

SMALL BUSINESS 7(A) LOAN AGENT TRANSPARENCY ACT

OCTOBER 12, 2021.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Ms. VELÁZQUEZ, from the Committee on Small Business,
submitted the following

R E P O R T

[To accompany H.R. 4481]

The Committee on Small Business, to whom was referred the bill (H.R. 4481) to amend the Small Business Act to establish requirements for 7(a) agents, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND BILL SUMMARY

The purpose of H.R. 4481, the “Small Business 7(a) Loan Agent Transparency Act”, is to establish a registration system with unique identifiers for 7(a) agents to help the Small Business Administration’s (SBA) Office of Credit Risk Management (OCRM)

track and evaluate the performance of 7(a) loans generated through loan agent activity. H.R. 4481 also enhances OCRM's and the SBA Lender Oversight Committee's (LOC) enforcements authority with respect to loan agents.

II. BACKGROUND AND NEED FOR LEGISLATION

H.R. 4481 was introduced by Rep. Dean Phillips (D–MN) and Rep. Dan Meuser (R–PA) on July 16, 2021 to improve SBA's oversight of loan agent and broker activity in the 7(a) Loan Guaranty Program (7(a) program). In February 2020, the Committee on Small Business held a hearing reviewing the management of SBA's Office of Credit Risk Management (OCRM),¹ which is responsible for the oversight of SBA lenders and its \$120 billion business loan portfolios. During the hearing, OCRM's director testified that approximately 11 percent of the 7(a) loan portfolio was generated through loan agent activity, which in FY 2019, represented over 5,700 loans. The director also testified that SBA lacks a way to uniquely identify and systematically track loan agents, and instead relies on lender reviews to obtain information about each lender's agents and brokers.

Authorized by section 7(a) of the Small Business Act, the SBA's 7(a) program is the agency's flagship loan program. Private sector lenders (mostly banks and credit unions but also some non-depository lenders) originate commercial and working capital loans of up to \$5 million to small businesses who cannot access credit elsewhere. SBA guarantees 50 to 90 percent of each 7(a) loan made, depending on loan characteristics, assuring the lender that if a borrower defaults on the loan, SBA will purchase the loan and the lender will receive an agreed-upon portion of the outstanding balance. SBA also administers several subprograms within the 7(a) program that offer streamlined and expedited loan procedures for different groups of borrowers, including the SBA Express, Export Express, and Community Advantage Pilot programs. Although these subprograms have their own distinguishing eligibility requirements, terms, and benefits, they operate under the 7(a) program's authorization. For the majority of 7(a) loans, SBA relies on lenders with delegated authority to process and service loans, and ensure borrowers meet the program's eligibility requirements. In FY2020, SBA approved 42,302 7(a) loans for a total of over \$22.5 billion, with an average loan size of \$533,076.

Increased risk to SBA's business loan programs introduced by loan agents and brokers has been consistently cited by SBA's OIG as a top management and performance challenge facing the agency, most recently in FY 2021.² In September 2015, OIG published an audit report which found though SBA strengthened some controls over loan agent participation in the business loan programs, further improvements were necessary to ensure program integrity and mitigate the risk of fraud and loss.³ For example, OCRM's loan

¹ *SBA Management Review: Office of Credit Risk Management: Hearing Before the H. Comm. on Small Business*, 116th Cong. (2020).

² U.S. SMALL BUS. ADMIN. OFFICE OF INSPECTOR GEN., TOP MANAGEMENT AND PERFORMANCE CHALLENGES FACING THE SMALL BUSINESS ADMINISTRATION IN FISCAL YEAR 2021, (Oct. 16, 2020), <https://www.sba.gov/sites/default/files/2020-10/SBA%20OIG%20Report%2021-01.508%20.pdf>.

³ U.S. SMALL BUS. ADMIN. OFFICE OF INSPECTOR GEN., AUDIT REPORT: SBA NEEDS TO IMPROVE ITS OVERSIGHT OF LOAN AGENTS, REPORT, (Sep. 25, 2015), https://www.sba.gov/sites/default/files/oig/Report_15-16_SBA_Needs_to_Improve_Its_Oversight_of_Loan_Agents.pdf.

agent oversight activities remain limited to lender on-site reviews, and according to OCRM officials cited in the September 2015 OIG audit report, the on-site review process could not effectively evaluate loan agent activity and performance. The report included a recommendation that SBA implement a process using permissible information to uniquely identify loan agents involved with SBA lending programs for tracking purposes.

Since 2005, OIG has investigated at least 22 cases with confirmed loan agent fraud totaling at least \$335 million. OIG's analysis determined that 7(a) loans made in which a lender paid a referral fee to a loan agent defaulted at a rate 28 percent higher than loans where no referral fee was reported. Furthermore, OIG identified that agents have targeted multiple SBA lenders, who would be unaware of loan agents' past performance or activity with other lenders. OIG's analysis found that one loan agent that fraudulently originated \$90 million in SBA loans received compensation from at least 19 different lenders. The Committee agrees with OIG that though lenders bear primary responsibility for monitoring their agents, only SBA is positioned to aggregate loan agent portfolios, evaluate their performance, and inform lenders and policymakers about concerning program risks or trends. Companion legislation (H.R. 4481, the "Small Business 7(a) Loan Agent Transparency Act") would require OCRM to compile loan agent data using a registration system that assigns each agent a unique identifier. H.R. 4531 requires a report to Congress regarding such data, including an analysis of the performance, cost, and risk associated with loan agent activity in the 7(a) program.

