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H. R. 5297

IN THE SENATE OF THE UNITED STATES

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AN ACT

To create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This title may be cited as the
 5 “Small Business Jobs and Credit Act of 2010”.

6 (b) TABLE OF CONTENTS.—The table of contents for
 7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—SMALL BUSINESS LENDING FUND

- Sec. 101. Purpose.
- Sec. 102. Definitions.
- Sec. 103. Small Business Lending Fund.
- Sec. 104. Additional authorities of the Secretary.
- Sec. 105. Considerations.
- Sec. 106. Reports.
- Sec. 107. Oversight and audits.
- Sec. 108. Credit reform; Funding.
- Sec. 109. Termination and continuation of authorities.
- Sec. 110. Preservation of authority.
- Sec. 111. Assurances.
- Sec. 112. Study and report with respect to women-owned, veteran-owned, and
 minority-owned businesses.
- Sec. 113. Temporary amortization authority.
- Sec. 114. Sense of Congress.

TITLE II—STATE SMALL BUSINESS CREDIT INITIATIVE

- Sec. 201. Short title.
- Sec. 202. Definitions.
- Sec. 203. Federal funds allocated to States.
- Sec. 204. Approving States for participation.
- Sec. 205. Approving State capital access programs.
- Sec. 206. Approving collateral support and other innovative credit access and
 guarantee initiatives for small businesses and manufacturers.
- Sec. 207. Reports.
- Sec. 208. Remedies for State program termination or failures.
- Sec. 209. Implementation and administration.
- Sec. 210. Regulations.
- Sec. 211. Oversight and audits.

TITLE III—SMALL BUSINESS EARLY-STAGE INVESTMENT
 PROGRAM

- Sec. 301. Short title.
- Sec. 302. Small business early-stage investment program.
- Sec. 303. Regulations.

Sec. 304. Prohibitions on earmarks.

TITLE IV—MISCELLANEOUS

Sec. 401. Budgetary effects.

TITLE V—TAX PROVISIONS

Sec. 500. Short title; etc.

Subtitle A—Small Business Tax Incentives

PART 1—GENERAL PROVISIONS

Sec. 501. Temporary exclusion of 100 percent of gain on certain small business stock.

PART 2—LIMITATIONS AND REPORTING ON CERTAIN PENALTIES

Sec. 511. Limitation on penalty for failure to disclose certain information.

Sec. 512. Annual reports on penalties and certain other enforcement actions.

PART 3—OTHER PROVISIONS

Sec. 521. Increase in amount allowed as deduction for start-up expenditures.

Sec. 522. Nonrecourse small business investment company loans from the Small Business Administration treated as amounts at risk.

Sec. 523. Benefits under the Small Business Borrower Assistance Program excluded from gross income.

Subtitle B—Revenue Provisions

Sec. 531. Required minimum 10-year term, etc., for grantor retained annuity trusts.

Sec. 532. Crude tall oil ineligible for cellulosic biofuel producer credit.

Sec. 533. Time for payment of corporate estimated taxes.

TITLE VI—PLAIN WRITING ACT

Sec. 601. Short title.

Sec. 602. Purpose.

Sec. 603. Definitions.

Sec. 604. Responsibilities of Federal agencies.

Sec. 605. Reports to Congress.

TITLE VII—SENSE OF CONGRESS ON AGRICULTURE AND
FARMING SMALL BUSINESS LOANS

Sec. 701. Sense of Congress.

TITLE VIII—SMALL BUSINESS BORROWER ASSISTANCE PROGRAM

Sec. 801. Short title.

Sec. 802. Small Business Borrower Assistance Program.

1 **TITLE I—SMALL BUSINESS**
2 **LENDING FUND**

3 **SEC. 101. PURPOSE.**

4 The purpose of this title is to address the ongoing
5 effects of the financial crisis on small businesses by pro-
6 viding temporary authority to the Secretary of the Treas-
7 ury to make capital investments in eligible institutions in
8 order to increase the availability of credit for small busi-
9 nesses.

10 **SEC. 102. DEFINITIONS.**

11 For purposes of this title:

12 (1) **APPROPRIATE COMMITTEES OF CON-**
13 **GRESS.**—The term “appropriate committees of Con-
14 gress” means—

15 (A) the Committee on Small Business and
16 Entrepreneurship, the Committee on Agri-
17 culture, Nutrition, and Forestry, the Committee
18 on Banking, Housing, and Urban Affairs, the
19 Committee on Finance, the Committee on the
20 Budget, and the Committee on Appropriations
21 of the Senate; and

22 (B) the Committee on Small Business, the
23 Committee on Agriculture, the Committee on
24 Financial Services, the Committee on Ways and
25 Means, the Committee on the Budget, and the

1 Committee on Appropriations of the House of
2 Representatives.

3 (2) APPROPRIATE FEDERAL BANKING AGEN-
4 CY.—The term “appropriate Federal banking agen-
5 cy” has the meaning given such term under section
6 3(q) of the Federal Deposit Insurance Act (12
7 U.S.C. 1813(q)).

8 (3) BANK HOLDING COMPANY.—The term
9 “bank holding company” has the meaning given
10 such term under section 2(a)(1) of the Bank Hold-
11 ing Company Act of 1956 (12 U.S.C.
12 1841(2)(a)(1)).

13 (4) CALL REPORT.—The term “call report”
14 means—

15 (A) reports of Condition and Income sub-
16 mitted to the Office of the Comptroller of the
17 Currency, the Board of Governors of the Fed-
18 eral Reserve System, and the Federal Deposit
19 Insurance Corporation;

20 (B) the Office of Thrift Supervision Thrift
21 Financial Report;

22 (C) any report that is designated by the
23 Office of the Comptroller of the Currency, the
24 Board of Governors of the Federal Reserve Sys-
25 tem, the Federal Deposit Insurance Corpora-

1 tion, or the Office of Thrift Supervision, as ap-
2 plicable, as a successor to any report referred to
3 in subparagraph (A) or (B);

4 (D) standard reports of Condition and In-
5 come submitted by Community Development
6 Financial Institution loan funds to the Commu-
7 nity Development Financial Institutions Fund;
8 and

9 (E) with respect to an eligible institution
10 for which no report exists that is described
11 under subparagraph (A), (B), or (C), such
12 other report or set of information as the Sec-
13 retary, in consultation with the Administrator
14 of the Small Business Administration, may pre-
15 scribe.

16 (5) CDCI.—The term “CDCI” means the Com-
17 munity Development Capital Initiative created by
18 the Secretary under the Troubled Asset Relief Pro-
19 gram established by the Emergency Economic Sta-
20 bilization Act of 2008.

21 (6) CDCI INVESTMENT.—The term “CDCI in-
22 vestment” means, with respect to any eligible insti-
23 tution, the principal amount of any investment made
24 by the Secretary in such eligible institution under
25 the CDCI that has not been repaid.

1 (7) CPP.—The term “CPP” means the Capital
2 Purchase Program created by the Secretary under
3 the Troubled Asset Relief Program established by
4 the Emergency Economic Stabilization Act of 2008.

5 (8) CPP INVESTMENT.—The term “CPP in-
6 vestment” means, with respect to any eligible insti-
7 tution, the principal amount of any investment made
8 by the Secretary in such eligible institution under
9 the CPP that has not been repaid.

10 (9) ELIGIBLE INSTITUTION.—The term “eligi-
11 ble institution” means—

12 (A) any insured depository institution,
13 which—

14 (i) is not controlled by a bank holding
15 company or savings and loan holding com-
16 pany that is also an eligible institution;

17 (ii) has total assets of equal to or less
18 than \$10,000,000,000, as reported in the
19 call report as of the end of the fourth
20 quarter of calendar year 2009; and

21 (iii) is not directly or indirectly con-
22 trolled by any company or other entity that
23 has total consolidated assets of more than
24 \$10,000,000,000, as so reported;

1 (B) any bank holding company which has
2 total consolidated assets of equal to or less than
3 \$10,000,000,000;

4 (C) any savings and loan holding company
5 which has total consolidated assets of equal to
6 or less than \$10,000,000,000;

7 (D) any community development financial
8 institution loan fund which has total assets of
9 equal to or less than \$10,000,000,000; and

10 (E) any small business lending company
11 that has total assets of equal to or less than
12 \$10,000,000,000.

13 (10) FUND.—The term “Fund” means the
14 Small Business Lending Fund established by section
15 4(a)(1) of this title.

16 (11) INSURED DEPOSITORY INSTITUTION.—The
17 term “insured depository institution” has the mean-
18 ing given such term under section 3(c)(2) of the
19 Federal Deposit Insurance Act (12 U.S.C.
20 1813(c)(2)).

21 (12) PROGRAM.—The term “Program” means
22 the Small Business Lending Fund Program author-
23 ized by section 4(a)(2) of this title.

24 (13) SAVINGS AND LOAN HOLDING COMPANY.—
25 The term “savings and loan holding company” has

1 the meaning given such term under section
2 10(a)(1)(D) of the Home Owners' Loan Act (12
3 U.S.C. 1467a(a)(1)(D)).

4 (14) SECRETARY.—The term “Secretary”
5 means the Secretary of the Treasury.

6 (15) SMALL BUSINESS LENDING.—

7 (A) IN GENERAL.—The term “small busi-
8 ness lending” means small business lending, as
9 defined by and reported in an eligible institu-
10 tion’s quarterly call report, where each loan
11 comprising such lending is made to a small
12 business and is one of the following types:

13 (i) Commercial and industrial loans.

14 (ii) Owner-occupied nonfarm, nonresi-
15 dential real estate loans.

16 (iii) Loans to finance agricultural pro-
17 duction and other loans to farmers.

18 (iv) Loans secured by farmland.

19 (v) Nonowner-occupied commercial
20 real estate loans.

21 (vi) CONSTRUCTION, LAND DEVELOP-
22 MENT, AND OTHER LAND LOANS.—

23 (I) IN GENERAL.—Loans secured
24 by real estate—

1 (aa) that are made to fi-
2 nance—

3 (AA) land development
4 that is preparatory to erect-
5 ing new structures, includ-
6 ing improving land, laying
7 sewers, and laying water
8 pipes; or

9 (BB) the on-site con-
10 struction of industrial, com-
11 mercial, residential, or farm
12 buildings;

13 (bb) that is vacant land, ex-
14 cept land known to be used or
15 usable for agricultural purposes,
16 such as crop and livestock pro-
17 duction;

18 (cc) the proceeds of which
19 are to be used to acquire and im-
20 prove developed or undeveloped
21 property; or

22 (dd) that are made under
23 title I or title X of the National
24 Housing Act.

1 (II) CONSTRUCTION INDUSTRY
2 REQUIREMENT.—Subclause (I) shall
3 only apply to loans that are extended
4 to small business concerns in the con-
5 struction industry, as such term is de-
6 fined by the Secretary in consultation
7 with the Administrator of the Small
8 Business Administration.

9 (III) CONSTRUCTION DEFINED.—
10 For purposes of this clause, the term
11 “construction” includes the construc-
12 tion of new structures, additions or al-
13 terations to existing structures, and
14 the demolition of existing structures
15 to make way for new structures.

16 (B) TREATMENT OF HOLDING COMPA-
17 NIES.—In the case of eligible institutions that
18 are bank holding companies or savings and loan
19 holding companies having one or more insured
20 depository institution subsidiaries, small busi-
21 ness lending shall be measured based on the
22 combined small business lending reported in the
23 call report of the insured depository institution
24 subsidiaries.

1 (16) MINORITY-OWNED AND WOMEN-OWNED
2 BUSINESS.—The terms “minority-owned business”
3 and “women-owned business” shall have the mean-
4 ing given the terms “minority-owned business” and
5 “women’s business”, respectively, under section
6 21A(r)(4) of the Federal Home Loan Bank Act (12
7 U.S.C. 1441A(r)(4)).

8 (17) CDFI; COMMUNITY DEVELOPMENT FINAN-
9 CIAL INSTITUTION.—The terms “CDFI” and “com-
10 munity development financial institution” have the
11 meaning given the term “community development fi-
12 nancial institution” under the Riegle Community
13 Development and Regulatory Improvement Act of
14 1994.

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

18 (A) is certified by the Department of the
19 Treasury as a community development financial
20 institution loan fund;

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

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

1 (19) SMALL BUSINESS.—The term “small busi-
2 ness” has the meaning given the term “small busi-
3 ness concern” under section 3 of the Small Business
4 Act (15 U.S.C. 632).

5 (20) SMALL BUSINESS LENDING COMPANY.—
6 The term “small business lending company” has the
7 meaning given such term under section 3(r)(1) of
8 the Small Business Act (15 U.S.C. 632(r)(1)).

9 (21) VETERAN-OWNED BUSINESS.—

10 (A) The term “veteran-owned business”
11 means a business—

12 (i) more than 50 percent of the own-
13 ership or control of which is held by 1 or
14 more veterans;

15 (ii) more than 50 percent of the net
16 profit or loss of which accrues to 1 or more
17 veterans; and

18 (iii) a significant percentage of senior
19 management positions of which are held by
20 veterans.

21 (B) For purposes of this paragraph, the
22 term “veteran” has the meaning given such
23 term in section 101(2) of title 38, United
24 States Code.

1 **SEC. 103. SMALL BUSINESS LENDING FUND.**

2 (a) **FUND AND PROGRAM.—**

3 (1) **FUND ESTABLISHED.—**There is established
4 in the Treasury of the United States a fund to be
5 known as the “Small Business Lending Fund”,
6 which shall be administered by the Secretary.

7 (2) **PROGRAMS AUTHORIZED.—**The Secretary is
8 authorized to establish the Small Business Lending
9 Fund Program for using the Fund consistent with
10 this title.

11 (b) **USE OF FUND.—**

12 (1) **IN GENERAL.—**Subject to paragraph (2),
13 the Fund shall be available to the Secretary, without
14 further appropriation or fiscal year limitation, for
15 the costs of purchases (including commitments to
16 purchase), and modifications of such purchases, of
17 preferred stock and other financial instruments from
18 eligible institutions on such terms and conditions as
19 are determined by the Secretary in accordance with
20 this title. For purposes of this paragraph and with
21 respect to an eligible institution, the term “other fi-
22 nancial instruments” shall include only debt instru-
23 ments for which such eligible institution is fully lia-
24 ble or equity equivalent capital of the eligible institu-
25 tion. Such debt instruments may be subordinated to

1 the claims of other creditors of the eligible institu-
2 tion.

3 (2) MAXIMUM PURCHASE LIMIT.—The aggre-
4 gate amount of purchases (and commitments to pur-
5 chase) made pursuant to paragraph (1) may not ex-
6 ceed \$30,000,000,000.

