

This establishes a temporary small business lending fund separate from TARP for banks having total assets of \$10 billion or less. It also provides that banks that receive capital investments from the small business lending fund will not be TARP recipients solely by reason of having received such a capital investment.

SMALL BUSINESS LENDING FUND ACT

SEC. 1. SHORT TITLE.

This Act may be cited as the “Small Business Lending Fund Act”.

SEC. 2. PURPOSES.

The purpose of this Act is to address the ongoing effects of the financial crisis on small businesses by providing temporary authority to the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses.

SEC. 3. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) **APPROPRIATE COMMITTEES OF CONGRESS.**—The term “appropriate committees of Congress” means—

(A) the Committee on Small Business and Entrepreneurship, the Committee on Agriculture, Nutrition and Forestry, the Committee on Banking, Housing, and Urban Affairs, the Committee on Finance, the Committee on the Budget, and the Committee on Appropriations of the Senate; and

(B) the Committee on Small Business, the Committee on Agriculture, the Committee on Financial Services, the Committee on Ways and Means, the Committee on the Budget, and the Committee on Appropriations of the House of Representatives.

(2) **APPROPRIATE FEDERAL BANKING AGENCY.**—The term “appropriate Federal banking agency” has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(3) **CALL REPORT.**—The term “call report” means—

(A) Reports of Condition and Income submitted to the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation;

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

(C) Any report that is designated by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, or Office of Thrift Supervision, as applicable, as a successor to any report referred to in subparagraphs (A) and (B).

(4) CDCI.—The term “CDCI” means the Community Development Capital Investment program created by the Secretary under the Troubled Assets Relief Program established by the Emergency Economic Stabilization Act of 2008.

(5) CDCI INVESTMENT.—The term “CDCI investment” means, with respect to any eligible institution, the principal amount of any investment made by the Treasury Department in such eligible institution under the CDCI that has not been repaid as of the date of determination.

(6) CPP.—The term “CPP” means the Capital Purchase Program created by the Secretary under the Troubled Assets Relief Program established by the Emergency Economic Stabilization Act of 2008.

(7) CPP INVESTMENT.—The term “CPP investment” means, with respect to any eligible institution, the principal amount of any investment made by the Treasury Department in such eligible institution under the CPP that has not been repaid as of the date of determination.

(8) ELIGIBLE INSTITUTION.—The term “eligible institution” means—

(A) any insured depository institution, as that term is defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)), which is (i) not controlled by a bank holding company or savings and loan holding company that is also an “eligible institution”; (ii) has total assets of equal to or less than \$10,000,000,000, as reported in the call report as of the end of the fourth quarter of calendar year 2009; and (iii) is not directly or indirectly controlled by any company or other entity that has total assets of equal to or less than \$10,000,000,000, as so reported;

(B) any bank holding company, as that term is defined in section 2(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(2)(a)(1)), which (i) has total assets of equal to or less than \$10,000,000,000; and (ii) has one or more insured depository institution subsidiaries that have combined total assets of equal to or less than \$10,000,000,000, as reported in the call report of each insured depository institution subsidiary as of the end of the fourth quarter of calendar year 2009; and

(C) any savings and loan holding company, as that term is defined in section 10(a)(1)(D) of the Home Owners’ Loan Act (12 U.S.C. 1467a(a)(1)(D)), which (i) has total assets of equal to or less than \$10,000,000,000; and (ii) has one or more insured depository institution subsidiaries that have total assets of equal to or less than \$10,000,000,000, as reported in the call report of each insured depository institution subsidiary as of the end of the fourth quarter of calendar year 2009.

(9) FUND.—The term “Fund” means the Small Business Lending Fund established by section 4(a)(1) of this Act.

(10) PROGRAM.—The term “Program” means the Small Business Lending Fund Program authorized by section 4(a)(2) of this Act.

(11) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

(12) SMALL BUSINESS LENDING.—The term “small business lending” means (A) commercial and industrial loans plus owner-occupied non-farm, non-residential real estate loans; (B) loans to finance agricultural production and other loans to farmers; and (C) loans secured by farmland, as defined by and reported in an eligible institution’s quarterly call report. In the case of eligible institutions that are bank holding companies or savings and loan holding companies having one or more insured depository institution subsidiaries, small business lending shall be measured based on the combined small business lending reported in the call report of the insured depository institution subsidiaries.

SEC. 4. SMALL BUSINESS LENDING FUND.

(a) FUND AND PROGRAM.—

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

(2) PROGRAM AUTHORIZED.—The Secretary is authorized to establish the Small Business Lending Fund Program for using the Fund consistent with this with this Act

(b) USE OF FUND—

(1) IN GENERAL.—Subject to paragraph (2), the Fund shall be available to the Secretary, without further appropriation or fiscal year limitation, for the costs of purchases (including commitments to purchase), and modifications of such purchases, of preferred stock and other financial instruments from eligible institutions on such terms and conditions as are determined by the Secretary and in accordance with this Act and the policies and procedures developed and published by the Secretary.

