

114TH CONGRESS
1ST SESSION

H. R. 3559

To establish minimum standards of disclosure by franchises whose franchisees use loans guaranteed by the Small Business Administration.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 2015

Mr. ELLISON (for himself, Mr. CONYERS, and Mr. HUFFMAN) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To establish minimum standards of disclosure by franchises whose franchisees use loans guaranteed by the Small Business Administration.

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 “Small Business Admin-
5 istration Franchise Loan Transparency Act of 2015”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

9 (1) Franchise businesses represent a large and
10 growing segment of the retail and service businesses

1 of the United States and are rapidly replacing more
2 traditional forms of small business ownership in the
3 economy of the United States.

4 (2) The Small Business Administration
5 (“SBA”) guarantees much of the financing available
6 in franchising.

7 (3) The SBA requires pro forma projections, in-
8 cluding projected revenue, for the first year of oper-
9 ations of a franchise as part of the standard oper-
10 ating requirements for a franchisee to qualify for fi-
11 nancing.

12 (4) On July 13, 2011, the SBA Office of In-
13 spector General published an audit (Report No. 11-
14 16) on loans made under section 7(a) of the Small
15 Business Act to Huntington Learning Center fran-
16 chises where first year revenue projections were all
17 significantly inflated.

18 (5) On July 2, 2013, the SBA Office of Inspec-
19 tor General published an audit evaluation (Report
20 No. 13-17) showing that the SBA needed to im-
21 prove the management of its 7(a) loan portfolio risk,
22 specifically with certain franchise brands that had
23 exceptionally high default rates that continued to re-
24 ceive guaranteed loans from the SBA.

1 (6) In September 2013, The Government Ac-
2 countability Office published a study (GAO–13–759)
3 showing that over the 10-year period from 2003 to
4 2012, 28 percent of 7(a) loans to franchises required
5 a guarantee payment. The study was based on
6 32,323 loans totaling \$10.6 billion, which required
7 \$1.5 billion in guarantee payments. The report spe-
8 cifically stated, “Potential franchisees should include
9 first-year revenue estimates in their SBA loan appli-
10 cations. However, this information is not necessarily
11 available to potential franchisees in the franchise or-
12 ganization’s disclosure document.”.

13 (7) Franchise companies most often collect roy-
14 alties based on gross revenue; therefore, revenue
15 data on each franchise outlet are readily available.

16 (8) While both the franchisor and the lender
17 profit as a result of the SBA financing, only the
18 franchisee bears the total liability for the loan.

19 (b) PURPOSE.—It is the purpose of this Act to—

20 (1) ensure transparency in the loan processes of
21 the Small Business Administration, so that the
22 franchisee borrower, the lender, and the Administra-
23 tion all have access to information that is key to the
24 lending process;

1 (2) remove any hidden discussions between the
2 franchisor and the lender on financial data critical
3 to the loan approval process;

4 (3) lower the fees and rates charged to
5 franchisee borrowers; and

6 (4) help ensure lower default rates in order to
7 make more money available for loans.

8 **SEC. 3. REQUIRED DISCLOSURES.**

9 (a) IN GENERAL.—A franchisor, except for a
10 franchisor of a franchise in the lodging industry, shall dis-
11 close in the required Federal Trade Commission disclosure
12 document, the following:

13 (1) The average first-year revenue for all fran-
14 chise locations for each of the preceding five years
15 of operation.

16 (2) The number of franchise locations that went
17 out of business or were sold by the franchisee during
18 the first year of operation for each of the preceding
19 five years.

20 (3) Average revenues for all locations of the
21 franchise for each of the preceding five years of op-
22 eration, aggregated to show the top 25 percent, mid-
23 dle 50 percent, and the bottom 25 percent of rev-
24 enue.

1 (b) DISCLOSURE TO PROSPECTIVE FRANCHISEE.—
2 Any financial information relating to the performance of
3 any location of a franchise that is provided by the
4 franchisor, or its representatives, to the lender for the pur-
5 pose of qualifying the loan, shall be disclosed to the pro-
6 spective franchisee borrower.

7 **SEC. 4. DEFINITIONS.**

8 For purposes of this Act, the following definitions
9 apply:

10 (1) The term “disclosure document” means the
11 disclosure statement required by the Federal Trade
12 Commission in Trade Regulation Rule 436 (16 Fed.
13 Reg. 436).

14 (2) The terms “franchise”, “franchisee” and
15 “franchisor” have the meanings given such terms in
16 section 436.1 of title 16 of the Code of Federal Reg-
17 ulations as in effect on July 1, 2007.

18 **SEC. 5. SEVERABILITY.**

19 If any provision of this Act or any application of this
20 Act to any person or circumstances is held invalid, the
21 remainder of this Act and its application to any person
22 or circumstance shall not be affected thereby.

○