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111TH CONGRESS
2^D SESSION

H. R. 5297

[Report No. 111-499]

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, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2010

Mr. FRANK of Massachusetts (for himself, Ms. WATERS, Mrs. MALONEY, Mr. GUTIERREZ, Mr. WATT, Mr. MOORE of Kansas, Mr. HINOJOSA, Mr. MEEKS of New York, Mr. MILLER of North Carolina, Mr. SCOTT of Georgia, Mr. AL GREEN of Texas, Ms. BEAN, Ms. MOORE of Wisconsin, Mr. ELLISON, Mr. KLEIN of Florida, Mr. PERLMUTTER, Mr. PETERS, Mr. MAFFEI, and Mrs. DAHLKEMPER) introduced the following bill; which was referred to the Committee on Financial Services

MAY 27, 2010

Additional sponsors: Ms. NORTON and Ms. CLARKE

MAY 27, 2010

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

[For text of introduced bill, see copy of bill as introduced on May 13, 2010]

A BILL

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, 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 ***TITLE I—SMALL BUSINESS***

4 ***LENDING FUND***

5 ***SECTION 1. SHORT TITLE.***

6 *This title may be cited as the “Small Business Lending*
7 *Fund Act of 2010”.*

8 ***SEC. 2. PURPOSE.***

9 *The purpose of this title is to address the ongoing ef-*
10 *fects of the financial crisis on small businesses by providing*
11 *temporary authority to the Secretary of the Treasury to*
12 *make capital investments in eligible institutions in order*
13 *to increase the availability of credit for small businesses.*

14 ***SEC. 3. DEFINITIONS.***

15 *For purposes of this title:*

16 (1) ***APPROPRIATE COMMITTEES OF CONGRESS.***—

17 *The term “appropriate committees of Congress”*
18 *means—*

19 (A) *the Committee on Small Business and*
20 *Entrepreneurship, the Committee on Agriculture,*
21 *Nutrition, and Forestry, the Committee on*
22 *Banking, Housing, and Urban Affairs, the Com-*
23 *mittee on Finance, the Committee on the Budget,*
24 *and the Committee on Appropriations of the*
25 *Senate; and*

1 (B) *the Committee on Small Business, the*
2 *Committee on Agriculture, the Committee on Fi-*
3 *nancial Services, the Committee on Ways and*
4 *Means, the Committee on the Budget, and the*
5 *Committee on Appropriations of the House of*
6 *Representatives.*

7 (2) *APPROPRIATE FEDERAL BANKING AGENCY.—*
8 *The term “appropriate Federal banking agency” has*
9 *the meaning given such term under section 3(q) of the*
10 *Federal Deposit Insurance Act (12 U.S.C. 1813(q)).*

11 (3) *BANK HOLDING COMPANY.—The term “bank*
12 *holding company” has the meaning given such term*
13 *under section 2(a)(1) of the Bank Holding Company*
14 *Act of 1956 (12 U.S.C. 1841(2)(a)(1)).*

15 (4) *CALL REPORT.—The term “call report”*
16 *means—*

17 (A) *reports of Condition and Income sub-*
18 *mitted to the Office of the Comptroller of the*
19 *Currency, the Board of Governors of the Federal*
20 *Reserve System, and the Federal Deposit Insur-*
21 *ance Corporation;*

22 (B) *the Office of Thrift Supervision Thrift*
23 *Financial Report; and*

24 (C) *any report that is designated by the Of-*
25 *fice of the Comptroller of the Currency, the*

1 *Board of Governors of the Federal Reserve Sys-*
2 *tem, the Federal Deposit Insurance Corporation,*
3 *or the Office of Thrift Supervision, as applicable,*
4 *as a successor to any report referred to in sub-*
5 *paragraph (A) or (B).*

6 (5) *CDCI.*—*The term “CDCI” means the Com-*
7 *munity Development Capital Initiative created by the*
8 *Secretary under the Troubled Asset Relief Program*
9 *established by the Emergency Economic Stabilization*
10 *Act of 2008.*

11 (6) *CDCI INVESTMENT.*—*The term “CDCI in-*
12 *vestment” means, with respect to any eligible institu-*
13 *tion, the principal amount of any investment made*
14 *by the Secretary in such eligible institution under the*
15 *CDCI that has not been repaid.*

16 (7) *CPP.*—*The term “CPP” means the Capital*
17 *Purchase Program created by the Secretary under the*
18 *Troubled Asset Relief Program established by the*
19 *Emergency Economic Stabilization Act of 2008.*

20 (8) *CPP INVESTMENT.*—*The term “CPP invest-*
21 *ment” means, with respect to any eligible institution,*
22 *the principal amount of any investment made by the*
23 *Secretary in such eligible institution under the CPP*
24 *that has not been repaid.*

1 (9) *ELIGIBLE INSTITUTION.*—*The term “eligible*
2 *institution” means—*

3 (A) *any insured depository institution,*
4 *which—*

5 (i) *is not controlled by a bank holding*
6 *company or savings and loan holding com-*
7 *pany that is also an eligible institution;*

8 (ii) *has total assets of equal to or less*
9 *than \$10,000,000,000, as reported in the*
10 *call report as of the end of the fourth quar-*
11 *ter of calendar year 2009; and*

12 (iii) *is not directly or indirectly con-*
13 *trolled by any company or other entity that*
14 *has total consolidated assets of more than*
15 *\$10,000,000,000, as so reported;*

16 (B) *any bank holding company which has*
17 *total assets of equal to or less than*
18 *\$10,000,000,000; and*

19 (C) *any savings and loan holding company*
20 *which has total assets of equal to or less than*
21 *\$10,000,000,000.*

22 (10) *FUND.*—*The term “Fund” means the Small*
23 *Business Lending Fund established by section 4(a)(1)*
24 *of this title.*

1 (11) *INSURED DEPOSITORY INSTITUTION.*—*The*
2 *term “insured depository institution” has the mean-*
3 *ing given such term under section 3(c)(2) of the Fed-*
4 *eral Deposit Insurance Act (12 U.S.C. 1813(c)(2)).*

5 (12) *PROGRAM.*—*The term “Program” means the*
6 *Small Business Lending Fund Program authorized*
7 *by section 4(a)(2) of this title.*

8 (13) *SAVINGS AND LOAN HOLDING COMPANY.*—
9 *The term “savings and loan holding company” has*
10 *the meaning given such term under section*
11 *10(a)(1)(D) of the Home Owners’ Loan Act (12*
12 *U.S.C. 1467a(a)(1)(D)).*

13 (14) *SECRETARY.*—*The term “Secretary” means*
14 *the Secretary of the Treasury.*

15 (15) *SMALL BUSINESS LENDING.*—

16 (A) *IN GENERAL.*—*The term “small busi-*
17 *ness lending” means small business lending, as*
18 *defined by and reported in an eligible institu-*
19 *tion’s quarterly call report, of the following*
20 *types:*

21 (i) *Commercial and industrial loans*
22 *plus.*

23 (ii) *Owner-occupied nonfarm, nonresi-*
24 *dential real estate loans.*

1 (iii) Loans to finance agricultural pro-
2 duction and other loans to farmers.

3 (iv) Loans secured by farmland.

