AMENDMENT NO._______ Calendar No._____

Purpose: In the nature of a substitute.


S.____

To authorize the Community Advantage Loan Program of the Small Business Administration, and for other purposes.

Referred to the Committee on ______________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. CARDIN (for himself and Ms. ERNST)

Viz:

1 Strike all after the enacting clause and insert the following:

2 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

3 (a) Short Title.—This Act may be cited as the “Community Advantage Loan Program Act of 2023”.

4 (b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—COMMUNITY ADVANTAGE LOAN PROGRAM

Sec. 101. Community Advantage Loan Program.

TITLE II—SMALL BUSINESS LENDING COMPANIES

Sec. 201. Short title.


Sec. 203. Lending criteria.
Sec. 204. Affiliation and franchise directory.
Sec. 205. Loan authorization.
Sec. 206. Oversight of small business lending companies.
Sec. 207. Office of Credit Risk Management.
Sec. 208. Denied loan or loan modification request.
Sec. 209. Direct lending.
Sec. 210. Restriction on refinancing debt.
Sec. 211. GAO study.

SEC. 2. DEFINITIONS.

In this Act:

(1) ADMINISTRATION.—The term “Administration” means the Small Business Administration.

(2) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Administration.

TITLE I—COMMUNITY ADVANTAGE LOAN PROGRAM

SEC. 101. COMMUNITY ADVANTAGE LOAN PROGRAM.

(a) In General.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following:

“(38) Community Advantage Loan Program.—

“(A) Purposes.—The purposes of the Community Advantage Loan Program are—

“(i) to create a mission-oriented loan guarantee program;
“(ii) to increase lending to small business concerns in underserved and rural markets, including to new businesses;

“(iii) to ensure that the program under this subsection expands inclusion and more broadly meets congressional intent to reach borrowers who are unable to get credit elsewhere on reasonable terms and conditions;

“(iv) to help underserved small business concerns become bankable by utilizing the small dollar financing and business support experience of mission-oriented lenders;

“(v) to allow certain mission-oriented lenders, primarily financial intermediaries focused on economic development in underserved markets, access to guarantees for loans under this subsection (referred to in this paragraph as ‘7(a) loans’) and provide management and technical assistance to small business concerns as needed; and

“(vi) to assist covered institutions with providing business support services
and technical assistance to small business concerns, when needed.

“(B) DEFINITIONS.—In this paragraph:

“(i) COMMUNITY ADVANTAGE NETWORK PARTNER.—The term ‘Community Advantage Network Partner’—

“(I) means a nonprofit, mission-oriented organization that acts as a Referral Agent to covered institutions in order to expand the reach of the program to small business concerns in underserved markets; and

“(II) does not include a covered institution making loans under the program.

“(ii) COVERED INSTITUTION.—The term ‘covered institution’ means an entity that—

“(I) is—

“(aa) a development company, as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662), participating in the 504 Loan Guaranty program established
under title V of that Act (15 U.S.C. 695 et seq.);

“(bb) a nonprofit intermediary, as defined in subsection (m)(11), participating in the microloan program under subsection (m);

“(cc) a non-Federally regulated entity certified as a community development financial institution by the Community Development Financial Institutions Fund established under section 104(a) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(a)); or

“(dd) an eligible intermediary, as defined in subsection (l)(1), participating in the small business intermediary lending program established under subsection (l)(2); and

“(II) has approved and disbursed 10 similarly sized loans in the pre-
ceding 24-month period and is servicing not less than 10 similarly sized loans to small business concerns in the portfolio of the entity.

“(iii) EXISTING BUSINESS.—The term ‘existing business’ means a small business concern that has been in existence for not less than 2 years on the date on which a loan is made to the small business concern under the program.

“(iv) NEW BUSINESS.—The term ‘new business’ means a small business concern that has been in existence for not more than 2 years on the date on which a loan is made to the small business concern under the program.

“(v) PROGRAM.—The term ‘program’ means the Community Advantage Loan Program established under subparagraph (C).

“(vi) REFERRAL AGENT.—The term ‘Referral Agent’ has the meaning given the term in section 103.1(f) of title 13, Code of Federal Regulations, or any successor regulation.
“(vii) RURAL AREA.—The term ‘rural area’ means any county that the Bureau of the Census has defined as mostly rural or completely rural in the most recent decennial census.

“(viii) SMALL BUSINESS CONCERN IN AN UNDERSERVED MARKET.—The term ‘small business concern in an underserved market’ means a small business concern—

“(I) that is located in—

“(aa) a low- to moderate-income community;

“(bb) a HUBZone, as that term is defined in section 31(b);

“(cc) a rural area;

“(dd) a community that has been designated as an empowerment zone or enterprise community under section 1391 of the Internal Revenue Code of 1986;

“(ee) a community that has been designated as a qualified opportunity zone under section 1400Z–1 of the Internal Revenue Code of 1986; or
“(ff) a community that has been designated as a promise zone by the Secretary of Housing and Urban Development;

“(II) for which more than 50 percent of the employees reside in a low- or moderate-income community;

“(III) that is a new business; or

“(IV) that is owned and controlled by veterans or spouses of veterans.

“(C) Establishment.—There is established a Community Advantage Loan Program under which the Administration may guarantee loans closed by covered institutions under this subsection, with an emphasis on loans made to small business concerns in underserved markets.

“(D) Program Levels.—In fiscal year 2024 and each fiscal year thereafter, not more than 10 percent of the number of loans guaranteed under this subsection may be guaranteed under the program.

