

Calendar No. 512

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, Mr. PETERS, and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

JUNE 9, 2016

Reported by Mr. VITTER, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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”.

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

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

5 (1) by redesignating section 47 as section 49;

6 and

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

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

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

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

15 “(c) **SUPERVISION.**—

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

21 “(2) **REVIEWS.**—An employee of the Office
 22 shall be present for and supervise any full review
 23 conducted by a contractor of the Administration.

24 “(d) **ENFORCEMENT AUTHORITY OF THE DIREC-**
 25 **TOR.**—

1 “(1) IN GENERAL.—In addition to other en-
2 forcement actions authorized under regulations pro-
3 mulgated by the Administration, the Director shall
4 impose penalties on any lender that finances loans
5 under section 7(a) if the lender knowingly and re-
6 peatedly—

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

14 “(B) sells the guaranteed portion of a loan
15 under section 5(f) when the proceeds of the
16 loan have not been fully disbursed in accord-
17 ance with program requirements;

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

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

23 “(2) PENALTIES.—In addition to the authority
24 of the Administrator to deny liability for a loan, the
25 Director may impose a penalty on a lender that

1 knowingly and repeatedly violates the requirements
2 of section 7(a) and the regulations promulgated
3 under that section, including by committing viola-
4 tions described in paragraph (1), which—

5 “(A) shall be based on—

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

7 “(ii) the frequency with which the
8 lender fails to comply with the require-
9 ments; and

10 “(B) may include—

11 “(i) issuing the lender a warning and
12 an order to comply;

13 “(ii) if the lender is a participant in
14 the Preferred Lenders Program (in this
15 subsection referred to as the ‘program’), as
16 defined in section 7(a)(2)(C)(iii), sus-
17 pending the lender from participating in
18 the program for a period of not less than
19 90 days and not more than 1 year, which
20 shall include the right of the lender to ap-
21 peal the decision of the Director to the Of-
22 fice of Hearings and Appeals;

23 “(iii) prohibiting the lender from
24 issuing loans under section 7(a) under
25 processes determined by the Administrator

1 through regulation, which shall include the
2 right of the lender to appeal the decision
3 of the Director to the Office of Hearings
4 and Appeals;

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

12 “(v) prohibiting a lender from selling
13 in the secondary market, under section
14 5(f), the guaranteed portion of any loan
15 made by the lender; and

16 “(vi) any other penalty that the Direc-
17 tor determines to be appropriate after con-
18 sidering the severity and the frequency of
19 the violations of the lender.

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

23 “(A) not later than 180 days after the date
24 of enactment of this section, propose amend-

1 ments to any regulations in effect on the date
2 of enactment of this section; and

3 “~~(B)~~ not later than ~~1~~ year after the date
4 of enactment of this section; publish a final reg-
5 ulation.

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

13 “~~(c)~~ ~~REPORT TO CONGRESS.~~—Not later than Decem-
14 ber ~~31~~ of each year, the Office shall submit to Congress
15 a report detailing the subject matter and frequency of ac-
16 tions taken by the Office during the year preceding the
17 submission of the report.

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

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

22 “~~(b)~~ ~~REPORT.~~—

23 “~~(1)~~ ~~IN GENERAL.~~—Beginning on April 1,
24 2018, and annually thereafter, the Director of the
25 Office of Credit Risk Management shall submit to

1 Congress a report containing the results of each
 2 portfolio risk analysis conducted under subsection
 3 (a).

4 “(2) CONTENTS.—A report submitted under
 5 paragraph (1) shall include—

6 “(A) an analysis of overall program risk;

7 “(B) an analysis of program risk—

8 “(i) by industry concentration;

9 “(ii) by geography; and

10 “(iii) by program loan interest rates;

11 “(C) without identifying individual lenders

12 by name; a consolidated analysis of the risk cre-

13 ated by the individual lenders responsible for

14 not less than 1 percent of the gross loan ap-

15 provals for the year covered by the report; and

16 “(D) a summary of the steps taken by the

17 Administration to mitigate the risks identified

18 in subparagraphs (A), (B), and (C).”.