4 (B) TREATMENT OF HOLDING COMPA-
5 NIES.—In the case of eligible institutions that
6 are bank holding companies or savings and loan
7 holding companies having one or more insured
8 depository institution subsidiaries, small busi-
9 ness lending shall be measured based on the com-
10 bined small business lending reported in the call
11 report of the insured depository institution sub-
12 sidiaries.

13 (16) MINORITY-OWNED AND WOMEN-OWNED
14 BUSINESS.—The terms “minority-owned business”
15 and “women-owned business” shall have the meaning
16 given the terms “minority-owned business” and
17 “women’s business”, respectively, under section
18 21A(r)(4) of the Federal Home Loan Bank Act (12
19 U.S.C. 1441A(r)(4)).

20 **SEC. 4. SMALL BUSINESS LENDING FUND.**

21 (a) FUND AND PROGRAM.—

22 (1) FUND ESTABLISHED.—There is established in
23 the Treasury of the United States a fund to be known
24 as the “Small Business Lending Fund”, which shall
25 be administered by the Secretary.

1 (2) *PROGRAMS AUTHORIZED.*—*The Secretary is*
2 *authorized to establish the Small Business Lending*
3 *Fund Program for using the Fund consistent with*
4 *this title.*

5 (b) *USE OF FUND.*—

6 (1) *IN GENERAL.*—*Subject to paragraph (2), the*
7 *Fund shall be available to the Secretary, without fur-*
8 *ther appropriation or fiscal year limitation, for the*
9 *costs of purchases (including commitments to pur-*
10 *chase), and modifications of such purchases, of pre-*
11 *ferred stock and other financial instruments from eli-*
12 *gible institutions on such terms and conditions as are*
13 *determined by the Secretary in accordance with this*
14 *title.*

15 (2) *MAXIMUM PURCHASE LIMIT.*—*The aggregate*
16 *amount of purchases (and commitments to purchase)*
17 *made pursuant to paragraph (1) may not exceed*
18 *\$30,000,000,000.*

19 (3) *PROCEEDS USED TO PAY DOWN PUBLIC*
20 *DEBT.*—*All funds received by the Secretary in connec-*
21 *tion with purchases made pursuant to paragraph (1),*
22 *including interest payments, dividend payments, and*
23 *proceeds from the sale of any financial instrument,*
24 *shall be paid into the general fund of the Treasury for*
25 *reduction of the public debt.*

1 (c) *CREDITS TO THE FUND.*—*There shall be credited*
2 *to the Fund amounts made available pursuant to section*
3 *9, to the extent provided by appropriations Acts.*

4 (d) *TERMS.*—

5 (1) *APPLICATION.*—

6 (A) *INSTITUTIONS WITH ASSETS OF*
7 *\$1,000,000,000 OR LESS.*—*Eligible institutions*
8 *having total assets equal to or less than*
9 *\$1,000,000,000, as reported in a call report as of*
10 *the end of the fourth quarter of calendar year*
11 *2009, may apply to receive a capital investment*
12 *from the Fund in an amount not exceeding 5*
13 *percent of risk-weighted assets, as reported in the*
14 *call report immediately preceding the date of ap-*
15 *plication, less the amount of any CDCI invest-*
16 *ment and any CPP investment.*

17 (B) *INSTITUTIONS WITH ASSETS OF MORE*
18 *THAN \$1,000,000,000 AND LESS THAN*
19 *\$10,000,000,000.*—*Eligible institutions having total*
20 *assets of more than \$1,000,000,000 but less than*
21 *\$10,000,000,000, as of the end of the fourth quar-*
22 *ter of calendar year 2009, may apply to receive*
23 *a capital investment from the Fund in an*
24 *amount not exceeding 3 percent of risk-weighted*
25 *assets, as reported in the call report immediately*

1 preceding the date of application, less the
2 amount of any CDCI investment and any CPP
3 investment.

4 (C) *TREATMENT OF HOLDING COMPANIES.*—

5 *In the case of an eligible institution that is a*
6 *bank holding company or a savings and loan*
7 *holding company having one or more insured de-*
8 *pository institution subsidiaries, total assets*
9 *shall be measured based on the combined total*
10 *assets reported in the call report of the insured*
11 *depository institution subsidiaries as of the end*
12 *of the fourth quarter of calendar year 2009 and*
13 *risk-weighted assets shall be measured based on*
14 *the combined risk-weighted assets of the insured*
15 *depository institution subsidiaries as reported in*
16 *the call report immediately preceding the date of*
17 *application.*

18 (D) *TREATMENT OF APPLICANTS THAT ARE*

19 *INSTITUTIONS CONTROLLED BY HOLDING COMPA-*
20 *NIES.*—*If an eligible institution that applies to*
21 *receive a capital investment under the Program*
22 *is under the control of a bank holding company*
23 *or a savings and loan holding company, then the*
24 *Secretary may use the Fund to purchase pre-*
25 *ferred stock or other financial instruments from*

1 *the top-tier bank holding company or savings*
2 *and loan holding company of such eligible insti-*
3 *tution, as applicable. For purposes of this para-*
4 *graph, the term “control” with respect to a bank*
5 *holding company shall have the same meaning*
6 *as in section 2(a)(2) of the Bank Holding Com-*
7 *pany Act of 1956 (12 U.S.C. 1841(2)(a)(2)). For*
8 *purposes of this paragraph, the term “control”*
9 *with respect to a savings and loan holding com-*
10 *pany shall have the same meaning as in 10(a)(2)*
11 *of the Home Owners’ Loan Act (12 U.S.C.*
12 *1467a(a)(2)).*

13 *(E) REQUIREMENT TO PROVIDE A SMALL*
14 *BUSINESS LENDING PLAN.—At the time that an*
15 *applicant submits an application to the Sec-*
16 *retary for a capital investment under the Pro-*
17 *gram, the applicant shall deliver to the appro-*
18 *priate Federal banking agency a small business*
19 *lending plan describing how the applicant’s busi-*
20 *ness strategy and operating goals will allow it to*
21 *address the needs of small businesses in the areas*
22 *it serves. This plan shall be confidential super-*
23 *visory information.*

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

1 *ital investment under the Program, the Secretary*
2 *shall consult with the appropriate Federal banking*
3 *agency for the eligible institution to determine wheth-*
4 *er the eligible institution may receive such capital in-*
5 *vestment.*

6 (3) *INELIGIBILITY OF INSTITUTIONS ON FDIC*
7 *PROBLEM BANK LIST.—*

8 (A) *IN GENERAL.—An eligible institution*
9 *may not receive any capital investment under*
10 *the Program if—*

11 (i) *such institution is on the FDIC*
12 *problem bank list; or*

13 (ii) *such institution has been removed*
14 *from the FDIC problem bank list for less*
15 *than 90 days.*

16 (B) *FDIC PROBLEM BANK LIST DEFINED.—*
17 *For purposes of this subparagraph, the term*
18 *“FDIC problem bank list” means the list of in-*
19 *stitutions with a current rating of 4 or 5 under*
20 *the Uniform Financial Institutions Rating Sys-*
21 *tem, or such other list designated by the Federal*
22 *Deposit Insurance Corporation.*

