

Revised 21

**AMENDMENT TO THE AMENDMENT TO H.R. 5297,  
AS REPORTED  
OFFERED BY MR. FRANK OF MASSACHUSETTS**

Page 1, beginning on line 4, strike “Small Business Lending Fund Act of 2010” and insert “Small Business Jobs and Credit Act of 2010”.

Page 3, line 5, strike “and”.

Page 3, line 12, strike the period and insert “; and”

Page 3, after line 12, insert the following:

- 1 (D) standard reports of Condition and In-
- 2 come submitted by Community Development
- 3 Financial Institution loan funds to the Commu-
- 4 nity Development Financial Institutions Fund.

Page 4, line 24, after “total” insert “consolidated”.

Page 4, line 25, strike “and”.

Page 5, line 3, strike the period and insert “; and”.

Page 5, line 2, after “total” insert “consolidated”.

Page 5, after line 3, insert the following:

1 (D) any community development financial  
2 institution loan fund which has total assets of  
3 equal to or less than \$10,000,000,000.

Page 6, beginning on line 3, strike “loans plus.” and  
insert “loans.”.

Page 6, after line 25, insert the following para-  
graphs:

4 (17) CDFI; COMMUNITY DEVELOPMENT FINAN-  
5 CIAL INSTITUTION.—The terms “CDFI” and “com-  
6 munity development financial institution” have the  
7 meaning given the term “community development fi-  
8 nancial institution” under the Riegle Community  
9 Development and Regulatory Improvement Act of  
10 1994.

11 (18) CDLF; COMMUNITY DEVELOPMENT LOAN  
12 FUND.—The terms “CDLF” and “community devel-  
13 opment loan fund” mean any entity that—

14 (A) is certified by the Department of the  
15 Treasury as a community development financial  
16 institution loan fund;

17 (B) is exempt from taxation under the In-  
18 ternal Revenue Code of 1986; and

19 (C) has assets under \$10,000,000,000 as  
20 of the fourth quarter of calendar year 2009.

Page 7, line 20, insert after the period the following:

“For purposes of this paragraph and with respect to an eligible institution, the term ‘other financial instruments’ shall include only debt instruments for which such eligible institution is fully liable or equity equivalent capital of the eligible institution. Such debt instruments may be subordinated to the claims of other creditors of the eligible institution”.

Page 8, after line 5, insert the following new paragraph:

1           (4)   LIMITATION   ON   PURCHASES   FROM  
2   CDLFS.—

3           (A) IN GENERAL.—Not more than 1 per-  
4           cent of the value of purchases made by the Sec-  
5           retary in carrying out the Program may be  
6           used to make purchases from community devel-  
7           opment loan funds.

8           (B) ELIGIBILITY STANDARDS.—The Sec-  
9           retary, in consultation with the Community De-  
10          velopment Financial Institutions Fund, shall  
11          develop eligibility criteria to determine the fi-  
12          nancial ability of a CDLF to participate in the  
13          Program and repay the investment. Such cri-  
14          teria may include net asset ratio to total assets,  
15          ratio of loan loss reserves to loans and leases 90

1 days or more delinquent (including loans sold  
2 with full recourse), positive net income meas-  
3 ured on a 3-year rolling average, operating li-  
4 quidity ratio, ratio of loans and leases 90 days  
5 or more delinquent (including loans sold with  
6 full recourse) to total equity plus loan loss re-  
7 serves or any other measures deemed appro-  
8 priate. In addition, CDLFs participating in the  
9 Program shall submit audited financial state-  
10 ments to the Secretary, have a clean audit opin-  
11 ion, and have at least three years of operating  
12 experience.

Page 10, line 23, after “agency” insert the fol-  
lowing: “and, for applicants that are State-chartered  
banks, to the appropriate State banking regulator,”.

Page 11, after line 3, insert the following subpara-  
graph:

13 (F) TREATMENT OF APPLICANTS THAT  
14 ARE COMMUNITY DEVELOPMENT LOAN  
15 FUNDS.—Eligible institutions that are commu-  
16 nity development loan funds may apply to re-  
17 ceive a capital investment from the Fund in an  
18 amount not exceeding 10 percent of total as-

1 sets, as reported in the call report immediately  
2 preceding the date of application.

Page 11, strike lines 7 through 10 and insert the following:

3 shall—

4 (A) consult with the appropriate Federal  
5 banking agency for the eligible institution to de-  
6 termine whether the eligible institution may re-  
7 ceive such capital investment;

8 (B) in the case of an eligible institution  
9 that is a State-chartered bank, consider any  
10 views received from the State banking regulator  
11 of the State of the eligible institution regarding  
12 the financial condition of the eligible institution;  
13 and

14 (C) in the case of a community develop-  
15 ment financial institution loan fund, consult  
16 with the Community Development Financial In-  
17 stitution Fund.