7 (3) PROCEEDS USED TO PAY DOWN PUBLIC
8 DEBT.—All funds received by the Secretary in con-
9 nection with purchases made pursuant to paragraph
10 (1), including interest payments, dividend payments,
11 and proceeds from the sale of any financial instru-
12 ment, shall be paid into the general fund of the
13 Treasury for reduction of the public debt.

14 (4) LIMITATION ON PURCHASES FROM
15 CDLFS.—

16 (A) IN GENERAL.—Not more than 1 per-
17 cent of the value of purchases made by the Sec-
18 retary in carrying out the Program may be
19 used to make purchases from community devel-
20 opment loan funds.

21 (B) ELIGIBILITY STANDARDS.—The Sec-
22 retary, in consultation with the Community De-
23 velopment Financial Institutions Fund, shall
24 develop eligibility criteria to determine the fi-
25 nancial ability of a CDLF to participate in the

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

16 (c) CREDITS TO THE FUND.—There shall be credited
17 to the Fund amounts made available pursuant to section
18 9, to the extent provided by appropriations Acts.

19 (d) TERMS.—

20 (1) APPLICATION.—

21 (A) INSTITUTIONS WITH ASSETS OF
22 \$1,000,000,000 OR LESS.—Eligible institutions
23 having total assets equal to or less than
24 \$1,000,000,000, as reported in a call report as
25 of the end of the fourth quarter of calendar

1 year 2009, may apply to receive a capital in-
2 vestment from the Fund in an amount not ex-
3 ceeding 5 percent of risk-weighted assets, as re-
4 ported in the call report immediately preceding
5 the date of application, less the amount of any
6 CDCI investment and any CPP investment.

7 (B) INSTITUTIONS WITH ASSETS OF MORE
8 THAN \$1,000,000,000 AND LESS THAN
9 \$10,000,000,000.—Eligible institutions having
10 total assets of more than \$1,000,000,000 but
11 less than \$10,000,000,000, as of the end of the
12 fourth quarter of calendar year 2009, may
13 apply to receive a capital investment from the
14 Fund in an amount not exceeding 3 percent of
15 risk-weighted assets, as reported in the call re-
16 port immediately preceding the date of applica-
17 tion, less the amount of any CDCI investment
18 and any CPP investment.

19 (C) TREATMENT OF HOLDING COMPA-
20 NIES.—In the case of an eligible institution that
21 is a bank holding company or a savings and
22 loan holding company having one or more in-
23 sured depository institution subsidiaries, total
24 assets shall be measured based on the combined
25 total assets reported in the call report of the in-

1 sured depository institution subsidiaries as of
2 the end of the fourth quarter of calendar year
3 2009 and risk-weighted assets shall be meas-
4 ured based on the combined risk-weighted as-
5 sets of the insured depository institution sub-
6 sidiaries as reported in the call report imme-
7 diately preceding the date of application.

8 (D) TREATMENT OF APPLICANTS THAT
9 ARE INSTITUTIONS CONTROLLED BY HOLDING
10 COMPANIES.—If an eligible institution that ap-
11 plies to receive a capital investment under the
12 Program is under the control of a bank holding
13 company or a savings and loan holding com-
14 pany, then the Secretary may use the Fund to
15 purchase preferred stock or other financial in-
16 struments from the top-tier bank holding com-
17 pany or savings and loan holding company of
18 such eligible institution, as applicable. For pur-
19 poses of this paragraph, the term “control”
20 with respect to a bank holding company shall
21 have the same meaning as in section 2(a)(2) of
22 the Bank Holding Company Act of 1956 (12
23 U.S.C. 1841(2)(a)(2)). For purposes of this
24 paragraph, the term “control” with respect to a
25 savings and loan holding company shall have

1 the same meaning as in 10(a)(2) of the Home
2 Owners' Loan Act (12 U.S.C. 1467a(a)(2)).

3 (E) REQUIREMENT TO PROVIDE A SMALL
4 BUSINESS LENDING PLAN.—At the time that an
5 applicant submits an application to the Sec-
6 retary for a capital investment under the Pro-
7 gram, the applicant shall deliver to the appro-
8 priate Federal banking agency and, for appli-
9 cants that are State-chartered banks, to the ap-
10 propriate State banking regulator, a small busi-
11 ness lending plan describing how the applicant's
12 business strategy and operating goals will allow
13 it to address the needs of small businesses in
14 the areas it serves, as well as a plan to provide
15 linguistically and culturally appropriate out-
16 reach, where appropriate. This plan shall be
17 confidential supervisory information.

18 (F) TREATMENT OF APPLICANTS THAT
19 ARE COMMUNITY DEVELOPMENT LOAN
20 FUNDS.—Eligible institutions that are commu-
21 nity development loan funds may apply to re-
22 ceive a capital investment from the Fund in an
23 amount not exceeding 10 percent of total as-
24 sets, as reported in the call report immediately
25 preceding the date of application.

1 (G) ELECTION TO INCLUDE OTHER NON-
2 FARM, NONRESIDENTIAL REAL ESTATE LOANS
3 IN AMOUNT OF SMALL BUSINESS LENDING.—At
4 the time that an applicant submits an applica-
5 tion to the Secretary for a capital investment
6 under the Program, the applicant may notify
7 the Secretary that it elects to have included in
8 the determination of the amount of its small
9 business lending, for purposes of the computa-
10 tions made under paragraph (4), the amount of
11 lending reported as other nonfarm, nonresiden-
12 tial real estate loans in its quarterly call report,
13 but for purposes of this subparagraph, other
14 nonfarm, nonresidential real estate loans shall
15 not include a loan having an original amount
16 greater than \$10,000,000. If an applicant
17 makes the election under this subparagraph, the
18 amount of lending reported as other nonfarm,
19 nonresidential real estate loans shall be in-
20 cluded in the determination of the amount of its
21 small business lending for purposes of the com-
22 putations made under paragraph (4).

23 (2) CONSULTATION WITH REGULATORS.—For
24 each eligible institution that applies to receive a cap-

1 ital investment under the Program, the Secretary
2 shall—

3 (A) consult with the appropriate Federal
4 banking agency or, in the case of an eligible in-
5 stitution that is a non-depository community
6 development financial institution, the Commu-
7 nity Development Financial Institution Fund,
8 for the eligible institution to determine whether
9 the eligible institution may receive such capital
10 investment;

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

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

21 (3) INELIGIBILITY OF INSTITUTIONS ON FDIC
22 PROBLEM BANK LIST.—

23 (A) IN GENERAL.—An eligible institution
24 may not receive any capital investment under
25 the Program if—

1 (i) such institution is on the FDIC
2 problem bank list; or

3 (ii) such institution has been removed
4 from the FDIC problem bank list for less
5 than 90 days.

6 (B) CONSTRUCTION.—Nothing in subpara-
7 graph (A) shall be construed as limiting the dis-
8 cretion of the Secretary to deny the application
9 of an eligible institution that is not on the
10 FDIC problem bank list.

11 (C) FDIC PROBLEM BANK LIST DE-
12 FINED.—For purposes of this subparagraph,
13 the term “FDIC problem bank list” means the
14 list of institutions with a current rating of 4 or
15 5 under the Uniform Financial Institutions
16 Rating System, or such other list designated by
17 the Federal Deposit Insurance Corporation.

18 (4) INCENTIVES TO LEND.—

19 (A) REQUIREMENTS ON PREFERRED
20 STOCK AND OTHER FINANCIAL INSTRU-
21 MENTS.—Any preferred stock or other financial
22 instrument issued to Treasury by an eligible in-
23 stitution receiving a capital investment under
24 the Program shall provide that—

1 (i) the rate at which dividends or in-
2 terest are payable shall be 5 percent per
3 annum initially;

4 (ii) within the first 2 years after the
5 date of the capital investment under the
6 Program, the rate may be adjusted based
7 on the amount of an eligible institution's
8 small business lending. Changes in the
9 amount of small business lending shall be
10 measured against the average amount of
11 small business lending reported by the eli-
12 gible institution in its call reports for the
13 4 full quarters immediately preceding the
14 enactment of this title, minus adjustments
15 from each quarterly balance in respect
16 of—

17 (I) net loan charge offs with re-
18 spect to small business lending; and

19 (II) gains realized by the eligible
20 institution resulting from mergers, ac-
21 quisitions or purchases of loans after
22 origination and syndication; which ad-
23 justments shall be determined in ac-
24 cordance with guidance promulgated
25 by the Secretary; and

1 (iii) during any calendar quarter dur-
2 ing the initial 2-year period referred to in
3 clause (ii), an institution's rate shall be ad-
4 justed to reflect the following schedule,
5 based on that institution's change in the
6 amount of small business lending relative
7 to the baseline—

8 (I) if the amount of small busi-
9 ness lending has increased by less
10 than 2.5 percent, the dividend or in-
11 terest rate shall be 5 percent;

12 (II) if the amount of small busi-
13 ness lending has increased by 2.5 per-
14 cent or greater, but by less than 5.0
15 percent, the dividend or interest rate
16 shall be 4 percent;

17 (III) if the amount of small busi-
18 ness lending has increased by 5.0 per-
19 cent or greater, but by less than 7.5
20 percent, the dividend or interest rate
21 shall be 3 percent;

22 (IV) if the amount of small busi-
23 ness lending has increased by 7.5 per-
24 cent or greater, and but by less than

1 10.0 percent, the dividend or interest
2 rate shall be 2 percent; or

3 (V) if the amount of small busi-
4 ness lending has increased by 10 per-
5 cent or greater, the dividend or inter-
6 est rate shall be 1 percent.

7 (B) BASIS OF INITIAL RATE.—The initial
8 dividend or interest rate shall be based on call
9 report data published in the quarter imme-
10 diately preceding the date of the capital invest-
11 ment under the Program.

12 (C) TIMING OF RATE ADJUSTMENTS.—Any
13 rate adjustment shall occur in the calendar
14 quarter following the publication of call report
15 data, such that the rate based on call report
16 data from any one calendar quarter, which is
17 published in the first following calendar quar-
18 ter, shall be adjusted in that first following cal-
19 endar quarter and payable in the second fol-
20 lowing quarter.

21 (D) RATE FOLLOWING INITIAL 2-YEAR PE-
22 RIOD.—Generally, the rate based on call report
23 data from the eighth calendar quarter after the
24 date of the capital investment under the Pro-
25 gram shall be payable until the expiration of

1 the 4½-year period that begins on the date of
2 the investment. In the case where the amount
3 of small business lending has remained the
4 same or decreased relative to the institution's
5 baseline in the eighth quarter after the date of
6 the capital investment under the Program, the
7 rate shall be 7 percent until the expiration of
8 the 4½-year period that begins on the date of
9 the investment.

10 (E) RATE FOLLOWING INITIAL 4½-YEAR
11 PERIOD.—The dividend or interest rate paid on
12 any preferred stock or other financial instru-
13 ment issued by an eligible institution that re-
14 ceives a capital investment under the Program
15 shall increase to 9 percent at the end of the
16 4½-year period that begins on the date of the
17 capital investment under the Program.

18 (F) LIMITATION ON RATE REDUCTIONS
19 WITH RESPECT TO CERTAIN AMOUNT.—The re-
20 duction in the dividend or interest rate payable
21 to Treasury by any eligible institution shall be
22 limited such that the rate reduction shall not
23 apply to a dollar amount of the investment
24 made by Treasury that is greater than the dol-
25 lar amount increase in the amount of small

1 business lending realized under this program.
2 The Secretary may issue guidelines that will
3 apply to new capital investments limiting the
4 amount of capital available to eligible institu-
5 tions consistent with this limitation.

6 (G) RATE ADJUSTMENTS FOR S CORPORA-
7 TION.—Before making a capital investment in
8 an eligible institution that is an S corporation
9 or a corporation organized on a mutual basis,
10 the Secretary may adjust the dividend or inter-
11 est rate on the financial instrument to be issued
12 to the Secretary, from the dividend or interest
13 rate that would apply under subparagraphs (A)
14 through (F), to take into account any differen-
15 tial tax treatment of securities issued by such
16 eligible institution. For purpose of this subpara-
17 graph, the term “S corporation” has the same
18 meaning as in section 1361(a) of the Internal
19 Revenue Code of 1986.

20 (H) REPAYMENT DEADLINE.—The capital
21 investment received by an eligible institution
22 under the Program shall be evidenced by pre-
23 ferred stock or other financial instrument
24 that—

1 (i) includes, as a term and condition,
2 that the capital investment will—

3 (I) be repaid not later than the
4 end of the 10-year period beginning
5 on the date of the capital investment
6 under the Program; or

7 (II) at the end of such 10-year
8 period, be subject to such additional
9 terms as the Secretary shall prescribe,
10 which shall include a requirement that
11 the stock or instrument shall carry
12 the highest dividend or interest rate
13 payable; and

14 (ii) provides that the term and condi-
15 tion described under clause (i) shall not
16 apply if the application of that term and
17 condition would adversely affect the capital
18 treatment of the stock or financial instru-
19 ment under current or successor applicable
20 capital provisions compared to a capital in-
21 strument with identical terms other than
22 the term and condition described under
23 clause (i).

24 (I) REQUIREMENTS ON FINANCIAL IN-
25 STRUMENTS ISSUED BY A COMMUNITY DEVEL-

1 OPMENT FINANCIAL INSTITUTION LOAN
2 FUND.—Any equity equivalent capital issued to
3 the Treasury by a Community Development Fi-
4 nancial Institution loan fund receiving a capital
5 investment under the Program shall provide
6 that the rate at which interest is payable shall
7 be 2 percent per annum for 8 years. After 8
8 years, the rate at which interest is payable shall
9 be 9 percent.

10 (J) INCENTIVES CONTINGENT ON AN IN-
11 CREASE IN THE NUMBER OF LOANS MADE.—
12 For any quarter during the first 4½-year pe-
13 riod following the date on which an eligible in-
14 stitution receives a capital investment under the
15 Program, other than the first such quarter, in
16 which the institution's change in the amount of
17 small business lending relative to the baseline is
18 positive, if the number of loans made by the in-
19 stitution does not increase by 2.5 percent for
20 each 2.5 percent increase of small business
21 lending, then the rate at which dividends and
22 interest shall be payable during the following
23 quarter on preferred stock or other financial in-
24 struments issued to the Treasury by the eligible
25 institution shall be—

- 1 (i) 5 percent, if such quarter is within
2 the 2-year period following the date on
3 which the eligible institution receives the
4 capital investment under the Program; or
5 (ii) 7 percent, if such quarter is after
6 such 2-year period.

7 (K) ALTERNATIVE COMPUTATION.—An eli-
8 gible institution may choose to compute their
9 small business lending amount by computing
10 the amount of small business lending, as if the
11 definition of such term did not require that the
12 loans comprising such lending be made to small
13 business. Any eligible institution choosing to
14 compute their small business lending in this
15 manner shall certify that all lending included by
16 the institution for purposes of computing the
17 increase in lending under this paragraph was
18 made to small businesses.