“(E) Grandfathering of Existing Lenders.—Any covered institution that was li-
censed by the Administrator as a Community Advantage small business lending company, or that participated in the Community Advantage Pilot Program of the Administration, during the period beginning on May 1, 2023, and ending on September 30, 2023, and was in good standing during that period, as determined by the Administration—

“(i) shall be designated as participants in the program;

“(ii) shall not be required to submit an application to participate in the program; and

“(iii) for the purpose of determining the loan loss reserve amount of the covered institution, shall have participation in the Community Advantage Pilot Program included in the calculation under subparagraph (J).

“(F) REQUIREMENT TO MAKE LOANS TO UNDERSERVED MARKETS.—Not less than 60 percent of loans closed by a covered institution under the program shall consist of loans made to small business concerns in underserved markets.
“(G) Maximum loan amount; collateral.—

“(i) Maximum loan amount.—

“(I) In general.—Except as provided in subclause (II), the maximum loan amount for a loan guaranteed under the program is $350,000.

“(II) Experienced lenders.—

“(aa) In general.—The Administrator may approve not more than 8 covered institutions (referred to in this subclause as the ‘experienced lenders’), each of which has not less than 5 years of experience making loans under the Community Advantage Pilot Program of the Administration or the program established under this paragraph, to be eligible to make loans under this subclause.

“(bb) Maximum loan amount.—Subject to item (dd), an experienced lender may make a loan guaranteed under the pro-
gram in an amount that is not
more than $750,000.

“(cc) Participation by
the Administration.—With re-
spect to an agreement to partici-
pate in a loan made under this
subclause on a deferred basis, the
participation by the Administra-
tion shall be—

“(AA) 75 percent of the
balance of the financing out-
standing at the time of the
disbursement of the loan, if
that balance is more than
$350,000;

“(BB) as described in
clause (i) of paragraph
(2)(G), if the balance of the
financing outstanding at the
time of the disbursement of
the loan is as described in
that clause; or

“(CC) as described in
clause (ii) of paragraph
(2)(G), if the balance of the
financing outstanding at the
time of the disbursement of
the loan is as described in
that clause.

“(dd) REQUIREMENTS TO
MAKE LOANS IN CERTAIN
AMOUNTS.—Not less than 60
percent of loans closed by each
selected lender under the pro-
gram shall consist of loans in an
amount that is not more than
$350,000.

“(ii) COLLATERAL.—

“(I) IN GENERAL.—A covered in-
stitution shall not be required to take
collateral with respect to a loan guar-
anteed under the program if the
amount of that loan is not more than
$50,000.

“(II) POLICIES AND PROCE-
DURES OF COVERED INSTITUTION.—
In determining the amount of collat-
eral required with respect to a loan
guaranteed under the program, a cov-
ered institution may use the collateral
policies and procedures of the covered institution with respect to similarly sized commercial loans closed by the covered institution that are not guaranteed by the Administration.

“(H) INTEREST RATES.—The maximum allowable interest rate prescribed by the Administration on any financing made on a deferred basis pursuant to the program shall not exceed the maximum allowable interest rate under sections 120.213 and 120.214 of title 13, Code of Federal Regulations, or any successor regulations.

“(I) REFINANCING OF COMMUNITY ADVANTAGE PROGRAM LOANS.—A loan guaranteed under the program or guaranteed under the Community Advantage Pilot Program of the Administration may be refinanced into another 7(a) loan made by a lender that does not participate in the program.

“(J) LOAN LOSS RESERVE REQUIREMENTS.—

“(i) LOAN LOSS RESERVE ACCOUNT FOR COVERED INSTITUTIONS.—A covered institution—
“(I) with not more than 5 years of participation in the program shall maintain a loan loss reserve account with an amount equal to 5 percent of the outstanding amount of the unguaranteed portion of the loan portfolio of the covered institution under the program; and

“(II) with more than 5 years of participation in the program shall maintain a loan loss reserve account with an amount equal to the average repurchase rate of the covered institution over the preceding 36-month period, except that such amount shall not be less than 3 percent of the outstanding amount of the unguaranteed portion of the loan portfolio of the covered institution under the program.

“(ii) ADDITIONAL LOAN LOSS RESERVE AMOUNT FOR SELLING LOANS ON THE SECONDARY MARKET.—In addition to the amount required in the loan loss reserve account under clause (i), a covered institution that sells a program loan on the
secondary market shall be required to maintain the following additional amounts in the loan loss reserve account:

“(I) For a covered institution with less than 5 years of experience selling program loans on the secondary market, an amount equal to 3 percent of the guaranteed portion of each program loan sold on the secondary market.

“(II) For a covered institution with more than 5 years of experience selling program loans on the secondary market, an amount equal to the average repurchase rate for loans sold by the covered institution on the secondary market over the preceding 36 months, except that such amount shall be not less than 2 percent of the guaranteed portion of each program loan sold into the secondary market.

“(iii) Recalculation.—On October 1 of each year, the Administrator shall re-calculate the loan loss reserve required under clauses (i) and (ii).
“(K) TRAINING.—The Administration—

“(i) shall provide accessible upfront and ongoing training for covered institutions making loans under the program to support program compliance and improve the interface between the covered institutions and the Administration, which shall include—

“(I) guidance for following the regulations of the Administration; and

“(II) guidance specific to mission-oriented lending that is intended to help lenders effectively reach and support small business concerns in underserved markets, including management and technical assistance delivery;

“(ii) may enter into a contract to provide the training described in clause (i) with an organization—

“(I) with expertise in lending under this subsection; and primarily specializing in—

“(aa) mission-oriented lending; and
“(bb) lending to small business concerns in underserved markets; and

“(iii) shall provide training for the employees and contractors of the Administration that regularly engage with covered institutions or borrowers under the program.

