

110TH CONGRESS  
1ST SESSION

# S. 2288

To establish portfolio quality standards, improve lender oversight by the Small Business Administration, create economic outcome and performance measurements, strengthen the loan programs under section 7(a) of the Small Business Act and title V of the Small Business Investment Act of 1958, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 1, 2007

Ms. SNOWE (for herself and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

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## A BILL

To establish portfolio quality standards, improve lender oversight by the Small Business Administration, create economic outcome and performance measurements, strengthen the loan programs under section 7(a) of the Small Business Act and title V of the Small Business Investment Act of 1958, 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,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Small Business Lend-  
3 ing Oversight and Program Performance Improvement  
4 Act of 2007”.

5 **SEC. 2. FINDINGS.**

6       Congress finds the following:

7           (1) Recent reports by the Government Account-  
8 ability Office have recommended that the Small  
9 Business Administration develop better measure-  
10 ments and methods for measuring the performance  
11 of lending programs and the effectiveness of lender  
12 oversight.

13           (2) A July 2007 report by the Government Ac-  
14 countability Office entitled “Small Business Admin-  
15 istration: Additional Measures Needed to Assess  
16 7(a) Loan Program’s Performance” found the fol-  
17 lowing:

18           (A) Determining the success of the loan  
19 programs under section 7(a) of the Small Busi-  
20 ness Act (15 U.S.C. 636(a)) “is difficult as the  
21 performance measures show only outputs—the  
22 number of loans provided—and not outcomes,  
23 or the fate of the businesses borrowing with the  
24 guarantee.”.

1 (B) “The current measures do not indicate  
2 how well the agency is meeting its strategic goal  
3 of helping small businesses.”.

4 (C) “To better ensure that the 7(a) pro-  
5 gram is meeting its mission responsibility of  
6 helping small firms succeed through guaranteed  
7 loans, we recommend that the SBA adminis-  
8 trator complete and expand the SBA’s current  
9 work on evaluating the program’s performance  
10 measures. As part of that effort, at a minimum,  
11 the SBA should further utilize the loan per-  
12 formance information it already collects, includ-  
13 ing but not limited to defaults, prepayments,  
14 and number of loans in good standing, to better  
15 report how small businesses fare after they par-  
16 ticipate in the 7(a) program.”.

17 (3) A June 2004 report by the Government Ac-  
18 countability Office entitled “Small Business Admin-  
19 istration: New Services for Lender Oversight Reflect  
20 Some Best Practices but Strategy for Use Lags Be-  
21 hind” found that “Best practices dictate the need  
22 for a clear and transparent understanding of how a  
23 risk management service and the tools it provides  
24 will be used.”.

1 **SEC. 3. DEFINITIONS.**

2 In this Act—

3 (1) the terms “Administration” and “Adminis-  
4 trator” mean the Small Business Administration  
5 and the Administrator thereof, respectively;

6 (2) the term “base year” means the year in  
7 which a covered loan recipient receives a loan under  
8 section 7(a) of the Small Business Act (15 U.S.C.  
9 636(a)) or the 504 Loan Program;

10 (3) the term “covered lender” means—

11 (A) a lender participating in the guarantee  
12 loan program under section 7(a) of the Small  
13 Business Act (15 U.S.C. 636(a)); and

14 (B) a State or local development company  
15 participating in the 504 Loan Program;

16 (4) the term “covered loan recipient” means a  
17 person that receives a loan under section 7(a) of the  
18 Small Business Act (15 U.S.C. 636(a)) or the 504  
19 Loan Program;

20 (5) the term “economic performance evaluation  
21 measurements” means the economic performance  
22 evaluation measurements established under section  
23 8(a);

24 (6) the term “504 Loan Program” means the  
25 program to provide financing to small business con-  
26 cerns by guarantees of loans under title V of the

1 Small Business Investment Act of 1958 (15 U.S.C.  
2 695 et seq.), which are funded by debentures guar-  
3 anteed by the Administrator;

4 (7) the term “portfolio quality evaluation stand-  
5 ards” means the portfolio quality evaluation stand-  
6 ards established under section 5(a)(1); and

7 (8) the term “small business concern” has the  
8 same meaning as in section 3 of the Small Business  
9 Act (15 U.S.C. 632).

