

**Editorial Notes**

## REFERENCES IN TEXT

The Federal Credit Union Act, referred to in par. (2)(B), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified principally to chapter 14 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

Section 308(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in par. (17), is section 308(b) of Pub. L. 101-73, which is set out in a note under section 1463 of this title.

## AMENDMENTS

2021—Par. (10)(E). Pub. L. 117-2, § 3301(e), added subpar. (E).

Pars. (15) to (19). Pub. L. 117-2, § 3301(f), added pars. (15) to (19).

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 117-2, title III, § 3301(g), Mar. 11, 2021, 135 Stat. 72, provided that: “The amendments made by this section [amending this section and sections 5702 to 5706, 5708, and 5710 of this title and enacting provisions set out as a note below] shall apply with respect to funds appropriated under this section and funds appropriated on and after the date of enactment of this section [Mar. 11, 2021].”

## SHORT TITLE

Pub. L. 111-240, title III, § 3001, Sept. 27, 2010, 124 Stat. 2568, provided that: “This title [enacting this chapter] may be cited as the ‘State Small Business Credit Initiative Act of 2010’.”

## APPROPRIATION

Pub. L. 117-2, title III, § 3301(a)(2), Mar. 11, 2021, 135 Stat. 69, provided that:

“(A) IN GENERAL.—In addition to amounts otherwise available, there is hereby appropriated to the Secretary of the Treasury for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$10,000,000,000, to remain available until expended, to provide support to small businesses responding to and recovering from the economic effects of the COVID-19 pandemic, ensure business enterprises owned and controlled by socially and economically disadvantaged individuals have access to credit and investments, provide technical assistance to help small businesses applying for various support programs, and to pay reasonable costs of administering such Initiative.

“(B) RESCISSION.—With respect to amounts appropriated under subparagraph (A)—

“(i) the Secretary of the Treasury shall complete all disbursements and remaining obligations before September 30, 2030; and

“(ii) any amounts that remain unexpended (whether obligated or unobligated) on September 30, 2030, shall be rescinded and deposited into the general fund of the Treasury.”

**§ 5702. Federal funds allocated to States****(a) Program established; purpose**

There is established the State Small Business Credit Initiative, to be administered by the Secretary. Under the Program, the Secretary shall allocate Federal funds to participating States and make the allocated funds available to the participating States as provided in this section for the uses described in this section.

**(b) Allocation formula****(1) In general**

Not later than 30 days after March 11, 2021, the Secretary shall allocate Federal funds to

participating States so that each State is eligible to receive an amount equal to what the State would receive under the 2021 allocation, as determined under paragraph (2).

**(2) 2021 allocation formula****(A) In general**

With respect to States other than Tribal governments, the Secretary shall determine the 2021 allocation by allocating Federal funds among the States in the proportion that each such State's 2020 State employment decline bears to the aggregate of the 2020 State employment declines for all States.

**(B) Minimum allocation**

The Secretary shall adjust the allocations under subparagraph (A) for each State to the extent necessary to ensure that no State receives less than 0.9 percent of the Federal funds.

**(C)<sup>1</sup> 2020 State employment decline defined**

In this paragraph and with respect to a State, the term “2020 State employment decline” means the excess (if any) of—

(i) the number of individuals employed in such State determined for December 2019; over

(ii) the number of individuals employed in such State determined for December 2020.

**(C)<sup>1</sup> Separate allocation for Tribal governments****(i) In general**

With respect to States that are Tribal governments, the Secretary shall determine the 2021 allocation by allocating \$500,000,000 among the Tribal governments in the proportion the Secretary determines appropriate, including with consideration to available employment and economic data regarding each such Tribal government.

**(ii) Notice of intent; timing of allocation**

With respect to allocations to States that are Tribal governments, the Secretary may—

(I) require Tribal governments that individually or jointly wish to participate in the Program to file a notice of intent with the Secretary not later than 30 days after March 11, 2021; and

(II) notwithstanding paragraph (1), allocate Federal funds to participating Tribal governments not later than 60 days after March 11, 2021.

**(D) Employment data**

If the Secretary determines that employment data with respect to a State is unavailable from the Bureau of Labor Statistics of the Department of Labor, the Secretary shall consider such other economic and employment data that is otherwise available for purposes of determining the employment data of such State.

<sup>1</sup> So in original. Two subpars. (C) have been enacted.