“(L) COMMUNITY ADVANTAGE OUTREACH AND EDUCATION.—The Administrator—

“(i) shall develop and implement a program to promote to, conduct outreach to, and educate prospective covered institutions about the program; and

“(ii) may enter into a contract with 1 or more nonprofit organizations experienced in working with and training mission driven lenders to provide the promotion, outreach, and education described in clause (i).

“(M) COMMUNITY ADVANTAGE NETWORK PARTNER PARTICIPATION.—

“(i) IN GENERAL.—A covered institution that uses a Community Advantage Network Partner shall abide by policies
and procedures of the Administration con-
cerning the use of Referral Agent fees per-
mitted by the Administration and disclo-
sure of those fees.

“(ii) Payment of fees.—Notwith-
sanding any other provision of law, all
fees described in clause (i) shall be paid by
the covered institution to the Community
Advantage Network Partner upon dis-
bursement of the applicable program loan.

“(N) Delegated authority.—A covered
institution is not eligible to receive delegated
authority from the Administration under the
program until the covered institution has satis-
fied the following applicable requirements:

“(i) For a covered institution actively
participating in the Community Advantage
Pilot Program of the Administration, as of
the day before the date of enactment of
this paragraph—

“(I) the covered institution has
approved and fully disbursed not
fewer than 10 loans under that Pilot
Program; and
“(II) the Administration has evaluated the ability of the covered institution to fulfill program requirements.

“(ii) For any covered institution not described in clause (i)—

“(I) the covered institution has approved and fully disbursed not fewer than 20 loans under the program; and

“(II) the Administration has evaluated the ability of the covered institution to fulfill program requirements.

“(O) REPORTING.—

“(i) WEEKLY REPORTS.—

“(I) IN GENERAL.—The Administration shall report on the website of the Administration, as part of the weekly reports on lending approvals under this subsection—

“(aa) on and after the date of enactment of this paragraph, the number and dollar amount of loans guaranteed under the Com-
munity Advantage Pilot Program
of the Administration; and

“(bb) on and after the date
on which the Administration be-
gins to approve loans under the
program, the number and dollar
amount of loans guaranteed
under the program.

“(II) SEPARATE ACCOUNTING.—
The number and dollar amount of
loans reported in a weekly report
under subclause (I) for loans guaran-
teed under the Community Advantage
Program of the Administration and
under the program shall include a
breakdown by the demographic infor-
mation of the owners of the small
business concerns, by whether the
small business concern is a new busi-
ness or an existing business, and by
whether the small business concern is
located in an urban or rural area, and
broken down by—

“(aa) loans of not more than
$50,000;
“(bb) loans of more than $50,000 and not more than $150,000;

“(cc) loans of more than $150,000 and not more than $250,000;

“(dd) loans of more than $250,000 and not more than $350,000; and

“(ee) loans of more than $350,000 and not more than $750,000.

“(ii) Annual reports.—

“(I) In general.—For each fiscal year in which the program is in effect, the Administration shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives, and make publicly available on the internet, information about loans provided under the program and under the Community Advantage Pilot Program of the Administration.
“(II) CONTENTS.—Each report submitted and made publicly available under subclause (I) shall include—

“(aa) the number and dollar amounts of loans provided to small business concerns under the program, including a breakdown by—

“(AA) the demographic information of the owners of the small business concern;

“(BB) whether the small business concern is located in an urban or rural area; and

“(CC) whether the small business concern is an existing business or a new business, as provided in the weekly reports on lending approvals under this subsection;

“(bb) the proportion of loans described in item (aa) compared to—
“(AA) other 7(a) loans of any amount;

“(BB) other 7(a) loans of similar amounts;

“(CC) express loans provided under paragraph (31) of similar amounts; and

“(DD) other 7(a) loans of similar amounts provided to small business concerns in underserved markets;

“(ee) a comparison of the number and dollar amounts of loans provided to small business concerns under the program and under each category of loans described in item (aa), broken down by—

“(AA) loans of not more than $50,000;

“(BB) loans of more than $50,000 and not more than $150,000;
“(CC) loans of more than $150,000 and not more than $250,000;

“(DD) loans of more than $250,000 and not more than $350,000; and

“(EE) loans of more than $350,000 and not more than $750,000;

“(dd) the number and dollar amounts of loans provided to small business concerns under the program by State, and the jobs created or retained within each State; and

“(ee) a list of covered institutions participating in the program and the Community Advantage Program of the Administration, including—

“(AA) the name, location, and contact information, such as the website and telephone number, of each covered institution; and
“(BB) a breakdown by the number and dollar amount of the loans approved for small business concerns.

“(III) TIMING.—An annual report required under this clause shall—

“(aa) be submitted and made publicly available not later than December 1 of each year; and

“(bb) cover the lending activity for the fiscal year that ended on September 30 of that same year.

“(P) GAO REPORT.—Not later than 5 years after the date of enactment of this paragraph, the Comptroller General of the United States shall submit to the Administrator, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives a report—

“(i) assessing—
“(I) the extent to which the program fulfills the requirements of this paragraph; and

“(II) the performance of covered institutions participating in the program; and

“(ii) providing recommendations on the administration of the program and the findings under subclauses (I) and (II) of clause (i).

“(Q) REGULATIONS.—

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of this paragraph, the Administrator shall promulgate regulations governing the program, including metrics for lender performance, metrics of success and benchmarks of the program, and criteria for appropriate management and technical assistance.