10 **SEC. 4. AUTHORITY.**

11 Section 5 of the Small Business Act (15 U.S.C. 634)  
12 is amended—

13 (1) in subsection (b)(14), by striking “other  
14 lender oversight activities” and inserting “used to  
15 improve portfolio performance and lender oversight  
16 through technology and software programs designed  
17 to increase program loan quality, management, accu-  
18 racy, and efficiency and program underwriting accu-  
19 racy and efficiency”; and

20 (2) by adding at the end the following:

21 “(i) In establishing lender oversight review fees de-  
22 scribed in subsection (b)(14), the Administrator shall fol-  
23 low cost containment and cost control best practices that  
24 ensure that such fees are reasonable and do not become  
25 burdensome or excessive.”.

1 **SEC. 5. PORTFOLIO QUALITY EVALUATION STANDARDS.**

2 (a) STANDARDS.—

3 (1) IN GENERAL.—Not later than 1 year after  
4 the date of enactment of this Act, the Administrator  
5 shall develop and publish in the Federal Register  
6 portfolio quality evaluation standards for covered  
7 lenders, which shall include portfolio quality criteria,  
8 including—

9 (A) a liquidation rate;

10 (B) a currency rate;

11 (C) a recovery rate;

12 (D) a delinquency rate; and

13 (E) other portfolio risk indicators.

14 (2) USE.—The Administration shall use the  
15 portfolio quality evaluation standards—

16 (A) to determine the portfolio quality of a  
17 covered lender, in comparison to the portfolio  
18 quality of all covered lenders; and

19 (B) for conducting lender oversight of cov-  
20 ered lenders.

21 (b) IMPLEMENTATION.—The Administrator shall—

22 (1) rank and determine a separate score for  
23 each covered lender, on each of the portfolio quality  
24 evaluation standards;

25 (2) combine the portfolio quality rankings de-  
26 scribed in paragraph (1) to establish the overall

1 lender portfolio quality score for each covered lender,  
 2 based on the compliance of that covered lender with  
 3 the portfolio quality evaluation standards;

4 (3) provide a covered lender access to—

5 (A) the score of that covered lender for  
 6 each of the portfolio quality evaluation stand-  
 7 ards; and

8 (B) the overall portfolio quality score for  
 9 that covered lender; and

10 (4) provide a written explanation of the factors  
 11 affecting the score described in paragraph (3)(A) for  
 12 a covered lender to that covered lender.

13 (c) QUARTERLY EVALUATIONS.—Not less frequently  
 14 than once each quarter, the Administrator shall evaluate  
 15 each covered lender to determine whether—

16 (1) there has been a statistically significant ad-  
 17 verse change in the criteria evaluated under the  
 18 portfolio quality evaluation standards relating to a  
 19 covered lender; and

20 (2) the portfolio of that covered lender has a  
 21 higher concentration of loans made to businesses in  
 22 a specific North American Industry Classification  
 23 System code (or any successor thereto) than is typ-  
 24 ical for businesses in that code, as determined by the  
 25 Administrator.

1 (d) ADDITIONAL ONSITE REVIEW.—

2 (1) DETERIORATION IN LOAN PORTFOLIO.—If  
3 the Administrator determines that there is signifi-  
4 cant and sustained statistically adverse change in  
5 the loan portfolio of a covered lender, based on the  
6 quarterly evaluation of that covered lender under  
7 subsection (c), the Administrator shall—

8 (A) determine the reason for such deterio-  
9 ration;

10 (B) determine if the deterioration should  
11 lead to an onsite review of the loan portfolio of  
12 that covered lender;

13 (C) taking into consideration the opinion  
14 of the relevant district director of the Adminis-  
15 tration, determine whether it is appropriate for  
16 the Administrator to adjust the preferred lender  
17 or other loan making status of that covered  
18 lender;

19 (D) document the decision by the Adminis-  
20 trator regarding whether to conduct an onsite  
21 review or adjust the loan making status of that  
22 covered lender; and

23 (E) inform that covered lender of any sta-  
24 tistically adverse change in loan quality of the  
25 portfolio of that covered lender.



1           (2) ADVERSE CHANGES.—If the Administrator  
 2           determines there has been a statistically significant  
 3           adverse change in the criteria evaluated under the  
 4           portfolio quality evaluation standards relating to a  
 5           covered lender, the Administrator shall determine  
 6           whether it is necessary to conduct an onsite review  
 7           of that covered lender.

