete file review conducted under
15 paragraph (1) reveals a deficiency that could result
16 in a loss to the Administration, requiring the appli-
17 cable certified development company or the des-
18 ignated attorney to promptly correct the deficiency.

19 “(k) SUPERVISION OF CERTIFIED DEVELOPMENT
20 COMPANIES.—With respect to the supervision of certified
21 development companies—

22 “(1) an employee of the Office shall—

23 “(A) be present for, and supervise, the re-
24 view of any such company that is conducted by

1 a contractor of the Office on the premises of
2 the company; and

3 “(B) supervise the review of any such com-
4 pany that is conducted by a contractor of the
5 Office that is not conducted on the premises of
6 the company; and

7 “(2) the Administrator shall—

8 “(A) develop a timeline for the review by
9 the Office of certified development companies
10 and the submission of reports regarding those
11 reviews, under which the Administrator shall—

12 “(i) submit to a certified development
13 company a written report of any review of
14 the company not later than 90 days after
15 the date on which the review is concluded;
16 or

17 “(ii) if the Administrator expects to
18 submit the report after the end of the 90-
19 day period described in clause (i), notify
20 the company of the expected date of sub-
21 mission of the report and the reason for
22 the delay; and

23 “(B) if a response by a certified develop-
24 ment company is requested in a report sub-
25 mitted under subparagraph (A)(i), require the

1 company to submit responses to the Adminis-
 2 trator not later than 45 business days after the
 3 date on which the company receives the report.

4 “(1) ENFORCEMENT AUTHORITY AGAINST CER-
 5 TIFIED DEVELOPMENT COMPANIES.—

6 “(1) INFORMAL ENFORCEMENT AUTHORITY.—

7 The Director may take an informal enforcement ac-
 8 tion against a certified development company if the
 9 Director finds that the company has violated a stat-
 10 utory or regulatory requirement or any requirement
 11 in a Standard Operating Procedures Manual or Pol-
 12 icy Notice relating to a program or function of the
 13 Office of Capital Access.

14 “(2) FORMAL ENFORCEMENT AUTHORITY.—

15 “(A) IN GENERAL.—With the approval of
 16 the Lender Oversight Committee established
 17 under section 48, the Director may take a for-
 18 mal enforcement action against any certified de-
 19 velopment company if the Director finds that
 20 the company has violated—

21 “(i) a statutory or regulatory require-
 22 ment, including a requirement relating to
 23 the necessary funds for making loans when
 24 those funds are not made available to the

1 company from private sources on reason-
 2 able terms; or

3 “(ii) any requirement described in a
 4 Standard Operating Procedures Manual or
 5 Policy Notice relating to a program or
 6 function of the Office of Capital Access.

7 “(B) ENFORCEMENT ACTIONS.—The deci-
 8 sion to take an enforcement action against a
 9 certified development company under subpara-
 10 graph (A) shall be based on the severity or fre-
 11 quency of the violation and may include assess-
 12 ing a civil monetary penalty against the com-
 13 pany in an amount that is not greater than
 14 \$250,000.

15 “(3) FAILURE TO SUBMIT ANNUAL REPORT.—
 16 With respect to a certified development company
 17 that, as of the date that is 30 days after the date
 18 on which the company is required to submit any re-
 19 port, fails to submit that report, the Director may—

20 “(A) suspend the company from partici-
 21 pating in the program established under title V
 22 of the Small Business Investment Act of 1958
 23 (15 U.S.C. 695 et seq.) for a period that is not
 24 longer than 30 days; or

1 “(B) impose a penalty on the company in
 2 an amount to be determined by the Director,
 3 except that the amount of the penalty shall be
 4 not more than \$10,000.

5 “(m) FEE AUTHORITY REGARDING CERTIFIED DE-
 6 VELOPMENT COMPANIES.—

7 “(1) IN GENERAL.—On and after the date that
 8 is 1 year after the date of enactment of this sub-
 9 section, the Office may collect from each certified
 10 development company a fee, the amount of which—

11 “(A) shall be determined on a graduated
 12 scale according to the size of the portfolio of
 13 the certified development company with respect
 14 to the program carried out under title V of the
 15 Small Business Investment Act of 1958 (15
 16 U.S.C. 695 et seq.); and

17 “(B) shall not exceed the amount that is 1
 18 basis point with respect to the value of the
 19 portfolio described in subparagraph (A).

20 “(2) PAYMENT.—A certified development com-
 21 pany on which a fee is imposed under paragraph (1)
 22 shall pay the fee from the servicing fees collected by
 23 the development company pursuant to regulation.”.

1 **SEC. 3. RULES RELATING TO OBLIGATIONS OF CERTIFIED**
 2 **DEVELOPMENT COMPANIES UNDER THE NA-**
 3 **TIONAL ENVIRONMENTAL POLICY ACT.**

4 (a) **ELIGIBLE CERTIFIED DEVELOPMENT COMPANY**
 5 **DEFINED.**—In this section, the term “eligible certified de-
 6 velopment company” means a certified development com-
 7 pany defined under title V of the Small Business Invest-
 8 ment Act of 1958 (15 U.S.C. 695 et seq.) that receives
 9 assistance pursuant to that title.

10 (b) **REQUIREMENT TO ISSUE RULES.**—Not later
 11 than 180 days after the date of enactment of this Act,
 12 the Administrator of the Small Business Administration
 13 shall issue rules to clarify the procedures necessary for an
 14 eligible certified development company to comply with the
 15 applicable requirements under National Environmental
 16 Policy Act of 1969 (42 U.S.C. 4321 et seq.).

17 (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-
 18 tion shall be construed to modify the requirements of the
 19 National Environmental Policy Act of 1969 (42 U.S.C.
 20 4321 et seq.).

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