

15 USCS § 650

Current through Public Law 116-344, approved January 13, 2021, with a gap of Public Law 116-283.

§ 650. Supervisory and enforcement authority for small business lending companies

(a) In general. The Administrator is authorized—

- (1) to supervise the safety and soundness of small business lending companies and non-Federally regulated lenders;
- (2) with respect to small business lending companies to set capital standards to regulate, to examine, and to enforce laws governing such companies, in accordance with the purposes of this Act; and
- (3) with respect to non-Federally regulated lenders to regulate, to examine, and to enforce laws governing the lending activities of such lenders under section 7(a) [15 USCS § 636(a)] in accordance with the purposes of this Act.

(b) Capital directive.

- (1) In general. If the Administrator determines that a small business lending company is being operated in an imprudent manner, the Administrator may, in addition to any other action authorized by law, issue a directive to such company to increase capital to such level as the Administrator determines will result in the safe and sound operation of such company.
- (2) Delegation. The Administrator may not delegate the authority granted under paragraph (1) except to an Associate Deputy Administrator.
- (3) Regulations. The Administrator shall issue regulations outlining the conditions under which the Administrator may determine the level of capital pursuant to paragraph (1).

(c) Civil action. If a small business lending company violates this Act, the Administrator may institute a civil action in an appropriate district court to terminate the rights, privileges, and franchises of the company under this Act.

(d) Revocation or suspension of loan authority.

- (1) The Administrator may revoke or suspend the authority of a small business lending company or a non-Federally regulated lender to make, service or liquidate business loans authorized by section 7(a) of this Act [15 USCS § 636(a)]—
 - (A) for false statements knowingly made in any written submission required under this Act;
 - (B) for omission of a material fact from any written submission required under this Act;
 - (C) for willful or repeated violation of this Act;
 - (D) for willful or repeated violation of any condition imposed by the Administrator with respect to any application, request, or agreement under this Act; or
 - (E) for violation of any cease and desist order of the Administrator under this section.

15 USCS § 650

(2) The Administrator may revoke or suspend authority under paragraph (1) only after a hearing under subsection (f). The Administrator may delegate power to revoke or suspend authority under paragraph (1) only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

(A) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a suspension order without conducting a hearing pursuant to subsection (f). If the Administrator issues a suspension under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f).

(B) Any suspension under paragraph (1) shall remain in effect until the Administrator makes a decision pursuant to subparagraph (4) to permanently revoke the authority of the small business lending company or non-Federally regulated lender, suspend the authority for a time certain, or terminate the suspension.

(3) The small business lending company or non-Federally regulated lender must notify borrowers of a revocation and that a new entity has been appointed to service their loans. The Administrator or an employee of the Administration designated by the Administrator may provide such notice to the borrower.

(4) Any revocation or suspension under paragraph (1) shall be made by the Administrator except that the Administrator shall delegate to an administrative law judge as that term is used in [section 3105 of title 5, United States Code](#), the authority to conduct any hearing required under subsection (f). The Administrator shall base the decision to revoke on the record of the hearing.

(e) Cease and desist order.

(1) Where a small business lending company, a non-Federally regulated lender, or other person violates this Act or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of this Act, the Administrator may order, after the opportunity for hearing pursuant to subsection (f), the company, lender, or other person to cease and desist from such action or failure to act. The Administrator may delegate the authority under the preceding sentence only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

(2) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a cease and desist order without conducting a hearing pursuant to subsection (f). If the Administrator issues a cease and desist order under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f).

(3) The Administrator may further order such small business lending company or non-Federally regulated lender or other person to take such action or to refrain from such action as the Administrator deems necessary to insure compliance with this Act.

(4) A cease and desist order under this subsection may also provide for the suspension of authority to lend in subsection (d).

(f) Procedure for revocation or suspension of loan authority and for cease and desist order.

(1) Before revoking or suspending authority under subsection (d) or issuing a cease and desist order under subsection (e), the Administrator shall serve an order to show cause upon the small business lending company, non-Federally regulated lender, or other person why an order revoking or suspending the authority or a cease and desist order should not be issued. The order to show cause shall contain a statement of the matters of fact and law asserted by the Administrator and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before an administrative law judge at a time and place stated in the order. Such hearing shall be conducted pursuant to the provisions of sections 554, 556, and 557 of title 5, United States Code. If after hearing, or a waiver thereof, the Administrator determines that an order revoking or suspending the authority or a cease and desist order should be issued, the Administrator shall promptly issue such order, which shall include a statement of the findings of the Administrator and the grounds and reasons therefor and

15 USCS § 650

specify the effective date of the order, and shall cause the order to be served on the small business lending company, non-Federally regulated lender, or other person involved.