19 (5) ADDITIONAL INCENTIVES TO REPAY.—The
20 Secretary may, by regulation or guidance issued
21 under section 104(8), establish repayment incentives
22 in addition to the incentive in paragraph (4)(E) that
23 will apply to new capital investments in a manner
24 that the Secretary determines to be consistent with
25 the purposes of this title.

1 (6) CAPITAL PURCHASE PROGRAM REFI-
2 NANCE.—

3 (A) IN GENERAL.—The Secretary shall, in
4 a manner that the Secretary determines to be
5 consistent with the purposes of this title, issue
6 regulations and other guidance to permit eligi-
7 ble institutions to refinance securities issued to
8 Treasury under the CDCI and the CPP for se-
9 curities to be issued under the Program.

10 (B) PROHIBITION ON PARTICIPATION BY
11 NON-PAYING CPP PARTICIPANTS.—Subpara-
12 graph (A) shall not apply to any eligible institu-
13 tion that has missed more than one dividend
14 payment due under the CPP. For purposes of
15 this subparagraph, a CPP dividend payment
16 that is submitted within 60 days of the due
17 date of such payment shall not be considered a
18 missed dividend payment.

19 (7) OUTREACH TO MINORITIES, WOMEN, AND
20 VETERANS.—The Secretary shall require eligible in-
21 stitutions receiving capital investments under the
22 Program to provide linguistically and culturally ap-
23 propriate outreach and advertising in the applicant
24 pool describing the availability and application proc-
25 ess of receiving loans from the eligible institution

1 that are made possible by the Program through the
2 use of print, radio, television or electronic media out-
3 lets which target organizations, trade associations,
4 and individuals that—

5 (A) represent or work within or are mem-
6 bers of minority communities;

7 (B) represent or work with or are women;
8 and

9 (C) represent or work with or are veterans.

10 (8) ADDITIONAL TERMS.—The Secretary may,
11 by regulation or guidance issued under section 5(9),
12 make modifications that will apply to new capital in-
13 vestments in order to manage risks associated with
14 the administration of the Fund in a manner con-
15 sistent with the purposes of this title.

16 (9) MINIMUM UNDERWRITING STANDARDS.—
17 The appropriate Federal banking agency for an eli-
18 gible institution that receives funds under the Pro-
19 gram shall within 60 days issue guidance regarding
20 prudent underwriting standards that must be used
21 for loans made by the eligible institution using such
22 funds. In the case of a community development fi-
23 nancial institution loan fund, the Community Devel-
24 opment Financial Institutions Fund shall within 60
25 days issue regulations defining minimum under-

1 writing standards that must be used for loans made
2 by the eligible institution using such funds.

3 (10) REPORTING.—Each eligible institution re-
4 ceiving a capital investment under the Program shall
5 issue a quarterly report to the Secretary detailing
6 the percentage of new loans to small businesses the
7 institution makes that are—

8 (A) guaranteed by the Small Business Ad-
9 ministration;

10 (B) made to Small Business Investment
11 Companies;

12 (C) other loans made to small business
13 concerns (as defined under the Small Business
14 Act), if the internal reporting of the concern
15 distinguishes the size of businesses to which
16 loans are made; and

17 (D) other loans made to entities that the
18 internal reporting of the concern classifies as a
19 small business.

20 (e) NOTIFICATION TO CUSTOMERS.—Any eligible in-
21 stitution receiving funds under the Program shall—

22 (1) disclose on every applicable loan transaction
23 that the loan is being made possible by the Program;
24 and

1 (2) if such institution has an established inter-
2 net website, such institution shall make available on
3 its internet website—

4 (A) the written reports made by the Sec-
5 retary pursuant to paragraphs (1) and (2) of
6 section 7; and

7 (B) a statement that the institution, as a
8 participant in the Program, is seeking to make
9 small business loans to qualified borrowers and
10 may not discriminate on the basis of any factor
11 prohibited under the Equal Credit Opportunity
12 Act, including the race, color, religion, national
13 origin, sex, marital status, or age.

14 **SEC. 104. ADDITIONAL AUTHORITIES OF THE SECRETARY.**

15 The Secretary may take such actions as the Secretary
16 deems necessary to carry out the authorities in this title,
17 including, without limitation, the following:

18 (1) The Secretary may use the services of any
19 agency or instrumentality of the United States or
20 component thereof on a reimbursable basis, and any
21 such agency or instrumentality or component thereof
22 is authorized to provide services as requested by the
23 Secretary using all authorities vested in or delegated
24 to that agency, instrumentality, or component.

1 (2) The Secretary may designate any bank, sav-
2 ings association, trust company, security broker or
3 dealer, asset manager, or investment adviser as a fi-
4 nancial agent of the Federal Government and such
5 institution shall perform all such reasonable duties
6 related to this title as financial agent of the Federal
7 Government as may be required. The Secretary shall
8 have authority to amend existing agreements with fi-
9 nancial agents, entered into during the 2-year period
10 before the date of enactment of this title, to perform
11 reasonable duties related to this title.

12 (3) The Secretary may exercise any rights re-
13 ceived in connection with any preferred stock or
14 other financial instruments or assets purchased or
15 acquired pursuant to the authorities granted under
16 this title.

17 (4) Subject to section 4(b)(3), the Secretary
18 may manage any assets purchased under this title,
19 including revenues and portfolio risks therefrom.

20 (5) The Secretary may sell, dispose of, transfer,
21 exchange or enter into securities loans, repurchase
22 transactions, or other financial transactions in re-
23 gard to, any preferred stock or other financial in-
24 strument or asset purchased or acquired under this

1 title, upon terms and conditions and at a price de-
2 termined by the Secretary.

3 (6) The Secretary may manage or prohibit con-
4 flicts of interest that may arise in connection with
5 the administration and execution of the authorities
6 provided under this title.

7 (7) The Secretary may establish and use vehi-
8 cles, subject to supervision by the Secretary, to pur-
9 chase, hold, and sell preferred stock or other finan-
10 cial instruments and issue obligations.

11 (8) The Secretary may, in consultation with the
12 Administrator of the Small Business Administration,
13 issue such regulations and other guidance as may be
14 necessary or appropriate to define terms or carry
15 out the authorities or purposes of this title.

16 **SEC. 105. CONSIDERATIONS.**

17 In exercising the authorities granted in this title, the
18 Secretary shall take into consideration—

19 (1) increasing the availability of credit for small
20 businesses;

21 (2) providing funding to minority-owned eligible
22 institutions and other eligible institutions that serve
23 small businesses that are minority-, veteran-, and
24 women-owned and that also serve low- and mod-

1 erate-income, minority, and other underserved or
2 rural communities;

3 (3) protecting and increasing American jobs;

4 (4) increasing the opportunity for small busi-
5 ness development in areas with high unemployment
6 rates that exceed the national average;

7 (5) ensuring that all eligible institutions may
8 apply to participate in the program established
9 under this title, without discrimination based on ge-
10 ography;

11 (6) providing transparency with respect to use
12 of funds provided under this title;

13 (7) minimizing the cost to taxpayers of exer-
14 cising the authorities;

15 (8) promoting and engaging in financial edu-
16 cation to would-be borrowers; and

17 (9) providing funding to eligible institutions
18 that serve small businesses directly affected by the
19 discharge of oil arising from the explosion on and
20 sinking of the mobile offshore drilling unit Deep-
21 water Horizon and small businesses in communities
22 that have suffered negative economic effects as a re-
23 sult of that discharge with particular consideration
24 to States along the coast of the Gulf of Mexico.

1 **SEC. 106. REPORTS.**

2 The Secretary shall provide to the appropriate com-
3 mittees of Congress—

4 (1) within 7 days of the end of each month
5 commencing with the first month in which trans-
6 actions are made under the Program, a written re-
7 port describing all of the transactions made during
8 the reporting period pursuant to the authorities
9 granted under this title;

10 (2) after the end of March and the end of Sep-
11 tember, commencing September 30, 2010, a written
12 report on all projected costs and liabilities, all oper-
13 ating expenses, including compensation for financial
14 agents, and all transactions made by the Fund,
15 which shall include participating institutions and
16 amounts each institution has received under the Pro-
17 gram; and

18 (3) within 7 days of the end of each month
19 commencing with the first month in which trans-
20 actions are made under the Program, a written re-
21 port detailing how eligible institutions participating
22 in the Program have used the funds such institu-
23 tions received under the Program.

24 **SEC. 107. OVERSIGHT AND AUDITS.**

25 (a) INSPECTOR GENERAL OVERSIGHT.—The Inspec-
26 tor General of the Department of the Treasury shall con-

1 duct, supervise, and coordinate audits and investigations
2 of the Program through the Office of Small Business
3 Lending Fund Program Oversight established under sub-
4 section (b).

5 (b) OFFICE OF SMALL BUSINESS LENDING FUND
6 PROGRAM OVERSIGHT.—

7 (1) ESTABLISHMENT.—There is hereby estab-
8 lished within the Office of the Inspector General of
9 the Department of the Treasury a new office to be
10 named the “Office of Small Business Lending Fund
11 Program Oversight” to provide oversight of the Pro-
12 gram.

13 (2) LEADERSHIP.—The Inspector General shall
14 appoint a Special Deputy Inspector General for
15 SBLF Program Oversight to lead the Office, with
16 commensurate staff, who shall report directly to the
17 Inspector General and who shall be responsible for
18 the performance of all auditing and investigative ac-
19 tivities relating to the Program.

20 (3) REPORTING.—

21 (A) IN GENERAL.—The Inspector General
22 shall issue a report no less than two times a
23 year to the Congress and the Secretary devoted
24 to the oversight provided by the Office, includ-

1 ing any recommendations for improvements to
2 the Program.

3 (B) RECOMMENDATIONS.—With respect to
4 any deficiencies identified in a report under
5 subparagraph (A), the Secretary shall either—

6 (i) take actions to address such defi-
7 ciencies; or

8 (ii) certify to the appropriate commit-
9 tees of Congress that no action is nec-
10 essary or appropriate.

11 (4) COORDINATION.—The Inspector General, in
12 maximizing the effectiveness of the Office, shall
13 work with other Offices of Inspector General, as ap-
14 propriate, to minimize duplication of effort and en-
15 sure comprehensive oversight of the Program.

16 (5) TERMINATION.—The Office shall terminate
17 at the end of the 6-month period beginning on the
18 date on which all capital investments are repaid
19 under the Program or the date on which the Sec-
20 retary determines that any remaining capital invest-
21 ments will not be repaid.

22 (6) DEFINITIONS.—For purposes of this sub-
23 section:

24 (A) OFFICE.—The term “Office” means
25 the Office of Small Business Lending Fund

1 Program Oversight established under paragraph
2 (1).

3 (B) INSPECTOR GENERAL.—The term “In-
4 specter General” means the Inspector General
5 of the Department of the Treasury.

6 (c) GAO AUDIT.—The Comptroller General of the
7 United States shall perform an annual audit of the Pro-
8 gram and issue a report to the appropriate committees
9 of Congress containing the results of such audit.

10 (d) REQUIRED CERTIFICATIONS.—

11 (1) ELIGIBLE INSTITUTION CERTIFICATION.—

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

1 (2) LOAN RECIPIENTS.—With respect to funds
2 received by an eligible institution under the Pro-
3 gram, any business receiving a loan from the eligible
4 institution using such funds after the date of the en-
5 actment of this title shall certify to such eligible in-
6 stitution that the principals of such business have
7 not been convicted of a sex offense against a minor
8 (as such terms are defined in section 111 of the Sex
9 Offender Registration and Notification Act (42
10 U.S.C. 16911)).

11 (e) PROHIBITION ON PORNOGRAPHY.—None of the
12 funds made available under this title may be used to pay
13 the salary of any individual engaged in activities related
14 to the Program who has been officially disciplined for vio-
15 lations of subpart G of the Standards of Ethical Conduct
16 for Employees of the Executive Branch for viewing,
17 downloading, or exchanging pornography, including child
18 pornography, on a Federal Government computer or while
19 performing official Federal Government duties.

20 **SEC. 108. CREDIT REFORM; FUNDING.**

21 (a) CREDIT REFORM.—The cost of purchases of pre-
22 ferred stock and other financial instruments made as cap-
23 ital investments under this title shall be determined as
24 provided under the Federal Credit Reform Act of 1990
25 (2 U.S.C. 661 et seq.).

1 (b) FUNDS MADE AVAILABLE.—There are hereby ap-
2 propriated, out of funds in the Treasury not otherwise ap-
3 propriated, such sums as may be necessary to pay the
4 costs of \$30,000,000,000 of capital investments in eligible
5 institutions, including the costs of modifying such invest-
6 ments, and reasonable costs of administering the program
7 of making, holding, managing, and selling the capital in-
8 vestments.

9 **SEC. 109. TERMINATION AND CONTINUATION OF AUTHORI-**
10 **TIES.**

11 (a) TERMINATION OF INVESTMENT AUTHORITY.—
12 The authority to make capital investments in eligible insti-
13 tutions, including commitments to purchase preferred
14 stock or other instruments, provided under this title shall
15 terminate 1 year after the date of enactment of this title.

16 (b) CONTINUATION OF OTHER AUTHORITIES.—The
17 authorities of the Secretary in section 104 shall not be
18 limited by the termination date in subsection (a).

19 **SEC. 110. PRESERVATION OF AUTHORITY.**

20 Nothing in this title may be construed to limit the
21 authority of the Secretary under any other provision of
22 law.

23 **SEC. 111. ASSURANCES.**

24 (a) SMALL BUSINESS LENDING FUND SEPARATE
25 FROM TARP.—The Small Business Lending Fund Pro-

1 gram is established as separate and distinct from the
2 Troubled Asset Relief Program established by the Emer-
3 gency Economic Stabilization Act of 2008. An institution
4 shall not, by virtue of a capital investment under the Small
5 Business Lending Fund Program, be considered a recipi-
6 ent of the Troubled Asset Relief Program.

7 (b) CHANGE IN LAW.—If, after a capital investment
8 has been made in an eligible institution under the Pro-
9 gram, there is a change in law that modifies the terms
10 of the investment or program in a materially adverse re-
11 spect for the eligible institution, the eligible institution
12 may, after consultation with the appropriate Federal
13 banking agency for the eligible institution, repay the in-
14 vestment without impediment.

15 **SEC. 112. STUDY AND REPORT WITH RESPECT TO WOMEN-**
16 **OWNED, VETERAN-OWNED, AND MINORITY-**
17 **OWNED BUSINESSES.**

18 (a) STUDY.—The Secretary shall conduct a study to
19 determine the number of women-owned businesses, vet-
20 eran-owned businesses, and minority-owned businesses
21 that receive assistance as a result of the Program (includ-
22 ing determining the percentage of the total number of all
23 businesses that receive assistance that such number rep-
24 resents), including—

1 (1) efforts, including technical assistance and
2 outreach that institutions have employed under the
3 Program to provide loans to minority-, veteran-, and
4 women-owned small businesses;

5 (2) loan applications received;

6 (3) loan applications approved; and

7 (4) and any other relevant data related to such
8 transactions to promote the purposes of the Pro-
9 gram as the Secretary may require.