**(c) Availability of allocated amount**

The amount allocated by the Secretary to each participating State under subsection (b) shall be made available to the State as follows:

**(1) Allocated amount generally to be available to State in one-thirds****(A) In general**

The Secretary shall—

(i) apportion the participating State's allocated amount into thirds;

(ii) transfer to the participating State the first  $\frac{1}{3}$  when the Secretary approves the State for participation under section 5703 of this title; and

(iii) transfer to the participating State each successive  $\frac{1}{3}$  when the State has certified to the Secretary that it has expended, transferred, or obligated 80 percent of the last transferred  $\frac{1}{3}$  for Federal contributions to, or for the account of, State programs that have delivered loans or investments to eligible businesses.

**(B) Authority to withhold pending audit**

The Secretary may withhold the transfer of any successive  $\frac{1}{3}$  pending results of a financial audit.

**(C) Inspector General audits****(i) In general**

The Inspector General of the Department of the Treasury shall carry out an audit of the participating State's use of allocated Federal funds transferred to the State.

**(ii) Recoupment of misused transferred funds required**

The allocation agreement between the Secretary and the participating State shall provide that the Secretary shall recoup any allocated Federal funds transferred to the participating State if the results of the an audit include a finding that there was an intentional or reckless misuse of transferred funds by the State.

**(iii) Penalty for misstatement**

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

**(iv) Municipalities**

In this subparagraph, the term "participating State" shall include a municipality given special permission to participate in the Program, under section 5703(d) of this title.

**(D) Exception**

The Secretary may, in the Secretary's discretion, transfer the full amount of the participating State's allocated amount to the State in a single transfer if the participating State applies to the Secretary for approval

to use the full amount of the allocation as collateral for a qualifying loan or swap funding facility.

**(2) Transferred amounts**

Each amount transferred to a participating State under this section shall remain available to the State until used by the State as permitted under paragraph (3).

**(3) Use of transferred funds**

Each participating State may use funds transferred to it under this section only—

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

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

(C) in the case of the first  $\frac{1}{3}$  transferred, for paying administrative costs incurred by the State in implementing an approved State program in an amount not to exceed 5 percent of that first  $\frac{1}{3}$ ; or

(D) in the case of each successive  $\frac{1}{3}$  transferred, for paying administrative costs incurred by the State in implementing an approved State program in an amount not to exceed 3 percent of that successive  $\frac{1}{3}$ .

**(4) Termination of availability of amounts not transferred****(A) In general**

Any portion of a participating State's allocated amount that has not been transferred to the State under this section may be deemed by the Secretary to be no longer allocated to the State and no longer available to the State and shall be returned to the general fund of the Treasury or reallocated as described under subparagraph (B), if—

(i) the second  $\frac{1}{3}$  of a State's allocated amount has not been transferred to the State before the end of the end of the 3-year period beginning on the date that the Secretary approves the State for participation; or

(ii) the last  $\frac{1}{3}$  of a State's allocated amount has not been transferred to the State before the end of the end of the 6-year period beginning on the date that the Secretary approves the State for participation.

**(B) Reallocation**

Any amount deemed by the Secretary to be no longer allocated to a State and no longer available to such State under subparagraph (A) may be reallocated by the Secretary to other participating States. In making such a reallocation, the Secretary shall not take into account the minimum allocation requirements under subsection (b)(2)(B) or the specific allocation for Tribal governments described under subsection (b)(2)(C).

**(5) Transferred amounts not assistance**

The amounts transferred to a participating State under this section shall not be considered assistance for purposes of subtitle V of title 31.

**(6) Definitions**

In this section—

(A) the term “allocated amount” means the total amount of Federal funds allocated by the Secretary under subsection (b) to the participating State; and

(B) the term “ $\frac{1}{3}$ ” means—

(i) in the case of the first  $\frac{1}{3}$  and second  $\frac{1}{3}$ , an amount equal to 33 percent of a participating State’s allocated amount; and

(ii) in the case of the last  $\frac{1}{3}$ , an amount equal to 34 percent of a participating State’s allocated amount.