23 (4) *INCENTIVES TO LEND.—*

24 (A) *REQUIREMENTS ON PREFERRED STOCK*
25 *AND OTHER FINANCIAL INSTRUMENTS.—Any pre-*

1 *ferred stock or other financial instrument issued*
2 *to Treasury by an eligible institution receiving*
3 *a capital investment under the Program shall*
4 *provide that—*

5 *(i) the rate at which dividends or in-*
6 *terest are payable shall be 5 percent per*
7 *annum initially;*

8 *(ii) within the first 2 years after the*
9 *date of the capital investment under the*
10 *Program, the rate may be adjusted based on*
11 *the amount of an eligible institution's small*
12 *business lending. Changes in the amount of*
13 *small business lending shall be measured*
14 *against the amount of small business lend-*
15 *ing reported by the eligible institution in its*
16 *call report for the last quarter in calendar*
17 *year 2009 or the average amount of small*
18 *business lending reported by the eligible in-*
19 *stitution in all call reports for calendar*
20 *year 2009, whichever is lower, minus ad-*
21 *justments from each quarterly balance in*
22 *respect of—*

23 *(I) net loan charge offs with re-*
24 *spect to small business lending; and*

1 (ii) gains realized by the eligible
2 institution resulting from mergers, ac-
3 quisitions or purchases of loans after
4 origination and syndication; which ad-
5 justments shall be determined in ac-
6 cordance with guidance promulgated
7 by the Secretary; and

8 (iii) during any calendar quarter dur-
9 ing the initial 2-year period referred to in
10 clause (ii), an institution's rate shall be ad-
11 justed to reflect the following schedule, based
12 on that institution's change in the amount
13 of small business lending relative to the
14 baseline—

15 (I) if the amount of small business
16 lending has increased by less than 2.5
17 percent, the dividend or interest rate
18 shall be 5 percent;

19 (II) if the amount of small busi-
20 ness lending has increased by 2.5 per-
21 cent or greater, but by less than 5.0
22 percent, the dividend or interest rate
23 shall be 4 percent;

24 (III) if the amount of small busi-
25 ness lending has increased by 5.0 per-

1 *cent or greater, but by less than 7.5*
2 *percent, the dividend or interest rate*
3 *shall be 3 percent;*

4 *(IV) if the amount of small busi-*
5 *ness lending has increased by 7.5 per-*
6 *cent or greater, and but by less than*
7 *10.0 percent, the dividend or interest*
8 *rate shall be 2 percent; or*

9 *(V) if the amount of small busi-*
10 *ness lending has increased by 10 per-*
11 *cent or greater, the dividend or interest*
12 *rate shall be 1 percent.*

13 *(B) BASIS OF INITIAL RATE.—The initial*
14 *dividend or interest rate shall be based on call*
15 *report data published in the quarter immediately*
16 *preceding the date of the capital investment*
17 *under the Program.*

18 *(C) TIMING OF RATE ADJUSTMENTS.—Any*
19 *rate adjustment shall occur in the calendar quar-*
20 *ter following the publication of call report data,*
21 *such that the rate based on call report data from*
22 *any one calendar quarter, which is published in*
23 *the first following calendar quarter, shall be ad-*
24 *justed in that first following calendar quarter*
25 *and payable in the second following quarter.*

1 (D) *RATE FOLLOWING INITIAL 2-YEAR PE-*
2 *RIOD.*—Generally, the rate based on call report
3 data from the eighth calendar quarter after the
4 date of the capital investment under the Pro-
5 gram shall be payable until the expiration of the
6 4¹/₂-year period that begins on the date of the in-
7 vestment. In the case where the amount of small
8 business lending has remained the same or de-
9 creased relative to the institution's baseline in
10 the eighth quarter after the date of the capital
11 investment under the Program, the rate shall be
12 7 percent until the expiration of the 4¹/₂-year pe-
13 riod that begins on the date of the investment.

14 (E) *RATE FOLLOWING INITIAL 4¹/₂-YEAR PE-*
15 *RIOD.*—The dividend or interest rate paid on
16 any preferred stock or other financial instrument
17 issued by an eligible institution that receives a
18 capital investment under the Program shall in-
19 crease to 9 percent at the end of the 4¹/₂-year pe-
20 riod that begins on the date of the capital invest-
21 ment under the Program.

22 (F) *LIMITATION ON RATE REDUCTIONS*
23 *WITH RESPECT TO CERTAIN AMOUNT.*—The re-
24 duction in the dividend or interest rate payable
25 to Treasury by any eligible institution shall be

1 *limited such that the rate reduction shall not*
2 *apply to a dollar amount of the investment made*
3 *by Treasury that is greater than the dollar*
4 *amount increase in the amount of small business*
5 *lending realized under this program. The Sec-*
6 *retary may issue guidelines that will apply to*
7 *new capital investments limiting the amount of*
8 *capital available to eligible institutions con-*
9 *sistent with this limitation.*

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

24 (H) *REPAYMENT DEADLINE.—The capital*
25 *investment received by an eligible institution*

1 *under the Program shall be repaid by the end of*
2 *the 10-year period that begins on the date of the*
3 *capital investment under the Program.*

4 (5) *ADDITIONAL INCENTIVES TO REPAY.—The*
5 *Secretary may, by regulation or guidance issued*
6 *under section 5(9), establish repayment incentives in*
7 *addition to the incentive in paragraph (4)(E) that*
8 *will apply to new capital investments in a manner*
9 *that the Secretary determines to be consistent with the*
10 *purposes of this title.*

11 (6) *CAPITAL PURCHASE PROGRAM REFINANCE.—*

12 (A) *IN GENERAL.—The Secretary shall, in a*
13 *manner that the Secretary determines to be con-*
14 *sistent with the purposes of this title, issue regu-*
15 *lations and other guidance to permit eligible in-*
16 *stitutions to refinance securities issued to Treas-*
17 *ury under the CDCI and the CPP for securities*
18 *to be issued under the Program.*

19 (B) *PROHIBITION ON PARTICIPATION BY*
20 *NON-PAYING CPP PARTICIPANTS.—Subparagraph*
21 *(A) shall not apply to any eligible institution*
22 *that has ever missed a dividend payment due*
23 *under the CPP.*

24 (7) *MINORITY OUTREACH.—The Secretary shall*
25 *require eligible institutions receiving capital invest-*

1 *ments under the Program to provide outreach and ad-*
2 *vertising in the appropriate language of the applicant*
3 *pool describing the availability and application proc-*
4 *ess of receiving loans from the eligible institution that*
5 *are made possible by the Program through the use of*
6 *print, radio, television or electronic media outlets*
7 *which target organizations, trade associations, and*
8 *individuals that represent or work within or are*
9 *members of minority communities.*

10 (8) *ADDITIONAL TERMS.—The Secretary may, by*
11 *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.—The*
17 *appropriate Federal banking agency for an eligible*
18 *institution that receives funds under the Program*
19 *shall within 60 days issue regulations defining min-*
20 *imum underwriting standards that must be used for*
21 *loans made by the eligible institution using such*
22 *funds.*

1 **SEC. 5. ADDITIONAL AUTHORITIES OF THE SECRETARY.**

2 *The Secretary may take such actions as the Secretary*
3 *deems necessary to carry out the authorities in this title,*
4 *including, without limitation, the following:*