10 (b) REPORT.—Not later than one year after the date
11 of enactment of this Act, the Secretary shall submit to
12 Congress a report on the results of the study conducted
13 pursuant to subsection (a). To the extent possible, the
14 Secretary shall disaggregate the results of such study by
15 ethnic group and gender.

16 (c) INFORMATION PROVIDED TO THE SECRETARY.—
17 Eligible institutions that participate in the Program shall
18 provide the Secretary with such information as the Sec-
19 retary may require to carry out the study required by this
20 section.

21 **SEC. 113. TEMPORARY AMORTIZATION AUTHORITY.**

22 (a) PURPOSE.—The purpose this section is to address
23 the ongoing effects of the financial crisis on small busi-
24 nesses by providing temporary authority to amortize losses

1 or write-downs in order to increase the availability of cred-
2 it for small businesses.

3 (b) IN GENERAL.—For purposes of capital calcula-
4 tion under the Financial Institutions Examination Coun-
5 cil’s Consolidated Reports of Condition, an eligible institu-
6 tion may choose to amortize any loss or write-down, on
7 a quarterly straight line basis over a period determined
8 under subsection (c), beginning with the month in which
9 such loss or write-down occurs, resulting from the applica-
10 tion of FASB Statement 114 or 144 to—

11 (1) other real estate owned (as defined under
12 section 34.81 of title 12, Code of Federal Regula-
13 tion), or

14 (2) an impaired loan secured by real estate,
15 provided that the institution discloses the difference in the
16 amount of the institution’s capital, when calculated taking
17 into account the temporary amortization, from the amount
18 of the institution’s capital when calculated without taking
19 into account the temporary amortization on the Financial
20 Institutions Examination Council’s Consolidated Reports
21 of Condition.

22 (c) AMORTIZATION REQUIREMENTS.—During the ini-
23 tial 2-year period referred to in section 4(d)(4), an eligible
24 institution’s amortization period shall be adjusted to re-
25 flect the following schedule based on the institution’s

1 change in the amount of small business lending relative
2 to the baseline:

3 (1) If the amount of small business lending has
4 increased by less than 2.5 percent, the amortization
5 period shall be 6 years.

6 (2) If the amount of small business lending has
7 increased by 2.5 percent or greater, but by less than
8 5.0 percent, the amortization period shall be 7 years.

9 (3) If the amount of small business lending has
10 increased by 5.0 percent or greater, but by less than
11 7.5 percent, the amortization period shall be 8 years.

12 (4) If the amount of small business lending has
13 increased by 7.5 percent or greater, but by less than
14 10.0 percent, the amortization period shall be 9
15 years.

16 (5) If the amount of small business lending has
17 increased by 10 percent or greater, the amortization
18 period shall be 10 years.

19 (d) MINIMUM UNDERWRITING STANDARDS.—The
20 appropriate Federal banking agency for an eligible institu-
21 tion that chooses to amortize any loss or write-down as
22 permitted under subsection (b) shall, within 60 days of
23 the date of the enactment of this title, issue regulations
24 defining minimum underwriting standards that must be
25 used for loans made by the eligible institution.

1 (e) EFFECTIVE DATE.—The provisions of this section
2 shall apply to loan origination that occurred on or after
3 January 1, 2003, and before January 1, 2008.

4 **SEC. 114. SENSE OF CONGRESS.**

5 It is the sense of Congress that the Federal Deposit
6 Insurance Corporation and other bank regulators are
7 sending mixed messages to banks regarding regulatory
8 capital requirements and lending standards, which is a
9 contributing cause of decreased small business lending and
10 increased regulatory uncertainty at community banks.

11 **TITLE II—STATE SMALL**
12 **BUSINESS CREDIT INITIATIVE**

13 **SEC. 201. SHORT TITLE.**

14 This title may be cited as the “State Small Business
15 Credit Initiative Act of 2010”.

16 **SEC. 202. DEFINITIONS.**

17 For purposes of this title, the following definitions
18 shall apply:

19 (1) APPROPRIATE FEDERAL BANKING AGEN-
20 CY.—The term “appropriate Federal banking agen-
21 cy”—

22 (A) has the same meaning as in section 3
23 of the Federal Deposit Insurance Act; and

24 (B) includes the National Credit Union
25 Administration Board in the case of any credit

1 union the deposits of which are insured in ac-
2 cordance with the Federal Credit Union Act.

3 (2) ENROLLED LOAN.—The term “enrolled
4 loan” means a loan made by a financial institution
5 lender that is enrolled by a participating State in an
6 approved State capital access program in accordance
7 with this title.

8 (3) FEDERAL CONTRIBUTION.—The term “Fed-
9 eral contribution” means the portion of the contribu-
10 tion made by a participating State to, or for the ac-
11 count of, an approved State program that is made
12 with Federal funds allocated to the State by the Sec-
13 retary under section 203.

14 (4) FINANCIAL INSTITUTION.—The term “fi-
15 nancial institution” means any insured depository
16 institution, insured credit union, or community de-
17 velopment financial institution, as those terms are
18 each defined in section 103 of the Riegle Community
19 Development and Regulatory Improvement Act of
20 1994.

21 (5) PARTICIPATING STATE.—The term “partici-
22 pating State” means any State that has been ap-
23 proved for participation in the Program under sec-
24 tion 204.

1 (6) PROGRAM.—The term “Program” means
2 the State Small Business Credit Initiative estab-
3 lished under this title.

4 (7) QUALIFYING LOAN OR SWAP FUNDING FA-
5 CILITY.—The term “qualifying loan or swap funding
6 facility” means a contractual arrangement between a
7 participating State and a private financial entity
8 under which—

9 (A) the participating State delivers funds
10 to the entity as collateral;

11 (B) the entity provides funding from the
12 arrangement back to the participating State;
13 and

14 (C) the full amount of resulting funding
15 from the arrangement, less any fees and other
16 costs of the arrangement, is contributed to, or
17 for the account of, an approved State program.

18 (8) RESERVE FUND.—The term “reserve fund”
19 means a fund, established by a participating State,
20 dedicated to a particular financial institution lender,
21 for the purposes of—

22 (A) depositing all required premium
23 charges paid by the financial institution lender
24 and by each borrower receiving a loan under an

1 approved State program from that financial in-
2 stitution lender;

3 (B) depositing contributions made by the
4 participating State, including State contribu-
5 tions made with Federal contributions; and

6 (C) covering losses on enrolled loans by
7 disbursing accumulated funds.

8 (9) STATE.—The term “State” means—

9 (A) a State of the United States;

10 (B) the District of Columbia, the Common-
11 wealth of Puerto Rico, the Commonwealth of
12 Northern Mariana Islands, Guam, American
13 Samoa, and the United States Virgin Islands;

14 (C) when designated by a State of the
15 United States, a political subdivision of that
16 State that the Secretary determines has the ca-
17 pacity to participate in the Program; and

18 (D) under the circumstances described in
19 section 204(d), a municipality of a State of the
20 United States to which the Secretary has given
21 a special permission under section 204(d).

22 (10) STATE CAPITAL ACCESS PROGRAM.—The
23 term “State capital access program” means a pro-
24 gram of a State that—

1 (A) uses public resources to promote pri-
2 vate access to credit; and

3 (B) meets the eligibility criteria in section
4 205(c).

5 (11) STATE OTHER CREDIT SUPPORT PRO-
6 GRAM.—The term “State other credit support pro-
7 gram”—

8 (A) means a program of a State that—

9 (i) uses public resources to promote
10 private access to credit;

11 (ii) is not a State capital access pro-
12 gram; and

13 (iii) meets the eligibility criteria in
14 section 206(c); and

15 (B) includes, collateral support programs,
16 loan participation programs, State-run venture
17 capital fund programs, and credit guarantee
18 programs.

19 (12) STATE PROGRAM.—The term “State pro-
20 gram” means a State capital access program or a
21 State other credit support program.

22 (13) SECRETARY.—The term “Secretary”
23 means the Secretary of the Treasury.

1 **SEC. 203. FEDERAL FUNDS ALLOCATED TO STATES.**

2 (a) PROGRAM ESTABLISHED; PURPOSE.—There is
3 established the State Small Business Credit Initiative
4 (hereinafter in this title referred to as the “Program”),
5 to be administered by the Secretary. Under the Program,
6 the Secretary shall allocate Federal funds to participating
7 States and make the allocated funds available to the par-
8 ticipating States as provided in this section for the uses
9 described in this section.

10 (b) ALLOCATION FORMULA.—

11 (1) IN GENERAL.—Not later than 30 days after
12 the date of enactment of this title, the Secretary
13 shall allocate Federal funds to participating States
14 so that each State is eligible to receive an amount
15 equal to the average of the respective amounts that
16 the State—

17 (A) would receive under the 2009 alloca-
18 tion, as determined under paragraph (2); and

19 (B) would receive under the 2010 alloca-
20 tion, as determined under paragraph (3).

21 (2) 2009 ALLOCATION FORMULA.—

22 (A) IN GENERAL.—The Secretary shall de-
23 termine the 2009 allocation by allocating Fed-
24 eral funds among the States in the proportion
25 that each such State’s 2008 State employment

1 decline bears to the aggregate of the 2008
2 State employment declines for all States.

3 (B) MINIMUM ALLOCATION.—The Sec-
4 retary shall adjust the allocations under sub-
5 paragraph (A) for each State to the extent nec-
6 essary to ensure that no State receives less than
7 0.9 percent of the Federal funds.

8 (C) 2008 STATE EMPLOYMENT DECLINE
9 DEFINED.—For purposes of this paragraph and
10 with respect to a State, the term “2008 State
11 employment decline” means the excess (if any)
12 of—

13 (i) the number of individuals em-
14 ployed in such State determined for De-
15 cember 2007; over

16 (ii) the number of individuals em-
17 ployed in such State determined for De-
18 cember 2008.

19 (3) 2010 ALLOCATION FORMULA.—

20 (A) IN GENERAL.—The Secretary shall de-
21 termine the 2010 allocation by allocating Fed-
22 eral funds among the States in the proportion
23 that each such State’s 2009 unemployment
24 number bears to the aggregate of the 2009 un-
25 employment numbers for all of the States.

1 (B) MINIMUM ALLOCATION.—The Sec-
2 retary shall adjust the allocations under sub-
3 paragraph (A) for each State to the extent nec-
4 essary to ensure that no State receives less than
5 0.9 percent of the Federal funds.

6 (C) 2009 UNEMPLOYMENT NUMBER DE-
7 FINED.—For purposes of this paragraph and
8 with respect to a State, the term “2009 unem-
9 ployment number” means the number of indi-
10 viduals within such State who were determined
11 to be unemployed by the Bureau of Labor Sta-
12 tistics for December 2009.

13 (c) AVAILABILITY OF ALLOCATED AMOUNT.—The
14 amount allocated by the Secretary to each participating
15 State under subsection (b) shall be made available to the
16 State as follows:

17 (1) ALLOCATED AMOUNT GENERALLY TO BE
18 AVAILABLE TO STATE IN ONE-THIRDS.—

19 (A) IN GENERAL.—The Secretary shall—

20 (i) apportion the participating State’s
21 allocated amount into one-thirds;

22 (ii) transfer to the participating State
23 the first one-third when the Secretary ap-
24 proves the State for participation under
25 section 204; and

1 (iii) transfer to the participating State
2 each successive one-third when the State
3 has certified to the Secretary that it has
4 expended, transferred, or obligated 80 per-
5 cent of the last transferred one-third for
6 Federal contributions to, or for the ac-
7 count of, State programs.

8 (B) AUTHORITY TO WITHHOLD PENDING
9 AUDIT.—The Secretary may withhold the trans-
10 fer of any successive one-third pending results
11 of a financial audit.

12 (C) TRANSFERS CONTINGENT ON INSPEC-
13 TOR GENERAL AUDITS.—

14 (i) IN GENERAL.—Before a transfer
15 to a participating State of the second one-
16 third or the last one-third, the Inspector
17 General of the Department of the Treasury
18 shall carry out an audit of the partici-
19 pating State's use of amounts already re-
20 ceived.

21 (ii) PENALTY FOR MISSTATEMENT.—
22 Any participating State that is found to
23 have intentionally misstated any report
24 issued to the Secretary under the Program
25 shall be ineligible to receive any additional

1 funds under the Program. Funds that had
2 been allocated or that would otherwise
3 have been allocated to such participating
4 State shall be paid into the general fund of
5 the Treasury for reduction of the public
6 debt.

7 (iii) MUNICIPALITIES.—For purposes
8 of this subparagraph, the term “partici-
9 pating State” shall include a municipality
10 given special permission to participate in
11 the Program, pursuant to section 204(d).

12 (D) EXCEPTION.—

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

22 (ii) RECOUPMENT TRIGGERED BY IN-
23 TENTIONAL MISSTATEMENT.—If, in any
24 audit of a report issued by a participating
25 State that receives a single transfer pursu-

1 ant to clause (i), the Secretary or the In-
2 spector General of the Department of the
3 Treasury determines that such State inten-
4 tionally misstated information in such re-
5 port, the participating State shall be re-
6 quired to fully repay all amounts received
7 by the State under the Program, and such
8 amounts shall be paid into the general
9 fund of the Treasury for reduction of the
10 public debt.

11 (2) TRANSFERRED AMOUNTS.—Each amount
12 transferred to a participating State under this sec-
13 tion shall remain available to the State until used by
14 the State as permitted under paragraph (3).

15 (3) USE OF TRANSFERRED FUNDS.—Each par-
16 ticipating State may use funds transferred to it
17 under this section only—

18 (A) for making Federal contributions to, or
19 for the account of, an approved State program;

20 (B) as collateral for a qualifying loan or
21 swap funding facility;

22 (C) in the case of the first one-third trans-
23 ferred, for paying administrative costs incurred
24 by the State in implementing an approved State

1 program in an amount not to exceed 5 percent
2 of that first one-third; or

3 (D) in the case of each successive one-third
4 transferred, for paying administrative costs in-
5 curred by the State in implementing an ap-
6 proved State program in an amount not to ex-
7 ceed 3 percent of that successive one-third.

8 (4) TERMINATION OF AVAILABILITY OF
9 AMOUNTS NOT TRANSFERRED WITHIN 2 YEARS OF
10 PARTICIPATION.—Any portion of a participating
11 State’s allocated amount that has not been trans-
12 ferred to the State under this section by the end of
13 the 2-year period beginning on the date that the
14 Secretary approves the State for participation may
15 be deemed by the Secretary to be no longer allocated
16 to the State and no longer available to the State and
17 shall be returned to the General Fund of the Treas-
18 ury.