“(ii) UPDATES.—The Administrator shall consult the report submitted under subparagraph (P) and, not later than 180 days after the date on which the Comptroller General of the United States sub-
mits the report, promulgate any necessary
changes to existing regulations of the Ad-
ministration based on the recommenda-
tions contained in the report.”.

(b) PARTICIPATION.—Section 7(a)(2) of the Small
Business Act (15 U.S.C. 636(a)(2)) is amended—

(1) in subparagraph (A), in the matter pre-
ceding clause (i), by striking “and (F)” and insert-
ing “(F), and (G)”;

(2) by adding at the end the following:

“(G) PARTICIPATION IN THE COMMUNITY
ADVANTAGE LOAN PROGRAM.—Subject to sub-
paragraph (G)(i)(II)(cc) of paragraph (38), in
an agreement to participate in a loan on a de-
ferred basis under that paragraph, the partici-
pation by the Administration shall be—

“(i) 80 percent of the balance of the
financing outstanding at the time of the
disbursement of the loan, if that balance is
more than $150,000 and not more than
$350,000; or

“(ii) 90 percent of the balance of the
financing outstanding at the time of the
disbursement of the loan, if that balance is
not more than $150,000.”.
TITLE II—SMALL BUSINESS
LENDING COMPANIES

SEC. 201. SHORT TITLE.
This title may be cited as the “Modernizing SBA’s Business Loan Programs Act of 2023”.

SEC. 202. FINDINGS.
Congress finds that—

   (1) in 1982, the Administration placed a moratorium on licensing new small business lending companies because the Administration lacked the resources to effectively service and supervise additional small business lending companies;

   (2) according to the Office of the Inspector General of the Administration, the reduction in staff in the Office of Credit Risk Management of the Administration from 42 full-time employees to 29 full-time employees could affect the fiscal year 2023 goals of the Administration for oversight reviews;

   (3) the Administration has finalized a rule-making to lift the moratorium on the licensing new small business lending companies and establish a new Community Advantage small business lending company license, and there is no cap on the number of small business lending companies licenses that could be issued by the Administration;
(4) the increased costs and fees for an existing Community Advantage lender in the Community Advantage Pilot Program of the Administration to obtain and maintain a Community Advantage small business lending company license could be cost prohibitive for a majority of current Community Advantage lenders to transition to a Community Advantage small business lending company;

(5) on May 1, 2023, the Administration announced that the Community Advantage Pilot Program would sunset on September 30, 2023, and the authority of a Community Advantage lender to make loans under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) under the pilot program will terminate;

(6) the Administration does not have adequate resources to issue either more than 3 new small business lending company licenses or new Community Advantage small business lending company licenses, as the Office of Credit Risk Management does not have the capacity to assume additional oversight responsibilities; and

(7) in order to increase small dollar lending in underserved areas, the Community Advantage Pilot Program should be made permanent, giving lenders
certainty to continue to make loans under section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

SEC. 203. LENDING CRITERIA.

(a) 7(a) LOANS.—Section 7(a)(1) of the Small Business Act (15 U.S.C. 636(a)(1)) is amended by adding at the end the following:

“(D) UNDERWRITING REQUIREMENTS.—

“(i) IN GENERAL.—With respect to a loan guaranteed under this subsection—

“(I) the applicant (including an operating company) shall be credit-worthy;

“(II) the loan must be so sound as to reasonably assure repayment; and

“(III) subject to the approval of the Administrator, the Director of the Office of Credit Risk Management may require additional criteria.

“(ii) LENDING CRITERIA FOR LOANS OF $350,000 OR MORE.—With respect to a loan guaranteed under this section that is not less than $350,000, the Administration and lenders shall, as applicable, consider the following:
“(I) Credit history of the applicant (and the operating company, if applicable), and the associates and guarantors of the applicant.

“(II) Experience and depth of management.

“(III) Strength of the business.

“(IV) Past earnings, projected cash flow, and future prospects.

“(V) Ability to repay the loan with earnings from the business of the applicant.

“(VI) Sufficient invested equity to operate on a sound financial basis.

“(VII) Potential for long-term success.

“(VIII) Nature and value of collateral (although inadequate collateral may not be the sole reason for denial of a loan application).

“(IX) The effect any affiliate of the applicant may have on the ultimate repayment ability of the applicant.
“(iii) LENDING CRITERIA FOR LOANS OF LESS THAN $350,000.—With respect to a loan guaranteed under this section that is less than $350,000—

“(I) lenders shall use appropriate and generally acceptable commercial credit analysis processes and procedures consistent with those used for similarly-sized commercial loans that are not guaranteed by the Administration;

“(II) the Administration and lenders may use a business credit scoring model; and

“(III) the Administration and lenders shall, as applicable, consider—

“(aa) the credit score or credit history of the applicant (and the operating company, if applicable), and the associates and guarantors of the applicant;

“(bb) the earnings or cash flow of the applicant;

“(cc) any equity or collateral of the applicant; and
“(dd) the effect any affiliates of the applicant may have on the ultimate repayment ability of the applicant.”.

(b) 504/CDC Loans.—Section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696) is amended—

(1) in the matter preceding paragraph (1), by striking “The Administration” and inserting the following:

“(a) In General.—The Administration”; and

(2) in subsection (a), as so designated, by adding at the end the following:

“(8) Underwriting Requirements.—

“(A) In General.—With respect to a loan made under this section—

“(i) the applicant (including an operating company) shall be creditworthy; and

“(ii) the loan must be so sound as to reasonably assure repayment.