Page 11, line 8, after “agency” insert the following:  
“or, in the case of an eligible institution that is a non-  
depository community development financial institution,  
the Community Development Financial Institution  
Fund,”.

Page 11, after line 20, insert the following new subparagraph:

1                   (B) CONSTRUCTION.—Nothing in subpara-  
2                   graph (A) shall be construed as limiting the dis-  
3                   cretion of the Secretary to deny the application  
4                   of an eligible institution that is not on the  
5                   FDIC problem bank list.

Page 11, line 21, strike “(B)” and insert “(C)”.

Page 17, beginning on line 7, strike “shall be repaid by the end of the 10-year period that begins on the date of the capital investment under the Program.” and insert the following:

6                   shall be evidenced by preferred stock or other  
7                   financial instrument that—  
8                   (i) includes, as a term and condition,  
9                   that the capital investment will—  
10                   (I) be repaid not later than the  
11                   end of the 10-year period beginning  
12                   on the date of the capital investment  
13                   under the Program; or  
14                   (II) at the end of such 10-year  
15                   period, be subject to such additional  
16                   terms as the Secretary shall prescribe,  
17                   which shall include a requirement that

1 the stock or instrument shall carry  
2 the highest dividend or interest rate  
3 payable; and

4 (ii) provides that the term and condi-  
5 tion described under clause (i) shall not  
6 apply if the application of that term and  
7 condition would adversely affect the capital  
8 treatment of the stock or financial instru-  
9 ment under current or successor applicable  
10 capital provisions compared to a capital in-  
11 strument with identical terms other than  
12 the term and condition described under  
13 clause (i).

Page 17, after line 9, insert the following new sub-  
paragraph:

14 (I) REQUIREMENTS ON FINANCIAL IN-  
15 STRUMENTS ISSUED BY A COMMUNITY DEVEL-  
16 OPMENT FINANCIAL INSTITUTION LOAN  
17 FUND.—Any equity equivalent capital issued to  
18 the Treasury by a Community Development Fi-  
19 nancial Institution loan fund receiving a capital  
20 investment under the Program shall provide  
21 that the rate at which interest is payable shall  
22 be 2 percent per annum for 8 years. After 8

1           years, the rate at which interest is payable shall  
2           be 9 percent.

Page 18, strike lines 1 through 5 and insert the following new subparagraph:

3                   (B) PROHIBITION ON PARTICIPATION BY  
4           NON-PAYING CPP PARTICIPANTS.—Subpara-  
5           graph (A) shall not apply to any eligible institu-  
6           tion that has missed more than one dividend  
7           payment due under the CPP. For purposes of  
8           this subparagraph, a CPP dividend payment  
9           that is submitted within 60 days of the due  
10          date of such payment shall not be considered a  
11          missed dividend payment.

Page 19, beginning on line 1, strike “regulations defining minimum underwriting standards” and insert “guidance regarding prudent underwriting standards”.

Page 19, line 4, insert after the period the following: “In the case of a community development financial institution loan fund, the Community Development Financial Institutions Fund shall within 60 days issue regulations defining minimum underwriting standards that must be used for loans made by the eligible institution using such funds”.



Page 19, after line 4, insert the following new paragraph:

- 1           (10) REPORTING.—Each eligible institution re-
- 2           ceiving a capital investment under the Program shall
- 3           issue a quarterly report to the Secretary detailing
- 4           the percentage of new loans to small businesses the
- 5           institution makes that are—
- 6                 (A) guaranteed by the Small Business Ad-
- 7                 ministration;
- 8                 (B) made to Small Business Investment
- 9                 Companies;
- 10                (C) other loans made to small business
- 11                concerns (as defined under the Small Business
- 12                Act), if the internal reporting of the concern
- 13                distinguishes the size of businesses to which
- 14                loans are made; and
- 15                (D) other loans made to entities that the
- 16                internal reporting of the concern classifies as a
- 17                small business.

Page 19, strike lines 16 through 18 (and redesignate subsequent paragraphs accordingly).

Page 23, after line 13, insert the following new subsections:

- 18           (c) REQUIRED CERTIFICATIONS.—

1 (1) ELIGIBLE INSTITUTION CERTIFICATION.—

2 Each eligible institution that participate in the Pro-  
3 gram must certify that such institution is in compli-  
4 ance with the requirements of section 103.121 of  
5 title 31, Code of Federal Regulations, a regulation  
6 that, at a minimum, requires financial institutions,  
7 as that term is defined in 31 U.S.C. 5312(a)(2) and  
8 (c)(1)(A), to implement reasonable procedures to  
9 verify the identity of any person seeking to open an  
10 account, to the extent reasonable and practicable,  
11 maintain records of the information used to verify  
12 the person's identity, and determine whether the  
13 person appears on any lists of known or suspected  
14 terrorists or terrorist organizations provided to the  
15 financial institution by any government agency.