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

24 (6) DEFINITIONS.—For purposes of this sec-
25 tion—

1 (A) the term “allocated amount” means
2 the total amount of Federal funds allocated by
3 the Secretary under subsection (b) to the par-
4 ticipating State; and

5 (B) the term “one-third” means—

6 (i) in the case of the first and second
7 one-thirds, an amount equal to 33 percent
8 of a participating State’s allocated amount;
9 and

10 (ii) in the case of the last one-third,
11 an amount equal to 34 percent of a partici-
12 pating State’s allocated amount.

13 **SEC. 204. APPROVING STATES FOR PARTICIPATION.**

14 (a) APPLICATION.—Any State may apply to the Sec-
15 retary for approval to be a participating State under the
16 Program and to be eligible for an allocation of Federal
17 funds under the Program.

18 (b) GENERAL APPROVAL CRITERIA.—The Secretary
19 shall approve a State to be a participating State, if—

20 (1) a specific department, agency, or political
21 subdivision of the State has been designated to im-
22 plement a State program and participate in the Pro-
23 gram;

24 (2) all legal actions necessary to enable such
25 designated department, agency, or political subdivi-

1 sion to implement a State program and participate
2 in the Program have been accomplished;

3 (3) the State has filed an application with the
4 Secretary for approval of a State capital access pro-
5 gram under section 205 or approval as a State other
6 credit support program under section 206, in each
7 case within the time period provided in the respec-
8 tive section; and

9 (4) the State and the Secretary have executed
10 an allocation agreement that—

11 (A) conforms to the requirements of this
12 title;

13 (B) ensures that the State program com-
14 plies with such national standards as are estab-
15 lished by the Secretary under section 209(a)(2);

16 (C) sets forth internal control, compliance,
17 and reporting requirements as established by
18 the Secretary, and such other terms and condi-
19 tions necessary to carry out the purposes of this
20 title, including an agreement by the State to
21 allow the Secretary to audit State programs;

22 (D) requires that the State program be
23 fully positioned, within 90 days of the State's
24 execution of the allocation agreement with the
25 Secretary, to act on providing the kind of credit

1 support that the State program was established
2 to provide; and

3 (E) includes an agreement by the State to
4 deliver to the Secretary, and update annually, a
5 schedule describing how the State intends to
6 apportion among its State programs the Fed-
7 eral funds allocated to the State.

8 (c) CONTRACTUAL ARRANGEMENTS FOR IMPLEMEN-
9 TATION OF STATE PROGRAMS.—A State may be approved
10 to be a participating State, and be eligible for an allocation
11 of Federal funds under the Program, if the State has con-
12 tractual arrangements for the implementation and admin-
13 istration of its State program with—

14 (1) an existing, approved State program admin-
15 istered by another State; or

16 (2) an authorized agent of, or entity supervised
17 by, the State, including for-profit and not-for-profit
18 entities.

19 (d) SPECIAL PERMISSION.—

20 (1) CIRCUMSTANCES WHEN A MUNICIPALITY
21 MAY APPLY DIRECTLY.—If a State does not, within
22 60 days after the date of enactment of this title, file
23 with the Secretary a notice of its intent to apply for
24 approval by the Secretary of a State program or
25 within 9 months after the date of enactment of this

1 title, file with the Secretary a complete application
2 for approval of a State program, the Secretary may
3 grant to municipalities of that State a special per-
4 mission that will allow them to apply directly to the
5 Secretary without the State for approval to be par-
6 ticipating municipalities.

7 (2) TIMING REQUIREMENTS APPLICABLE TO
8 MUNICIPALITIES APPLYING DIRECTLY.—To qualify
9 for the special permission, a municipality of a State
10 must, within 12 months after the date of enactment
11 of this title, file with the Secretary a complete appli-
12 cation for approval by the Secretary of a State pro-
13 gram.

14 (3) NOTICES OF INTENT AND APPLICATIONS
15 FROM MORE THAN 1 MUNICIPALITY.—A municipality
16 of a State may combine with 1 or more other mu-
17 nicipalities of that State to file a joint notice of in-
18 tent to file and a joint application.

19 (4) APPROVAL CRITERIA.—The general ap-
20 proval criteria in paragraphs (2) and (4) shall apply.

21 (5) ALLOCATION TO MUNICIPALITIES.—

22 (A) IF MORE THAN 3.—If more than 3 mu-
23 nicipalities, or combination of municipalities as
24 provided in paragraph (3), of a State apply for
25 approval by the Secretary to be participating

1 municipalities under this subsection, and the
2 applications meet the approval criteria in para-
3 graph (4), the Secretary shall allocate Federal
4 funds to the 3 municipalities with the largest
5 populations.

6 (B) IF 3 OR FEWER.—If 3 or fewer mu-
7 nicipalities, or combination of municipalities as
8 provided in paragraph (3), of a State apply for
9 approval by the Secretary to be participating
10 municipalities under this subsection, and the
11 applications meet the approval criteria in para-
12 graph (4), the Secretary shall allocate Federal
13 funds to each applicant municipality or com-
14 bination of municipalities.

15 (6) APPORTIONMENT OF ALLOCATED AMOUNT
16 AMONG PARTICIPATING MUNICIPALITIES.—If the
17 Secretary approves municipalities to be participating
18 municipalities under this subsection, the Secretary
19 shall apportion the full amount of the Federal funds
20 that are allocated to that State to municipalities
21 that are approved under this subsection in amounts
22 proportionate to the population of those municipali-
23 ties, based on the most recent available decennial
24 census.

1 (7) APPROVING STATE PROGRAMS FOR MUNICI-
2 PALITIES.—If the Secretary approves municipalities
3 to be participating municipalities under this sub-
4 section, the Secretary shall take into account the ad-
5 ditional considerations in section 206(d) in making
6 the determination under section 205 or 206 that the
7 State program or programs to be implemented by
8 the participating municipalities, including a State
9 capital access program, is eligible for Federal con-
10 tributions to, or for the account of, the State pro-
11 gram.

12 **SEC. 205. APPROVING STATE CAPITAL ACCESS PROGRAMS.**

13 (a) APPLICATION.—A participating State that estab-
14 lishes a new, or has an existing, State capital access pro-
15 gram that meets the eligibility criteria in subsection (c)
16 may apply to Secretary to have the State capital access
17 program approved as eligible for Federal contributions to
18 the reserve fund.

19 (b) APPROVAL.—The Secretary shall approve such
20 State capital access program as eligible for Federal con-
21 tributions to the reserve fund if—

22 (1) within 60 days after the date of enactment
23 of this title, the State has filed with the Secretary
24 a notice of intent to apply for approval by the Sec-
25 retary of a State capital access program;

1 (2) within 9 months after the date of enactment
2 of this title, the State has filed with the Secretary
3 a complete application for approval by the Secretary
4 of a capital access program;

5 (3) the State satisfies the requirements of sub-
6 sections (a) and (b) of section 204; and

7 (4) the State capital access program meets the
8 eligibility criteria in subsection (c).

9 (c) ELIGIBILITY CRITERIA FOR STATE CAPITAL AC-
10 CESS PROGRAMS.—For a State capital access program to
11 be approved under this section, it must be a program of
12 the State that—

13 (1) provides portfolio insurance for business
14 loans based on a separate loan-loss reserve fund for
15 each financial institution;

16 (2) requires insurance premiums to be paid by
17 the financial institution lenders and by the business
18 borrowers to the reserve fund to have their loans en-
19 rolled in the reserve fund;

20 (3) provides for contributions to be made by the
21 State to the reserve fund in amounts at least equal
22 to the sum of the amount of the insurance premium
23 charges paid by the borrower and the financial insti-
24 tution to the reserve fund for any newly enrolled
25 loan; and

1 (4) provides its portfolio insurance solely for
2 loans that meet both the following requirements:

3 (A) The borrower has 500 employees or
4 less at the time that the loan is enrolled in the
5 Program.

6 (B) The loan amount does not exceed
7 \$5,000,000.

8 (d) FEDERAL CONTRIBUTIONS TO APPROVED STATE
9 CAPITAL ACCESS PROGRAMS.—A State capital access pro-
10 gram approved under this section will be eligible for receiv-
11 ing Federal contributions to the reserve fund in an
12 amount equal to the sum of the amount of the insurance
13 premium charges paid by the borrowers and by the finan-
14 cial institution to the reserve fund for loans that meet the
15 requirements in subsection (c)(4). A participating State
16 may use the Federal contribution to make its contribution
17 to the reserve fund of an approved State capital access
18 program.

19 (e) MINIMUM PROGRAM REQUIREMENTS FOR STATE
20 CAPITAL ACCESS PROGRAMS.—The Secretary shall, by
21 regulation or other guidance, prescribe Program require-
22 ments that meet the following minimum requirements:

23 (1) EXPERIENCE AND CAPACITY.—The partici-
24 pating State shall determine for each financial insti-
25 tution that participates in the State capital access

1 program, after consultation with the appropriate
2 Federal banking agency or, in the case of a financial
3 institution that is a non depository community devel-
4 opment financial institution, the Community Devel-
5 opment Financial Institution Fund, that the finan-
6 cial institution has sufficient commercial lending ex-
7 perience and financial and managerial capacity to
8 participate in the approved State capital access pro-
9 gram. The determination by the State shall not be
10 reviewable by the Secretary.

11 (2) INVESTMENT AUTHORITY.—Subject to ap-
12 plicable State law, the participating State may in-
13 vest, or cause to be invested, funds held in a reserve
14 fund by establishing a deposit account at the finan-
15 cial institution lender in the name of the partici-
16 pating State. In the event that funds in the reserve
17 fund are not deposited in such an account, such
18 funds shall be invested in a form that the partici-
19 pating State determines is safe and liquid.

20 (3) LOAN TERMS AND CONDITIONS TO BE DE-
21 TERMINED BY AGREEMENT.—A loan to be filed for
22 enrollment in an approved State capital access pro-
23 gram may be made with such interest rate, fees, and
24 other terms and conditions, and the loan may be en-
25 rolled in the approved State capital access program

1 and claims may be filed and paid, as agreed upon
2 by the financial institution lender and the borrower,
3 consistent with applicable law.

4 (4) LENDER CAPITAL AT-RISK.—A loan to be
5 filed for enrollment in the State capital access pro-
6 gram must require the financial institution lender to
7 have a meaningful amount of its own capital re-
8 sources at risk in the loan.

9 (5) PREMIUM CHARGES MINIMUM AND MAX-
10 IMUM AMOUNTS.—The insurance premium charges
11 payable to the reserve fund by the borrower and the
12 financial institution lender shall be prescribed by the
13 financial institution lender, within minimum and
14 maximum limits that require that the sum of the in-
15 surance premium charges paid in connection with a
16 loan by the borrower and the financial institution
17 lender may not be less than 2 percent nor more than
18 7 percent of the amount of the loan enrolled in the
19 approved State capital access program.

20 (6) STATE CONTRIBUTIONS.—In enrolling a
21 loan in an approved State capital access program,
22 the participating State may make a contribution to
23 the reserve fund to supplement Federal contribu-
24 tions made under this Program.

25 (7) LOAN PURPOSE.—

1 (A) PARTICULAR LOAN PURPOSE REQUIRE-
2 MENTS AND PROHIBITIONS.—In connection
3 with the filing of a loan for enrollment in an
4 approved State capital access program, the fi-
5 nancial institution lender—

6 (i) shall obtain an assurance from
7 each borrower that—

8 (I) the proceeds of the loan will
9 be used for a business purpose;

10 (II) the loan will not be used to
11 finance such business activities as the
12 Secretary, by regulation, may pro-
13 scribe as prohibited loan purposes for
14 enrollment in an approved State cap-
15 ital access program; and

16 (III) the borrower is not—

17 (aa) an executive officer, di-
18 rector, or principal shareholder of
19 the financial institution lender;

20 (bb) a member of the imme-
21 diate family of an executive offi-
22 cer, director, or principal share-
23 holder of the financial institution
24 lender; or

1 (cc) a related interest of any
2 such executive officer, director,
3 principal shareholder, or member
4 of the immediate family;

5 (ii) shall provide assurances to the
6 participating State that the loan has not
7 been made in order to place under the pro-
8 tection of the approved State capital access
9 program prior debt that is not covered
10 under the approved State capital access
11 program and that is or was owed by the
12 borrower to the financial institution lender
13 or to an affiliate of the financial institution
14 lender;

15 (iii) shall not allow the enrollment of
16 a loan to a borrower that is a refinancing
17 of a loan previously made to that borrower
18 by the financial institution lender or an af-
19 filiate of the financial institution lender;
20 and

21 (iv) may include additional restric-
22 tions on the eligibility of loans or bor-
23 rowers that are not inconsistent with the
24 provisions and purposes of this title, in-
25 cluding compliance with all applicable Fed-

1 eral and State laws, regulations, ordi-
2 nances, and Executive orders.

3 (B) DEFINITIONS.—For purposes of this
4 subsection, the terms “executive officer”, “di-
5 rector”, “principal shareholder”, “immediate
6 family”, and “related interest” refer to the
7 same relationship to a financial institution lend-
8 er as the relationship described in part 215 of
9 title 12 of the Code of Federal Regulations, or
10 any successor to such part.

11 (8) CAPITAL ACCESS FOR SMALL BUSINESSES
12 IN UNDERSERVED COMMUNITIES.—At the time that
13 a State applies to the Secretary to have the State
14 capital access program approved as eligible for Fed-
15 eral contributions, the State shall deliver to the Sec-
16 retary a report stating how the State plans to use
17 the Federal contributions to the reserve fund to pro-
18 vide access to capital for small businesses in low-
19 and moderate-income, minority, and other under-
20 served communities, including women- and minority-
21 owned small businesses.

1 **SEC. 206. APPROVING COLLATERAL SUPPORT AND OTHER**
2 **INNOVATIVE CREDIT ACCESS AND GUAR-**
3 **ANTEE INITIATIVES FOR SMALL BUSINESSES**
4 **AND MANUFACTURERS.**

5 (a) APPLICATION.—A participating State that estab-
6 lishes a new, or has an existing, credit support program
7 that meets the eligibility criteria in subsection (c) may
8 apply to the Secretary to have the State other credit sup-
9 port program approved as eligible for Federal contribu-
10 tions to, or for the account of, the State program.