“(B) Lending Criteria.—With respect to a loan made under this section—

“(i) lenders and certified development companies shall use appropriate and generally acceptable commercial credit analysis
processes and procedures consistent with those used for similarly-sized commercial loans that are not guaranteed by the Administration;

“(ii) the Administration, lenders, and certified development companies may use a business credit scoring model; and

“(iii) the Administration, lenders, and certified development companies shall, as applicable, consider—

“(I) the credit score or credit history of the applicant (and the operating company, if applicable), and the associates and guarantors of the applicant;

“(II) the earnings or cash flow of the applicant; and

“(III) any equity or collateral of the applicant.”.

SEC. 204. AFFILIATION AND FRANCHISE DIRECTORY.

(a) AFFILIATION PRINCIPLES.—

(1) BUSINESS LOANS.—Section 7(a)(1) of the Small Business Act (15 U.S.C. 636(a)(1)), as amended by section 203(a) of this Act, is amended by adding at the end the following:
“(E) AFFILIATION PRINCIPLES.—Affiliation under any of the circumstances described below is sufficient to establish affiliation for applicants for a loan guaranteed under this subsection:

“(i) AFFILIATION BASED ON OWNERSHIP.—

“(I) IN GENERAL.—For determining affiliation based on equity ownership, a concern is an affiliate of an individual, concern, or entity that owns or has the power to control more than 50 percent of the voting equity of the concern.

“(II) OTHER OFFICERS.—If no individual, concern, or entity is found to control a concern under subclause (I), the Administrator shall deem the board of directors, president, or chief executive officer (or other officers, managing members, or partners who control the management of the concern) to be in control of the concern.

“(III) MINORITY SHAREHOLDER.—The Administrator shall
36
dee a minority shareholder of a con-
cern to be in control of the concern if
that individual or entity has the abil-
ity, under the charter, by-laws, or
shareholder agreement of the concern,
to prevent a quorum or otherwise
block action by the board of directors
or shareholders of the concern.

“(ii) Affiliation arising under
stock options, convertible securi-
ties, and agreements to merge.—

“(I) In general.—In determining the size of a concern, the Ad-
ministrator shall—

“(aa) consider stock options,
convertible securities, and agree-
ments to merge (including agree-
ments in principle) to have a
present effect on the power to
control a concern; and

“(bb) treat options, convert-
ible securities, and agreements
described in item (aa) as though
the rights granted have been ex-
ercised.
“(II) AGREEMENTS TO OPEN OR CONTINUE NEGOTIATIONS.—An agreement to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date is not considered an ‘agreement in principle’ and is not given present effect.

“(III) CONDITIONS PRECEDENT.—Stock options, convertible securities, and agreements that are subject to conditions precedent that are incapable of fulfillment, speculative, conjectural, or unenforceable under State or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given present effect.

“(IV) TERMINATION OF CONTROL.—

“(aa) IN GENERAL.—An individual, concern, or other entity that controls 1 or more other concerns cannot use stock options, convertible securities, or
agreements to appear to terminate such control before actually doing so.

“(bb) DIVESTING.—The Administrator shall not give present effect to the ability of an individual, concern, or other entity to divest all or part of their ownership interest in a concern in order to avoid a finding of affiliation.

“(iii) AFFILIATION BASED ON MANAGEMENT.—Affiliation arises where—

“(I) the chief executive officer or president of the applicant concern (or other officers, managing members, or partners who control the management of the concern) also controls the management of 1 or more other concerns;

“(II) a single individual, concern, or entity that controls the board of directors or management of 1 concern also controls the board of directors or management of 1 of more other concerns; or
“(III) a single individual, concern, or entity controls the management of the applicant concern through a management agreement.

“(iv) AFFILIATION BASED ON IDENTITY OF INTEREST.—

“(I) DEFINITION.—In this clause, the term ‘close relative’ means—

“(aa) a spouse, parent, child, or sibling; and

“(bb) the spouse of any individual described in item (aa).

“(II) CLOSE RELATIVES.—Affiliation arises when there is an identity of interest between close relatives with identical or substantially identical business or economic interests, such as where the close relatives operate concerns in the same or similar industry in the same geographic area.

“(III) AGGREGATED INTERESTS.—If the Administrator determines that interests described in subclause (II) should be aggregated, an
individual or firm may rebut that determination with evidence showing that the interests deemed to be 1 are in fact separate.

“(v) AFFILIATION BASED ON FRANCHISE AND LICENSE AGREEMENTS.—

“(I) IN GENERAL.—The restraints imposed on a franchisee or licensee by its franchise or license agreement generally shall not be considered in determining whether the franchisor or licensor is affiliated with an applicant franchisee or licensee, provided the applicant franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership.

“(II) NATURE OF AGREEMENT.—For purposes of subclause (I), the Administrator shall only consider the franchise or license agreements of the applicant concern.

“(vi) DETERMINING THE CONCERN’S SIZE.—In determining the size of a concern, the Administrator counts the re-
ceipts, employees, or the alternate size
standard (if applicable) of the concern
whose size is at issue and all of the domes-
tic and foreign affiliates of the concern, re-
gardless of whether the affiliates are orga-
nized for profit.

“(vii) EXCEPTIONS TO AFFILI-
ATION.—The exceptions to affiliation de-
scribed in section 121.103(b) of title 13,
Code of Federal Regulations, or any suc-
cessor regulation, shall apply.”.

(2) 504/CDC LOANS.—Section 502(a) of the
696(a)), as amended by section 203(b) of this Act,
is amended by adding at the end the following:

“(9) AFFILIATION PRINCIPLES.—Affiliation
under any of the circumstances described below is
sufficient to establish affiliation for applicants for a
loan under this subsection:

“(A) AFFILIATION BASED ON OWNER-
SHIP.—

“(i) OWNERSHIP OF ANOTHER BUSI-
NESS.—When the applicant owns more
than 50 percent of another business, the
applicant and the other business are affiliated.