5 (1) *The Secretary may use the services of any*
6 *agency or instrumentality of the United States or*
7 *component thereof on a reimbursable basis, and any*
8 *such agency or instrumentality or component thereof*
9 *is authorized to provide services as requested by the*
10 *Secretary using all authorities vested in or delegated*
11 *to that agency, instrumentality, or component.*

12 (2) *The Secretary may enter into contracts, in-*
13 *cluding contracts for services authorized by section*
14 *3109 of title 5, United States Code.*

15 (3) *The Secretary may designate any bank, sav-*
16 *ings association, trust company, security broker or*
17 *dealer, asset manager, or investment adviser as a fi-*
18 *nancial agent of the Federal Government and such in-*
19 *stitution shall perform all such reasonable duties re-*
20 *lated to this title as financial agent of the Federal*
21 *Government as may be required. The Secretary shall*
22 *have authority to amend existing agreements with fi-*
23 *nancial agents, entered into during the 2-year period*
24 *before the date of enactment of this title, to perform*
25 *reasonable duties related to this title.*

1 (4) *The Secretary may exercise any rights re-*
2 *ceived in connection with any preferred stock or other*
3 *financial instruments or assets purchased or acquired*
4 *pursuant to the authorities granted under this title.*

5 (5) *Subject to section 4(b)(3), the Secretary may*
6 *manage any assets purchased under this title, includ-*
7 *ing revenues and portfolio risks therefrom.*

8 (6) *The Secretary may sell, dispose of, transfer,*
9 *exchange or enter into securities loans, repurchase*
10 *transactions, or other financial transactions in regard*
11 *to, any preferred stock or other financial instrument*
12 *or asset purchased or acquired under this title, upon*
13 *terms and conditions and at a price determined by*
14 *the Secretary.*

15 (7) *The Secretary may manage or prohibit con-*
16 *flicts of interest that may arise in connection with the*
17 *administration and execution of the authorities pro-*
18 *vided under this title.*

19 (8) *The Secretary may establish and use vehicles,*
20 *subject to supervision by the Secretary, to purchase,*
21 *hold, and sell preferred stock or other financial in-*
22 *struments and issue obligations.*

23 (9) *The Secretary may, in consultation with the*
24 *Administrator of the Small Business Administration,*
25 *issue such regulations and other guidance as may be*

1 *necessary or appropriate to define terms or carry out*
2 *the authorities or purposes of this title.*

3 **SEC. 6. CONSIDERATIONS.**

4 *In exercising the authorities granted in this title, the*
5 *Secretary shall take into consideration—*

6 (1) *increasing the availability of credit for small*
7 *businesses;*

8 (2) *providing funding to eligible institutions*
9 *that serve small businesses that are minority- and*
10 *women-owned and that also serve low- and moderate-*
11 *income, minority, and other underserved or rural*
12 *communities;*

13 (3) *protecting and increasing American jobs;*

14 (4) *ensuring that all eligible institutions may*
15 *apply to participate in the program established under*
16 *this title, without discrimination based on geography;*

17 (5) *providing transparency with respect to use of*
18 *funds provided under this title;*

19 (6) *minimizing the cost to taxpayers of exer-*
20 *cising the authorities; and*

21 (7) *promoting and engaging in financial edu-*
22 *cation to would-be borrowers.*

23 **SEC. 7. REPORTS.**

24 *The Secretary shall provide to the appropriate com-*
25 *mittees of Congress—*

1 (1) *within 7 days of the end of each month com-*
2 *mencing with the first month in which transactions*
3 *are made under the Program, a written report de-*
4 *scribing all of the transactions made during the re-*
5 *porting period pursuant to the authorities granted*
6 *under this title;*

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

14 (3) *within 7 days of the end of each month com-*
15 *mencing with the first month in which transactions*
16 *are made under the Program, a written report detail-*
17 *ing how eligible institutions participating in the Pro-*
18 *gram have used the funds such institutions received*
19 *under the Program.*

20 **SEC. 8. OVERSIGHT AND AUDITS.**

21 (a) *INSPECTOR GENERAL OVERSIGHT.*—*The Inspector*
22 *General of the Department of the Treasury shall conduct,*
23 *supervise, and coordinate audits and investigations of the*
24 *purchase (and commitments to purchase) of preferred stock*
25 *and other financial instruments under the Program.*

1 (b) *GAO AUDIT.*—*The Comptroller General of the*
2 *United States shall perform an annual audit of the Pro-*
3 *gram and issue a report to the appropriate committees of*
4 *Congress containing the results of such audit.*

5 **SEC. 9. CREDIT REFORM; FUNDING.**

6 (a) *CREDIT REFORM.*—*The cost of purchases of pre-*
7 *ferred stock and other financial instruments made as cap-*
8 *ital investments under this title shall be determined as pro-*
9 *vided under the Federal Credit Reform Act of 1990 (2*
10 *U.S.C. 661 et seq.).*

11 (b) *FUNDS MADE AVAILABLE.*—*There are hereby au-*
12 *thorized to be appropriated, out of funds in the Treasury*
13 *not otherwise appropriated, such sums as may be necessary*
14 *to pay the costs of \$30,000,000,000 of capital investments*
15 *in eligible institutions, including the costs of modifying*
16 *such investments, and reasonable costs of administering the*
17 *program of making, holding, managing, and selling the*
18 *capital investments.*

19 **SEC. 10. TERMINATION AND CONTINUATION OF AUTHORI-**
20 **TIES.**

21 (a) *TERMINATION OF INVESTMENT AUTHORITY.*—*The*
22 *authority to make capital investments in eligible institu-*
23 *tions, including commitments to purchase preferred stock*
24 *or other instruments, provided under this title shall termi-*
25 *nate 1 year after the date of enactment of this title.*

1 (b) *CONTINUATION OF OTHER AUTHORITIES.*—The
2 *authorities of the Secretary in section 5 shall not be limited*
3 *by the termination date in subsection (a).*

4 **SEC. 11. PRESERVATION OF AUTHORITY.**

5 *Nothing in this title may be construed to limit the au-*
6 *thority of the Secretary under any other provision of law.*

7 **SEC. 12. ASSURANCES.**

8 (a) *SMALL BUSINESS LENDING FUND SEPARATE*
9 *FROM TARP.*—The *Small Business Lending Fund Pro-*
10 *gram is established as separate and distinct from the Trou-*
11 *bled Asset Relief Program established by the Emergency*
12 *Economic Stabilization Act of 2008. An institution shall*
13 *not, by virtue of a capital investment under the Small Busi-*
14 *ness Lending Fund Program, be considered a recipient of*
15 *the Troubled Asset Relief Program.*

16 (b) *CHANGE IN LAW.*—If, after a capital investment
17 has been made in an eligible institution under the Program,
18 there is a change in law that modifies the terms of the in-
19 vestment or program in a materially adverse respect for the
20 eligible institution, the eligible institution may, after con-
21 sultation with the appropriate Federal banking agency for
22 the eligible institution, repay the investment without im-
23 pediment.