11 (b) APPROVAL.—The Secretary shall approve such
12 State other credit support program as eligible for Federal
13 contributions to, or for the account of, the program if—

14 (1) the Secretary determines that the State sat-
15 isfies the requirements of paragraphs (1) through
16 (3) of section 205(b);

17 (2) the Secretary determines that the State
18 other credit support program meets the eligibility
19 criteria in subsection (c);

20 (3) the Secretary determines the State other
21 credit support program to be eligible based on the
22 additional considerations in subsection (d); and

23 (4) within 9 months after the date of enactment
24 of this title, the State has filed with Treasury a
25 complete application for Treasury approval.

1 (c) ELIGIBILITY CRITERIA FOR STATE OTHER CRED-
2 IT SUPPORT PROGRAMS.—For a State other credit sup-
3 port program to be approved under this section, it must
4 be a program of the State that—

5 (1) can demonstrate that, at a minimum, 1 dol-
6 lar of public investment by the State program will
7 cause and result in 1 dollar of new private credit;

8 (2) can demonstrate a reasonable expectation
9 that, when considered with all other State programs
10 of the State, such State programs together have the
11 ability to use amounts of new Federal contributions
12 to, or for the account of, all such programs in the
13 State to cause and result in amounts of new small
14 business lending at least 10 times the new Federal
15 contribution amount;

16 (3) for those State other credit support pro-
17 grams that provide their credit support through 1 or
18 more financial institution lenders, requires the finan-
19 cial institution lenders to have a meaningful amount
20 of their own capital resources at risk in their small
21 business lending; and

22 (4) uses Federal funds allocated under this title
23 to extend credit support that—

24 (A) targets an average borrower size of
25 500 employees or less;

1 (B) does not extend credit support to bor-
2 rowers that have more than 750 employees;

3 (C) targets support towards loans with an
4 average principal amount of \$5,000,000 or less;
5 and

6 (D) does not extend credit support to loans
7 that exceed a principal amount of \$20,000,000.

8 (d) ADDITIONAL CONSIDERATIONS.—In making a de-
9 termination that a State other credit support program is
10 eligible for Federal contributions to, or for the account
11 of, the State program, the Secretary shall take into ac-
12 count the following additional considerations:

13 (1) The anticipated benefits to the State, its
14 businesses, and its residents to be derived from the
15 Federal contributions to, or for the account of, the
16 approved State other credit support program, includ-
17 ing the extent to which resulting small business
18 lending will expand economic opportunities.

19 (2) The operational capacity, skills, and experi-
20 ence of the management team of the State other
21 credit support program.

22 (3) The capacity of the State other credit sup-
23 port program to manage increases in the volume of
24 its small business lending.

1 (4) The internal accounting and administrative
2 controls systems of the State other credit support
3 program, and the extent to which they can provide
4 reasonable assurance that funds of the State pro-
5 gram are safeguarded against waste, loss, unauthor-
6 ized use, or misappropriation.

7 (5) The soundness of the program design and
8 implementation plan of the State other credit sup-
9 port program.

10 (e) FEDERAL CONTRIBUTIONS TO APPROVED STATE
11 OTHER CREDIT SUPPORT PROGRAMS.—A State other
12 credit support program approved under this section will
13 be eligible for receiving Federal contributions to, or for
14 the account of, the State program in an amount consistent
15 with the schedule describing the apportionment of allo-
16 cated Federal funds among State programs delivered by
17 the State to the Secretary under the allocation agreement.

18 (f) MINIMUM PROGRAM REQUIREMENTS FOR STATE
19 OTHER CREDIT SUPPORT PROGRAMS.—

20 (1) FUND TO PRESCRIBE.—The Secretary shall,
21 by regulation or other guidance, prescribe Program
22 requirements for approved State other credit support
23 programs.

24 (2) CONSIDERATIONS FOR FUND.—In pre-
25 scribing minimum Program requirements for ap-

1 proved State other credit support programs, the Sec-
2 retary shall take into consideration, to the extent the
3 Secretary determines applicable and appropriate, the
4 minimum Program requirements for approved State
5 capital access programs in section 205(e).

6 **SEC. 207. REPORTS.**

7 (a) QUARTERLY USE-OF-FUNDS REPORT.—

8 (1) IN GENERAL.—Not later than 30 days after
9 the beginning of each calendar quarter, beginning
10 after the first full calendar quarter to occur after
11 the date the Secretary approves a State for partici-
12 pation, the participating State shall submit to the
13 Secretary a report on the use of Federal funding by
14 the participating State during the previous calendar
15 quarter.

16 (2) REPORT CONTENTS.—The report shall—

17 (A) indicate the total amount of Federal
18 funding used by the participating State;

19 (B) include a certification by the partici-
20 pating State that—

21 (i) the information provided in accord-
22 ance with subparagraph (A) is accurate;

23 (ii) funds continue to be available and
24 legally committed to contributions by the
25 State to, or for the account of, approved

1 State programs, less any amount that has
2 been contributed by the State to, or for the
3 account of, approved State programs sub-
4 sequent to the State being approved for
5 participation in the Program; and

6 (iii) the participating State is imple-
7 menting its approved State program or
8 programs in accordance with this title and
9 regulations issued pursuant to section 210.

10 (b) ANNUAL REPORT.—Not later than March 31 of
11 each year, beginning March 31, 2011, each participating
12 State shall submit to the Secretary an annual report that
13 shall include the following information:

14 (1) The number of borrowers that received new
15 loans originated under the approved State program
16 or programs after the State program was approved
17 as eligible for Federal contributions.

18 (2) The total amount of such new loans.

19 (3) Breakdowns by industry type, loan size, an-
20 nual sales, and number of employees of the bor-
21 rowers that received such new loans.

22 (4) The zip code of each borrower that received
23 such a new loan.

1 (5) Such other data as the Secretary, in the
2 Secretary's sole discretion, may require to carry out
3 the purposes of the Program.

4 (c) FORM.—The reports and data filed pursuant to
5 subsections (a) and (b) shall be in such form as the Sec-
6 retary, in the Secretary's sole discretion, may require.

7 (d) TERMINATION OF REPORTING REQUIRE-
8 MENTS.—The requirement to submit reports under sub-
9 sections (a) and (b) shall terminate for a participating
10 State with the submission of the completed reports due
11 on the first March 31 to occur after 5 complete 12-month
12 periods after the State is approved by the Secretary to
13 be a participating State.

14 **SEC. 208. REMEDIES FOR STATE PROGRAM TERMINATION**
15 **OR FAILURES.**

16 (a) REMEDIES.—

17 (1) IN GENERAL.—If any of the events listed in
18 paragraph (2) occur, the Secretary, in the Sec-
19 retary's discretion, may—

20 (A) reduce the amount of Federal funds al-
21 located to the State under the Program; or

22 (B) terminate any further transfers of allo-
23 cated amounts that have not yet been trans-
24 ferred to the State.

1 (2) CAUSAL EVENTS.—The events referred to in
2 paragraph (1) are—

3 (A) termination by a participating State of
4 its participation in the Program;

5 (B) failure on the part of a participating
6 State to submit complete reports under section
7 207 on a timely basis; or

8 (C) noncompliance by the State with the
9 terms of the allocation agreement between the
10 Secretary and the State.

11 (b) DEALLOCATED AMOUNTS TO BE REALLO-
12 CATED.—If, after 13 months, any portion of the amount
13 of Federal funds allocated to a participating State is
14 deemed by the Secretary to be no longer allocated to the
15 State after actions taken by the Secretary under sub-
16 section (a)(1), the Secretary shall reallocate that portion
17 among the participating States, excluding the State whose
18 allocated funds were deemed to be no longer allocated, as
19 provided in section 203(b).

20 **SEC. 209. IMPLEMENTATION AND ADMINISTRATION.**

21 (a) GENERAL AUTHORITIES AND DUTIES.—The Sec-
22 retary shall—

23 (1) consult with the Administrator of the Small
24 Business Administration and the appropriate Fed-

1 eral banking agencies on the administration of the
2 Program;

3 (2) establish minimum national standards for
4 approved State programs;

5 (3) provide technical assistance to States for
6 starting State programs and generally disseminate
7 best practices;

8 (4) manage, administer, and perform necessary
9 program integrity functions for the Program; and

10 (5) ensure adequate oversight of the approved
11 State programs, including oversight of the cash
12 flows, performance, and compliance of each approved
13 State program.

14 (b) APPROPRIATIONS.—There is hereby appropriated
15 to the Secretary, out of funds in the Treasury not other-
16 wise appropriated, \$2,000,000,000 to carry out the Pro-
17 gram, including to pay reasonable costs of administering
18 the Program.

19 (c) TERMINATION OF SECRETARY'S PROGRAM AD-
20 MINISTRATION FUNCTIONS.—The authorities and duties
21 of the Secretary to implement and administer the Program
22 shall terminate at the end of the 7-year period beginning
23 on the date of enactment of this title.

1 **SEC. 210. REGULATIONS.**

2 The Secretary, in consultation with the Administrator
3 of the Small Business Administration, shall issue such
4 regulations and other guidance as the Secretary deter-
5 mines necessary or appropriate to implement this title in-
6 cluding, but not limited to, to define terms, to establish
7 compliance and reporting requirements, and such other
8 terms and conditions necessary to carry out the purposes
9 of this title.

10 **SEC. 211. OVERSIGHT AND AUDITS.**

11 (a) **INSPECTOR GENERAL OVERSIGHT.**—The Inspec-
12 tor General of the Department of the Treasury shall con-
13 duct, supervise, and coordinate audits and investigations
14 of the use of funds made available under the Program.

15 (b) **GAO AUDIT.**—The Comptroller General of the
16 United States shall perform an annual audit of the Pro-
17 gram and issue a report to the appropriate committees
18 of Congress, as such term is defined under section 3(1),
19 containing the results of such audit.

20 (c) **REQUIRED CERTIFICATION.**—

21 (1) **FINANCIAL INSTITUTIONS CERTIFI-**
22 **CATION.**—With respect to funds received by a par-
23 ticipating State under the Program, any financial in-
24 stitution that receives a loan, a loan guarantee, or
25 other financial assistance using such funds after the
26 date of the enactment of this title must certify that

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

14 (2) SEX OFFENSE CERTIFICATION.—With re-
15 spect to funds received by a participating State
16 under the Program, any private entity that receives
17 a loan, a loan guarantee, or other financial assist-
18 ance using such funds after the date of the enact-
19 ment of this title shall certify to the participating
20 State that the principals of such entity have not
21 been convicted of a sex offense against a minor (as
22 such terms are defined in section 111 of the Sex Of-
23 fender Registration and Notification Act (42 U.S.C.
24 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.

10 **TITLE III—SMALL BUSINESS**
11 **EARLY-STAGE INVESTMENT**
12 **PROGRAM**

13 **SEC. 301. SHORT TITLE.**

14 This title may be cited as the “Small Business Early-
15 Stage Investment Program Act of 2010”.

16 **SEC. 302. SMALL BUSINESS EARLY-STAGE INVESTMENT**
17 **PROGRAM.**

18 Title III of the Small Business Investment Act of
19 1958 (15 U.S.C. 681 et seq.) is amended by adding at
20 the end the following:

21 **“PART D—SMALL BUSINESS EARLY-STAGE**
22 **INVESTMENT PROGRAM**

23 **“SEC. 399A. ESTABLISHMENT OF PROGRAM.**

24 “The Administrator shall establish and carry out an
25 early-stage investment program (hereinafter referred to in

1 this part as the ‘program’) to provide equity investment
2 financing to support early-stage small businesses in ac-
3 cordance with this part.

4 **“SEC. 399B. ADMINISTRATION OF PROGRAM.**

5 “The program shall be administered by the Adminis-
6 trator acting through the Associate Administrator de-
7 scribed under section 201.

8 **“SEC. 399C. APPLICATIONS.**

9 “(a) IN GENERAL.—Any existing or newly formed in-
10 corporated body, limited liability company, or limited part-
11 nership organized and chartered or otherwise existing
12 under Federal or State law for the purpose of performing
13 the functions and conducting the activities contemplated
14 under the program and any manager of any small business
15 investment company may submit to the Administrator an
16 application to participate in the program.

17 “(b) REQUIREMENTS FOR APPLICATION.—An appli-
18 cation to participate in the program shall include the fol-
19 lowing:

20 “(1) A business plan describing how the appli-
21 cant intends to make successful venture capital in-
22 vestments in early-stage small businesses and direct
23 capital to small business concerns in targeted indus-
24 tries or other business sectors.

1 shall identify all conditions necessary for a final approval
2 and shall provide a period of not less than one year for
3 satisfying such conditions.

4 “(b) SELECTION CRITERIA.—In making a determina-
5 tion under subsection (a), the Administrator shall consider
6 each of the following:

7 “(1) The likelihood that the applicant will meet
8 the goals specified in the business plan of the appli-
9 cant.

10 “(2) The likelihood that the investments of the
11 applicant will create or preserve jobs, both directly
12 and indirectly.

13 “(3) The character and fitness of the manage-
14 ment of the applicant.

15 “(4) The experience and background of the
16 management of the applicant.

17 “(5) The extent to which the applicant will con-
18 centrate investment activities on early-stage small
19 businesses.

20 “(6) The likelihood that the applicant will
21 achieve profitability.

22 “(7) The experience of the management of the
23 applicant with respect to establishing a profitable in-
24 vestment track record.

1 “(8) The extent to which the applicant will con-
2 centrate investment activities on small business con-
3 cerns in targeted industries.

4 “(c) FINAL APPROVAL.—For each applicant provided
5 a conditional approval under subsection (a), the Adminis-
6 trator shall provide final approval to participate in the
7 program not later than 90 days after the date the appli-
8 cant satisfies the conditions specified by the Administrator
9 under such subsection or, in the case of applicants whose
10 partnership or management agreements conform to mod-
11 els approved by the Administrator, the Administrator shall
12 provide final approval to participate in the program not
13 later than 30 days after the date the applicant satisfies
14 the conditions specified under such subsection. If an appli-
15 cant provided conditional approval under subsection (a)
16 fails to satisfy the conditions specified by the Adminis-
17 trator in the time period designated under such sub-
18 section, the Administrator shall revoke the conditional ap-
19 proval.

20 **“SEC. 399E. EQUITY FINANCINGS.**

21 “(a) IN GENERAL.—The Administrator may make
22 one or more equity financings to a participating invest-
23 ment company.

24 “(b) EQUITY FINANCING AMOUNTS.—

1 “(1) NON-FEDERAL CAPITAL.—An equity fi-
2 nancing made to a participating investment company
3 under the program may not be in an amount that
4 exceeds the amount of the capital of such company
5 that is not from a Federal source and that is avail-
6 able for investment on or before the date on which
7 an equity financing is drawn upon. Such capital may
8 include legally binding commitments with respect to
9 capital for investment.

10 “(2) LIMITATION ON AGGREGATE AMOUNT.—
11 The aggregate amount of all equity financings made
12 to a participating investment company under the
13 program may not exceed \$100,000,000.

