

116TH CONGRESS
1ST SESSION

S. 2361

To amend the Small Business Act to increase lending to underserved borrowers through the largest loan program of the Small Business Administration, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2019

Mr. CARDIN introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To amend the Small Business Act to increase lending to underserved borrowers through the largest loan program of the Small Business Administration, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Closing the Credit Gap
5 Act”.

6 **SEC. 2. COMMUNITY ADVANTAGE LOAN PROGRAM.**

7 Section 7(a) of the Small Business Act (15 U.S.C.
8 636(a)) is amended by adding at the end the following:

1 “(36) COMMUNITY ADVANTAGE LOAN PRO-
2 GRAM.—

3 “(A) PURPOSES.—The purposes of the
4 Community Advantage Loan Program are—

5 “(i) to create a mission-oriented loan
6 guarantee program that builds on the dem-
7 onstrated success of the Community Ad-
8 vantage Pilot Program of the Administra-
9 tion, as established in 2011, to reach more
10 underserved small business concerns;

11 “(ii) to increase lending to small busi-
12 ness concerns in underserved and rural
13 markets, including veterans and members
14 of the military community, small business
15 concerns owned and controlled by socially
16 and economically disadvantaged individ-
17 uals, women, and startups;

18 “(iii) to ensure that the program
19 under this subsection (in this paragraph
20 referred to as the ‘7(a) loan program’) is
21 more inclusive and more broadly meets
22 congressional intent to reach borrowers
23 who are unable to get credit elsewhere on
24 reasonable terms and conditions;

1 “(iv) to help underserved small busi-
2 ness concerns become bankable by utilizing
3 the small-dollar financing and business
4 support experience of mission-oriented
5 lenders;

6 “(v) to allow certain mission-oriented
7 lenders, primarily nonprofit financial inter-
8 mediaries focused on economic develop-
9 ment in underserved markets, access to
10 guarantees for loans under this subsection
11 (in this paragraph referred to as ‘7(a)
12 loans’) of not more than \$350,000 and
13 provide management and technical assist-
14 ance to small business concerns as needed;

15 “(vi) to provide certainty for the lend-
16 ing partners that make loans under this
17 subsection and to attract new lenders; and

18 “(vii) to encourage collaboration be-
19 tween mission-oriented and conventional
20 lenders under this subsection in order to
21 support underserved small business con-
22 cerns.

23 “(B) DEFINITIONS.—In this paragraph—

24 “(i) the term ‘covered institution’
25 means—

1 “(I) a development company, as
2 defined in section 103 of the Small
3 Business Investment Act of 1958 (15
4 U.S.C. 662), participating in the 504
5 Loan Guaranty program established
6 under title V of such Act (15 U.S.C.
7 695 et seq.);

8 “(II) a nonprofit intermediary, as
9 defined in subsection (m)(11), partici-
10 pating in the microloan program
11 under subsection (m);

12 “(III) a non-Federally regulated
13 entity certified as a community devel-
14 opment financial institution by the
15 Community Development Financial
16 Institutions Fund established under
17 section 104(a) of the Riegle Commu-
18 nity Development and Regulatory Im-
19 provement Act of 1994 (12 U.S.C.
20 4703(a)); and

21 “(IV) an eligible intermediary, as
22 defined in subsection (l)(1), partici-
23 pating in the Intermediary Lending
24 Pilot Program established under sub-
25 section (l)(2);

1 “(ii) the term ‘existing business’
2 means a small business concern that has
3 been in existence for not less than 2 years
4 on the date on which a loan is made to the
5 small business concern under the program;

6 “(iii) the term ‘new business’ means a
7 small business concern that has been exist-
8 ence for not more than 2 years on the date
9 on which a loan is made to the small busi-
10 ness concern under the program;

11 “(iv) the term ‘program’ means the
12 Community Advantage Loan Program es-
13 tablished under subparagraph (C);

14 “(v) the term ‘Reservist’ means a
15 member of a reserve component of the
16 Armed Forces named in section 10101 of
17 title 10, United States Code;

18 “(vi) the term ‘rural area’ means any
19 county that the Bureau of the Census has
20 defined as mostly rural or completely rural
21 in the most recent decennial census;