19 **SEC. 3. CREDIT ELSEWHERE.**

20 The Small Business Act (15 U.S.C. 631 et seq.) is

21 amended—

22 (1) by striking section 3(h) (15 U.S.C. 632(h))

23 and inserting the following:

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

1 “(1) for the purposes of this Act, except for
2 section 7(b), the availability of credit to the indi-
3 vidual loan applicant on reasonable terms and condi-
4 tions from non-Federal, non-State, or non-local gov-
5 ernment sources, taking into consideration factors
6 associated with conventional lending practices, in-
7 cluding but not limited to—

8 “(A) the business industry in which the
9 loan applicant operates;

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

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

15 “(D) the loan term necessary to reasonably
16 assure the ability of the loan applicant to repay
17 the debt from the actual or projected cash flow
18 of the business; and

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

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

3 “(b) As used in this Act, the term ‘agricultural enter-
4 prises’ means those businesses engaged in the production
5 of food and fiber, ranching, and raising of livestock, aqua-
6 culture, and all other farming and agricultural related in-
7 dustries.”.

8 **SEC. 4. OVERSIGHT FEES.**

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

12 (1) in subparagraph (A)—

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

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

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

18 “(ii) OFFICE OF CREDIT RISK MAN-
19 AGEMENT.—The Administration shall as-
20 sess and collect a fee equal to 0.03 percent
21 per year of the outstanding balance of the
22 deferred participation share of each loan
23 approved under this subsection, the pro-
24 ceeds of which shall be used solely to sup-

1 port the operations of the Office of Credit
2 Risk Management.”; and

3 ~~(2) in subparagraph (B); by striking “fee as-~~
4 ~~essed” and inserting “fees assessed”.~~

5 (b) SECONDARY MARKET SALES.—Section
6 ~~5(g)(4)(A) of the Small Business Act (15 U.S.C.~~
7 ~~634(g)(4)(A)) is amended by striking the first sentence~~
8 ~~and inserting “The Administrator shall collect a fee for~~
9 ~~any loan guarantee sold into the secondary market under~~
10 ~~subsection (f) in an amount equal to 50 percent of the~~
11 ~~portion of the sale price that exceeds 108 percent of the~~
12 ~~outstanding principal amount of the portion of the loan~~
13 ~~guaranteed by the Administration.”.~~

14 **SEC. 5. REDUCTION OF RISK.**

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

18 “(D) PORTFOLIO CONCENTRATIONS.—

19 “(i) CONCENTRATION OF LOANS MADE
20 WITH NO EQUITY CONTRIBUTION.—

21 “(I) IN GENERAL.—Not later
22 than December 31 of each year, the
23 Administrator shall calculate, as of
24 September 30 of the year in which the
25 calculation is made and for each lend-

1 er that issues loans under this section;
2 the percentage of loans in the port-
3 folio of the lender that were made
4 without a contribution of equity by
5 the borrower when the purpose of the
6 loan was to establish a new small
7 business concern; to effectuate a
8 change of ownership of a small busi-
9 ness concern; or to purchase real es-
10 tate.

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

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

11 “(ii) INDUSTRY CONCENTRATION.—

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

23 “(II) APPROVAL.—If, after mak-
24 ing the calculation required under
25 subclause (I), the Administrator de-

1 termines that more than 20 percent of
2 the loans of a lender are concentrated
3 in a single industry, any loan applica-
4 tion submitted to the lender from a
5 small business concern operating in
6 that industry may not be approved
7 under the authority delegated to the
8 lender as a participant in the Pre-
9 ferred Lenders Program, as defined in
10 paragraph (2)(C)(iii) and if applica-
11 ble.

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

22 “(E) FINANCING IN EXCESS OF 100 PER-
23 CENT.—The Administrator may not approve a
24 loan under subparagraph (D) if the loan pro-

1 vides financing in an amount that is more than
2 100 percent of the project costs.”.

3 ~~(b) REGULATIONS.—~~

4 ~~(1) IN GENERAL.—~~The Administrator of the
5 Small Business Administration shall—

6 ~~(A)~~ not later than 180 days after the date
7 of enactment of this Act, issue proposed regula-
8 tions to implement this section and the amend-
9 ments made by this section; and

10 ~~(B)~~ not later than 1 year after the date of
11 enactment of this Act, publish final regulations
12 implementing this section and the amendments
13 made by this section.

14 ~~(2) CONTENT.—~~The regulations described in
15 subparagraphs ~~(A)~~ and ~~(B)~~ of paragraph ~~(1)~~ shall
16 include factors, such as the balance sheet equity of
17 a borrower, that a lender may consider when deter-
18 mining whether and how much equity will be re-
19 quired to ensure that a loan is creditworthy.