14 “(c) EQUITY FINANCING PROCESS.—In making an
15 equity financing under the program, the Administrator
16 shall commit an equity financing amount to a partici-
17 pating investment company and the amount of each such
18 commitment shall remain available to be drawn upon by
19 such company—

20 “(1) for new-named investments during the 5-
21 year period beginning on the date on which each
22 such commitment is first drawn upon; and

23 “(2) for follow-on investments and management
24 fees during the 10-year period beginning on the date
25 on which each such commitment is first drawn upon,

1 with not more than 2 additional 1-year periods avail-
2 able at the discretion of the Administrator.

3 “(d) COMMITMENT OF FUNDS.—The Administrator
4 shall make commitments for equity financings not later
5 than 2 years after the date funds are appropriated for the
6 program.

7 **“SEC. 399F. INVESTMENTS IN EARLY-STAGE SMALL BUSI-
8 NESSES.**

9 “(a) IN GENERAL.—As a condition of receiving an
10 equity financing under the program, a participating in-
11 vestment company shall make all of the investments of
12 such company in small business concerns, of which at least
13 50 percent shall be early-stage small businesses.

14 “(b) EVALUATION OF COMPLIANCE.—With respect to
15 an equity financing amount committed to a participating
16 investment company under section 399E, the Adminis-
17 trator shall evaluate the compliance of such company with
18 the requirements under this section if such company has
19 drawn upon 50 percent of such commitment.

20 **“SEC. 399G. PRO RATA INVESTMENT SHARES.**

21 “Each investment made by a participating invest-
22 ment company under the program shall be treated as com-
23 prised of capital from equity financings under the program
24 according to the ratio that capital from equity financings

1 under the program bears to all capital available to such
2 company for investment.

3 **“SEC. 399H. EQUITY FINANCING INTEREST.**

4 “(a) EQUITY FINANCING INTEREST.—

5 “(1) IN GENERAL.—As a condition of receiving
6 an equity financing under the program, a partici-
7 pating investment company shall convey an equity fi-
8 nancing interest to the Administrator in accordance
9 with paragraph (2).

10 “(2) EFFECT OF CONVEYANCE.—The equity fi-
11 nancing interest conveyed under paragraph (1) shall
12 have all the rights and attributes of other investors
13 attributable to their interests in the participating in-
14 vestment company, but shall not denote control or
15 voting rights to the Administrator. The equity fi-
16 nancing interest shall entitle the Administrator to a
17 pro rata portion of any distributions made by the
18 participating investment company equal to the per-
19 centage of capital in the participating investment
20 company that the equity financing comprises. The
21 Administrator shall receive distributions from the
22 participating investment company at the same times
23 and in the same amounts as any other investor in
24 the company with a similar interest. The investment
25 company shall make allocations of income, gain, loss,

1 deduction, and credit to the Administrator with re-
2 spect to the equity financing interest as if the Ad-
3 ministrator were an investor.

4 “(b) **MANAGER PROFITS.**—As a condition of receiv-
5 ing an equity financing under the program, the manager
6 profits interest payable to the managers of a participating
7 investment company under the program shall not exceed
8 20 percent of profits, exclusive of any profits that may
9 accrue as a result of the capital contributions of any such
10 managers with respect to such company. Any excess of
11 this amount, less taxes payable thereon, shall be returned
12 by the managers and paid to the investors and the Admin-
13 istrator in proportion to the capital contributions and eq-
14 uity financings paid in. No manager profits interest (other
15 than a tax distribution) shall be paid prior to the repay-
16 ment to the investors and the Administrator of all contrib-
17 uted capital and equity financings made.

18 “(c) **DISTRIBUTION REQUIREMENTS.**—As a condition
19 of receiving an equity financing under the program, a par-
20 ticipating investment company shall make all distributions
21 to all investors in cash and shall make distributions within
22 a reasonable time after exiting investments, including fol-
23 lowing a public offering or market sale of underlying in-
24 vestments.

1 **“SEC. 399I. FUND.**

2 “There is hereby created within the Treasury a sepa-
3 rate fund for equity financings which shall be available
4 to the Administrator subject to annual appropriations as
5 a revolving fund to be used for the purposes of the pro-
6 gram. All amounts received by the Administrator, includ-
7 ing any moneys, property, or assets derived by the Admin-
8 istrator from operations in connection with the program,
9 shall be deposited in the fund. All expenses and payments,
10 excluding administrative expenses, pursuant to the oper-
11 ations of the Administrator under the program shall be
12 paid from the fund.

13 **“SEC. 399J. APPLICATION OF OTHER SECTIONS.**

14 “To the extent not inconsistent with requirements
15 under this part, the Administrator may apply sections
16 309, 311, 312, 313, and 314 to activities under this part
17 and an officer, director, employee, agent, or other partici-
18 pant in a participating investment company shall be sub-
19 ject to the requirements under such sections.

20 **“SEC. 399K. ANNUAL REPORTING.**

21 “The Administrator shall report on the performance
22 of the program in the annual performance report of the
23 Administration.

24 **“SEC. 399L. DEFINITIONS.**

25 “In this part, the following definitions apply:

1 “(1) EARLY-STAGE SMALL BUSINESS.—The
2 term ‘early-stage small business’ means a small busi-
3 ness concern that—

4 “(A) is domiciled in a State; and

5 “(B) has not generated gross annual sales
6 revenues exceeding \$15,000,000 in any of the
7 previous 3 years.

8 “(2) PARTICIPATING INVESTMENT COMPANY.—
9 The term ‘participating investment company’ means
10 an applicant approved under section 399D to par-
11 ticipate in the program.

12 “(3) TARGETED INDUSTRIES.—The term ‘tar-
13 geted industries’ means any of the following business
14 sectors:

15 “(A) Agricultural technology.

16 “(B) Energy technology.

17 “(C) Environmental technology.

18 “(D) Life science.

19 “(E) Information technology.

20 “(F) Digital media.

21 “(G) Clean technology.

22 “(H) Defense technology.

23 “(I) Photonics technology.

1 **“SEC. 399M. APPROPRIATION.**

2 “From funds not otherwise appropriated, there is
3 hereby appropriated \$1,000,000,000 to carry out the pro-
4 gram.

5 **“SEC. 399N. CERTIFICATION.**

6 “(a) IMMIGRATION CERTIFICATION.—

7 “(1) PARTICIPATING INVESTMENT COMPA-
8 NIES.—Each participating investment company that
9 receives an equity financing under this part after the
10 date of the enactment of this part must, if applica-
11 ble, certify that such company is in compliance with
12 the requirements of section 103.121 of title 31, Code
13 of Federal Regulations, a regulation that, at a min-
14 imum, requires financial institutions, as that term is
15 defined in 31 U.S.C. 5312(a)(2) and (c)(1)(A), to
16 implement reasonable procedures to verify the iden-
17 tity of any person seeking to open an account, to the
18 extent reasonable and practicable, maintain records
19 of the information used to verify the person’s iden-
20 tity, and determine whether the person appears on
21 any lists of known or suspected terrorists or ter-
22 rorist organizations provided to the financial institu-
23 tion by any government agency.

24 “(2) EARLY-STAGE SMALL BUSINESSES.—Each
25 early-stage small business that receives funds from
26 a participating investment company that receives an

1 equity financing under this part after the date of the
2 enactment of this part must, if applicable, certify
3 that such company is in compliance with the require-
4 ments of section 103.121 of title 31, Code of Fed-
5 eral Regulations, a regulation that, at a minimum,
6 requires financial institutions, as that term is de-
7 fined in 31 U.S.C. 5312(a)(2) and (c)(1)(A), to im-
8 plement reasonable procedures to verify the identity
9 of any person seeking to open an account, to the ex-
10 tent reasonable and practicable, maintain records of
11 the information used to verify the person’s identity,
12 and determine whether the person appears on any
13 lists of known or suspected terrorists or terrorist or-
14 ganizations provided to the financial institution by
15 any government agency.

16 “(b) SEX OFFENDER CERTIFICATION.—

17 “(1) PARTICIPATING INVESTMENT COMPA-
18 NIES.—Each participating investment company that
19 receives an equity financing under this part after the
20 date of the enactment of this part shall certify to the
21 Administrator that the principals of such company
22 have not been convicted of a sex offense against a
23 minor (as such terms are defined in section 111 of
24 the Sex Offender Registration and Notification Act
25 (42 U.S.C. 16911)).

1 “(2) EARLY-STAGE SMALL BUSINESSES.—Each
2 early-stage small business that receives funds from
3 a participating investment company that receives an
4 equity financing under this part after the date of the
5 enactment of this part shall certify to the Adminis-
6 trator that the principals of such business have not
7 been convicted of a sex offense against a minor (as
8 such terms are defined in section 111 of the Sex Of-
9 fender Registration and Notification Act (42 U.S.C.
10 16911)).

11 “(c) PORNOGRAPHY CERTIFICATION.—None of the
12 funds made available under this part may be used to pay
13 the salary of any individual engaged in activities related
14 to the provisions of this part who has been officially dis-
15 ciplined for violations of subpart G of the Standards of
16 Ethical Conduct for Employees of the Executive Branch
17 for viewing, downloading, or exchanging pornography, in-
18 cluding child pornography, on a Federal Government com-
19 puter or while performing official Federal Government du-
20 ties.”.

21 **SEC. 303. REGULATIONS.**

22 Not later than 180 days after the date of enactment
23 of this Act, the Administrator shall issue regulations to
24 carry out this title and the amendments made by this title.

1 **SEC. 304. PROHIBITIONS ON EARMARKS.**

2 None of the funds appropriated for the program es-
3 tablished under part D of title III of the Small Business
4 Investment Act of 1958, as added by this Act, may be
5 used for a Congressional earmark as defined in clause 9(e)
6 of rule XXI of the Rules of the House of Representatives.

7 **TITLE IV—MISCELLANEOUS**

8 **SEC. 401. BUDGETARY EFFECTS.**

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

17 **TITLE V—TAX PROVISIONS**

18 **SEC. 500. SHORT TITLE; ETC.**

19 (a) **SHORT TITLE.**—This title may be cited as the
20 “Small Business Jobs Tax Relief Act of 2010”.

21 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
22 wise expressly provided, whenever in this title an amend-
23 ment or repeal is expressed in terms of an amendment
24 to, or repeal of, a section or other provision, the reference
25 shall be considered to be made to a section or other provi-
26 sion of the Internal Revenue Code of 1986.

1 **Subtitle A—Small Business Tax**
2 **Incentives**

3 **PART 1—GENERAL PROVISIONS**

4 **SEC. 501. TEMPORARY EXCLUSION OF 100 PERCENT OF**
5 **GAIN ON CERTAIN SMALL BUSINESS STOCK.**

6 (a) IN GENERAL.—Subsection (a) of section 1202 is
7 amended by adding at the end the following new para-
8 graph:

9 “(4) SPECIAL 100 PERCENT EXCLUSION.—In
10 the case of qualified small business stock acquired
11 after March 15, 2010, and before January 1,
12 2012—

13 “(A) paragraph (1) shall be applied by
14 substituting ‘100 percent’ for ‘50 percent’,

15 “(B) paragraph (2) shall not apply, and

16 “(C) paragraph (7) of section 57(a) shall
17 not apply.”.

18 (b) CONFORMING AMENDMENTS.—Paragraph (3) of
19 section 1202(a) is amended—

20 (1) by striking “after the date of the enactment
21 of this paragraph and before January 1, 2011” and
22 inserting “after February 17, 2009, and before
23 March 16, 2010”; and

1 (1) Section 6662A (relating to accuracy-related
2 penalty on understatements with respect to report-
3 able transactions).

4 (2) Section 6700(a) (relating to promoting abu-
5 sive tax shelters).

6 (3) Section 6707 (relating to failure to furnish
7 information regarding reportable transactions).

8 (4) Section 6707A (relating to failure to include
9 reportable transaction information with return).

10 (5) Section 6708 (relating to failure to main-
11 tain lists of advisees with respect to reportable
12 transactions).

13 (b) **ADDITIONAL INFORMATION.**—The report re-
14 quired under subsection (a) shall also include information
15 on the following with respect to each year:

16 (1) Any action taken under section 330(b) of
17 title 31, United States Code, with respect to any re-
18 portable transaction (as defined in section 6707A(c)
19 of the Internal Revenue Code of 1986).

20 (2) Any extension of the time for assessment of
21 tax enforced, or assessment of any amount under
22 such an extension, under paragraph (10) of section
23 6501(c) of the Internal Revenue Code of 1986.

1 (c) DATE OF REPORT.—The first report required
2 under subsection (a) shall be submitted not later than De-
3 cember 31, 2010.

4 **PART 3—OTHER PROVISIONS**

5 **SEC. 521. INCREASE IN AMOUNT ALLOWED AS DEDUCTION**
6 **FOR START-UP EXPENDITURES.**

7 (a) IN GENERAL.—Subsection (b) of section 195 is
8 amended by adding at the end the following new para-
9 graph:

10 “(3) INCREASED LIMITATION FOR TAXABLE
11 YEARS BEGINNING IN 2010 OR 2011.—In the case of
12 any taxable year beginning in 2010 or 2011, para-
13 graph (1)(A)(ii) shall be applied—

14 “(A) by substituting ‘\$20,000’ for
15 ‘\$5,000’, and

16 “(B) by substituting ‘\$75,000’ for
17 ‘\$50,000’.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 December 31, 2009.

1 **SEC. 522. NONRECOURSE SMALL BUSINESS INVESTMENT**
2 **COMPANY LOANS FROM THE SMALL BUSI-**
3 **NESS ADMINISTRATION TREATED AS**
4 **AMOUNTS AT RISK.**

5 (a) IN GENERAL.—Subparagraph (B) of section
6 465(b)(6) is amended to read as follows:

7 “(B) QUALIFIED NONRECOURSE FINANC-
8 ING.—For purposes of this paragraph—

9 “(i) IN GENERAL.—The term ‘quali-
10 fied nonrecourse financing’ means any fi-
11 nancing—

12 “(I) which is qualified real prop-
13 erty financing or qualified SBIC fi-
14 nancing,

15 “(II) except to the extent pro-
16 vided in regulations, with respect to
17 which no person is personally liable
18 for repayment, and

19 “(III) which is not convertible
20 debt.

21 “(ii) QUALIFIED REAL PROPERTY FI-
22 NANCING.—The term ‘qualified real prop-
23 erty financing’ means any financing
24 which—

1 “(I) is borrowed by the taxpayer
2 with respect to the activity of holding
3 real property,

4 “(II) is secured by real property
5 used in such activity, and

6 “(III) is borrowed by the tax-
7 payer from a qualified person or rep-
8 resents a loan from any Federal,
9 State, or local government or instru-
10 mentality thereof, or is guaranteed by
11 any Federal, State, or local govern-
12 ment.