22 “(vii) the term ‘service-connected’ has
23 the meaning given the term in section
24 101(16) of title 38, United States Code;

“(viii) 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;

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

“(dd) a community that has been designated as a promise zone by the Secretary of Housing and Urban Development;

“(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 rural area;

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

1 “(III) that is a startup or new
2 business;

3 “(IV) owned and controlled by
4 socially and economically disadvan-
5 tagged individuals, including Black
6 Americans, Hispanic Americans, Na-
7 tive Americans, Asian Pacific Ameri-
8 cans, and other minorities;

9 “(V) owned and controlled by
10 women;

11 “(VI) owned and controlled by
12 veterans;

13 “(VII) owned and controlled by
14 service-disabled veterans;

15 “(VIII) not less than 51 percent
16 owned and controlled by 1 or more—

17 “(aa) members of the Armed
18 Forces participating in the Tran-
19 sition Assistance Program of the
20 Department of Defense;

21 “(bb) Reservists;

22 “(cc) spouses of veterans,
23 members of the Armed Forces, or
24 Reservists; or

1 “(dd) surviving spouses of
2 veterans who died on active duty
3 or as a result of a service-con-
4 nected disability; or

5 “(IX) that is eligible to receive a
6 veterans advantage loan;

7 “(ix) the term ‘small business concern
8 owned and controlled by socially and eco-
9 nomically disadvantaged individuals’ has
10 the meaning given the term in section
11 8(d)(3)(C);

12 “(x) the term ‘startup’ means a busi-
13 ness that has not yet opened; and

14 “(xi) the term ‘veterans advantage
15 loan’ means a loan made to a small busi-
16 ness concern under this subsection that is
17 eligible for a waiver of the guarantee fee
18 under paragraph (18) or the yearly fee
19 under paragraph (23) because the small
20 business concern is a concern described in
21 subclause (VI), (VII), or (VIII) of clause
22 (viii).

23 “(C) ESTABLISHMENT.—There is estab-
24 lished a Community Advantage Loan Program
25 under which the Administration may guarantee

1 loans made by covered institutions under this
 2 subsection, including loans made to small busi-
 3 ness concerns in underserved markets.

4 “(D) PROGRAM LEVELS.—In each of fiscal
 5 years 2020, 2021, 2022, 2023, and 2024, not
 6 more than 10 percent of the number of loans
 7 guaranteed under this subsection may be guar-
 8 anteed under the program.

9 “(E) NEW LENDERS.—

10 “(i) FISCAL YEARS 2020 AND 2021.—In
 11 each of fiscal years 2020 and 2021—

12 “(I) not more than 150 covered
 13 institutions shall participate in the
 14 program; and

15 “(II) the Administrator shall
 16 allow for new applicants and give pri-
 17 ority to applications submitted by any
 18 covered institution that is located in
 19 an area with insufficient or no lending
 20 under the program.

21 “(ii) FISCAL YEARS 2022, 2023, AND
 22 2024.—

23 “(I) IN GENERAL.—In each of
 24 fiscal years 2022, 2023, and 2024—

1 “(aa) except as provided in
2 subclause (II), not more than
3 175 covered institutions shall
4 participate in the program; and

5 “(bb) the Administrator
6 shall allow for new applicants
7 and give priority to applications
8 submitted by any covered institu-
9 tion that is located in an area
10 with insufficient or no lending
11 under the program.

12 “(II) EXCEPTION FOR FISCAL
13 YEAR 2024.—In fiscal year 2024, not
14 more than 200 covered institutions
15 may participate in the program if—

16 “(aa) after reviewing the re-
17 port under subparagraph
18 (M)(iii), the Administrator deter-
19 mines that not more than 200
20 covered institutions may partici-
21 pate in the program;

22 “(bb) the Administrator no-
23 tifies Congress in writing of the
24 determination of the Adminis-
25 trator under item (aa); and

1 “(cc) not later than July 30,
2 2023, the Administrator notifies
3 the public of the determination of
4 the Administrator under item
5 (aa).