(2) Witnesses summoned before the Administrator shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States.

(3) A cease and desist order, suspension or revocation issued by the Administrator, after the hearing under this subsection is final agency action for purposes of chapter 7 of title 5, United States Code [[5 USCS §§ 701](#) et seq.]. An adversely aggrieved party shall have 20 days from the date of issuance of the cease and desist order, suspension or revocation, to seek judicial review in an appropriate district court.

(g) Removal or suspension of management official.

(1) Definition. In this section, the term “management official” means, with respect to a small business lending company or a non-Federally regulated lender, an officer, director, general partner, manager, employee, agent, or other participant in the management of the affairs of the company’s or lender’s activities under section 7(a) of this Act [[15 USCS § 636\(a\)](#)].

(2) Removal of management official.

(A) Notice. The Administrator may serve upon any management official a written notice of its intention to remove that management official if, in the opinion of the Administrator, the management official—

(i) willfully and knowingly commits a substantial violation of—

(I) this Act;

(II) any regulation issued under this Act;

(III) a final cease-and-desist order under this Act; or

(IV) any agreement by the management official, the small business lending company or non-Federally regulated lender under this Act; or

(ii) willfully and knowingly commits a substantial breach of a fiduciary duty of that person as a management official and the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such management official.

(B) Contents of notice. A notice under subparagraph (A) shall contain a statement of the facts constituting grounds therefor and shall fix a time and place at which a hearing, conducted pursuant to sections 554, 556, and 557 of title 5, United States Code, will be held thereon.

(C) Hearing.

(i) Timing. A hearing under subparagraph (B) shall be held not earlier than 30 days and later than 60 days after the date of service of notice of the hearing, unless an earlier or a later date is set by the Administrator at the request of—

(I) the management official, and for good cause shown; or

(II) the Attorney General.

(ii) Consent. Unless the management official appears at a hearing under this paragraph in person or by a duly authorized representative, the management official shall be deemed to have consented to the issuance of an order of removal under subparagraph (A).

(D) Order of removal.

(i) In general. In the event of consent under subparagraph (C)(ii), or if upon the record made at a hearing under this subsection, the Administrator finds that any of the grounds specified in the notice of removal has been established, the Administrator may issue such orders of removal from office as the Administrator deems appropriate.

15 USCS § 650

(ii) Effectiveness. An order under clause (i) shall—

(I) take effect 30 days after the date of service upon the subject small business lending company or non-Federally regulated lender and the management official concerned (except in the case of an order issued upon consent as described in subparagraph (C)(ii), which shall become effective at the time specified in such order); and

(II) remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court in accordance with this section.

(3) Authority to suspend or prohibit participation.

(A) In general. In order to protect a small business lending company, a non-Federally regulated lender or the interests of the Administration or the United States, the Administrator may suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of a small business lending company or a non-Federally regulated lender a management official by written notice to such effect served upon the management official. Such suspension or prohibition may prohibit the management official from making, servicing, reviewing, approving, or liquidating any loan under section 7(a) of this Act [15 USCS § 636(a)].

(B) Effectiveness. A suspension or prohibition under subparagraph (A)—

(i) shall take effect upon service of notice under paragraph (2); and

(ii) unless stayed by a court in proceedings authorized by subparagraph (C), shall remain in effect—

(I) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under paragraph (2); and

(II) until such time as the Administrator dismisses the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

(C) Judicial review of suspension prior to hearing. Not later than 10 days after a management official is suspended or prohibited from participation under subparagraph (A), the management official may apply to an appropriate district court for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intent to remove served upon the management official under paragraph (2).

(4) Authority to suspend on criminal charges.

(A) In general. If a management official is charged in any information, indictment, or complaint authorized by a United States attorney, with a felony involving dishonesty or breach of trust, the Administrator may, by written notice served upon the management official, suspend the management official from office or prohibit the management official from further participation in any manner in the management or conduct of the affairs of the small business lending company or non-Federally regulated lender.