13 “(iii) QUALIFIED SBIC FINANCING.—
14 The term ‘qualified SBIC financing’ means
15 any financing which—

16 “(I) is borrowed by a small busi-
17 ness investment company (within the
18 meaning of section 301 of the Small
19 Business Investment Act of 1958),
20 and

21 “(II) is borrowed from, or guar-
22 anteed by, the Small Business Admin-
23 istration under the authority of sec-
24 tion 303(b) of such Act.”.

1 (b) CONFORMING AMENDMENTS.—Subparagraph (A)
2 of section 465(b)(6) is amended—

3 (1) by striking “in the case of an activity of
4 holding real property,”; and

5 (2) by striking “which is secured by real prop-
6 erty used in such activity”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to loans and guarantees made after
9 the date of the enactment of this Act.

10 **SEC. 523. BENEFITS UNDER THE SMALL BUSINESS BOR-**
11 **RROWER ASSISTANCE PROGRAM EXCLUDED**
12 **FROM GROSS INCOME.**

13 (a) IN GENERAL.—Part III of subchapter B of chap-
14 ter 1 is amended by adding at the end the following new
15 section:

16 **“SEC. 139F. BENEFITS UNDER THE SMALL BUSINESS BOR-**
17 **RROWER ASSISTANCE PROGRAM.**

18 “(a) IN GENERAL.—Gross income shall not include
19 any amount paid on behalf of a borrower by the Adminis-
20 trator of the Small Business Administration under the
21 Small Business Borrower Assistance program established
22 under section 402 of the Small Business Assistance Fund
23 Act of 2010 (as in effect immediately after the date of
24 the enactment of such Act).

1 “(b) DENIAL OF DOUBLE BENEFIT.—Notwith-
2 standing any other provision of this subtitle, with respect
3 to the person for whose benefit a payment described in
4 subsection (a) is made—

5 “(1) INTEREST.—No deduction shall be allowed
6 for interest to the extent the liability for such inter-
7 est is covered by such payment.

8 “(2) PAYMENTS OF PRINCIPAL.—If any pay-
9 ment is applied to reduce the principal of the loan
10 to which such payment relates—

11 “(A) ALLOCATION AMONG FINANCED EX-
12 PENDITURES.—Such payment shall be allocated
13 pro rata among the expenditures financed with
14 such loan.

15 “(B) CREDITS AND DEDUCTIBLE EX-
16 PENSES.—No deduction or credit shall be al-
17 lowed for, or by reason of, any such expenditure
18 to the extent of the amount of the payment al-
19 located to such expenditure under subparagraph
20 (A).

21 “(C) ADJUSTMENT OF BASIS.—The ad-
22 justed basis of any property acquired with such
23 expenditure shall be reduced to the extent of
24 the amount of the payment allocated to such
25 expenditure under subparagraph (A).”.

1 (b) CLERICAL AMENDMENTS.—The table of sections
2 for part III of subchapter B of chapter 1 is amended by
3 adding at the end the following new item:

“Sec. 139F. Benefits under the Small Business Borrower Assistance Program.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to payments made after the date
6 of the enactment of this Act.

7 **Subtitle B—Revenue Provisions**

8 **SEC. 531. REQUIRED MINIMUM 10-YEAR TERM, ETC., FOR** 9 **GRANTOR RETAINED ANNUITY TRUSTS.**

10 (a) IN GENERAL.—Subsection (b) of section 2702 is
11 amended—

12 (1) by redesignating paragraphs (1), (2) and
13 (3) as subparagraphs (A), (B), and (C), respectively,
14 and by moving such subparagraphs (as so redesign-
15 nated) 2 ems to the right;

16 (2) by striking “For purposes of” and inserting
17 the following:

18 “(1) IN GENERAL.—For purposes of”;

19 (3) by striking “paragraph (1) or (2)” in para-
20 graph (1)(C) (as so redesignated) and inserting
21 “subparagraph (A) or (B)”; and

22 (4) by adding at the end the following new
23 paragraph:

1 “(2) ADDITIONAL REQUIREMENTS WITH RE-
2 SPECT TO GRANTOR RETAINED ANNUITIES.—For
3 purposes of subsection (a), in the case of an interest
4 described in paragraph (1)(A) (determined without
5 regard to this paragraph) which is retained by the
6 transferor, such interest shall be treated as de-
7 scribed in such paragraph only if—

8 “(A) the right to receive the fixed amounts
9 referred to in such paragraph is for a term of
10 not less than 10 years,

11 “(B) such fixed amounts, when determined
12 on an annual basis, do not decrease relative to
13 any prior year during the first 10 years of the
14 term referred to in subparagraph (A), and

15 “(C) the remainder interest has a value
16 greater than zero determined as of the time of
17 the transfer.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to transfers made after the date
20 of the enactment of this Act.

21 **SEC. 532. CRUDE TALL OIL INELIGIBLE FOR CELLULOSIC**
22 **BIOFUEL PRODUCER CREDIT.**

23 (a) IN GENERAL.—Clause (iii) of section 40(b)(6)(E)
24 is amended—

25 (1) by striking “or” at the end of subclause (I),

1 by promoting clear Government communication that the
2 public can understand and use.

3 **SEC. 603. DEFINITIONS.**

4 In this title:

5 (1) AGENCY.—The term “agency” means the
6 Department of the Treasury and the Small Business
7 Administration.

8 (2) COVERED DOCUMENT.—The term “covered
9 document”—

10 (A) means any document that—

11 (i) is relevant to obtaining any Fed-
12 eral Government benefit or service pro-
13 vided under title I, II, or III;

14 (ii) provides information about any
15 Federal Government benefit or service pro-
16 vided under title I, II, or III; or

17 (iii) explains to the public how to com-
18 ply with a requirement the Federal Gov-
19 ernment administers or enforces under title
20 I, II, or III;

21 (B) includes (whether in paper or elec-
22 tronic form) a letter, publication, form, notice,
23 or instruction; and

24 (C) does not include a regulation.

1 (3) PLAIN WRITING.—The term “plain writing”
2 means writing that the intended audience can read-
3 ily understand and use because that writing is clear,
4 concise, well-organized, and follows other best prac-
5 tices of plain writing.

6 **SEC. 604. RESPONSIBILITIES OF FEDERAL AGENCIES.**

7 (a) PREPARATION FOR IMPLEMENTATION OF PLAIN
8 WRITING REQUIREMENTS.—

9 (1) IN GENERAL.—Not later than 9 months
10 after the date of enactment of this title, the head of
11 each agency shall—

12 (A) designate 1 or more senior officials
13 within the agency to oversee the agency imple-
14 mentation of this title;

15 (B) communicate the requirements of this
16 title to the employees of the agency;

17 (C) train employees of the agency in plain
18 writing;

19 (D) establish a process for overseeing the
20 ongoing compliance of the agency with the re-
21 quirements of this title;

22 (E) create and maintain a plain writing
23 section of the agency’s website that is accessible
24 from the homepage of the agency’s website; and

1 (F) designate 1 or more agency points-of-
2 contact to receive and respond to public input
3 on—

4 (i) agency implementation of this title;

5 and

6 (ii) the agency reports required under
7 section 605.

8 (2) WEBSITE.—The plain writing section de-
9 scribed under paragraph (1)(E) shall—

10 (A) inform the public of agency compliance
11 with the requirements of this title; and

12 (B) provide a mechanism for the agency to
13 receive and respond to public input on—

14 (i) agency implementation of this title;

15 and

16 (ii) the agency reports required under
17 section 605.

18 (b) REQUIREMENT TO USE PLAIN WRITING IN NEW
19 DOCUMENTS.—Beginning not later than 1 year after the
20 date of enactment of this title, each agency shall use plain
21 writing in every covered document of the agency that the
22 agency issues or substantially revises.

23 (c) GUIDANCE.—In carrying out the provisions of this
24 title, agencies may follow the guidance of—

- 1 (1) the writing guidelines developed by the
2 Plain Language Action and Information Network; or
3 (2) guidance provided by the head of the agen-
4 cy.

5 **SEC. 605. REPORTS TO CONGRESS.**

6 (a) INITIAL REPORT.—Not later than 9 months after
7 the date of enactment of this title, the head of each agency
8 shall publish on the plain writing section of the agency’s
9 website a report that describes the agency plan for compli-
10 ance with the requirements of this title.

11 (b) ANNUAL COMPLIANCE REPORT.—Not later than
12 18 months after the date of enactment of this title, and
13 annually thereafter, the head of each agency shall publish
14 on the plain writing section of the agency’s website a re-
15 port on agency compliance with the requirements of this
16 title.

17 **TITLE VII—SENSE OF CONGRESS**
18 **ON AGRICULTURE AND FARM-**
19 **ING SMALL BUSINESS LOANS**

20 **SEC. 701. SENSE OF CONGRESS.**

21 It is the sense of the Congress that—

- 22 (1) agriculture operations, farms, and rural
23 communities should receive equal consideration
24 through lending activities for small businesses in

1 this Act, particularly small- and mid-size farms and
2 agriculture operations; and

3 (2) attention should be given to ensuring there
4 is adequate small business credit and financing
5 availability under this Act in the agriculture and
6 farming sectors.

7 **TITLE VIII—SMALL BUSINESS**
8 **BORROWER ASSISTANCE PRO-**
9 **GRAM**

10 **SEC. 801. SHORT TITLE.**

11 This title may be cited as the “Small Business Assist-
12 ance Fund Act of 2010”.

13 **SEC. 802. SMALL BUSINESS BORROWER ASSISTANCE PRO-**
14 **GRAM.**

15 (a) IN GENERAL.—The Administrator shall carry out
16 a program to be called the “Small Business Borrower As-
17 sistance Program” to provide payments of principal and
18 interest on qualifying small business loans.

19 (b) AUTOMATIC ENROLLMENT; COMMITMENT OF
20 FUNDS.—

21 (1) IN GENERAL.—To the extent funds are
22 available under the Program, each borrower that re-
23 ceives a qualifying small business loan after the date
24 on which the Administrator issues regulations pursu-
25 ant to subsection (e) shall be automatically enrolled

1 in the Program, unless the borrower requests other-
2 wise, and the Administrator shall commit an amount
3 to each borrower equal to 6 percent of the principal
4 disbursed amount of such borrower's qualifying
5 small business loan.

6 (2) ONE YEAR WINDOW FOR PARTICIPATING IN
7 PROGRAM.—Notwithstanding paragraph (1), a bor-
8 rower may only be enrolled in the Program if the
9 borrower is approved for a qualifying small business
10 loan before the end of the 1-year period following
11 the date on which the Administrator issues final reg-
12 ulations pursuant to subsection (e).

13 (3) TERMINATION OF PARTICIPATION IN CER-
14 TAIN CIRCUMSTANCES.—In any instance in which
15 the Administrator determines that a borrower par-
16 ticipating in the Program has committed fraud or
17 made a material misrepresentation related to such
18 participation, the Administrator may terminate such
19 borrower's participation in the Program and ban
20 such borrower from any future participation in the
21 Program.

22 (c) DISBURSEMENT OF FUNDS.—

23 (1) IN GENERAL.—A borrower enrolled in the
24 Program may submit a request for the payment of

1 committed funds by a method to be developed by the
2 Administrator.

3 (2) MULTIPLE DISBURSEMENTS PERMITTED.—

4 A borrower enrolled in the Program may request
5 multiple payments under paragraph (1), as long as
6 the aggregate amount of such payments does not ex-
7 ceed the amount committed to such borrower under
8 subsection (b).

9 (d) TERMS.—

10 (1) PAYMENTS ONLY TO LENDER OR
11 SERVICER.—Payments made by the Administrator
12 under the Program shall only be made to the lender
13 or servicer of a qualifying small business loan to be
14 applied against outstanding principal or interest,
15 and may not be made to the borrower.

16 (2) PROGRAM PARTICIPATION ONLY PERMITTED
17 DURING FIRST 2 YEARS.—

18 (A) IN GENERAL.—Payments made by the
19 Administrator under the Program may only be
20 made with respect to a payment of interest or
21 principal due on a qualifying small business
22 loan within the 2-year period following the date
23 on which such loan is disbursed.

24 (B) UNEXPENDED COMMITTED FUNDS.—

1 (i) IN GENERAL.—With respect to any
2 funds committed to a borrower enrolled in
3 the Program that remain unexpended at
4 the end of the 2-year period described
5 under subparagraph (A), such funds shall
6 be paid to the lender or servicer of the bor-
7 rower’s loan and applied to the principal of
8 such loan.

9 (ii) EXCEPTION.—In any case in
10 which the amount of committed funds that
11 remain unexpended is greater than the re-
12 maining principal of a borrower’s loan, the
13 amount of any excess shall be returned to
14 the Treasury.

15 (e) RULEMAKING.—Not later than 180 days after the
16 date of the enactment of this section, the Administrator
17 shall issue regulations necessary to carry out this section.

18 (f) CONTRACTING WITH AGENTS.—The Adminis-
19 trator may contract with one or more entities as necessary
20 to carry out the provisions of the Program. The Secretary
21 of the Treasury is authorized to designate financial insti-
22 tutions, including any bank, savings association, or trust
23 company, as financial agents of the Federal Government
24 to carry out the authorities of this section, and such insti-
25 tutions shall perform all such reasonable duties related to

1 the Program as financial agents of the Federal Govern-
2 ment as the Secretary may require. In engaging any such
3 third parties to carry out the Program, the Administrator
4 or the Secretary shall seek to involve small businesses in
5 the provision of the core direct services required under the
6 engagement.

7 (g) DEFINITIONS.—For purposes of this section:

8 (1) ADMINISTRATOR.—The term “Adminis-
9 trator” means the Administrator of the Small Busi-
10 ness Administration.

11 (2) PROGRAM.—The term “Program” means
12 the Small Business Borrower Assistance Program
13 established under subsection (a).

14 (3) QUALIFYING SMALL BUSINESS LOAN.—The
15 term “qualifying small business loan” means any
16 loan, up to \$300,000, made to a small business con-
17 cern and guaranteed under section 7(a) of the Small
18 Business Act (15 U.S.C. 636(a)), other than a loan
19 made pursuant to section 7(a)(31) of such Act, a re-
20 volving credit line, or any other revolving loan.

21 (4) SMALL BUSINESS CONCERN.—The term
22 “small business concern” has the meaning given
23 such term under section 3 of the Small Business Act
24 (15 U.S.C. 632).

1 (h) AUTHORIZATION OF APPROPRIATIONS.—There is
2 hereby authorized to be appropriated to the Administrator
3 \$300,000,000 to carry out this section.

Passed the House of Representatives June 17, 2010.

Attest: LORRAINE C. MILLER,
Clerk.

Calendar No. 435

11TH CONGRESS
2^D SESSION
H. R. 5297

AN ACT

To create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes.

JUNE 21, 2010

Read the second time and placed on the calendar