1 **SEC. 13. STUDY AND REPORT WITH RESPECT TO WOMEN-**
2 **OWNED AND MINORITY-OWNED BUSINESSES.**

3 (a) *STUDY.*—*The Secretary shall conduct a study to*
4 *determine the number of women-owned businesses and mi-*
5 *nority-owned businesses that receive assistance as a result*
6 *of the Program, including—*

7 (1) *efforts, including technical assistance and*
8 *outreach that institutions have employed under the*
9 *Program to provide loans to minority- and women-*
10 *owned small businesses;*

11 (2) *loan applications received;*

12 (3) *loan applications approved; and*

13 (4) *and any other relevant data related to such*
14 *transactions to promote the purposes of the Program*
15 *as the Secretary may require.*

16 (b) *REPORT.*—*Not later than one year after the date*
17 *of enactment of this Act, the Secretary shall submit to Con-*
18 *gress a report on the results of the study conducted pursuant*
19 *to subsection (a).*

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

1 **TITLE II—STATE SMALL**
2 **BUSINESS CREDIT INITIATIVE**

3 **SEC. 201. SHORT TITLE.**

4 *This title may be cited as the “State Small Business*
5 *Credit Initiative Act of 2010”.*

6 **SEC. 202. DEFINITIONS.**

7 *For purposes of this title, the following definitions*
8 *shall apply:*

9 (1) *APPROPRIATE FEDERAL BANKING AGENCY.—*

10 *The term “appropriate Federal banking agency”—*

11 (A) *has the same meaning as in section 3*
12 *of the Federal Deposit Insurance Act; and*

13 (B) *includes the National Credit Union Ad-*
14 *ministration Board in the case of any credit*
15 *union the deposits of which are insured in ac-*
16 *cordance with the Federal Credit Union Act.*

17 (2) *ENROLLED LOAN.—The term “enrolled loan”*
18 *means a loan made by a financial institution lender*
19 *that is enrolled by a participating State in an ap-*
20 *proved State capital access program in accordance*
21 *with this title.*

22 (3) *FEDERAL CONTRIBUTION.—The term “Fed-*
23 *eral contribution” means the portion of the contribu-*
24 *tion made by a participating State to, or for the ac-*
25 *count of, an approved State program that is made*

1 with Federal funds allocated to the State by the Sec-
2 retary under section 203.

3 (4) *FINANCIAL INSTITUTION.*—The term “*finan-*
4 *cial institution*” means any insured depository insti-
5 tution, insured credit union, or community develop-
6 ment financial institution, as those terms are each de-
7 fined in section 103 of the Riegle Community Devel-
8 opment and Regulatory Improvement Act of 1994.

9 (5) *PARTICIPATING STATE.*—The term “*partici-*
10 *partating State*” means any State that has been ap-
11 proved for participation in the Program under sec-
12 tion 204.

13 (6) *PROGRAM.*—The term “*Program*” means the
14 State Small Business Credit Initiative established
15 under this title.

16 (7) *QUALIFYING LOAN OR SWAP FUNDING FACIL-*
17 *ITY.*—The term “*qualifying loan or swap funding fa-*
18 *cility*” means a contractual arrangement between a
19 participating State and a private financial entity
20 under which—

21 (A) the participating State delivers funds to
22 the entity as collateral;

23 (B) the entity provides funding from the ar-
24 rangement back to the participating State; and

1 (C) *the full amount of resulting funding*
2 *from the arrangement, less any fees and other*
3 *costs of the arrangement, is contributed to, or for*
4 *the account of, an approved State program.*

5 (8) *RESERVE FUND.*—*The term “reserve fund”*
6 *means a fund, established by a participating State,*
7 *dedicated to a particular financial institution lender,*
8 *for the purposes of—*

9 (A) *depositing all required premium*
10 *charges paid by the financial institution lender*
11 *and by each borrower receiving a loan under an*
12 *approved State program from that financial in-*
13 *stitution lender;*

14 (B) *depositing contributions made by the*
15 *participating State, including State contribu-*
16 *tions made with Federal contributions; and*

17 (C) *covering losses on enrolled loans by dis-*
18 *bursing accumulated funds.*

19 (9) *STATE.*—*The term “State” means—*

20 (A) *a State of the United States;*

21 (B) *the District of Columbia, the Common-*
22 *wealth of Puerto Rico, the Commonwealth of*
23 *Northern Mariana Islands, Guam, American*
24 *Samoa, and the United States Virgin Islands;*

1 (C) when designated by a State of the
2 United States, a political subdivision of that
3 State that the Secretary determines has the ca-
4 pacity to participate in the Program; and

5 (D) under the circumstances described in
6 section 204(d), a municipality of a State of the
7 United States to which the Secretary has given
8 a special permission under section 204(d).

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

12 (A) uses public resources to promote private
13 access to credit; and

14 (B) meets the eligibility criteria in section
15 205(c).

16 (11) STATE OTHER CREDIT SUPPORT PRO-
17 GRAM.—The term “State other credit support pro-
18 gram”—

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

20 (i) uses public resources to promote
21 private access to credit;

22 (ii) is not a State capital access pro-
23 gram; and

24 (iii) meets the eligibility criteria in
25 section 206(c); and

1 (B) includes, collateral support programs,
2 loan participation programs, and credit guar-
3 antee programs.

4 (12) *STATE PROGRAM*.—The term “State pro-
5 gram” means a State capital access program or a
6 State other credit support program.

7 (13) *SECRETARY*.—The term “Secretary” means
8 the Secretary of the Treasury.

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

10 (a) *PROGRAM ESTABLISHED; PURPOSE*.—There is es-
11 tablished the State Small Business Credit Initiative (here-
12 inafter in this title referred to as the “Program”), to be
13 administered by the Secretary. Under the Program, the Sec-
14 retary shall allocate Federal funds to participating States
15 and make the allocated funds available to the participating
16 States as provided in this section for the uses described in
17 this section.

18 (b) *ALLOCATION FORMULA*.—

19 (1) *IN GENERAL*.—Not later than 30 days after
20 the date of enactment of this title, the Secretary shall
21 allocate Federal funds to participating States so that
22 each State is eligible to receive an amount equal to
23 the average of the respective amounts that the State—

24 (A) would receive under the 2009 allocation,
25 as determined under paragraph (2); and

1 (B) would receive under the 2010 allocation,
2 as determined under paragraph (3).

3 (2) 2009 ALLOCATION FORMULA.—

4 (A) *IN GENERAL.*—The Secretary shall de-
5 termine the 2009 allocation by allocating Fed-
6 eral funds among the States in the proportion
7 that each such State’s 2008 State employment
8 decline bears to the aggregate of the 2008 State
9 employment declines for all States.

10 (B) *MINIMUM ALLOCATION.*—The Secretary
11 shall adjust the allocations under subparagraph
12 (A) for each State to the extent necessary to en-
13 sure that no State receives less than 0.9 percent
14 of the Federal funds.

15 (C) *2008 STATE EMPLOYMENT DECLINE DE-*
16 *FINED.*—For purposes of this paragraph and
17 with respect to a State, the term “2008 State em-
18 ployment decline” means the excess (if any) of—

19 (i) the number of individuals employed
20 in such State determined for December
21 2007; over

22 (ii) the number of individuals em-
23 ployed in such State determined for Decem-
24 ber 2008.

