

Calendar No. 167118TH CONGRESS
1ST SESSION**S. 1345**

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

APRIL 27, 2023

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

JULY 25, 2023

Reported by Mr. CARDIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “504 Credit Risk Man-
3 agement Improvement Act of 2023”.

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

6 Section 47 of the Small Business Act (15 U.S.C.
7 657t) is amended—

8 (1) by striking subsection (b) and inserting the
9 following:

10 “(b) DUTIES.—The Office—

11 “(1) shall be responsible for—

12 “(A) supervising—

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

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

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

24 “(iv) any certified development com-
25 pany described under the program estab-
26 lished under title V of the Small Business

1 Investment Act of 1958 (15 U.S.C. 695 et
2 seq.) (referred to in this section as a ‘cer-
3 tified development company’), as provided
4 in subsection (k); and

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

10 “(2) may—

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

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

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

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

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

1 eluding a review of the items listed on the Checklist
 2 for Complete File Review contained in the appro-
 3 priate form of the Administration.

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

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

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

14 “(C) the Commercial Loan Service Center.

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

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

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

24 “(A) be present for, and supervise, the re-
 25 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.).

21 **SECTION 1. SHORT TITLE.**

22 *This Act may be cited as the “504 Credit Risk Manage-*
 23 *ment Improvement Act of 2023”.*

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

3 *Title V of the Small Business Investment Act of 1958*
4 *(15 U.S.C. 695 et seq.) is amended by adding at the end*
5 *the following:*

6 **“SEC. 511. OFFICE OF CREDIT RISK MANAGEMENT OVER-**
7 **SIGHT.**

8 *“(a) DEFINITIONS.—In this section—*

9 *“(1) the term ‘Director’ means the Director of the*
10 *Office; and*

11 *“(2) the term ‘Office’ means the Office of Credit*
12 *Risk Management established under section 47 of the*
13 *Small Business Act (15 U.S.C. 657t).*

14 *“(b) DUTIES RELATING TO 504 PROGRAM.—The Of-*
15 *fice—*

16 *“(1) shall be responsible for—*

17 *“(A) supervising any certified development*
18 *company, as provided in subsection (d); and*

19 *“(B) conducting file reviews with respect to*
20 *loan closings under the program established*
21 *under this title, as provided in subsection (c);*
22 *and*

23 *“(2) may—*

24 *“(A) take formal and informal enforcement*
25 *actions against a certified development company,*
26 *as provided in subsection (e); and*

1 “(B) charge a certified development com-
2 pany a fee, as provided in subsection (f).

3 “(c) *LOAN CLOSING FILE REVIEWS.*—With respect to
4 a loan closing under the program established under this
5 title, the Office shall be responsible for the following:

6 “(1) Conducting a complete file review of a ran-
7 dom selection of all loan closings, the number, fre-
8 quency, and conduct of which shall be at the discre-
9 tion of the Office, to ensure program integrity, includ-
10 ing a review of the items listed on the Checklist for
11 Complete File Review contained in the appropriate
12 form of the Administration.

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

18 “(A) the applicable certified development
19 company;

20 “(B) the designated attorney that closed the
21 loan for the certified development company; and

22 “(C) the Commercial Loan Service Center.

23 “(3) If a complete file review conducted under
24 paragraph (1) reveals a deficiency that could result
25 in a loss to the Administration, requiring the appli-

1 *cable certified development company or the designated*
2 *attorney to promptly correct the deficiency.*

3 *“(d) SUPERVISION OF CERTIFIED DEVELOPMENT COM-*
4 *PANIES.—With respect to the supervision of certified devel-*
5 *opment companies—*

6 *“(1) an employee of the Office shall—*

7 *“(A) be present for, and supervise, the re-*
8 *view of any such company that is conducted by*
9 *a contractor of the Office on the premises of the*
10 *company; and*

11 *“(B) supervise the review of any such com-*
12 *pany that is conducted by a contractor of the Of-*
13 *fice that is not conducted on the premises of the*
14 *company; and*

15 *“(2) the Administrator shall—*

16 *“(A) develop a timeline for the review by*
17 *the Office of certified development companies and*
18 *the submission of reports regarding those re-*
19 *views, under which the Administrator shall—*

20 *“(i) submit to a certified development*
21 *company a written report of any review of*
22 *the company not later than 90 days after*
23 *the date on which the review is concluded;*
24 *or*

1 “(i) if the Administrator expects to
2 submit the report after the end of the 90-
3 day period described in clause (i)—

4 “(I) notify the company of the ex-
5 pected date of submission of the report
6 and the reason for the delay; and

7 “(II) submit to the company the
8 report; and

9 “(B) if a response by a certified develop-
10 ment company is requested in a report submitted
11 under subparagraph (A), require the company to
12 submit responses to the Administrator not later
13 than 45 business days after the date on which
14 the company receives the report.