8           (3) SCOPE OF REVIEW.—Any onsite review of a  
 9           covered lender under this subsection shall focus on—

10                   (A) the credit quality of the loans within  
 11                   the portfolio of that covered lender;

12                   (B) the soundness of the credit evaluation  
 13                   and underwriting processes and procedures of  
 14                   that covered lender;

15                   (C) the adherence by that covered lender  
 16                   to the policies and procedures of the Adminis-  
 17                   tration; and

18                   (D) any other measures that the Adminis-  
 19                   trator determines appropriate.

20           (e) DEFAULTS.—The Administrator shall provide to  
 21           a covered lender information relating to any indicator  
 22           under the portfolio quality evaluation standards that indi-  
 23           cate an increased risk of default for specific loans.

24           (f) DOCUMENT RETENTION.—The Administrator  
 25           shall maintain an electronic copy of any document relating

1 to any portfolio quality evaluation or onsite review under  
 2 this section (including documents relating to any deter-  
 3 mination regarding whether to conduct such a review).

4 (g) DATA COLLECTION.—The Administrator shall  
 5 enter into a contract with a fiscal and transfer agent of  
 6 the Administration under which that fiscal and transfer  
 7 agent shall provide to the Administrator the data nec-  
 8 essary to conduct the quarterly evaluation of covered lend-  
 9 ers using the portfolio quality evaluation standards under  
 10 this section.

11 **SEC. 6. DEFAULT RATE.**

12 (a) IN GENERAL.—Using established industry stand-  
 13 ards for calculating loan default rates, and not later than  
 14 1 year after the date of enactment of this Act, and every  
 15 year thereafter, the Administrator shall calculate a loan  
 16 default rate for—

17 (1) loans under section 7(a) of the Small Busi-  
 18 ness Act (15 U.S.C. 636(a));

19 (2) loans under the 504 Loan Program; and

20 (3) specialty loan programs under section 7(a)  
 21 of the Small Business Act or the 504 Loan Pro-  
 22 gram, including the Express Loan Program under  
 23 section 7(a)(31) of the Small Business Act and the  
 24 Export Working Capital Program under section  
 25 7(a)(14) of the Small Business Act.

1 (b) METHODOLOGY.—Not later than 1 year after the  
 2 date of enactment of this Act, the Administrator shall  
 3 publish in the Federal Register the methodology the Ad-  
 4 ministrator will use to calculate default rates under sub-  
 5 section (a).

6 (c) PURPOSE.—The purpose of the default rates cal-  
 7 culated under subsection (a) is to provide a cumulative  
 8 default rate for loans under section 7(a) of the Small  
 9 Business Act (15 U.S.C. 636(a)) and loans under the 504  
 10 Loan Program that may be compared directly to the de-  
 11 fault rates of other commercial loans.

12 **SEC. 7. COMPUTER MODELING.**

13 (a) TRANSPARENCY IN RANKING CRITERIA.—The  
 14 Administrator—

15 (1) shall provide each covered lender with the  
 16 data, factors, statistical methods, ranking criteria,  
 17 indicators, and other measures used to make the  
 18 ranking described in section 5(b); and

19 (2) may not charge a fee for providing the in-  
 20 formation described in paragraph (1).

21 (b) FAILURE TO PROVIDE.—In ranking a covered  
 22 lender under section 5(b), the Administrator may not use  
 23 any data, factor, statistical method, ranking criteria, indi-  
 24 cator, or other measure that the Administrator has not  
 25 provided to that covered lender.

1 (c) CONTRACTS.—Before establishing or modifying  
 2 any system or mechanism for evaluating the making of  
 3 loans, the accounting for loans, the underwriting of loans,  
 4 or otherwise overseeing loans made by covered lenders, the  
 5 Administrator shall consult with relevant covered lenders.