25 (3) 2010 ALLOCATION FORMULA.—

1 (A) *IN GENERAL.*—*The Secretary shall de-*
2 *termine the 2010 allocation by allocating Fed-*
3 *eral funds among the States in the proportion*
4 *that each such State’s 2009 unemployment num-*
5 *ber bears to the aggregate of the 2009 unemploy-*
6 *ment numbers for all of the States.*

7 (B) *MINIMUM ALLOCATION.*—*The Secretary*
8 *shall adjust the allocations under subparagraph*
9 *(A) for each State to the extent necessary to en-*
10 *sure that no State receives less than 0.9 percent*
11 *of the Federal funds.*

12 (C) *2009 UNEMPLOYMENT NUMBER DE-*
13 *FINED.*—*For purposes of this paragraph and*
14 *with respect to a State, the term “2009 unem-*
15 *ployment number” means the number of individ-*
16 *uals within such State who were determined to*
17 *be unemployed by the Bureau of Labor Statistics*
18 *for December 2009.*

19 (c) *AVAILABILITY OF ALLOCATED AMOUNT.*—*The*
20 *amount allocated by the Secretary to each participating*
21 *State under subsection (b) shall be made available to the*
22 *State as follows:*

23 (1) *ALLOCATED AMOUNT GENERALLY TO BE*
24 *AVAILABLE TO STATE IN ONE-THIRDS.*—

25 (A) *IN GENERAL.*—*The Secretary shall—*

1 (i) apportion the participating State's
2 allocated amount into one-thirds;

3 (ii) transfer to the participating State
4 the first one-third when the Secretary ap-
5 proves the State for participation under sec-
6 tion 204; and

7 (iii) transfer to the participating State
8 each successive one-third when the State has
9 certified to the Secretary that it has ex-
10 pended, transferred, or obligated 80 percent
11 of the last transferred one-third for Federal
12 contributions to, or for the account of, State
13 programs.

14 (B) *AUTHORITY TO WITHHOLD PENDING*
15 *AUDIT.*—The Secretary may withhold the trans-
16 fer of any successive one-third pending results of
17 a financial audit.

18 (C) *TRANSFERS CONTINGENT ON INSPECTOR*
19 *GENERAL AUDITS.*—

20 (i) *IN GENERAL.*—Before a transfer to
21 a participating State of the second one-
22 third or the last one-third, the Inspector
23 General of the Department of the Treasury
24 shall carry out an audit of the partici-

1 *participating State's use of amounts already re-*
2 *ceived.*

3 *(ii) PENALTY FOR MISSTATEMENT.—*

4 *Any participating State that is found to*
5 *have intentionally misstated any report*
6 *issued to the Secretary under the Program*
7 *shall be ineligible to receive any additional*
8 *funds under the Program. Funds that had*
9 *been allocated or that would otherwise have*
10 *been allocated to such participating State*
11 *shall be paid into the general fund of the*
12 *Treasury for reduction of the public debt.*

13 *(iii) MUNICIPALITIES.—For purposes*

14 *of this subparagraph, the term “partici-*
15 *participating State” shall include a municipality*
16 *given special permission to participate in*
17 *the Program, pursuant to section 204(d).*

18 *(2) TRANSFERRED AMOUNTS.—Each amount*

19 *transferred to a participating State under this section*
20 *shall remain available to the State until used by the*
21 *State as permitted under paragraph (3).*

22 *(3) USE OF TRANSFERRED FUNDS.—Each par-*

23 *ticipating State may use funds transferred to it*
24 *under this section only—*

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

3 (B) as collateral for a qualifying loan or
4 swap funding facility;

5 (C) in the case of the first one-third trans-
6 ferred, for paying administrative costs incurred
7 by the State in implementing an approved State
8 program in an amount not to exceed 5 percent
9 of that first one-third; or

10 (D) in the case of each successive one-third
11 transferred, for paying administrative costs in-
12 curred by the State in implementing an ap-
13 proved State program in an amount not to ex-
14 ceed 3 percent of that successive one-third.

15 (4) *TERMINATION OF AVAILABILITY OF AMOUNTS*
16 *NOT TRANSFERRED WITHIN 2 YEARS OF PARTICIPA-*
17 *TION.—Any portion of a participating State’s allo-*
18 *cated amount that has not been transferred to the*
19 *State under this section by the end of the 2-year pe-*
20 *riod beginning on the date that the Secretary ap-*
21 *proves the State for participation may be deemed by*
22 *the Secretary to be no longer allocated to the State*
23 *and no longer available to the State and shall be re-*
24 *turned to the General Fund of the Treasury.*

1 (5) *DEFINITIONS.*—*For purposes of this sec-*
2 *tion—*

3 (A) *the term “allocated amount” means the*
4 *total amount of Federal funds allocated by the*
5 *Secretary under subsection (b) to the partici-*
6 *parting State; and*

7 (B) *the term “one-third” means—*

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

12 (ii) *in the case of the last one-third, an*
13 *amount equal to 34 percent of a partici-*
14 *parting State’s allocated amount.*

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

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

20 (b) *GENERAL APPROVAL CRITERIA.*—*The Secretary*
21 *shall approve a State to be a participating State, if—*

22 (1) *a specific department, agency, or political*
23 *subdivision of the State has been designated to imple-*
24 *ment a State program and participate in the Pro-*
25 *gram;*

1 (2) all legal actions necessary to enable such des-
2 ignated department, agency, or political subdivision
3 to implement a State program and participate in the
4 Program have been accomplished;

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

11 (4) the State and the Secretary have executed an
12 allocation agreement that—

13 (A) conforms to the requirements of this
14 title;

15 (B) ensures that the State program complies
16 with such national standards as are established
17 by the Secretary under section 209(a)(2);

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

24 (D) requires that the State program be fully
25 positioned, within 90 days of the State's execu-

1 *tion of the allocation agreement with the Sec-*
2 *retary, to act on providing the kind of credit*
3 *support that the State program was established*
4 *to provide; and*

5 *(E) includes an agreement by the State to*
6 *deliver to the Secretary, and update annually, a*
7 *schedule describing how the State intends to ap-*
8 *portion among its State programs the Federal*
9 *funds allocated to the State.*

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

16 *(1) an existing, approved State program admin-*
17 *istered by another State; or*

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

21 *(d) SPECIAL PERMISSION.—*

22 *(1) CIRCUMSTANCES WHEN A MUNICIPALITY MAY*
23 *APPLY DIRECTLY.—If a State does not, within 60*
24 *days after the date of enactment of this title, file with*
25 *the Secretary a notice of its intent to apply for ap-*

1 *proval by the Secretary of a State program or within*
2 *9 months after the date of enactment of this title, file*
3 *with the Secretary a complete application for ap-*
4 *proval of a State program, the Secretary may grant*
5 *to municipalities of that State a special permission*
6 *that will allow them to apply directly to the Sec-*
7 *retary without the State for approval to be partici-*
8 *pating municipalities.*

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

16 (3) *NOTICES OF INTENT AND APPLICATIONS*
17 *FROM MORE THAN 1 MUNICIPALITY.—A municipality*
18 *of a State may combine with 1 or more other munici-*
19 *palities of that State to file a joint notice of intent*
20 *to file and a joint application.*

21 (4) *APPROVAL CRITERIA.—The general approval*
22 *criteria in paragraphs (2) and (4) shall apply.*