(2) MAXIMUM PURCHASE LIMIT.—The aggregate amount purchases under paragraph (1) may not exceed \$30,000,000,000,

(c) CREDITS TO THE FUND—There shall be credited to the Fund amounts made available by section 9.

(d) TERMS.—

(1) APPLICATION. —

(A) Eligible institutions having total assets equal to or less than \$1,000,000,000, as reported in a call report as of the end of the fourth quarter of calendar year 2009, may apply to receive a capital investment from the Small Business Lending Fund in an amount not exceeding 5 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment; and

(B) Eligible institutions having total assets of more than \$1,000,000,000 but less than \$10,000,000,000, as of the end of the fourth quarter of calendar year 2009, may apply to receive a capital investment from the Small Business Lending Fund in an amount not exceeding 3 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

(C) In the case of an eligible institution that is a bank holding company or a savings and loan holding company having one or more insured depository institution subsidiaries, total assets shall be measured based on the combined total assets reported in the call report of the insured depository institution subsidiaries as of the end of the fourth quarter of calendar year 2009 and risk-weighted assets shall be measured based on the combined risk-weighted assets of the insured depository institution subsidiaries as reported in the call report immediately preceding the date of application.

(D) If an eligible institution that applies to receive a capital investment under the Program is under the control of a bank holding company or a savings and loan holding company, then the Secretary may use the Small Business Lending Fund to purchase preferred stock or other financial instruments from the top-tier bank holding company or savings and loan holding company of such eligible institution, as applicable. For purposes of this paragraph, the term “control” with respect to a bank holding company shall have the same meaning as in section 2(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(2)(a)(2)). For purposes of this paragraph, the term “control” with respect to a savings and loan holding company shall have the same meaning as in 10(a)(2) of the Home Owners’ Loan Act (12 U.S.C. 1467a(a)(2)).

(E) At the time that an applicant submits an application to the Secretary for a capital investment under the Program, the applicant shall deliver to the appropriate Federal banking agency a small business lending plan describing how the applicant’s business strategy and operating goals will allow it to address the needs of small businesses in the areas it serves. This plan shall be confidential supervisory information.

(2) CONSULTATION WITH REGULATORS.—For each eligible institution that applies to receive a capital investment under the Program, the Secretary shall consult with the

appropriate Federal banking agency for the eligible institution to determine whether the eligible institution may receive such capital investment.

(3) LIMITATION ON DENIAL.—The Secretary may not deny an application by an eligible institution for a capital investment under the Program solely on the basis of the composite rating of the eligible institution under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system).

(3) INCENTIVES TO LEND.—

(A) Any preferred stock or other financial instrument issued to Treasury by an eligible institution receiving a capital investment under the Program shall provide that—

(i) the rate at which dividends or interest are payable shall be 5 percent per annum initially; and

(ii) Within the first 2 years after the date of the capital investment under the Program, the rate may be adjusted based on the amount of an eligible institution's small business lending. Changes in small business lending shall be measured against the amount of small business lending reported by the eligible institution in its call report for the last quarter in calendar year 2009 or the average amount of small business lending reported by the eligible institution in all call reports for calendar year 2009, whichever is lower, minus adjustments from each quarterly balance in respect of—

(I) Net loan charge offs with respect to small business lending; and

(II) Gains realized by the eligible institution resulting from mergers, acquisitions or purchases of loans after origination and syndication; which adjustments shall be determined in accordance with guidance promulgated by the Secretary.

(iii) During any calendar quarter during the initial 2-year period referred to in clause (i), an institution's rate shall be adjusted to reflect the following schedule, based on that institution's change in small business lending relative to the baseline:

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

(II) if small business lending has increased by 2.5 percent or greater, but by less than 5.0 percent, the dividend or interest rate shall be 4 percent;

(III) if small business lending has increased by 5.0 percent or greater, but by less than 7.5 percent, the dividend or interest rate shall be 3 percent;

(IV) if small business lending has increased by 7.5 percent or greater, and but by than 10.0 percent, the dividend or interest rate shall be 2 percent; or

(V) if small business lending has increased by 10 percent or greater, the dividend or interest rate shall be 1 percent.

(B) The initial dividend or interest rate shall be based on call report data published in the quarter immediately preceding the date of the capital investment under the Program.

(C) Any rate adjustment shall occur in the calendar quarter following the publication of call report data, such that the rate based on call report data from any one calendar quarter, which is published in the first following calendar quarter, shall be adjusted in that first following calendar quarter and payable in the second following quarter.

(D) Generally, the rate based on call report data from the eighth calendar quarter after the date of the capital investment under the Program shall be payable until the expiration of the 5-year period that begins on the date of the investment.

(i) In the case where lending has remained the same or decreased relative to the institution's baseline in the eighth quarter after the date of the capital investment under the Program, the rate shall be 7 percent until the expiration of the 5-year year period that begins on the date of the investment.

(E) The dividend or interest rate paid on any preferred stock or other financial instrument issued by an eligible institution that receives a capital investment under the Program shall increase to 9 percent at the end of the 5-year period that begins on the date of the capital investment under the Program.