“(ii) OWNERSHIP BY OTHER BUSINESSES.—

“(I) When a business owns more than 50 percent of an applicant, the business that owns the applicant is affiliated with the applicant.

“(II) If a business entity owner that owns more than 50 percent of an applicant also owns more than 50 percent of another business that operates in the same 3-digit North American Industry Classification System subsector as the applicant, then the business entity owner, the other business, and the applicant are all affiliated.

“(iii) OWNERSHIP BY INDIVIDUALS.—

When an individual owns more than 50 percent of the applicant and the individual also owns more than 50 percent of another business entity that operates in the same 3-digit North American Industry Classification System subsector as the applicant,
the applicant and the individual owner’s other business entity are affiliated.

“(iv) LESS THAN 50 PERCENT.—When an applicant does not have an owner that owns more than 50 percent of the applicant, if an owner of 20 percent or more of the applicant also owns more than 50 percent of another business entity that operates in the same 3-digit North American Industry Classification System subsector as the applicant, the applicant and the owner’s other business entity are affiliated.

“(v) SPOUSE AND MINOR CHILDREN.—Ownership interests of spouses and minor children shall be combined when determining amount of ownership interest.

“(vi) PERCENTAGE OF OWNERSHIP.—When determining the percentage of ownership that an individual owns in a business, the Administrator shall consider the pro rata ownership of entities.

“(B) AFFILIATION ARISING UNDER STOCK OPTIONS, CONVERTIBLE SECURITIES, AND AGREEMENTS TO MERGE.—
“(i) IN GENERAL.—The Administrator shall—

“(I) consider stock options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the ownership of an entity; and

“(II) treat options, convertible securities, and agreements described in subclause (I) as though the rights granted have been exercised.

“(ii) AGREEMENTS TO OPEN OR CONTINUE NEGOTIATIONS.—An agreement to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date is not considered an ‘agreement in principle’ and is not given present effect.

“(iii) CONDITIONS PRECEDENT.—Stock options, convertible securities, and agreements that are subject to conditions precedent that are incapable of fulfillment, speculative, conjectural, or unenforceable under State or Federal law, or where the probability of the transaction (or exercise
of the rights) occurring is shown to be extremely remote, are not given present effect.

“(iv) Ability to divest.—The Administrator shall not give present effect to individuals’, concerns’, or other entities’ ability to divest all or part of their ownership interest to avoid a finding of affiliation.

“(C) Determining the concern’s size.—In determining the size of a concern, the Administrator counts the receipts, employees, or the alternate size standard (if applicable) of the concern whose size is at issue and all of the domestic and foreign affiliates of the concern, regardless of whether the affiliates are organized for profit.

“(D) Exceptions to affiliation.—The exceptions to affiliation described in section 121.103(b) of title 13, Code of Federal Regulations, or any successor regulation, shall apply.”.

(b) Franchise Directory.—Not later than 30 days after the date of enactment of this Act, the Administration shall publish and maintain on the website of the Administration a Franchise Directory, which shall contain a list
that lenders and certified development companies may use
in evaluating whether a franchise is eligible for financing
from the Administration.

SEC. 205. LOAN AUTHORIZATION.

(a) 7(a) LOANS.—Section 7(a)(1) of the Small Busi-
ness Act (15 U.S.C. 636(a)(1)), as amended by section
204(a) of this Act, is amended by adding at the end the
following:

“(F) LOAN AUTHORIZATION.—

“(i) IN GENERAL.—With respect to a
loan made or guaranteed under this sub-
section, the Administration shall issue a
written agreement providing the terms and
conditions under which the Administration
will make or guarantee the loan.

“(ii) NOT A CONTRACT.—A written
agreement issued under clause (i) is not a
contract to make a loan.”.

(b) 504/CDC LOANS.—Section 502(a) of the Small
Business Investment Act of 1958 (15 U.S.C. 696(a)), as
amended by section 204(b) of this Act, is amended by add-
ing at the end the following:

“(10) LOAN AUTHORIZATION.—

“(A) IN GENERAL.—With respect to a loan
made under this subsection, the Administration
shall issue a written agreement providing the

terms and conditions under which the Adminis-

tration will make the loan.

“(B) NOT A CONTRACT.—A written agree-

ment issued under subparagraph (A) is not a

contact to make a loan.”.

SEC. 206. OVERSIGHT OF SMALL BUSINESS LENDING COM-

PANIES.

(a) DEFINITION.—Section 3(r) of the Small Business

Act (15 U.S.C. 632(r)) is amended, in the matter pre-

ceding paragraph (1), by striking “As used in section 23

of this Act” and inserting “In this Act”.

(b) CAPITAL REQUIREMENTS; MAXIMUM NUMBER.—

Section 7(a)(1) of the Small Business Act (15 U.S.C.

636(a)(1)), as amended by section 205(a) of this Act, is

amended by adding at the end the following:

“(G) ADDITIONAL PROVISIONS RELATING

to SMALL BUSINESS LENDING COMPANIES.—

“(i) MAXIMUM NUMBER.—

“(I) IN GENERAL.—Not more

than 17 small business lending com-

panies may be authorized to make

loans under this subsection at any

time.
“(II) Existing small business lending companies.—

“(aa) In general.—Except as provided in subclause (III), each of the 14 small business lending companies authorized to make loans under this subsection as of June 1, 2023 shall retain such authorization on and after the date of enactment of this Act.