23 (5) *ALLOCATION TO MUNICIPALITIES.—*

24 (A) *IF MORE THAN 3.—If more than 3 mu-*
25 *nicipalities, or combination of municipalities as*

1 *provided in paragraph (3), of a State apply for*
2 *approval by the Secretary to be participating*
3 *municipalities under this subsection, and the ap-*
4 *plications meet the approval criteria in para-*
5 *graph (4), the Secretary shall allocate Federal*
6 *funds to the 3 municipalities with the largest*
7 *populations.*

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

17 *(6) APPORTIONMENT OF ALLOCATED AMOUNT*
18 *AMONG PARTICIPATING MUNICIPALITIES.—If the Sec-*
19 *retary approves municipalities to be participating*
20 *municipalities under this subsection, the Secretary*
21 *shall apportion the full amount of the Federal funds*
22 *that are allocated to that State to municipalities that*
23 *are approved under this subsection in amounts pro-*
24 *portionate to the population of those municipalities,*
25 *based on the most recent available decennial 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 the*
8 *participating municipalities, including a State cap-*
9 *ital access program, is eligible for Federal contribu-*
10 *tions to, or for the account of, the State program.*

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

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

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

21 (1) *within 60 days after the date of enactment*
22 *of this title, the State has filed with the Secretary a*
23 *notice of intent to apply for approval by the Sec-*
24 *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 a*
3 *complete application for approval by the Secretary of*
4 *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 to*
22 *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 loan;*
25 *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 less
4 at the time that the loan is enrolled in the Pro-
5 gram.

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 amount
12 equal to the sum of the amount of the insurance premium
13 charges paid by the borrowers and by the financial institu-
14 tion to the reserve fund for loans that meet the requirements
15 in subsection (c)(4). A participating State may use the Fed-
16 eral contribution to make its contribution to the reserve
17 fund of an approved State capital access program.

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

22 (1) *EXPERIENCE AND CAPACITY.*—The partici-
23 pating State shall determine for each financial insti-
24 tution that participates in the State capital access
25 program, after consultation with the appropriate Fed-

1 *eral banking agency or, in the case of a financial in-*
2 *stitution that is a non depository community develop-*
3 *ment financial institution, the Community Develop-*
4 *ment Financial Institution Fund, that the financial*
5 *institution has sufficient commercial lending experi-*
6 *ence and financial and managerial capacity to par-*
7 *ticipate in the approved State capital access program.*
8 *The determination by the State shall not be review-*
9 *able by the Secretary.*

10 (2) *INVESTMENT AUTHORITY.*—*Subject to appli-*
11 *cable State law, the participating State may invest,*
12 *or cause to be invested, funds held in a reserve fund*
13 *by establishing a deposit account at the financial in-*
14 *stitution lender in the name of the participating*
15 *State. In the event that funds in the reserve fund are*
16 *not deposited in such an account, such funds shall be*
17 *invested in a form that the participating State deter-*
18 *mines is safe and liquid.*

19 (3) *LOAN TERMS AND CONDITIONS TO BE DETER-*
20 *MINED BY AGREEMENT.*—*A loan to be filed for enroll-*
21 *ment in an approved State capital access program*
22 *may be made with such interest rate, fees, and other*
23 *terms and conditions, and the loan may be enrolled*
24 *in the approved State capital access program and*
25 *claims may be filed and paid, as agreed upon by the*

1 *financial institution lender and the borrower, con-*
2 *sistent with applicable law.*

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

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

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

24 (7) *LOAN PURPOSE.*—

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

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

8 *(I) the proceeds of the loan will be*
9 *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 *diante 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 borrowers
23 that are not inconsistent with the provisions
24 and purposes of this title, including compli-
25 ance with all applicable Federal and State

1 *laws, regulations, ordinances, and Executive*
2 *orders.*

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

11 **SEC. 206. APPROVING COLLATERAL SUPPORT AND OTHER**
12 **INNOVATIVE CREDIT ACCESS AND GUAR-**
13 **ANTE INITIATIVES FOR SMALL BUSINESSES**
14 **AND MANUFACTURERS.**

15 (a) *APPLICATION.*—*A participating State that estab-*
16 *lishes a new, or has an existing, credit support program*
17 *that meets the eligibility criteria in subsection (c) may*
18 *apply to the Secretary to have the State other credit support*
19 *program approved as eligible for Federal contributions to,*
20 *or for the account of, the State program.*

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

1 (1) *the Secretary determines that the State satis-*
2 *fies the requirements of paragraphs (1) through (3) of*
3 *section 205(b);*

4 (2) *the Secretary determines that the State other*
5 *credit support program meets the eligibility criteria*
6 *in subsection (c);*

7 (3) *the Secretary determines the State other cred-*
8 *it support program to be eligible based on the addi-*
9 *tional considerations in subsection (d); and*

10 (4) *within 9 months after the date of enactment*
11 *of this title, the State has filed with Treasury a com-*
12 *plete application for Treasury approval.*

13 (c) *ELIGIBILITY CRITERIA FOR STATE OTHER CREDIT*
14 *SUPPORT PROGRAMS.—For a State other credit support*
15 *program to be approved under this section, it must be a*
16 *program of the State that—*

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

20 (2) *can demonstrate a reasonable expectation*
21 *that, when considered with all other State programs*
22 *of the State, such State programs together have the*
23 *ability to use amounts of new Federal contributions*
24 *to, or for the account of, all such programs in the*
25 *State to cause and result in amounts of new small*

1 *business lending at least 10 times the new Federal*
2 *contribution amount;*

3 (3) *for those State other credit support programs*
4 *that provide their credit support through 1 or more*
5 *financial institution lenders, requires the financial*
6 *institution lenders to have a meaningful amount of*
7 *their own capital resources at risk in their small*
8 *business lending; and*

9 (4) *extends credit support that—*

10 (A) *targets an average borrower size of 500*
11 *employees or less;*

12 (B) *does not extend credit support to bor-*
13 *rowers that have more than 750 employees;*

14 (C) *targets support towards loans with an*
15 *average principal amount of \$5,000,000 or less;*
16 *and*

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

19 (d) *ADDITIONAL CONSIDERATIONS.—In making a de-*
20 *termination that a State other credit support program is*
21 *eligible for Federal contributions to, or for the account of,*
22 *the State program, the Secretary shall take into account*
23 *the following additional considerations:*

24 (1) *The anticipated benefits to the State, its*
25 *businesses, and its residents to be derived from the*

1 *Federal contributions to, or for the account of, the ap-*
2 *proved State other credit support program, including*
3 *the extent to which resulting small business lending*
4 *will expand economic opportunities.*

5 *(2) The operational capacity, skills, and experi-*
6 *ence of the management team of the State other credit*
7 *support program.*

8 *(3) The capacity of the State other credit support*
9 *program to manage increases in the volume of its*
10 *small business lending.*

11 *(4) The internal accounting and administrative*
12 *controls systems of the State other credit support pro-*
13 *gram, and the extent to which they can provide rea-*
14 *sonable assurance that funds of the State program are*
15 *safeguarded against waste, loss, unauthorized use, or*
16 *misappropriation.*

17 *(5) The soundness of the program design and im-*
18 *plementation plan of the State other credit support*
19 *program.*