16 (2) LOAN RECIPIENTS.—With respect to funds  
17 received by an eligible institution under the Pro-  
18 gram, any business receiving a loan from the eligible  
19 institution using such funds after the date of the en-  
20 actment of this title shall certify to such eligible in-  
21 stitution that the principals of such business have  
22 not been convicted of a sex offense against a minor  
23 (as such terms are defined in section 111 of the Sex  
24 Offender Registration and Notification Act (42  
25 U.S.C. 16911)).

1       (d) PROHIBITION ON PORNOGRAPHY.—None of the  
2 funds made available under this title may be used to pay  
3 the salary of any individual engaged in activities related  
4 to the Program who has been officially disciplined for vio-  
5 lations of subpart G of the Standards of Ethical Conduct  
6 for Employees of the Executive Branch for viewing,  
7 downloading, or exchanging pornography, including child  
8 pornography, on a Federal Government computer or while  
9 performing official Federal Government duties.

Page 23, beginning on line 20, strike “authorized to  
be”.

Page 35, after line 7, insert the following new sub-  
paragraph:

10               (D) EXCEPTION.—  
11               (i) IN GENERAL.—The Secretary may,  
12 in the Secretary’s discretion, transfer the  
13 full amount of the participating State’s al-  
14 located amount to the State in a single  
15 transfer if the participating State applies  
16 to the Secretary for approval to use the  
17 full amount of the allocation as collateral  
18 for a qualifying loan or swap funding facil-  
19 ity.

1 (ii) RECOUPMENT TRIGGERED BY IN-  
2 TENTIONAL MISSTATEMENT.—If, in any  
3 audit of a report issued by a participating  
4 State that receives a single transfer pursu-  
5 ant to clause (i), the Secretary or the In-  
6 spector General of the Department of the  
7 Treasury determines that such State inten-  
8 tionally misstated information in such re-  
9 port, the participating State shall be re-  
10 quired to fully repay all amounts received  
11 by the State under the Program, and such  
12 amounts shall be paid into the general  
13 fund of the Treasury for reduction of the  
14 public debt.

Page 36, after line 14, insert the following new paragraph:

15 (5) TRANSFERRED AMOUNTS NOT ASSIST-  
16 ANCE.—The amounts transferred to a participating  
17 State under this section shall not be considered “as-  
18 sistance” for purposes of subtitle V of title 31,  
19 United States Code.

Page 36, line 15, strike “(5)” and insert “(6)”.

Page 49, after line 4, insert the following new para-  
graph:

1           (8) CAPITAL ACCESS FOR SMALL BUSINESSES  
2       IN UNDERSERVED COMMUNITIES.—At the time that  
3       a State applies to the Secretary to have the State  
4       capital access program approved as eligible for Fed-  
5       eral contributions, the State shall deliver to the Sec-  
6       retary a report stating how the State plans to use  
7       the Federal contributions to the reserve fund to pro-  
8       vide access to capital for small businesses in low-  
9       and moderate-income, minority, and other under-  
10      served communities, including women- and minority-  
11      owned small businesses.

Page 57, line 19, strike “AUTHORIZATION OF”.

Page 57, line 20, strike “are authorized to be” and  
insert “is hereby”.

Page 58, after line 21, insert the following new sub-  
sections:

12           (c) REQUIRED CERTIFICATION.—  
13           (1) FINANCIAL INSTITUTIONS CERTIFI-  
14      CATION.—With respect to funds received by a par-  
15      ticipating State under the Program, any financial in-  
16      stitution that receives a loan, a loan guarantee, or  
17      other financial assistance using such funds after the  
18      date of the enactment of this title must certify that  
19      such institution is in compliance with the require-

1       ments of section 103.121 of title 31, Code of Fed-  
2       eral Regulations, a regulation that, at a minimum,  
3       requires financial institutions, as that term is de-  
4       fined in 31 U.S.C. 5312(a)(2) and (c)(1)(A), to im-  
5       plement reasonable procedures to verify the identity  
6       of any person seeking to open an account, to the ex-  
7       tent reasonable and practicable, maintain records of  
8       the information used to verify the person's identity,  
9       and determine whether the person appears on any  
10      lists of known or suspected terrorists or terrorist or-  
11      ganizations provided to the financial institution by  
12      any government agency.

13           (2) SEX OFFENSE CERTIFICATION.—With re-  
14      spect to funds received by a participating State  
15      under the Program, any private entity that receives  
16      a loan, a loan guarantee, or other financial assist-  
17      ance using such funds after the date of the enact-  
18      ment of this title shall certify to the participating  
19      State that the principals of such entity have not  
20      been convicted of a sex offense against a minor (as  
21      such terms are defined in section 111 of the Sex Of-  
22      fender Registration and Notification Act (42 U.S.C.  
23      16911)).