“(bb) Loss of authorization.—With respect to a lender that, as of the date of enactment of this subparagraph, is authorized as a Community Advantage small business lending company, that lender shall, beginning on that date of enactment—

“(AA) no longer have that authorization; and

“(BB) be designated as a lender under the Community Advantage Loan Pro-
gram established under paragraph (38).

“(III) Transfer or Sale.—The Administrator shall have the discretion to authorize the transfer or sale of a license of a small business lending company to make loans under this subsection to another small business lending company.

“(IV) Limitation of Delegated Authority.—

“(aa) In General.—Notwithstanding paragraph (31), any small business lending company that the Administration authorizes after June 1, 2023 to make loans under this subsection shall be ineligible for delegated authority from the Administration to make and approve loans under this subsection for the 5-year period beginning on the date on which the Administration authorizes the small business lending
company to make loans under this subsection.

“(bb) **EXISTING SBLCS.**—Item (aa) shall not apply with respect to each of the 14 small business lending companies authorized to make loans under this subsection as of June 1, 2023.

“(ii) **MINIMUM CAPITAL REQUIREMENTS.**—

“(I) **IN GENERAL.**—Except as provided in subclauses (II) and (III), to be authorized to make loans under this subsection, a small business lending company shall comply with the minimum capital requirements in effect on January 3, 2021.

“(II) **APPROVED ON OR AFTER JANUARY 4, 2021.**—Any small business lending company authorized by the Administration to make loans under this subsection on or after January 4, 2021, including in the event of a change of ownership or control, shall
maintain, at a minimum, the greater of—

“(aa) unencumbered paid-in capital and paid-in surplus of not less than $5,000,000; or

“(bb) an amount equal to 10 percent of the aggregate of its share of all outstanding loans.

“(III) REQUIREMENTS ON AND AFTER JANUARY 4, 2024.—On and after January 4, 2024, each small business lending company that makes or acquires a loan under this subsection shall maintain, at a minimum, the greater of—

“(aa) unencumbered paid-in capital and paid-in surplus of not less than $5,000,000; or

“(bb) an amount equal to 10 percent of the aggregate of its share of all outstanding loans.

“(iii) CRITERIA FOR LICENSING SMALL BUSINESS LENDING COMPANIES.—

The Administrator shall use uniform terms for the licensing of business concerns as
small business lending companies and the participation of those companies in the programs under this subsection.”.

(c) **Annual Stress Testing and Reviews.**—Section 23(d) of the Small Business Act (47 U.S.C. 650(d)) is amended—

(1) in paragraph (1), by inserting “IN GENERAL.—” after “(1)”;

(2) in paragraph (2), by inserting “HEARING.—” after “(2)”;

(3) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively;

(4) by inserting after paragraph (2) the following:

“(3) **Special Supervisory Authorities Related to Small Business Lending Companies.**—

“(A) **Review and Revocation of Authority.**—

“(i) IN GENERAL.—The Director of the Office of Credit Risk Management (in this paragraph referred to as the ‘Director’)—

“(I) may review and revoke the authority of a small business lending company to make, service, or liquidate
business loans under section 7(a) for performance, excessive losses, or predatory lending;

“(II) shall review and may revoke the authority of a small business lending company to make, service, or liquidate business loans under section 7(a) if—

“(aa) the early default rate for the small business lending company exceeds the average default rate for all small business lending companies participating in the loan program under section 7(a);

“(bb) the small business lending company fails to comply with the requirements under subparagraph (B); or

“(cc) the Director finds in an audit conducted under subparagraph (C)(ii) that the small business lending company is not in compliance with 1 or more of
the requirements described in subparagraph (C); and

“(III) shall revoke the authority of a small business lending company to make, service, or liquidate business loans under section 7(a) if the Director has determined the small business lending company has failed to comply with the requirements in subclause (II) or (III) of subparagraph (B)(ii) for 2 or more years in a row.

“(ii) REPORTING REQUIREMENT.—If the Director revokes the authority of a small business lending company to make, service, or liquidate business loans under section 7(a), the Director shall report the revocation, along with details and information describing why that decision was made, to the Office of the Inspector General of the Administration.

“(B) ANNUAL STRESS TESTS.—

“(i) IN GENERAL.—Each small business lending company shall—

“(I) conduct an annual stress test of the portfolio of the small busi-
ness lending company under section 7(a) in accordance with the requirements under clause (ii); and

“(II) report to the Director the findings of each annual stress test conducted under subclause (I).

“(ii) REQUIREMENTS.—Each stress test conducted under clause (i) shall comply with the following requirements:

“(I) The small business lending company shall use financial data as of December 31 of the calendar year prior to the reporting year.

“(II) The small business lending company shall use the scenarios provided by the Director, which shall reflect a minimum of 2 sets of economic and financial conditions, including baseline and severely adverse scenarios that incorporate consideration of interest rate risk. The Director shall provide a description of the scenarios required to be used by each small business lending company not
later than February 15 of the reporting year.

“(III) The board of directors and senior management of each small business lending company shall consider the results of the stress tests conducted under this subsection in the normal course of business, including capital planning, assessment of capital adequacy, and risk management practices of the small business lending company.

“(C) COMPLIANCE WITH BANK SECRECY ACT AND ANTI-MONEY LAUNDERING REQUIREMENTS.—

“(i) DEFINITION.—In this subparagraph, the term ‘Bank Secrecy Act’ means—

“(I) section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b); and

“(II) chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951 et seq.); and
“(III) subchapter II of chapter 53 of title 31, United States Code.

“(ii) ANNUAL REVIEWS.—The Director—

“(I) shall conduct annual reviews to ensure that small business lending companies are in compliance with the requirements contained in the regulations issued under clause (iii); and

“(II) in conducting a review under subclause (I), may not rely on self-certification by a lender that the lender is in compliance with those requirements.