6 **SEC. 8. ECONOMIC PERFORMANCE EVALUATION MEASURE-**  
 7 **MENTS.**

8 (a) MEASUREMENTS.—Not later than 1 year after  
 9 the date of enactment of this Act, the Administrator shall  
 10 develop and publish in the Federal Register economic per-  
 11 formance evaluation measurements for evaluating the eco-  
 12 nomic performance and economic outcomes of each cov-  
 13 ered loan recipient, which shall include—

14 (1) number of individuals employed by that cov-  
 15 ered loan recipient;

16 (2) the annual sales receipts of that covered  
 17 loan recipient;

18 (3) an estimate of the total annual Federal in-  
 19 come tax paid by that covered loan recipient;

20 (4) whether the covered loan recipient prepaid  
 21 the covered loan;

22 (5) whether the covered loan recipient defaulted  
 23 on the covered loan;

24 (6) the number of businesses operated by cov-  
 25 ered loan recipients that cease operations; and

1           (7) the number of covered loan recipients that  
2       establish a new business relating to the business for  
3       which that covered loan recipient received a loan  
4       under section 7(a) of the Small Business Act (15  
5       U.S.C. 636(a)) or the 504 Loan Program.

6       (b) COLLECTION OF INFORMATION.—

7           (1) IN GENERAL.—On and after the date that  
8       is 2 years after the date of enactment of this Act,  
9       the Administrator shall electronically collect, as part  
10      of the loan application process, from the person ap-  
11      plying for a loan under section 7(a) of the Small  
12      Business Act (15 U.S.C. 636(a)) or the 504 Loan  
13      Program—

14           (A) the number of individuals employed by  
15      the applicant;

16           (B) the annual sales receipts of the appli-  
17      cant for the year before the date of the applica-  
18      tion; and

19           (C) an estimate of the total annual Federal  
20      income tax paid by that covered loan recipient.

21       (2) BASE YEAR.—The Administrator shall use  
22      the information collected under paragraph (1) to es-  
23      tablish the base year statistics for the applicant.

24       (3) INFORMATION COMPLIANCE.—

1 (A) IN GENERAL.—During the 12-year pe-  
 2 riod beginning on the date that a covered loan  
 3 recipient receives a loan under section 7(a) of  
 4 the Small Business Act or the 504 Loan Pro-  
 5 gram, as the case may be, the covered loan re-  
 6 cipient shall provide to the Administrator infor-  
 7 mation relating to the economic performance  
 8 evaluation measurements upon requested.

9 (B) FREQUENCY.—The Administrator  
 10 shall request information from a covered loan  
 11 recipient under subparagraph (A) not less fre-  
 12 quently than once every 4 years.

13 (c) REPORTING.—

14 (1) IN GENERAL.—Not later than 6 years after  
 15 the date of enactment of this Act, and every 4 years  
 16 thereafter, the Administrator shall publish a report  
 17 assessing the information relating to the economic  
 18 performance evaluation measurements submitted by  
 19 covered loan recipients during the period described  
 20 in paragraph (2), including an evaluation of the ag-  
 21 gregate changes, if any, in the economic perform-  
 22 ance evaluation measurements since the relevant  
 23 base years for such covered loan recipients.

24 (2) PERIOD.—The period described in this  
 25 paragraph is—

1 (A) for the first report submitted under  
 2 this subsection, not shorter than the 4-year pe-  
 3 riod before the date of that report;

4 (B) for the second report submitted under  
 5 this subsection, not shorter than the 8-year pe-  
 6 riod before the date of that report; and

7 (C) for the third report submitted under  
 8 this subsection, and each report submitted  
 9 thereafter, not shorter than the 12-year period  
 10 before the date of that report.

11 **SEC. 9. PRIVACY.**

12 In collecting data and preparing reports under this  
 13 Act, the Administrator shall ensure that the privacy and  
 14 information of covered loan recipients is protected.

15 **SEC. 10. EXECUTIVE COMPENSATION.**

16 Section 503 of the Small Business Investment Act  
 17 of 1958 (15 U.S.C. 697) is amended by adding at the end  
 18 the following:

19 “(j) EXECUTIVE COMPENSATION.—

20 “(1) IN GENERAL.—Except as provided in para-  
 21 graph (4), a State or local development company  
 22 shall have a written contract with each executive or  
 23 highly paid employee of that development company  
 24 relating to the employment of that executive or high-  
 25 ly paid employee, which shall include, for that execu-

1       tive or employee, the amount of compensation, bene-  
2       fits, and any transfer of anything of value to that  
3       executive or highly paid employee, including any  
4       rental or sale.