6 “(F) GRANDFATHERING OF EXISTING
7 LENDERS.—Any covered institution that par-
8 ticipated in the Community Advantage Pilot
9 Program of the Administration and is in good
10 standing on the day before the date of enact-
11 ment of this paragraph—

12 “(i) shall retain designation in the
13 program; and

14 “(ii) shall not be required to submit
15 an application to participate in the pro-
16 gram.

17 “(G) REQUIREMENT TO MAKE LOANS TO
18 UNDERSERVED MARKETS.—Not less than 60
19 percent of loans made by a covered institution
20 under the program shall consist of loans made
21 to small business concerns in underserved mar-
22 kets.

23 “(H) MAXIMUM LOAN AMOUNT.—

24 “(i) IN GENERAL.—Except as pro-
25 vided in clause (ii), the maximum loan

1 amount for a loan guaranteed under the
2 program is \$250,000.

3 “(ii) EXCEPTION.—

4 “(I) IN GENERAL.—The Admin-
5 istration may, in the discretion of the
6 Administration, approve a guarantee
7 of a loan under the program that is
8 more than \$250,000 and not more
9 than \$350,000.

10 “(II) NOTIFICATION.—Not later
11 than 2 days after receiving a request
12 for an exception to the maximum loan
13 amount established under clause (i),
14 the Administration shall—

15 “(aa) review the request;

16 and

17 “(bb) provide a decision re-
18 garding the request to the cov-
19 ered institution making the loan.

20 “(I) INTEREST RATES.—

21 “(i) IN GENERAL.—Except as pro-
22 vided in clause (ii), the maximum allowable
23 interest rate prescribed by the Administra-
24 tion on any financing made on a deferred
25 basis pursuant to the program shall not

1 exceed the maximum allowable interest
2 rate in effect on September 1, 2018.

3 “(ii) MODIFICATION.—The Adminis-
4 tration shall not modify the maximum al-
5 lowable interest rate described in clause (i)
6 unless the Administration provides the
7 public with an opportunity to comment for
8 a period of not less than 180 days before
9 implementing the modified interest rate.

10 “(J) TRAINING AND TECHNICAL ASSIST-
11 ANCE.—The Administration—

12 “(i) shall in person and online, pro-
13 vide upfront and ongoing training and
14 technical assistance for covered institutions
15 making loans under the program in order
16 to support prudent lending standards and
17 improve the interface between the covered
18 institutions and the Administration;

19 “(ii) shall ensure that the training
20 and technical assistance described in clause
21 (i) is provided for free or at a low-cost;
22 and

23 “(iii) may enter into a contract to
24 provide the training or technical assistance
25 described in clause (i) with an organization

1 with expertise in lending under this sub-
2 section, mission-oriented lending, and lend-
3 ing to underserved markets.

4 “(K) DELEGATED AUTHORITY.—A covered
5 institution is not eligible to receive delegated
6 authority from the Administration under the
7 program until the covered institution makes not
8 less than 7 loans under the program.

9 “(L) REGULATIONS.—

10 “(i) IN GENERAL.—Not later than
11 180 days after the date of enactment of
12 this paragraph and in accordance with the
13 notice and comment procedures under sec-
14 tion 553 of title 5, United States Code, the
15 Administrator shall promulgate regulations
16 to carry out the program, which shall be
17 substantially similar to the Community Ad-
18 vantage Pilot Program of the Administra-
19 tion, as in effect on September 1, 2018,
20 and shall—

21 “(I) outline the requirements for
22 participation by covered institutions in
23 the program;

24 “(II) define performance metrics
25 for covered institutions participating

1 in the program for the first time,
2 which are required to be met in order
3 to continue participating in the pro-
4 gram;

5 “(III) determine the credit score
6 of a small business concern under
7 which the Administration is required
8 to underwrite a loan provided to the
9 small business concern under the pro-
10 gram and the loan may not be made
11 using the delegated authority of a cov-
12 ered institution;

13 “(IV) require each covered insti-
14 tution that sells loans made under the
15 program on the secondary market to
16 establish a loan loss reserve fund,
17 which—

18 “(aa) with respect to cov-
19 ered institutions in good stand-
20 ing, including the covered institu-
21 tions described in subparagraph
22 (F), shall be maintained at a
23 level equal to 3 percent of the
24 outstanding guaranteed portion
25 of the loans; and

1 “(bb) with respect to any
2 other covered institution, shall be
3 maintained at a level equal to 5
4 percent of the outstanding guar-
5 anteed portion of the loans; and

6 “(V) allow the Administrator to
7 require additional amounts to be de-
8 posited into a loan loss reserve fund
9 established by a covered institution
10 under subclause (IV) based on the
11 risk characteristics or performance of
12 the covered institution and the loan
13 portfolio of the covered institution.