20 **SEC. 6. ISSUES WITH RESPECT TO LOANS TO SMALL BUSI-**
21 **NESS CONCERNS.**

22 Section 7(a) of the Small Business Act (15 U.S.C.
23 636(a)) is amended by adding at the end the following:

24 ~~“(35)~~ **ACCURACY REQUIREMENT.—**Any lender
25 that is required to report information to the Admin-

1 istration with respect to a loan guaranteed under
 2 this subsection on Form 1502, or any successor
 3 form that contains the information in Form 1502 as
 4 in effect on January 1, 2016, and has been approved
 5 by the Director of the Office of Management and
 6 Budget under section 3507 of title 44, United States
 7 Code, shall ensure that the information on such
 8 form is complete and accurate.

9 “(36) USE OF OUTSIDE AGENTS.—

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

17 “(i) the accuracy of all information
 18 submitted with respect to the loan;

19 “(ii) all decisions with respect to the
 20 eligibility and creditworthiness of the loan
 21 applicant; and

22 “(iii) any actions taken with respect
 23 to the loan.

24 “(B) ENFORCEMENT AUTHORITY OF THE
 25 ADMINISTRATION.—Nothing in subparagraph

1 (A) shall be construed to limit the authority of
 2 the Administrator that was in effect on the day
 3 before the date of enactment of this paragraph
 4 to bring an enforcement action against an out-
 5 side agent or a lender service provider.

6 ~~“(37) RETAINING OWNERSHIP.—~~With respect
 7 to a loan made under this subsection, a lender may
 8 not sell or pledge an amount that is more than the
 9 greater of—

10 ~~“(A) 85 percent of the loan; or~~

11 ~~“(B) the percentage of the loan that is~~
 12 ~~guaranteed by the Administration.”.~~

13 **SEC. 7. REGULATIONS.**

14 In addition to the regulations required under section
 15 5(b), the Administrator of the Small Business Administra-
 16 tion shall—

17 (1) not later than 180 days after the date of
 18 enactment of this Act, issue proposed regulations
 19 that—

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

22 (B) provide definitions and requirements
 23 with respect to the concepts of—

24 (i) equity injections; and

1 (ii) loans that are 100 percent fi-
 2 nanced; and
 3 ~~(2) not later than 1 year after the date of en-~~
 4 ~~actment of this Act, publish final versions of the reg-~~
 5 ~~ulations described in paragraph (1).~~

6 **SECTION 1. SHORT TITLE.**

7 *This Act may be cited as the “Small Business Lending*
 8 *Oversight Act of 2016”.*

9 **SEC. 2. OFFICE OF CREDIT RISK MANAGEMENT; STRESS**
 10 **ANALYSES.**

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

13 (1) *by redesignating section 47 as section 49;*
 14 *and*

15 (2) *by inserting after section 46 the following:*

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

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

20 “(b) *DIRECTOR.—The Office is headed by the Director*
 21 *of the Office of Credit Risk Management (in this section*
 22 *referred to as the ‘Director’).*

23 “(c) *SUPERVISION.—*

24 “(1) *FINAL REPORTS.—The Director shall be re-*
 25 *sponsible for any final report relating to a review of*

1 *any entity authorized to issue a loan or loan guar-*
2 *antee under section 7 or under title V of the Small*
3 *Business Investment Act of 1958 (15 U.S.C. 695 et*
4 *seq.).*

5 “(2) *REVIEWS.*—*An employee of the Office shall*
6 *be present for and supervise any review conducted on*
7 *the premises of a lender.*

8 “(d) *ENFORCEMENT AUTHORITY OF THE DIRECTOR.*—

9 “(1) *IN GENERAL.*—*The Director shall impose*
10 *not less than 1 penalty under paragraph (2) on any*
11 *lender that makes loans under section 7(a) if the lend-*
12 *er knowingly and repeatedly—*

13 “(A) *fails to properly determine and docu-*
14 *ment that a loan is eligible for financing under*
15 *this Act or regulations promulgated under this*
16 *Act, including a failure to document that a loan*
17 *is eligible for financing under section 7(a) be-*
18 *cause the applicant is unable to obtain credit*
19 *elsewhere;*

20 “(B) *sells the guaranteed portion of a loan*
21 *under section 5(f) when the proceeds of the loan*
22 *have not been fully disbursed in accordance with*
23 *program requirements;*