5               “(2) APPROVAL BY BOARD OF DIRECTORS.—

6               “(A) IN GENERAL.—A written contract de-  
7       scribed in paragraph (1) shall be approved by  
8       the board of directors of the State or local de-  
9       velopment company.

10              “(B) EVALUATION.—In evaluating a con-  
11       tract described in paragraph (1), the members  
12       of the board of directors of a State or local de-  
13       velopment company shall—

14              “(i) determine the fair market value  
15       of the benefits received by an executive or  
16       highly paid employee from that develop-  
17       ment company; and

18              “(ii) evaluate the amount paid by  
19       other State or local development companies  
20       and commercial lenders for comparable  
21       services, including, if a rental of property  
22       for that executive or highly paid employee  
23       is part of that contract, the amount of an-  
24       nual rent paid locally for comparable prop-  
25       erty.



1           “(C) DISTRIBUTION OF EVALUATION.—

2           The board of directors of a State or local devel-  
3           opment company shall ensure that the informa-  
4           tion described in subparagraph (B) is made  
5           available to each member of that board of direc-  
6           tors before the date of the meeting at which the  
7           board of directors will determine whether to ap-  
8           prove the relevant contract and include the in-  
9           formation described in subparagraph (B) in the  
10          minutes of that meeting.

11          “(D) PARTICIPATION.—An executive or  
12          highly paid official, and any other party with  
13          personal interest in a contract, shall not attend  
14          a meeting of the board of directors to determine  
15          whether to approve the contract with that exec-  
16          utive or highly paid official, unless the members  
17          of the board of directors request that executive  
18          or highly paid official respond to questions.

19          “(E) VOTING.—An executive or highly  
20          paid official, and any other party with personal  
21          interest in a contract, shall not be present dur-  
22          ing, and shall not vote on, whether to approve  
23          the contract with that executive or highly paid  
24          official.

1           “(3) ANNUAL REPORTS.—A State or local de-  
 2           velopment company shall report annually to the Ad-  
 3           ministration regarding the terms of each contract  
 4           with each executive or highly paid official of that de-  
 5           velopment company.

6           “(4) EXCEPTION.—This subsection shall not  
 7           apply to—

8                   “(A) a small State or local development  
 9           company;

10                   “(B) a State or local development company  
 11           that makes a low number of loans under the  
 12           504 Loan Program; or

13                   “(C) a State or local development company  
 14           regulated by a State or local government.

15           “(5) REGULATIONS.—The Administrator shall  
 16           promulgate regulations to carry out this subsection,  
 17           including defining the terms ‘executive’, ‘highly  
 18           paid’, ‘small State or local development company’,  
 19           and ‘low number of loans’.”.

20   **SEC. 11. STUDY AND REPORT ON EXAMINATION AND RE-**  
 21                   **VIEW FEES.**

22           (a) STUDY.—The Comptroller General of the United  
 23           States shall conduct a study of the Loan Guaranty Pro-  
 24           gram under section 7(a) of the Small Business Act to de-  
 25           termine—

1           (1) the scope of lender oversight needed by the  
2     Administration;

3           (2) what other entities regulate the lenders that  
4     participate in that loan guaranty program, what ac-  
5     tivities are being reviewed, and the scope of such re-  
6     views;

7           (3) how the amounts of examination and review  
8     fees are determined by such other regulatory enti-  
9     ties, who pays for such fees, and how they compare  
10    with examination and review fees proposed in regula-  
11    tions issued by the Administration on May 4, 2007;

12          (4) how examination and review fees factor into  
13    the risk-adjusted return on capital (or “RAROC”)  
14    ratings of lenders;

15          (5) what would be reasonable fees to be charged  
16    for Administration lender oversight;

17          (6) whether Administration lender oversight  
18    functions can be executed in conjunction with other  
19    lender reviews currently required by other regulatory  
20    entities, including those that review Federal banks,  
21    credit unions, or entities reviewed by the Farm  
22    Credit Administration; and

23          (7) the impact of lender oversight fees proposed  
24    by the Administration on lending to borrowers, in-

1       cluding cost changes, availability of credit, and in-  
2       creased or decreased lender participation.

3       (b) REPORT.—The Comptroller General shall submit  
4 to Congress a report on the results of the study required  
5 by subsection (a) not later than 1 year after the date of  
6 enactment of this Act.

○