

(A) by the Administrator, after reviewing a determination by the applicable contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period for performance) required by the contract; or

(B) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.

(b) Similarly situated entities

Contract amounts expended by a covered small business concern on a subcontractor that is a similarly situated entity shall not be considered subcontracted for purposes of determining whether the covered small business concern has violated a requirement established under subsection (a) or (d).

(c) Modifications of percentages

The Administrator may change, by rule (after providing notice and an opportunity for public comment), a percentage specified in paragraphs (1) through (4) of subsection (a) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category.

(d) Other contracts

(1) In general

With respect to a category of contracts to which a requirement under subsection (a) does not apply, the Administrator is authorized to establish, by rule (after providing notice and an opportunity for public comment), a requirement that a covered small business concern may not expend on subcontractors more than a specified percentage of the amount paid to the concern under a contract in that category.

(2) Uniformity

A requirement established under paragraph (1) shall apply to all covered small business concerns.

(3) Construction projects

The Administrator shall establish, through public rulemaking, requirements similar to those specified in paragraph (1) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such paragraph. The percentage applicable to any such requirement shall be determined in accordance with paragraph (1).

(e) Definitions

In this section, the following definitions apply:

(1) Covered small business concern

The term “covered small business concern” means a business concern that—

(A) with respect to a contract awarded under section 637(a) of this title, is a small business concern eligible to receive contracts under that section;

(B) with respect to a contract awarded under section 637(m) of this title—

(i) is a small business concern owned and controlled by women (as defined in that section); or

(ii) is a small business concern owned and controlled by women (as defined in that section) that is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(C) with respect to a contract awarded under section 644(a) of this title, is a small business concern;

(D) with respect to a contract awarded under section 657a of this title, is a qualified HUBZone small business concern; or

(E) with respect to a contract awarded under section 657f of this title, is a small business concern owned and controlled by service-disabled veterans.

(2) Similarly situated entity

The term “similarly situated entity” means a subcontractor that—

(A) if a subcontractor for a small business concern, is a small business concern;

(B) if a subcontractor for a small business concern eligible to receive contracts under section 637(a) of this title, is such a concern;

(C) if a subcontractor for a small business concern owned and controlled by women (as defined in section 637(m) of this title), is such a concern;

(D) if a subcontractor for a small business concern owned and controlled by women (as defined in section 637(m) of this title) that is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law), is such a concern;

(E) if a subcontractor for a qualified HUBZone small business concern, is such a concern; or

(F) if a subcontractor for a small business concern owned and controlled by service-disabled veterans, is such a concern.

(Pub. L. 85-536, §2[46], as added Pub. L. 112-239, div. A, title XVI, §1651, Jan. 2, 2013, 126 Stat. 2079; amended Pub. L. 114-92, div. A, title VIII, §864(b), Nov. 25, 2015, 129 Stat. 927.)

AMENDMENTS

2015—Subsec. (a)(4). Pub. L. 114-92 substituted “which is principally for supplies from a regular dealer in such supplies, and which is not a contract principally for services or construction” for “for supplies from a regular dealer in such supplies” in introductory provisions.

INAPPLICABILITY OF REQUIREMENT TO REVIEW AND JUSTIFY CERTAIN CONTRACTS

Pub. L. 113-66, div. A, title XVI, §1615, Dec. 26, 2013, 127 Stat. 950, provided that: “In the case of a contract to which the provisions of section 46 of the Small Business Act (15 U.S.C. 657s) apply, the requirements under section 802 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1824; 10 U.S.C. 2304 note) do not apply.”

§ 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 U.S.C. 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 650 of this title.

(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).

(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 premise¹ of the 7(a) lender; and
- (B) supervise any such review that is not conducted on the premise¹ 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 if the Director finds that the 7(a) lender has violated a statutory or regulatory requirement under section 7(a) [15 U.S.C. 636(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 657u of this title, 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), 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 634(i) of this title or to an appropriate district court of the United States.

(f) Regulations

Not later than 1 year after 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 U.S.C. 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).

(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

¹ So in original. Probably should be “premises”.

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 657u of this title;

(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.

(Pub. L. 85-536, §2[47], as added and amended Pub. L. 115-189, §3(a)(2), (b), June 21, 2018, 132 Stat. 1492, 1495.)

PRIOR PROVISIONS

A prior section 2[47] of Pub. L. 85-536 was renumbered section 2[49] and is set out as a note under section 631 of this title.

AMENDMENTS

2018—Subsec. (d). Pub. L. 115-189, §3(b), amended subsec. (d) generally. Prior to amendment, text read as follows: “With respect to 7(a) lenders, an employee of the Office shall—

“(1) 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

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

CHANGE OF NAME

Pub. L. 115-189, §3(d)(1), June 21, 2018, 132 Stat. 1496, provided that: “Any reference in a law, regulation, guidance, document, paper, or other record of the United States to the Office of Credit Risk Management of the Small Business Administration shall be deemed a reference to the Office of Credit Risk Management, established under section 47 of the Small Business Act [15 U.S.C. 657t], as added by subsection (a).”

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-189, §3(b), June 21, 2018, 132 Stat. 1495, provided that the amendment made by section 3(b) is effective Jan. 1, 2019.

TRANSFER OF FUNCTIONS

Pub. L. 115-189, §3(c)(1), June 21, 2018, 132 Stat. 1496, provided that: “All functions of the Office of Credit Risk Management of the Small Business Administration, including the personnel, assets, and obligation of the Office of Credit Risk Management, as in existence on the day before the date of the enactment of this Act [June 21, 2018], shall be transferred to the Office of Credit Risk Management established under section 47 of the Small Business Act [15 U.S.C. 657t], as added by subsection (a).”

ESTABLISHING A PROCESS FOR WAIVERS

Pub. L. 115-189, §6, June 21, 2018, 132 Stat. 1498, provided that:

“(a) **IN GENERAL.**—If the Administrator [of the Small Business Administration] exercises statutory or regulatory authority to waive a regulation or a requirement in the Standard Operating Procedures Manual or Policy Notice related to a program or function of the Office of Capital Access of the [Small Business] Administration, the waiver shall be in writing and be maintained in an indexed form.

“(b) **NO NEW WAIVER AUTHORITY.**—Nothing in subsection (a) shall be construed as creating new authority for the Administrator to waive regulations of the Administration.”

DEFINITIONS OF TERMS USED IN PUB. L. 115-189

Pub. L. 115-189, §2, June 21, 2018, 132 Stat. 1492, provided that: “In this Act [see Short Title of 2018 Amendment note set out under section 631 of this title], the terms ‘Administration’ and ‘Administrator’ mean the Small Business Administration and the Administrator thereof, respectively.”

§ 657u. 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); and

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

(c) Duties

The Committee shall—

(1) review reports on lender oversight activities;