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

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

6 “(2) PENALTIES.—In addition to other actions,
7 including enforcement actions, authorized under regu-
8 lations promulgated by the Administrator, the Direc-
9 tor may impose a penalty on a lender that knowingly
10 and repeatedly violates the requirements of this Act or
11 the regulations promulgated under this Act, including
12 by committing violations described in paragraph (1),
13 which—

14 “(A) shall be based on—

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

16 “(ii) the frequency with which the
17 lender fails to comply with the require-
18 ments; and

19 “(B) may include—

20 “(i) issuing the lender a warning and
21 an order to comply;

22 “(ii) if the lender is a participant in
23 the Preferred Lenders Program (in this sub-
24 section referred to as the ‘program’), as de-
25 fined in section 7(a)(2)(C)(iii), suspending

1 *the lender from participating in the pro-*
2 *gram for a period of not less than 90 days*
3 *and not more than 1 year, which shall in-*
4 *clude the right of the lender to appeal the*
5 *decision of the Director to the Office of*
6 *Hearings and Appeals;*

7 “(iii) *prohibiting the lender from*
8 *issuing loans under section 7(a), which*
9 *shall include the right of the lender to ap-*
10 *peal the decision of the Director to the Of-*
11 *fice of Hearings and Appeals;*

12 “(iv) *assessing a civil monetary pen-*
13 *alty against the lender in an amount that*
14 *is not less than \$5,000 and not greater than*
15 *\$250,000, which shall include the right of*
16 *the lender to appeal the decision of the Di-*
17 *rector to the Office of Hearings and Ap-*
18 *peals;*

19 “(v) *prohibiting a lender from selling*
20 *in the secondary market, under section 5(f),*
21 *the guaranteed portion of any loan made by*
22 *the lender; and*

23 “(vi) *any other penalty that the Direc-*
24 *tor determines to be appropriate after con-*

1 *sidering the severity and the frequency of*
2 *the violations of the lender.*

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

6 “(A) *not later than 180 days after the date*
7 *of enactment of this section, propose amendments*
8 *to any regulations in effect on the date of enact-*
9 *ment of this section; and*

10 “(B) *not later than 1 year after the date of*
11 *enactment of this section, publish a final regula-*
12 *tion.*

13 “(4) *SERVICING AND LIQUIDATION RESPONSIBIL-*
14 *ITIES.*—*During any period in which a lender is sus-*
15 *pending from participating in the program, or if a*
16 *lender is prohibited from issuing loans under section*
17 *7(a), the lender shall remain obligated to maintain*
18 *all servicing and liquidation activities delegated to*
19 *the lender by the Administrator unless the Director*
20 *specifies otherwise.*

21 “(5) *USE OF PENALTIES.*—*Any monetary pen-*
22 *alties collected under paragraph (2) shall be used sole-*
23 *ly to lower the subsidy rate of loans made under sec-*
24 *tion 7(a).*

1 “(6) *APPLICABILITY TO LENDERS SUPERVISED*
2 *BY THE ADMINISTRATION.*—*The authority of the Di-*
3 *rector under this section shall be exercised with re-*
4 *spect to a small business lending company or a non-*
5 *Federally regulated lender without regard to the re-*
6 *quirements of section 23.*

7 “(e) *REPORT TO CONGRESS.*—*Not later than December*
8 *31, 2017, and each year thereafter, the Office shall submit*
9 *to Congress a report detailing the subject matter and fre-*
10 *quency of actions by lenders that led the Office to impose*
11 *penalties under subsection (d)(2) during the fiscal year pre-*
12 *ceding the submission of the report.*

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

14 “(a) *IN GENERAL.*—*The Administrator shall annually*
15 *conduct a risk analysis of the portfolio of the Administra-*
16 *tion with respect to all loans guaranteed under section 7(a).*

17 “(b) *REPORT.*—

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

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; and
 4 “(ii) by geography;
 5 “(C) without identifying individual lenders
 6 by name, a consolidated analysis of the risk cre-
 7 ated by the individual lenders responsible for not
 8 less than 1 percent of the gross loan approvals
 9 for the year covered by the report; and
 10 “(D) a summary of the steps taken by the
 11 Administration to mitigate the risks identified
 12 in subparagraphs (A), (B), and (C).”.