(F) The reduction in the dividend or interest rate payable to Treasury by any eligible institution shall be limited such that the rate reduction shall not apply to an amount of the investment made by Treasury that is greater than the increase in lending realized under this program. The Secretary may issue guidelines that will apply to new capital investments limiting the amount of capital available to eligible institutions consistent with this limitation.

(G) Before making a capital investment in an eligible institution that is an S corporation or a corporation organized on a mutual basis, the Secretary may adjust the dividend or interest rate on the financial instrument to be issued to the Secretary, from the dividend or interest rate that would apply under subparagraphs (A) through (F), to take into account any differential tax treatment of securities issued by such eligible institution. For purpose of this subparagraph, the term "S corporation" has the same meaning as in section 1361(a) of the Internal Revenue Code of 1986.

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

(5) CAPITAL PURCHASE PROGRAM REFINANCE.—The Secretary shall, in a manner that the Secretary determines to be consistent with the purposes of this Act, issue regulations and other guidance to permit eligible institutions to refinance securities issued to Treasury under the CDCI and the CPP for securities to be issued under the Program.

(6) ADDITIONAL TERMS.—The Secretary may, by regulation or guidance issued under section 5(9), make modifications that will apply to new capital investments in order to manage risks associated with the administration of the Small Business Lending Fund in a manner consistent with the purposes of this Act.

SEC. 5. ADDITIONAL AUTHORITIES OF THE SECRETARY.

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

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

(2) The Secretary may enter into contracts, including contracts for services authorized by section 3109 of title 5, United States Code.

(3) The Secretary may designate any bank, savings association, trust company, or security broker or dealer as a financial agent of the Federal Government and such institution shall perform all such reasonable duties related to this Act as financial agent of the Federal Government as may be required. The Secretary shall have authority to amend existing agreements with financial agents, entered into during the 2-year period before the date of enactment of this Act, to perform reasonable duties related to this Act.

(4) The Secretary may exercise any rights received in connection with any preferred stock or other financial instruments or assets purchased or acquired pursuant to the authorities granted under this Act.

(5) The Secretary may manage any assets purchased under this Act, including revenues and portfolio risks therefrom.

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

(7) The Secretary may manage or prohibit conflicts of interest that may arise in connection with the administration and execution of the authorities provided under this Act.

(8) The Secretary may establish and use vehicles, subject to supervision by the Secretary, to purchase, hold, and sell preferred stock or other financial instruments and issue obligations.

(9) The Secretary may, in consultation with the Administrator of the Small Business Administration, issue such regulations and other guidance as may be necessary or appropriate to define terms or carry out the authorities or purposes of this Act.

SEC. 6. CONSIDERATIONS.

In exercising the authorities granted in this Act, the Secretary shall take into consideration—

- (1) increasing the availability of credit for small businesses;
- (2) providing funding to eligible institutions that serve small businesses in low- and moderate-income, minority and other underserved communities;
- (3) protecting and increasing American jobs;
- (4) ensuring that all eligible institutions may apply to participate in the program established under this Act, without discrimination based on geography;
- (5) providing transparency with respect to use of funds provided under this Act; and
- (6) minimizing the cost to taxpayers of exercising the authorities.

SEC. 7. REPORTS.

The Secretary shall provide to the appropriate committees of Congress—

- (1) within 7 days of the end of each month commencing with the first month in which transactions are made under the program, a written report describing all of the transactions made during the reporting period pursuant to the authorities granted under this Act; and
- (2) after the end of March and the end of September, commencing September 30, 2010, a written report on all projected costs and liabilities, all operating expenses, including compensation for financial agents, and all transactions made by the Small Business Lending Fund.

[SEC. 8. OVERSIGHT AND AUDITS.—*The Administration will work with the Congress to determine the most appropriate form of oversight for the program.*]

SEC. 9. CREDIT REFORM AND FUNDING.

(a) CREDIT REFORM.—The cost of purchases of preferred stock and other financial instruments made as capital investments under this Act shall be determined as provided under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

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

[(c) OFFSETS.—The Administration will work with the Congress to determine the most appropriate means of offsetting the cost of the program.]

SEC. 10. TERMINATION AND CONTINUATION OF AUTHORITIES.

(a) TERMINATION OF INVESTMENT AUTHORITY.—The authority to make capital investments in eligible institutions, including commitments to purchase preferred stock or other instruments, provided under this Act shall terminate 1 year after the date of enactment of this Act.

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

SEC. 11. PRESERVATION OF AUTHORITY.—Nothing in this Act may be construed to limit the authority of the Secretary under any other provision of law.

SEC. 12. ASSURANCES.

(a) SMALL BUSINESS LENDING FUND SEPARATE FROM TARP.—The Small Business Lending Fund Program is established as separate and distinct from the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008. An institution shall not, by virtue of a capital investment under the Small Business Lending Fund Program, be considered a recipient of the Troubled Asset Relief Program.

(b) CHANGE IN LAW.—If, after a capital investment has been made in an eligible institution under the Program, there is a change in law that modifies the terms of the investment or program in a materially adverse respect for the eligible institution, the eligible institution may, after consultation with the appropriate Federal banking agency for the eligible institution, repay the investment without impediment