24           (d) PROHIBITION ON PORNOGRAPHY.—None of the  
25      funds made available under this title may be used to pay

1 the salary of any individual engaged in activities related  
2 to the Program who has been officially disciplined for vio-  
3 lations of subpart G of the Standards of Ethical Conduct  
4 for Employees of the Executive Branch for viewing,  
5 downloading, or exchanging pornography, including child  
6 pornography, on a Federal Government computer or while  
7 performing official Federal Government duties.

Page 69, strike lines 9 through 11 and insert the  
following new sections:

8 **"SEC. 399M. APPROPRIATION.**

9 "From funds not otherwise appropriated, there is  
10 hereby appropriated \$1,000,000,000 to carry out the pro-  
11 gram.

12 **"SEC. 399N. CERTIFICATION.**

13 "(a) IMMIGRATION CERTIFICATION.—

14 "(1) PARTICIPATING INVESTMENT COMPA-  
15 NIES.—Each participating investment company that  
16 receives an equity financing under this part after the  
17 date of the enactment of this part must, if applica-  
18 ble, certify that such company is in compliance with  
19 the requirements of section 103.121 of title 31, Code  
20 of Federal Regulations, a regulation that, at a min-  
21 imum, requires financial institutions, as that term is  
22 defined in 31 U.S.C. 5312(a)(2) and (c)(1)(A), to  
23 implement reasonable procedures to verify the iden-

1       tity of any person seeking to open an account, to the  
2       extent reasonable and practicable, maintain records  
3       of the information used to verify the person's iden-  
4       tity, and determine whether the person appears on  
5       any lists of known or suspected terrorists or ter-  
6       rorist organizations provided to the financial institu-  
7       tion by any government agency.

8           “(2) EARLY-STAGE SMALL BUSINESSES.—Each  
9       early-stage small business that receives funds from  
10      a participating investment company that receives an  
11      equity financing under this part after the date of the  
12      enactment of this part must, if applicable, certify  
13      that such company is in compliance with the require-  
14      ments of section 103.121 of title 31, Code of Fed-  
15      eral Regulations, a regulation that, at a minimum,  
16      requires financial institutions, as that term is de-  
17      fined in 31 U.S.C. 5312(a)(2) and (c)(1)(A), to im-  
18      plement reasonable procedures to verify the identity  
19      of any person seeking to open an account, to the ex-  
20      tent reasonable and practicable, maintain records of  
21      the information used to verify the person's identity,  
22      and determine whether the person appears on any  
23      lists of known or suspected terrorists or terrorist or-  
24      ganizations provided to the financial institution by  
25      any government agency.



1       “(b) SEX OFFENDER CERTIFICATION.—

2               “(1) PARTICIPATING INVESTMENT COMPA-  
3 NIES.—Each participating investment company that  
4 receives an equity financing under this part after the  
5 date of the enactment of this part shall certify to the  
6 Administrator that the principals of such company  
7 have not been convicted of a sex offense against a  
8 minor (as such terms are defined in section 111 of  
9 the Sex Offender Registration and Notification Act  
10 (42 U.S.C. 16911)).

11               “(2) EARLY-STAGE SMALL BUSINESSES.—Each  
12 early-stage small business that receives funds from  
13 a participating investment company that receives an  
14 equity financing under this part after the date of the  
15 enactment of this part shall certify to the Adminis-  
16 trator that the principals of such business have not  
17 been convicted of a sex offense against a minor (as  
18 such terms are defined in section 111 of the Sex Of-  
19 fender Registration and Notification Act (42 U.S.C.  
20 16911)).

21       “(c) PORNOGRAPHY CERTIFICATION.—None of the  
22 funds made available under this part may be used to pay  
23 the salary of any individual engaged in activities related  
24 to the provisions of this part who has been officially dis-  
25 ciplined for violations of subpart G of the Standards of

1 Ethical Conduct for Employees of the Executive Branch  
2 for viewing, downloading, or exchanging pornography, in-  
3 cluding child pornography, on a Federal Government com-  
4 puter or while performing official Federal Government du-  
5 ties.”.

Add at the end the following new title:

6 **TITLE \_\_\_\_—MISCELLANEOUS**

7 **SEC. \_\_\_\_ . BUDGETARY EFFECTS.**

8 The budgetary effects of this Act, for the purpose of  
9 complying with the Statutory Pay-As-You-Go Act of 2010,  
10 shall be determined by reference to the latest statement  
11 titled “Budgetary Effects of PAYGO Legislation” for this  
12 Act, submitted for printing in the Congressional Record  
13 by the Chairman of the House Budget Committee, pro-  
14 vided that such statement has been submitted prior to the  
15 vote on passage.