15 “(e) ENFORCEMENT AUTHORITY AGAINST CERTIFIED
16 DEVELOPMENT COMPANIES.—

17 “(1) INFORMAL ENFORCEMENT AUTHORITY.—The
18 Director may take an informal enforcement action
19 against a certified development company if the Direc-
20 tor finds that the company has violated a statutory
21 or regulatory requirement or any requirement in a
22 Standard Operating Procedures Manual or Policy
23 Notice relating to a program or function of the Office
24 of Capital Access.

25 “(2) FORMAL ENFORCEMENT AUTHORITY.—

1 “(A) *IN GENERAL.*—*With the approval of*
2 *the Lender Oversight Committee established*
3 *under section 48 of the Small Business Act (15*
4 *U.S.C. 657u), the Director may take a formal*
5 *enforcement action against any certified develop-*
6 *ment company if the Director finds that the com-*
7 *pany has violated—*

8 “(i) *a statutory or regulatory require-*
9 *ment, including a requirement relating to*
10 *the necessary funds for making loans when*
11 *those funds are not made available to the*
12 *company from private sources on reasonable*
13 *terms; or*

14 “(ii) *any requirement described in a*
15 *Standard Operating Procedures Manual or*
16 *Policy Notice relating to a program or func-*
17 *tion of the Office of Capital Access.*

18 “(B) *ENFORCEMENT ACTIONS.*—*The deci-*
19 *sion to take an enforcement action against a cer-*
20 *tified development company under subparagraph*
21 *(A) shall be based on the severity or frequency of*
22 *the violation and may include assessing a civil*
23 *monetary penalty against the company in an*
24 *amount that is not greater than \$250,000.*

1 “(3) *FAILURE TO SUBMIT ANNUAL REPORT.*—
2 *With respect to a certified development company that,*
3 *as of the date that is 60 days after the date on which*
4 *the company is required to submit any report, fails*
5 *to submit that report, the Director may—*

6 “(A) *suspend the company from partici-*
7 *parting in the program established under this*
8 *title for a period that is not longer than 30 days;*
9 *or*

10 “(B) *impose a penalty on the company in*
11 *an amount to be determined by the Director, ex-*
12 *cept that the amount of the penalty shall be not*
13 *more than \$10,000.*

14 “(f) *FEE AUTHORITY REGARDING CERTIFIED DEVEL-*
15 *OPMENT COMPANIES.*—

16 “(1) *IN GENERAL.*—*On and after the date that*
17 *is 1 year after the date of enactment of this section,*
18 *the Office may collect from each certified development*
19 *company a fee, the amount of which—*

20 “(A) *shall be determined on a graduated*
21 *scale according to the size of the portfolio of the*
22 *certified development company with respect to*
23 *the program carried out under this title; and*

1 “(B) shall not exceed the amount that is 1
2 basis point with respect to the value of the port-
3 folio described in subparagraph (A).

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

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

11 (a) *ELIGIBLE CERTIFIED DEVELOPMENT COMPANY*
12 *DEFINED.*—In this section, the term “eligible certified de-
13 velopment company” means a certified development com-
14 pany, within the meaning under title V of the Small Busi-
15 ness Investment Act of 1958 (15 U.S.C. 695 et seq.), that
16 receives assistance pursuant to that title.

17 (b) *REQUIREMENT TO ISSUE RULES.*—Not later than
18 180 days after the date of enactment of this Act, the Admin-
19 istrator of the Small Business Administration shall issue
20 rules to clarify the procedures necessary for an eligible cer-
21 tified development company to comply with the applicable
22 requirements under National Environmental Policy Act of
23 1969 (42 U.S.C. 4321 et seq.).

24 (c) *RULE OF CONSTRUCTION.*—Nothing in this section
25 shall be construed to modify the requirements of the Na-

1 *tional Environmental Policy Act of 1969 (42 U.S.C. 4321*
2 *et seq.).*

3 **SEC. 4. EXTENSION OF SUNSET FOR DELEGATED AUTHOR-**
4 **ITY FOR ACCREDITED LENDERS.**

5 *Section 328(b)(2) of division N of the Consolidated Ap-*
6 *propriations Act, 2021 (15 U.S.C. 697d note) is amended*
7 *by striking “2023” and inserting “2025”.*

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118TH CONGRESS
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S. 1345

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.

JULY 25, 2023

Reported with an amendment