13 **SEC. 3. CREDIT ELSEWHERE.**

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

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

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

19 “(1) *for the purposes of this Act, except for sec-*
 20 *tion 7(b), the availability of credit to the individual*
 21 *loan applicant on reasonable terms and conditions*
 22 *from non-Federal, non-State, or non-local government*
 23 *sources, taking into consideration factors associated*
 24 *with conventional lending practices, including but not*
 25 *limited to—*

1 “(A) *the business industry in which the*
2 *loan applicant operates;*

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

6 “(C) *the adequacy of the collateral available*
7 *to secure the requested loan; and*

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

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

19 (2) *by striking section 18(b) (15 U.S.C. 647(b))*
20 *and inserting the following:*

21 “(b) *As used in this Act, the term ‘agricultural enter-*
22 *prises’ means those businesses engaged in the production of*
23 *food and fiber, ranching, and raising of livestock, aqua-*
24 *culture, and all other farming and agricultural related in-*
25 *dustries.”.*

1 **SEC. 4. OVERSIGHT AND OTHER FEES.**

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

5 (1) *in subparagraph (A)*—

6 (A) *by striking “With respect to” and in-*
7 *serting the following:*

8 “(i) *REDUCTION OF ADMINISTRATION*
9 *COSTS.*—*With respect to*”; and

10 (B) *by adding at the end the following:*

11 “(ii) *OFFICE OF CREDIT RISK MANAGE-*
12 *MENT.*—*Beginning on October 1, 2016 or*
13 *the date that is 30 days after the date of en-*
14 *actment of this clause, whichever is later,*
15 *the Administration shall assess, collect, and*
16 *retain a fee in an amount that is not great-*
17 *er than 0.03 percent per year of the out-*
18 *standing balance of the deferred participa-*
19 *tion share of each loan approved under this*
20 *subsection, the proceeds of which shall be*
21 *used solely to support the operations of the*
22 *Office of Credit Risk Management.”; and*

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

25 (b) *SECONDARY MARKET SALES.*—

1 (1) *IN GENERAL.*—Section 5(g)(4)(A) of the
 2 *Small Business Act (15 U.S.C. 634(g)(4)(A))* is
 3 amended by striking the first sentence and inserting
 4 “*The Administrator shall collect a fee for any loan*
 5 *guarantee sold into the secondary market under sub-*
 6 *section (f) in an amount equal to 50 percent of the*
 7 *portion of the sale price that exceeds 108 percent of*
 8 *the outstanding principal amount of the portion of*
 9 *the loan guaranteed by the Administration.*”.

10 (2) *EFFECTIVE DATE.*—The amendment made by
 11 paragraph (1) shall take effect on October 1, 2017.

12 **SEC. 5. REDUCTION OF RISK.**

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

16 “(D) *PORTFOLIO CONCENTRATIONS.*—

17 “(i) *CONCENTRATION OF LOANS MADE*
 18 *WITH NO EQUITY CONTRIBUTION.*—

19 “(I) *IN GENERAL.*—Except as pro-
 20 *vided in clause (iii), not later than De-*
 21 *cember 31, 2017, and each year there-*
 22 *after, the Administrator shall calculate,*
 23 *as of September 30 of the year in*
 24 *which the calculation is made and for*
 25 *each lender that makes loans under*

1 *this section under the authority dele-*
2 *gated to the lender as a participant in*
3 *the Preferred Lenders Program (in this*
4 *subparagraph referred to as the ‘pro-*
5 *gram’), as defined in paragraph*
6 *(2)(C)(iii), the percentage of loans in*
7 *the portfolio of the lender that were*
8 *made without a contribution of equity*
9 *by the borrower when the purpose of*
10 *the loan was to establish a new small*
11 *business concern or to effectuate a*
12 *change of ownership of a small busi-*
13 *ness concern.*

14 *“(II) APPROVAL.—If, after mak-*
15 *ing the calculation required under sub-*
16 *clause (I), the Administrator deter-*
17 *mines that more than 15 percent of the*
18 *loans of a lender are as described in*
19 *that subclause, any loan application*
20 *submitted to the lender that would pro-*
21 *vide financing without a contribution*
22 *of equity by the borrower and for one*
23 *of the purposes described in that sub-*
24 *clause may not be approved under the*