(B) Effectiveness. A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint is finally disposed of, or until terminated by the Administrator or upon an order of a district court.

(C) Authority upon conviction. If a judgment of conviction with respect to an offense described in subparagraph (A) is entered against a management official, then at such time as the judgment is not subject to further judicial review (and for purposes of this subparagraph shall not include any petition for a writ of habeas corpus), the Administrator may issue and serve upon the management official an order removing the management official, effective upon service of a copy of the order upon the small business lending company or non-Federally regulated lender.

15 USCS § 650

(D) Authority upon dismissal or other disposition. A finding of not guilty or other disposition of charges described in subparagraph (A) shall not preclude the Administrator from instituting proceedings under subsection (e) or (f).

(5) Notification to small business lending company or a non-Federally regulated lender. Copies of each notice required to be served on a management official under this section shall also be served upon the small business lending company or non-Federally regulated lender involved.

(6) Final agency action and judicial review.

(A) Issuance of orders. After a hearing under this subsection, and not later than 30 days after the Administrator notifies the parties that the case has been submitted for final decision, the Administrator shall render a decision in the matter (which shall include findings of fact upon which its decision is predicated), and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with this section. The decision of the Administrator shall constitute final agency action for purposes of chapter 7 of title 5, United States Code [[5 USCS §§ 701](#) et seq.].

(B) Judicial review. An adversely aggrieved party shall have 20 days from the date of issuance of the order to seek judicial review in an appropriate district court.

(h) Appointment of receiver.

(1) In any proceeding under subsection (f)(4) or subsection (g)(6)(C), the court may take exclusive jurisdiction of a small business lending company or a non-Federally regulated lender and appoint a receiver to hold and administer the assets of the company or lender.

(2) Upon request of the Administrator, the court may appoint the Administrator as a receiver under paragraph (1).

(i) Possession of assets.

(1) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent, the Administrator may take possession of the portfolio of loans guaranteed by the Administrator and sell such loans to a third party by means of a receiver appointed under subsection (h).

(2) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent or otherwise operating in an unsafe and unsound condition, the Administrator may take possession of servicing activities of loans that are guaranteed by the Administrator and sell such servicing rights to a third party by means of a receiver appointed under subsection (h).

(j) Penalties and forfeitures.

(1) Except as provided in paragraph (2), a small business lending company or a non-Federally regulated lender which violates any regulation or written directive issued by the Administrator regarding the filing of any regular or special report shall pay to the United States a civil penalty of not more than \$5,000 for each day of the continuance of the failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties under this subsection may be enforced in a civil action brought by the Administrator. The penalties under this subsection shall not apply to any affiliate of a small business lending company that procures at least 10 percent of its annual purchasing requirements from small manufacturers.

(2) The Administrator may by rules and regulations that shall be codified in the Code of Federal Regulations, after an opportunity for notice and comment, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing which shall be conducted pursuant to sections 554, 556, and 557 of title 5, United States Code, exempt in whole or in part, any small business lending company or non-Federally regulated lender from paragraph (1), upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the

[15 USCS § 657t](#)

Current through Public Law 116-344, approved January 13, 2021, with a gap of Public Law 116-283.

§ 657t. 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) [[15 USCS § 636\(a\)](#)] (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 [[15 USCS § 650](#)].

(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 [premises] of the 7(a) lender; and
- (B) supervise any such review that is not conducted on the premise [premises] 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.

15 USCS § 657t

(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 if the Director finds that the 7(a) lender 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 [[15 USCS § 657u](#)], the Director may take a formal enforcement action against any 7(a) lender if the Director finds that the 7(a) lender has violated—

(i) a statutory or regulatory requirement under section 7(a) [[15 USCS § 636\(a\)](#)], 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 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 in an amount that is not greater than \$250,000.

(3) Appeal by lender. A 7(a) lender 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) [[15 USCS § 634\(i\)](#)] 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 [enacted June 21, 2018], 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) [[15 USCS § 636\(a\)](#)], 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) [[15 USCS § 636\(a\)](#)].

(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) [[15 USCS § 636\(a\)](#)];

(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);

15 USCS § 657t

Administration;

(E) the number of 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

(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 [[15 USCS § 657u](#)];

(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 [[31 USCS § 1105a](#)]; 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.