20 *(e) FEDERAL CONTRIBUTIONS TO APPROVED STATE*
21 *OTHER CREDIT SUPPORT PROGRAMS.—A State other credit*
22 *support program approved under this section will be eligi-*
23 *ble for receiving Federal contributions to, or for the account*
24 *of, the State program in an amount consistent with the*
25 *schedule describing the apportionment of allocated Federal*

1 *funds among State programs delivered by the State to the*
2 *Secretary under the allocation agreement.*

3 (f) *MINIMUM PROGRAM REQUIREMENTS FOR STATE*
4 *OTHER CREDIT SUPPORT PROGRAMS.—*

5 (1) *FUND TO PRESCRIBE.—The Secretary shall,*
6 *by regulation or other guidance, prescribe Program*
7 *requirements for approved State other credit support*
8 *programs.*

9 (2) *CONSIDERATIONS FOR FUND.—In prescribing*
10 *minimum Program requirements for approved State*
11 *other credit support programs, the Secretary shall*
12 *take into consideration, to the extent the Secretary de-*
13 *termines applicable and appropriate, the minimum*
14 *Program requirements for approved State capital ac-*
15 *cess programs in section 205(e).*

16 **SEC. 207. REPORTS.**

17 (a) *QUARTERLY USE-OF-FUNDS REPORT.—*

18 (1) *IN GENERAL.—Not later than 30 days after*
19 *the beginning of each calendar quarter, beginning*
20 *after the first full calendar quarter to occur after the*
21 *date the Secretary approves a State for participation,*
22 *the participating State shall submit to the Secretary*
23 *a report on the use of Federal funding by the partici-*
24 *parting State during the previous calendar quarter.*

25 (2) *REPORT CONTENTS.—The report shall—*

1 (A) indicate the total amount of Federal
2 funding used by the participating State;

3 (B) include a certification by the partici-
4 pating State that—

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

7 (ii) funds continue to be available and
8 legally committed to contributions by the
9 State to, or for the account of, approved
10 State programs, less any amount that has
11 been contributed by the State to, or for the
12 account of, approved State programs subse-
13 quent to the State being approved for par-
14 ticipation in the Program; and

15 (iii) the participating State is imple-
16 menting its approved State program or pro-
17 grams in accordance with this title and reg-
18 ulations issued pursuant to section 210.

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

23 (1) The number of borrowers that received new
24 loans originated under the approved State program

1 or programs after the State program was approved as
2 eligible for Federal contributions.

3 (2) *The total amount of such new loans.*

4 (3) *Breakdowns by industry type, loan size, an-*
5 *nuual sales, and number of employees of the borrowers*
6 *that received such new loans.*

7 (4) *The zip code of each borrower that received*
8 *such a new loan.*

9 (5) *Such other data as the Secretary, in the Sec-*
10 *retary's sole discretion, may require to carry out the*
11 *purposes of the Program.*

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

15 (d) *TERMINATION OF REPORTING REQUIREMENTS.*—
16 *The requirement to submit reports under subsections (a)*
17 *and (b) shall terminate for a participating State with the*
18 *submission of the completed reports due on the first March*
19 *31 to occur after 5 complete 12-month periods after the*
20 *State is approved by the Secretary to be a participating*
21 *State.*

22 **SEC. 208. REMEDIES FOR STATE PROGRAM TERMINATION**
23 **OR FAILURES.**

24 (a) *REMEDIES.*—

1 (1) *IN GENERAL.*—*If any of the events listed in*
2 *paragraph (2) occur, the Secretary, in the Secretary’s*
3 *discretion, may—*

4 (A) *reduce the amount of Federal funds al-*
5 *located to the State under the Program; or*

6 (B) *terminate any further transfers of allo-*
7 *cated amounts that have not yet been transferred*
8 *to the State.*

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

11 (A) *termination by a participating State of*
12 *its participation in the Program;*

13 (B) *failure on the part of a participating*
14 *State to submit complete reports under section*
15 *207 on a timely basis; or*

16 (C) *noncompliance by the State with the*
17 *terms of the allocation agreement between the*
18 *Secretary and the State.*

19 (b) *DEALLOCATED AMOUNTS TO BE REALLOCATED.*—
20 *If, after 13 months, any portion of the amount of Federal*
21 *funds allocated to a participating State is deemed by the*
22 *Secretary to be no longer allocated to the State after actions*
23 *taken by the Secretary under subsection (a)(1), the Sec-*
24 *retary shall reallocate that portion among the participating*
25 *States, excluding the State whose allocated funds were*

1 *deemed to be no longer allocated, as provided in section*
2 *203(b).*

3 **SEC. 209. IMPLEMENTATION AND ADMINISTRATION.**

4 *(a) GENERAL AUTHORITIES AND DUTIES.—The Sec-*
5 *retary shall—*

6 *(1) consult with the Administrator of the Small*
7 *Business Administration and the appropriate Federal*
8 *banking agencies on the administration of the Pro-*
9 *gram;*

10 *(2) establish minimum national standards for*
11 *approved State programs;*

12 *(3) provide technical assistance to States for*
13 *starting State programs and generally disseminate*
14 *best practices;*

15 *(4) manage, administer, and perform necessary*
16 *program integrity functions for the Program; and*

17 *(5) ensure adequate oversight of the approved*
18 *State programs, including oversight of the cash flows,*
19 *performance, and compliance of each approved State*
20 *program.*

21 *(b) AUTHORIZATION OF APPROPRIATIONS.—There are*
22 *authorized to be appropriated to the Secretary, out of funds*
23 *in the Treasury not otherwise appropriated, \$2,000,000,000*
24 *to carry out the Program, including to pay reasonable costs*
25 *of administering the Program.*

1 (c) *TERMINATION OF SECRETARY'S PROGRAM ADMIN-*
2 *ISTRATION FUNCTIONS.*—*The authorities and duties of the*
3 *Secretary to implement and administer the Program shall*
4 *terminate at the end of the 7-year period beginning on the*
5 *date of enactment of this title.*

6 **SEC. 210. REGULATIONS.**

7 *The Secretary, in consultation with the Administrator*
8 *of the Small Business Administration, shall issue such regu-*
9 *lations and other guidance as the Secretary determines nec-*
10 *essary or appropriate to implement this title including, but*
11 *not limited to, to define terms, to establish compliance and*
12 *reporting requirements, and such other terms and condi-*
13 *tions necessary to carry out the purposes of this title.*

14 **SEC. 211. OVERSIGHT AND AUDITS.**

15 (a) *INSPECTOR GENERAL OVERSIGHT.*—*The Inspector*
16 *General of the Department of the Treasury shall conduct,*
17 *supervise, and coordinate audits and investigations of the*
18 *use of funds made available under the Program.*

19 (b) *GAO AUDIT.*—*The Comptroller General of the*
20 *United States shall perform an annual audit of the Pro-*
21 *gram and issue a report to the appropriate committees of*
22 *Congress, as such term is defined under section 3(1), con-*
23 *taining the results of such audit.*

Union Calendar No. 283

11TH CONGRESS
2^D SESSION

H. R. 5297

[Report No. 111-499]

A BILL

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, and for other purposes.

MAY 27, 2010

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed