

114TH CONGRESS
2D SESSION

S. 2992

To amend the Small Business Act to strengthen the Office of Credit Risk Management of the Small Business Administration, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 25, 2016

Mr. VITTER (for himself, Mrs. SHAHEEN, Mr. RISCH, Ms. AYOTTE, and Mr. PETERS) 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 strengthen the Office of Credit Risk Management 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 “Small Business Lend-
5 ing Oversight Act of 2016”.

6 **SEC. 2. OFFICE OF CREDIT RISK MANAGEMENT; STRESS**
7 **ANALYSES.**

8 The Small Business Act (15 U.S.C. 631 et seq.) is
9 amended—

1 (1) by redesignating section 47 as section 49;
2 and

3 (2) by inserting after section 46 the following:

4 **“SEC. 47. OFFICE OF CREDIT RISK MANAGEMENT.**

5 “(a) IN GENERAL.—There is within the Administra-
6 tion the Office of Credit Risk Management (in this section
7 referred to as the ‘Office’).

8 “(b) DIRECTOR.—The Office is headed by the Direc-
9 tor of the Office of Credit Risk Management (in this sec-
10 tion referred to as the ‘Director’).

11 “(c) SUPERVISION.—

12 “(1) FINAL REPORTS.—The Director shall issue
13 any final report relating to a review of any entity
14 authorized to issue a loan or loan guarantee under
15 section 7 or under title V of the Small Business In-
16 vestment Act of 1958 (15 U.S.C. 695 et seq.).

17 “(2) REVIEWS.—An employee of the Office
18 shall be present for and supervise any full review
19 conducted by a contractor of the Administration.

20 “(d) ENFORCEMENT AUTHORITY OF THE DIREC-
21 TOR.—

22 “(1) IN GENERAL.—In addition to other en-
23 forcement actions authorized under regulations pro-
24 mulgated by the Administration, the Director shall
25 impose penalties on any lender that finances loans

1 under section 7(a) if the lender knowingly and re-
2 peatedly—

3 “(A) fails to properly determine and docu-
4 ment that a loan is eligible for financing under
5 this Act and regulations promulgated under this
6 Act, including a failure to document that a loan
7 is eligible for financing under section 7(a) be-
8 cause the applicant is unable to obtain credit
9 elsewhere;

10 “(B) sells the guaranteed portion of a loan
11 under section 5(f) when the proceeds of the
12 loan have not been fully disbursed in accord-
13 ance with program requirements;

14 “(C) imposes on an applicant for a loan
15 under section 7(a) a fee that the Administration
16 has not specifically authorized; or

17 “(D) re-amortizes a loan solely to make
18 the loan appear current.

19 “(2) PENALTIES.—In addition to the authority
20 of the Administrator to deny liability for a loan, the
21 Director may impose a penalty on a lender that
22 knowingly and repeatedly violates the requirements
23 of section 7(a) and the regulations promulgated
24 under that section, including by committing viola-
25 tions described in paragraph (1), which—

1 “(A) shall be based on—

2 “(i) the severity of the violations; and

3 “(ii) the frequency with which the
4 lender fails to comply with the require-
5 ments; and

6 “(B) may include—

7 “(i) issuing the lender a warning and
8 an order to comply;

9 “(ii) if the lender is a participant in
10 the Preferred Lenders Program (in this
11 subsection referred to as the ‘program’), as
12 defined in section 7(a)(2)(C)(iii), sus-
13 pending the lender from participating in
14 the program for a period of not less than
15 90 days and not more than 1 year, which
16 shall include the right of the lender to ap-
17 peal the decision of the Director to the Of-
18 fice of Hearings and Appeals;

19 “(iii) prohibiting the lender from
20 issuing loans under section 7(a) under
21 processes determined by the Administrator
22 through regulation, which shall include the
23 right of the lender to appeal the decision
24 of the Director to the Office of Hearings
25 and Appeals;

1 “(iv) assessing a civil monetary pen-
2 alty against the lender in an amount that
3 is not less than \$5,000 and not greater
4 than \$250,000, which shall include the
5 right of the lender to appeal the decision
6 of the Director to the Office of Hearings
7 and Appeals;

8 “(v) prohibiting a lender from selling
9 in the secondary market, under section
10 5(f), the guaranteed portion of any loan
11 made by the lender; and

12 “(vi) any other penalty that the Direc-
13 tor determines to be appropriate after con-
14 sidering the severity and the frequency of
15 the violations of the lender.

16 “(3) REGULATIONS.—With respect to the pen-
17 alties described in clauses (ii), (iii), and (iv) of para-
18 graph (2)(B), the Administrator shall—

19 “(A) not later than 180 days after the date
20 of enactment of this section, propose amend-
21 ments to any regulations in effect on the date
22 of enactment of this section; and

23 “(B) not later than 1 year after the date
24 of enactment of this section, publish a final reg-
25 ulation.

1 “(4) SERVICING AND LIQUIDATION RESPON-
2 SIBILITIES.—During any period in which a lender is
3 suspended from participating in the program, or if
4 a lender is prohibited from issuing loans under sec-
5 tion 7(a), the lender shall remain obligated to main-
6 tain all servicing and liquidation activities delegated
7 to the lender by the Administrator.

8 “(e) REPORT TO CONGRESS.—Not later than Decem-
9 ber 31 of each year, the Office shall submit to Congress
10 a report detailing the subject matter and frequency of ac-
11 tions taken by the Office during the year preceding the
12 submission of the report.

13 **“SEC. 48. PORTFOLIO RISK ANALYSES.**

14 “(a) IN GENERAL.—The Administrator shall annu-
15 ally conduct a risk analysis of the portfolio of the Adminis-
16 tration with respect to all loans issued under section 7(a).

17 “(b) REPORT.—

18 “(1) IN GENERAL.—Beginning on April 1,
19 2018, and annually thereafter, the Director of the
20 Office of Credit Risk Management shall submit to
21 Congress a report containing the results of each
22 portfolio risk analysis conducted under subsection
23 (a).

24 “(2) CONTENTS.—A report submitted under
25 paragraph (1) shall include—

1 “(A) an analysis of overall program risk;
2 “(B) an analysis of program risk—
3 “(i) by industry concentration;
4 “(ii) by geography; and
5 “(iii) by program loan interest rates;
6 “(C) without identifying individual lenders
7 by name, a consolidated analysis of the risk cre-
8 ated by the individual lenders responsible for
9 not less than 1 percent of the gross loan ap-
10 provals for the year covered by the report; and
11 “(D) a summary of the steps taken by the
12 Administration to mitigate the risks identified
13 in subparagraphs (A), (B), and (C).”.

14 **SEC. 3. CREDIT ELSEWHERE.**

15 The Small Business Act (15 U.S.C. 631 et seq.) is
16 amended—

17 (1) by striking section 3(h) (15 U.S.C. 632(h))
18 and inserting the following:

19 “(h) The term ‘credit elsewhere’ means—

20 “(1) for the purposes of this Act, except for
21 section 7(b), the availability of credit to the indi-
22 vidual loan applicant on reasonable terms and condi-
23 tions from non-Federal, non-State, or non-local gov-
24 ernment sources, taking into consideration factors

1 associated with conventional lending practices, in-
2 cluding but not limited to—

3 “(A) the business industry in which the
4 loan applicant operates;

5 “(B) whether the loan applicant is an en-
6 terprise that has been in operation for a period
7 of less than 2 years;

8 “(C) the adequacy of the collateral avail-
9 able to secure the requested loan; and

10 “(D) the loan term necessary to reasonably
11 assure the ability of the loan applicant to repay
12 the debt from the actual or projected cash flow
13 of the business; and

14 “(2) for the purposes of section 7(b), the avail-
15 ability of credit from non-Federal sources on reason-
16 able terms and conditions taking into consideration
17 the prevailing rates and terms in the community in
18 or near where the concern transacts business, or the
19 homeowner resides, for similar purposes and periods
20 of time.”; and

21 (2) by striking section 18(b) (15 U.S.C. 647(b))
22 and inserting the following:

23 “(b) As used in this Act, the term ‘agricultural enter-
24 prises’ means those businesses engaged in the production
25 of food and fiber, ranching, and raising of livestock, aqua-

1 culture, and all other farming and agricultural related in-
2 dustries.”.

3 **SEC. 4. OVERSIGHT FEES.**

4 (a) FEES FOR THE OPERATION OF THE OFFICE OF
5 CREDIT RISK MANAGEMENT.—Section 7(a)(23) of the
6 Small Business Act (15 U.S.C. 636(a)(23)) is amended—

7 (1) in subparagraph (A)—

8 (A) by striking “With respect to” and in-
9 serting the following:

10 “(i) REDUCTION OF ADMINISTRATION
11 COSTS.—With respect to”; and

12 (B) by adding at the end the following:

13 “(ii) OFFICE OF CREDIT RISK MAN-
14 AGEMENT.—The Administration shall as-
15 sess and collect a fee equal to 0.03 percent
16 per year of the outstanding balance of the
17 deferred participation share of each loan
18 approved under this subsection, the pro-
19 ceeds of which shall be used solely to sup-
20 port the operations of the Office of Credit
21 Risk Management.”; and

22 (2) in subparagraph (B), by striking “fee as-
23 sessed” and inserting “fees assessed”.

24 (b) SECONDARY MARKET SALES.—Section
25 5(g)(4)(A) of the Small Business Act (15 U.S.C.

1 634(g)(4)(A)) is amended by striking the first sentence
 2 and inserting “The Administrator shall collect a fee for
 3 any loan guarantee sold into the secondary market under
 4 subsection (f) in an amount equal to 50 percent of the
 5 portion of the sale price that exceeds 108 percent of the
 6 outstanding principal amount of the portion of the loan
 7 guaranteed by the Administration.”.

8 **SEC. 5. REDUCTION OF RISK.**

9 (a) **LENDER CONCENTRATION.**—Section 7(a)(1) of
 10 the Small Business Act (15 U.S.C. 636(a)(1)) is amended
 11 by adding at the end the following:

12 “(D) **PORTFOLIO CONCENTRATIONS.**—

13 “(i) **CONCENTRATION OF LOANS MADE**
 14 **WITH NO EQUITY CONTRIBUTION.**—

15 “(I) **IN GENERAL.**—Not later
 16 than December 31 of each year, the
 17 Administrator shall calculate, as of
 18 September 30 of the year in which the
 19 calculation is made and for each lender
 20 that issues loans under this section,
 21 the percentage of loans in the port-
 22 folio of the lender that were made
 23 without a contribution of equity by
 24 the borrower when the purpose of the
 25 loan was to establish a new small

1 business concern, to effectuate a
2 change of ownership of a small busi-
3 ness concern, or to purchase real es-
4 tate.

5 “(II) APPROVAL.—If, after mak-
6 ing the calculation required under
7 subclause (I), the Administrator de-
8 termines that more than 15 percent of
9 the loans of a lender are as described
10 in that subclause, any loan application
11 submitted to the lender that would
12 provide financing without a contribu-
13 tion of equity by the borrower and for
14 one of the purposes described in that
15 subclause may not be approved under
16 the authority delegated to a lender as
17 a participant in the Preferred Lenders
18 Program, as defined in paragraph
19 (2)(C)(iii) and if applicable.

20 “(III) EXEMPTIONS.—Subclause
21 (II) shall not apply to any lender that
22 originates loans under section 7(a),
23 the aggregate amount of which equals
24 less than 1 percent of the annual total
25 program authorization, based upon

1 gross loan approvals for the fiscal
2 year preceding the year in which the
3 calculation is made under subclause
4 (I).

5 “(ii) INDUSTRY CONCENTRATION.—

6 “(I) IN GENERAL.—Not later
7 than December 31 of each year, the
8 Administrator shall calculate, as of
9 September 30 of the year in which the
10 calculation is made, for each lender
11 that issues loans under this section,
12 and using the applicable 6-digit classi-
13 fication code under the North Amer-
14 ican Industry Classification System,
15 industry concentrations for each lend-
16 er.

17 “(II) APPROVAL.—If, after mak-
18 ing the calculation required under
19 subclause (I), the Administrator de-
20 termines that more than 20 percent of
21 the loans of a lender are concentrated
22 in a single industry, any loan applica-
23 tion submitted to the lender from a
24 small business concern operating in
25 that industry may not be approved

1 under the authority delegated to the
2 lender as a participant in the Pre-
3 ferred Lenders Program, as defined in
4 paragraph (2)(C)(iii) and if applica-
5 ble.

6 “(III) EXEMPTIONS.—Subclause
7 (II) shall not apply to any lender that
8 originates loans under section 7(a),
9 the aggregate amount of which equals
10 less than 1 percent of the annual total
11 program authorization, based upon
12 gross loan approvals for the fiscal
13 year preceding the year in which the
14 calculation is made under subclause
15 (I).

16 “(E) FINANCING IN EXCESS OF 100 PER-
17 CENT.—The Administrator may not approve a
18 loan under subparagraph (D) if the loan pro-
19 vides financing in an amount that is more than
20 100 percent of the project costs.”.

21 (b) REGULATIONS.—

22 (1) IN GENERAL.—The Administrator of the
23 Small Business Administration shall—

24 (A) not later than 180 days after the date
25 of enactment of this Act, issue proposed regula-

1 tions to implement this section and the amend-
2 ments made by this section; and

3 (B) not later than 1 year after the date of
4 enactment of this Act, publish final regulations
5 implementing this section and the amendments
6 made by this section.

7 (2) CONTENT.—The regulations described in
8 subparagraphs (A) and (B) of paragraph (1) shall
9 include factors, such as the balance sheet equity of
10 a borrower, that a lender may consider when deter-
11 mining whether and how much equity will be re-
12 quired to ensure that a loan is creditworthy.

13 **SEC. 6. ISSUES WITH RESPECT TO LOANS TO SMALL BUSI-**
14 **NESS CONCERNS.**

15 Section 7(a) of the Small Business Act (15 U.S.C.
16 636(a)) is amended by adding at the end the following:

17 “(35) ACCURACY REQUIREMENT.—Any lender
18 that is required to report information to the Admin-
19 istration with respect to a loan guaranteed under
20 this subsection on Form 1502, or any successor
21 form that contains the information in Form 1502 as
22 in effect on January 1, 2016, and has been approved
23 by the Director of the Office of Management and
24 Budget under section 3507 of title 44, United States

1 Code, shall ensure that the information on such
2 form is complete and accurate.

3 “(36) USE OF OUTSIDE AGENTS.—

4 “(A) IN GENERAL.—For a loan made
5 under this subsection, a lender may use an out-
6 side agent or lender service provider to assist in
7 identifying potential applicants and with proc-
8 essing, disbursing, servicing, and liquidating the
9 loan, except that the lender, and not any agent,
10 shall be wholly responsible for—

11 “(i) the accuracy of all information
12 submitted with respect to the loan;

13 “(ii) all decisions with respect to the
14 eligibility and creditworthiness of the loan
15 applicant; and

16 “(iii) any actions taken with respect
17 to the loan.

18 “(B) ENFORCEMENT AUTHORITY OF THE
19 ADMINISTRATION.—Nothing in subparagraph
20 (A) shall be construed to limit the authority of
21 the Administrator that was in effect on the day
22 before the date of enactment of this paragraph
23 to bring an enforcement action against an out-
24 side agent or a lender service provider.

1 “(37) **RETAINING OWNERSHIP.**—With respect
2 to a loan made under this subsection, a lender may
3 not sell or pledge an amount that is more than the
4 greater of—

5 “(A) 85 percent of the loan; or

6 “(B) the percentage of the loan that is
7 guaranteed by the Administration.”.

8 **SEC. 7. REGULATIONS.**

9 In addition to the regulations required under section
10 5(b), the Administrator of the Small Business Administra-
11 tion shall—

12 (1) not later than 180 days after the date of
13 enactment of this Act, issue proposed regulations
14 that—

15 (A) implement all other provisions of this
16 Act and the amendments made by this Act; and

17 (B) provide definitions and requirements
18 with respect to the concepts of—

19 (i) equity injections; and

20 (ii) loans that are 100 percent fi-
21 nanced; and

22 (2) not later than 1 year after the date of en-
23 actment of this Act, publish final versions of the reg-
24 ulations described in paragraph (1).

○