1 *authority delegated to a lender as a*
2 *participant in the program.*

3 “(ii) *INDUSTRY CONCENTRATION.*—

4 *“(I) IN GENERAL.*—*Except as pro-*
5 *vided in clause (iii), not later than De-*
6 *cember 31, 2017, and each year there-*
7 *after, the Administrator shall calculate,*
8 *as of September 30 of the year in*
9 *which the calculation is made, for each*
10 *lender that makes loans under this sec-*
11 *tion under the authority delegated to*
12 *the lender as a participant in the pro-*
13 *gram, and using the applicable 6-digit*
14 *classification code under the North*
15 *American Industry Classification Sys-*
16 *tem, industry concentrations for each*
17 *lender.*

18 *“(II) APPROVAL.*—*If, after mak-*
19 *ing the calculation required under sub-*
20 *clause (I), the Administrator deter-*
21 *mines that more than 20 percent of the*
22 *loans of a lender are concentrated in a*
23 *single industry, any loan application*
24 *submitted to the lender from a small*
25 *business concern operating in that in-*

1 *dustry may not be approved under the*
2 *authority delegated to the lender as a*
3 *participant in the program.*

4 “(iii) *EXEMPTIONS.—*Clauses (i) and
5 *(ii) shall not apply to any lender that origi-*
6 *nates loans under section 7(a) if the aggre-*
7 *gate amount of the originations of the lend-*
8 *er made during the fiscal year preceding the*
9 *year in which the calculation would other-*
10 *wise be made under clauses (i)(I) and*
11 *(ii)(I) equals less than 1 percent of the an-*
12 *nuual total program authorization for that*
13 *fiscal year.*

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

19 (b) *REGULATIONS.—*

20 (1) *IN GENERAL.—*The Administrator of the
21 *Small Business Administration shall—*

22 (A) *not later than 180 days after the date*
23 *of enactment of this Act, issue proposed regula-*
24 *tions to implement this section and the amend-*
25 *ments made by this section; and*

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

5 (2) *CONTENT.*—The regulations described in sub-
 6 paragraphs (A) and (B) of paragraph (1) shall pro-
 7 vide definitions and requirements with respect to the
 8 concepts of equity contributions and loans that are
 9 100 percent financed.

10 **SEC. 6. ISSUES WITH RESPECT TO LOANS TO SMALL BUSI-**
 11 **NESS CONCERNS.**

12 Section 7(a) of the Small Business Act (15 U.S.C.
 13 636(a)) is amended by adding at the end the following:

14 “(35) *USE OF OUTSIDE AGENTS.*—

15 “(A) *IN GENERAL.*—For a loan made under
 16 this subsection, a lender may use an outside
 17 agent or lender service provider to assist in iden-
 18 tifying potential applicants and with processing,
 19 disbursing, servicing, and liquidating the loan,
 20 provided that the lender, and not any agent,
 21 shall be wholly responsible for—

22 “(i) the accuracy of all information
 23 submitted with respect to the loan;

1 “(ii) all decisions with respect to the
2 eligibility and creditworthiness of the loan
3 applicant; and

4 “(iii) any actions taken with respect to
5 the loan.

6 “(B) *ENFORCEMENT AUTHORITY OF THE*
7 *ADMINISTRATION.*—Nothing in subparagraph (A)
8 shall be construed to limit the authority of the
9 Administrator to bring an action against an
10 outside agent or a lender service provider.

11 “(36) *RETAINING OWNERSHIP.*—With respect to
12 a loan made under this subsection beginning on Octo-
13 ber 1 of the first fiscal year after the date of enact-
14 ment of this paragraph, a lender may not, unless the
15 lender has obtained the approval of the Adminis-
16 trator, sell an amount that is more than the greater
17 of—

18 “(A) 85 percent of the loan; or

19 “(B) the percentage of the loan that is guar-
20 anteed by the Administration.”.

21 **SEC. 7. REGULATIONS.**

22 *In addition to the regulations required under section*
23 *5(b), the Administrator of the Small Business Administra-*
24 *tion shall—*

1 (1) *not later than 180 days after the date of en-*
2 *actment of this Act, issue proposed regulations that*
3 *the Administrator deems necessary to implement all*
4 *other provisions of this Act and the amendments*
5 *made by this Act; and*

6 (2) *not later than 1 year after the date of enact-*
7 *ment of this Act, publish final versions of the regula-*
8 *tions described in paragraph (1).*

Calendar No. 512

114TH CONGRESS
2^D SESSION

S. 2992

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.

JUNE 9, 2016

Reported with an amendment