III. HEARINGS

On February 5, 2020, the Committee on Small Business held a management review hearing on OCRM,⁴ which is responsible for conducting oversight of the agency's business loan programs. This hearing continued the Committee's interest in OCRM's activities and followed the enactment of the Small Business 7(a) Lending Oversight Reform Act of 2018, which codified OCRM and strengthened its oversight and enforcement tools. During the hearing, OCRM's director testified that SBA lacks a way to uniquely identify and systematically track loan agents, and instead relies on lender reviews to obtain information about loan agents.

IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on July 29, 2021 and ordered H.R. 4481 favorably reported to the House of Representatives. During the markup, no amendments were offered.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The Committee voted by voice vote to favorably report H.R. 4481 to the House of Representatives at 10:28 a.m.

⁴ *Supra* note 1.

VI. SECTION-BY-SECTION ANALYSIS FOR H.R. 4481

Section 1. Short title

This Act may be cited as the “Small Business 7(a) Loan Agent Transparency Act”.

Section 2. Requirements for 7(a) agents

This section adds 7(a) agents as entities against whom OCRM and LOC may take a formal or informal enforcement action, which improves SBA’s ability to hold noncompliant agents accountable. This section also requires OCRM to establish a registration system for 7(a) agents that assigns each a unique identifier and collects data to help OCRM track and evaluate loan performance for loans generated through loan agent activity. It also requires OCRM to establish and maintain a database featuring the types of services provided by different 7(a) agents. This would improve SBA’s ability to assess the role agents and brokers play in providing access to capital through the 7(a) program, as well as help it monitor risk associated with loan agent activity. Finally, this section requires 7(a) agents to register in the system before providing services to a lender or borrower, and to pay an annual registration fee to OCRM.

VII. CONGRESSIONAL BUDGET COST ESTIMATE

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. The Committee has requested but not received from the Director of the Congressional Budget Office a cost estimate for the Committee’s provisions.

VIII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. While the Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974, the Committee does not believe that there will be any additional costs attributable to this legislation. H.R. 4481 does not direct new spending, but instead reallocates funding independently authorized and appropriated.

IX. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In accordance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in the H.R. 4481 are incorporated into the descriptive portions of this report.

X. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirements of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H.R. 4481 is to enhance OCRM's ability to monitor 7(a) loan agent activity and give OCRM enforcement authority against noncompliant agents.

XI. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, no provision of H.R. 4481 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

XII. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee finds that the bill does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the Rules of the House of Representatives.

XIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

XIV. FEDERAL ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

XV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XVI. CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 7 of rule XII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Art. I, § 8, cl. 1 of the Constitution of the United States.

XVII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, as shown as follows: existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

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SEC. 47. OFFICE OF CREDIT RISK MANAGEMENT.

(a) **ESTABLISHMENT.**—There is established within the Administration the Office of Credit Risk Management (in this section referred to as the “Office”).

(b) **DUTIES.**—The Office shall be responsible for supervising—

(1) any lender making loans under section 7(a) (in this section referred to as a “7(a) lender”);

(2) any Lending Partner or Intermediary participant of the Administration in a lending program of the Office of Capital Access of the Administration; **[and]**

(3) any small business lending company or a non-Federally regulated lender without regard to the requirements of section 23**[.]**;

(4) *any 7(a) agent.*

(c) **DIRECTOR.**—

(1) **IN GENERAL.**—The Office shall be headed by the Director of the Office of Credit Risk Management (in this section referred to as the “Director”), who shall be a career appointee in the Senior Executive Service (as defined in section 3132 of title 5, United States Code).

(2) **DUTIES.**—The Director shall be responsible for oversight of the lenders and participants described in subsection (b), including by conducting periodic reviews of the compliance and performance of such lenders and participants.

(d) **SUPERVISION DUTIES FOR 7(A) LENDERS.**—

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

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

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

(2) **REVIEW REPORT TIMELINE.**—

(A) **IN GENERAL.**—Notwithstanding any other requirements of the Office or the Administrator, the Administrator shall develop and implement a review report timeline which shall—

(i) require the Administrator to—

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

(II) if the Administrator expects to submit the report after the end of the 60-day period described

in clause (i), notify the 7(a) lender of the expected date of submission of the report and the reason for the delay; and

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

(B) EXTENSION.—The Administrator may extend the time frame described in subparagraph (A)(i)(II) with respect to a 7(a) lender as the Administrator determines necessary.

(e) ENFORCEMENT AUTHORITY AGAINST 7(a) LENDERS.—

(1) INFORMAL ENFORCEMENT AUTHORITY.—The Director may take an informal enforcement action against a 7(a) lender or 7(a) agent if the Director finds that the 7(a) lender or 7(a) agent has violated a statutory or regulatory requirement under section 7(a) or any requirement in a Standard Operating Procedures Manual or Policy Notice related to a program or function of the Office of Capital Access.

(2) FORMAL ENFORCEMENT AUTHORITY.—

(A) IN GENERAL.—With the approval of the Lender Oversight Committee established under section 48, the Director may take a formal enforcement action against any 7(a) lender or 7(a) agent if the Director finds that the 7(a) lender or 7(a) agent has violated—

(i) a statutory or regulatory requirement under section 7(a), including a requirement relating to credit elsewhere; or

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

(B) ENFORCEMENT ACTIONS.—An enforcement action imposed on a 7(a) lender or 7(a) agent by the Director under subparagraph (A) shall be based on the severity or frequency of the violation and may include assessing a civil monetary penalty against the 7(a) lender or 7(a) agent in an amount that is not greater than \$250,000.

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

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

(g) SERVICING AND LIQUIDATION RESPONSIBILITIES.—During any period during which a 7(a) lender is suspended or otherwise prohibited from making loans under section 7(a), the 7(a) lender shall remain obligated to maintain all servicing and liquidation activities delegated to the lender by the Administrator, unless otherwise specified by the Director.

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

(1) **IN GENERAL.**—The Director shall annually conduct a risk analysis of the portfolio of the Administration with respect to all loans guaranteed under section 7(a).

(2) **REPORT TO CONGRESS.**—On December 1, 2018, and every December 1 thereafter, the Director shall submit to Congress a report containing the results of each portfolio risk analysis conducted under paragraph (1) during the fiscal year preceding the submission of the report, which shall include—

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

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

(C) without identifying individual 7(a) lenders by name, a consolidated analysis of the risk created by the individual 7(a) lenders responsible for not less than 1 percent of the gross loan approvals set forth separately for the year covered by the report by—

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

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

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

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

(F) the number and dollar amount of total losses, the number and dollar amount of total purchases, and the percentage and dollar amount of recoveries at the Administration;

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

(H) the number and type of enforcement actions approved by the Lender Oversight Committee established under section 48;

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

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

(i) **BUDGET SUBMISSION AND JUSTIFICATION.**—The Director shall annually provide, in writing, a fiscal year budget submission for the Office and a justification for such submission to the Administrator. Such submission and justification shall—

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

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

(3) be maintained in an indexed form and made available for public review for a period of not less than 5 years beginning on the date of submission and justification.

(j) **REGISTRATION SYSTEM FOR 7(a) AGENTS.**—

(1) **IN GENERAL.**—*The Director shall establish a registration system for 7(a) agents that assigns a unique identifier to each 7(a) agent and collects data necessary for the Director to submit the report required under paragraph (4).*

(2) **REQUIREMENTS.**—*A 7(a) agent shall—*

(A) register in the system established under paragraph (1) before providing covered services to a lender or applicant; and

(B) effective 1 year after the date of the enactment of this subsection, submit an annual fee for such registration to the Director.

(3) DATABASE.—The Director shall establish and maintain an electronic database of the types of covered services provided by each 7(a) agent.

(k) DEFINITIONS.—In this section:

(1) 7(a) AGENT.—The term “7(a) agent” means a person who provides covered services on behalf of a lender or applicant.

(2) COVERED SERVICES.—The term “covered services” means—

(A) assistance with completing an application for a loan under section 7(a) (including preparing a business plan, cash flow projections, financial statements, and related documents); or

(B) consulting, broker, or referral services with respect to a loan under section 7(a).

SEC. 48. LENDER OVERSIGHT COMMITTEE.

(a) ESTABLISHMENT.—There is established within the Administration the Lender Oversight Committee (in this section referred to as the “Committee”).

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

(1) 3 members shall be voting members, 2 of whom shall be career appointees in the Senior Executive Service (as defined in section 3132 of title 5, United States Code); and

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

(c) DUTIES.—The Committee shall—

(1) review reports on lender oversight activities;

(2) review formal enforcement action recommendations of the Director of the Office of Credit Risk Management with respect to any lender making loans under section 7(a) [and any Lending Partner or Intermediary participant], any 7(a) agent (as defined in section 47), or any Lending Partner or Intermediary participant of the Administration in a lending program of the Office of Capital Access of the Administration;

(3) in carrying out paragraph (2) with respect to formal enforcement actions taken under subsection (d) or (e) of section 23, vote to recommend or not recommend action to the Administrator or a designee of the Administrator;

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

(5) review, in an advisory capacity, any lender oversight, portfolio risk management, or program integrity matters brought by the Director; and

(6) take such other actions and perform such other functions as may be delegated to the Committee by the Administrator.

(d) MEETINGS.—

(1) IN GENERAL.—The Committee shall meet as necessary, but not less frequently than on a quarterly basis.

(2) REPORTS.—The Committee shall submit to the Administrator a report detailing each meeting of the Committee, including if the Committee does or does not vote to approve a formal enforcement action of the Director of the Office of Credit Risk Management with respect to a lender.

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