“(iii) REGULATIONS.—Not later than 1 year after the date of enactment of the Modernizing SBA’s Business Loan Programs Act of 2023, the Administrator shall, in consultation with other appropriate Federal agencies, issue regulations to provide a framework to ensure that small business lending companies are in compliance with the requirements under the Bank Secrecy Act, including Know Your Customer and anti-money laundering
requirements, and any applicable consumer protection laws, including the Truth in Lending Act (15 U.S.C. 1601 et seq.), the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.), and the Gramm-Leach-Bliley Act (Public Law 106–102; 113 Stat. 1338).”; (5) in paragraph (4), as so redesignated, by inserting “NOTIFICATION.—” after “(4)”; and (6) in paragraph (5), as so redesignated, by inserting “DELEGATION.—” after “(5)”.

SEC. 207. OFFICE OF CREDIT RISK MANAGEMENT.

Section 47 of the Small Business Act (15 U.S.C. 657t) is amended— (1) in subsection (e)— (A) in paragraph (1), by inserting before the period at the end the following: “with a demonstrated career in or outstanding qualifications or expertise related to finance and financial risk management. The Director shall report directly to the Administrator”; and (B) by adding at the end the following: “(3) COMPENSATION.—The Administrator shall fix the compensation of the Director—
“(A) as necessary to carry out the duties of the Office; and

“(B) in an amount that is not less than the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.”; and

(2) in subsection (h)(2)—

(A) in subparagraph (I), by striking “and” at the end;

(B) in subparagraph (J), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(K) the number of 7(a) lenders that had more than 3 percent in early default rates; and

“(L) an analysis of the median and average credit scores of borrowers relating to early default rates, purchase rates, and charge offs.”.

SEC. 208. DENIED LOAN OR LOAN MODIFICATION REQUEST.

(a) 7(A) LOANS.—Section 7(a)(1) of the Small Business Act (15 U.S.C. 636(a)(1)), as amended by section 206(b) of this Act, is amended by adding at the end the following:

“(H) DENIED LOAN OR LOAN MODIFICATION REQUEST.—
“(i) ROLE OF ADMINISTRATOR.—The Administrator may not intervene or make a final decision with respect to a request for reconsideration of a denied loan or loan modification request made by an applicant or recipient of a loan under this subsection.

“(ii) FINAL DECISION.—Only the Director of the Office of Financial Assistance may make a final decision with respect to a request for reconsideration of a denied loan or loan modification request made by an applicant or recipient of a loan under this subsection.”.

(b) 504/CDC LOANS.—Section 502(a) of the Small Business Investment Act of 1958 (15 U.S.C. 696(a)), as amended by section 205(b) of this Act, is amended by adding at the end the following:

“(11) DENIED LOAN OR LOAN MODIFICATION REQUEST.—

“(A) ROLE OF ADMINISTRATOR.—The Administrator may not intervene or make a final decision with respect to a request for reconsideration of a denied loan or loan modification re-
quest made by an applicant or recipient of a loan under this section.

“(B) Final decision.—Only the Director of the Office of Financial Assistance may make a final decision with respect to a request for reconsideration of a denied loan or loan modification request made by an applicant or recipient of a loan under this section.”.

SEC. 209. DIRECT LENDING.

Section 7(a)(1) of the Small Business Act (15 U.S.C. 636(a)(1)), as amended by section 208(a) of this Act, is amended by adding at the end the following:

“(I) Notification required before direct lending.—Not later than 60 days before the Administration implements any policy or pilot program that would allow the Administration to directly make a loan under this subsection, the Administrator shall submit a notification to Congress for review.”.

SEC. 210. RESTRICTION ON REFINANCING DEBT.

Section 7(a)(1) of the Small Business Act (15 U.S.C. 636(a)(1)), as amended by section 209 of this Act, is amended by adding at the end the following:

“(J) Restriction on refinancing debt.—
“(i) Definition.—In this subpara-
graph, the term ‘delegated authority’
means status granted by the Administra-
tion to a lender to allow the lender to proc-
ess, close, service, and liquidate certain
loans made under this subsection without
prior review by the Administration.

“(ii) Restriction.—A lender shall be
prohibited from using any delegated au-
thority under this subsection to refinance
any debt held by the lender, including any
loan made under this subsection.”.

SEC. 211. GAO STUDY.

Not later than 2 years after the date of enactment
of this Act, the Comptroller General of the United States
shall conduct a study and submit to the Administrator,
the Committee on Small Business and Entrepreneurship
of the Senate, and the Committee on Small Business of
the House of Representatives a report that includes—

(1) an analysis of the use of alternative credit
models for loans made under section 7(a) of the
Small Business Act (15 U.S.C. 636(a)) in an
amount of less than $350,000, including—

(A) an analysis of whether appropriate
guardrails are in place to prevent fraud, waste,
and abuse and provide protections for the borrower;

(B) an evaluation of the effectiveness of those credit models in reducing barriers to access to capital to underserved and rural communities; and

(C) recommendations as to whether improvements can be made by Administration in its use of alternative credit models to prevent waste, fraud, and abuse and to improve access to capital to underserved and rural communities;

(2) an audit of the operations, staffing, and resources of the Office of Credit Risk Management of the Administration, including the efforts of the Office to implement the new oversight provisions under the amendments made by this title; and

(3) a survey of the practices of lenders under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) relating to the use of criminal history when determining whether to approve a loan under that section or a similarly sized commercial loan that is not guaranteed by the Administration.