14 “(ii) PILOT PROGRAM.—

15 “(I) REVERSION.—Beginning on
16 the date of enactment of this para-
17 graph and ending on the day before
18 the date on which the regulations pro-
19 mulgated by the Administrator under
20 clause (i) take effect, the Adminis-
21 trator may only carry out the Commu-
22 nity Advantage Pilot Program of the
23 Administration based on applicable
24 program guidelines, requirements, and
25 other policy in effect on September 1,

2018, except that the definition of underserved market shall include—

“(aa) a community and an area described in items (ee) and (ff), respectively, of subparagraph (B)(viii)(I); and

“(bb) small business concerns described in subclauses (IV) and (V) of subparagraph (B)(viii).

“(II) TERMINATION.—Beginning on the date on which the regulations promulgated by the Administrator under clause (i) take effect, the Administrator may not carry out the Community Advantage Pilot Program of the Administration.

“(M) 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—

1 “(aa) on and after the date
2 of enactment of this paragraph
3 until the date on which the regu-
4 lations promulgated under sub-
5 paragraph (L)(i) take effect, the
6 number and dollar amount of
7 loans guaranteed under the Com-
8 munity Advantage Pilot Program
9 of the Administration; and

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

16 “(II) SEPARATE ACCOUNTING.—

17 The number and dollar amount of
18 loans reported in a weekly report
19 under subclause (I) for loans guaran-
20 teed under the Community Advantage
21 Pilot Program of the Administration
22 and under the program shall include a
23 breakdown by the categories of race,
24 ethnicity, and gender of the owners of
25 the small business concerns.

1 “(ii) ANNUAL REPORTS.—

2 “(I) IN GENERAL.—For each of
3 the first 5 fiscal years in which the
4 program is in effect, the Administra-
5 tion shall submit to the Committee on
6 Small Business and Entrepreneurship
7 of the Senate and the Committee on
8 Small Business of the House of Rep-
9 resentatives, and make publicly avail-
10 able on the internet, information
11 about loans provided under the pro-
12 gram and under the Community Ad-
13 vantage Pilot Program of the Admin-
14 istration.

15 “(II) CONTENTS.—Each report
16 submitted and made publicly available
17 under subclause (I) shall include—

18 “(aa) the number and dollar
19 amounts of loans provided to
20 small business concerns under
21 the program and under the Com-
22 munity Advantage Pilot Program
23 of the Administration, including
24 a breakdown by—

1 “(AA) the gender of the
2 owners of the small business
3 concern;

4 “(BB) the race and
5 ethnicity of the owners of
6 the small business concern;

7 “(CC) whether the
8 small business concern is lo-
9 cated in an urban or rural
10 area; and

11 “(DD) whether the
12 small business concern is a
13 startup, an existing busi-
14 ness, or a new business, as
15 provided in the weekly re-
16 ports on lending approvals
17 under this subsection;

18 “(bb) the proportion of loans
19 described in item (aa) compared
20 to—

21 “(AA) other 7(a) loans
22 of any amount;

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

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

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

8 “(cc) a comparison of the
9 number and dollar amounts of
10 loans provided to small business
11 concerns under the program,
12 under the Community Advantage
13 Pilot Program of the Administra-
14 tion, and under each category of
15 loans described in item (bb), bro-
16 ken down by—

17 “(AA) loans of not
18 more than \$50,000;

19 “(BB) loans of more
20 than \$50,000 and not more
21 than \$150,000;

22 “(CC) loans of more
23 than \$150,000 and not more
24 than \$250,000; and

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

4 “(dd) the number and dollar
5 amounts of loans provided to
6 small business concerns under
7 the program and under the Com-
8 munity Advantage Pilot Program
9 of the Administration by State,
10 and the jobs created or retained
11 within each State;

12 “(ee) with respect to loans
13 provided to small business con-
14 cerns under the program and
15 under the Community Advantage
16 Pilot Program of the Administra-
17 tion—

18 “(AA) the performance
19 of the loans provided by
20 each type of covered institu-
21 tion;

22 “(BB) the performance
23 of the loans broken down by
24 loan size;

1 “(CC) the predictive
2 purchase rate of the loans;

3 “(DD) the early default
4 rate of the loans;

5 “(EE) the 12-month
6 default rate of the loans;

7 “(FF) the cumulative
8 default rate for the loans for
9 the 5-year period preceding
10 the report;

11 “(GG) the charge-off
12 rates of the loans;

13 “(HH) the charge-off
14 rates as a percent of the un-
15 paid principal balance as in
16 table 9 of the annual budget
17 submitted by the Adminis-
18 tration; and

19 “(II) the purchase rates
20 as a percent of the unpaid
21 principal balance as in table
22 8 of the annual budget sub-
23 mitted by the Administra-
24 tion;

1 “(ff) a list of covered insti-
2 tutions participating in the pro-
3 gram and the Community Advan-
4 tage Pilot Program of the Ad-
5 ministration, including—

6 “(AA) the name, loca-
7 tion, and contact informa-
8 tion, such as the website and
9 telephone number, of each
10 covered institution; and

11 “(BB) a breakdown by
12 the number and dollar
13 amount of the loans ap-
14 proved for small business
15 concerns; and

16 “(gg) the benchmarks estab-
17 lished by the Community Advan-
18 tage Working Group under sub-
19 paragraph (N)(i).

20 “(III) TIMING.—An annual re-
21 port required under this clause
22 shall—

23 “(aa) be submitted and
24 made publicly available not later

1 than November 15 of each year;
2 and

3 “(bb) cover the lending ac-
4 tivity for the fiscal year that
5 ended on September 30 of that
6 same year.

7 “(iii) GAO REPORT.—Not later than
8 3 years after the date of enactment of this
9 paragraph, the Comptroller General of the
10 United States shall submit to the Adminis-
11 trator, the Committee on Small Business
12 and Entrepreneurship of the Senate, and
13 the Committee on Small Business of the
14 House of Representatives a report—

15 “(I) assessing—

16 “(aa) the extent to which
17 the program fulfills the require-
18 ments of this paragraph; and

19 “(bb) the performance of
20 covered institutions participating
21 in the program; and

22 “(II) providing recommendations
23 on the administration of the program
24 and the findings under items (aa) and
25 (bb) of subclause (I).

1 “(N) WORKING GROUP.—

2 “(i) IN GENERAL.—Not later than 90
3 days after the date of enactment of this
4 paragraph, the Administrator shall estab-
5 lish a Community Advantage Working
6 Group, which shall—

7 “(I) include—

8 “(aa) a geographically di-
9 verse representation of members
10 from among covered institutions
11 participating in the program; and

12 “(bb) representatives from
13 the Office of Capital Access of
14 the Administration, including the
15 Office of Credit Risk Manage-
16 ment, the Office of Financial As-
17 sistance, and the Office of Eco-
18 nomic Opportunity;

19 “(II) develop recommendations
20 on how the Administration can effec-
21 tively manage, support, and promote
22 the program and the mission of the
23 program;

24 “(III) establish metrics of suc-
25 cess and benchmarks that reflect the

1 mission and population served by cov-
2 ered institutions under the program,
3 which the Administration shall use to
4 evaluate the performance of those cov-
5 ered institutions; and

6 “(IV) institute regular and sus-
7 tainable systems of communication be-
8 tween the Administration and covered
9 institutions participating in the pro-
10 gram.

11 “(ii) REPORT.—Not later than 180
12 days after the date of enactment of this
13 paragraph, the Administrator shall submit
14 to the Committee on Small Business and
15 Entrepreneurship of the Senate and the
16 Committee on Small Business of the
17 House of Representatives a report that in-
18 cludes—

19 “(I) the recommendations of the
20 Community Advantage Working
21 Group established under clause (i);
22 and

1 “(II) a recommended plan and
2 timeline for implementation of those
3 recommendations.”.

○