**(d) Additional allocations to support business enterprises owned and controlled by socially and economically disadvantaged individuals**

Of the amounts appropriated for fiscal year 2021 to carry out the Program, the Secretary shall—

(1) allocate \$1,500,000,000 to States from funds allocated under this section and, by regulation or other guidance, prescribe Program requirements that the funds be expended for business enterprises owned and controlled by socially and economically disadvantaged individuals; and

(2) allocate such amounts to States based on the needs of business enterprises owned and controlled by socially and economically disadvantaged individuals, as determined by the Secretary, in each State, and not subject to the allocation formula described under subsection (b).

**(e) Incentive allocations to support business enterprises owned and controlled by socially and economically disadvantaged individuals**

Of the amounts appropriated for fiscal year 2021 to carry out the Program, the Secretary shall set aside \$1,000,000,000 for an incentive program under which the Secretary shall increase the second  $\frac{1}{3}$  and last  $\frac{1}{3}$  allocations for States that demonstrate robust support, as determined by the Secretary, for business concerns owned and controlled by socially and economically disadvantaged individuals in the deployment of prior allocation amounts.

**(f) Additional allocations to support very small businesses**

**(1) In general**

Of the amounts appropriated to carry out the Program, the Secretary shall allocate not less than \$500,000,000 to States from funds allocated under this section to be expended for very small businesses.

**(2) Very small business defined**

In this subsection, the term “very small business”—

(A) means a business with fewer than 10 employees; and

(B) may include independent contractors and sole proprietors.

(Pub. L. 111–240, title III, §3003, Sept. 27, 2010, 124 Stat. 2570; Pub. L. 117–2, title III, §3301(a)(1)(A), (b), (c), Mar. 11, 2021, 135 Stat. 67, 69, 70.)

**Editorial Notes**

**AMENDMENTS**

2021—Subsec. (b)(1). Pub. L. 117–2, §3301(a)(1)(A)(i)(I), amended par. (1) generally. Prior to amendment, par.

(1) required allocation of funds by 30 days after Sept. 27, 2010.

Subsec. (b)(2). Pub. L. 117–2, §3301(a)(1)(A)(ii)(II)(bb), substituted “2020” for “2008” wherever appearing.

Pub. L. 117–2, §3301(a)(1)(A)(i)(II)(aa), substituted “2021” for “2009” in heading and in subpar. (A).

Subsec. (b)(2)(A). Pub. L. 117–2, §3301(a)(1)(A)(i)(II)(cc), substituted “With respect to States other than Tribal governments, the Secretary” for “The Secretary”.

Subsec. (b)(2)(C). Pub. L. 117–2, §3301(a)(1)(A)(i)(II)(ee), added subpar. (C) relating to separate allocation for tribal governments.

Subsec. (b)(2)(C)(i). Pub. L. 117–2, §3301(a)(1)(A)(i)(II)(dd), substituted “2019” for “2007” in cl. (i) of subpar. (C) defining 2020 State employment decline.

Subsec. (b)(2)(D). Pub. L. 117–2, §3301(a)(1)(A)(i)(II)(ee), added subpar. (D).

Subsec. (b)(3). Pub. L. 117–2, §3301(a)(1)(A)(i)(III), struck out par. (3) which provided for the 2010 allocation formula.

Subsec. (c)(1)(A)(iii). Pub. L. 117–2, §3301(a)(1)(A)(ii)(I), inserted before period at end “that have delivered loans or investments to eligible businesses”.

Subsec. (c)(4). Pub. L. 117–2, §3301(a)(1)(A)(ii)(II), amended par. (4) generally. Prior to amendment, text read as follows: “Any portion of a participating State’s allocated amount that has not been transferred to the State under this section by the end of the 2-year period beginning on the date that the Secretary approves the State for participation may be deemed by the Secretary to be no longer allocated to the State and no longer available to the State and shall be returned to the General Fund of the Treasury.”

Subsecs. (d), (e). Pub. L. 117–2, §3301(b), added subsecs. (d) and (e).

Subsec. (f). Pub. L. 117–2, §3301(c), added subsec. (f).

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF 2021 AMENDMENT**

Amendment by Pub. L. 117–2 applicable with respect to funds appropriated under section 3301 of Pub. L. 117–2 and funds appropriated on and after Mar. 11, 2021, see section 3301(g) of Pub. L. 117–2, set out as a note under section 5701 of this title.

**§ 5703. Approving States for participation**

**(a) Application**

Any State may apply to the Secretary for approval to be a participating State under the Program and to be eligible for an allocation of Federal funds under the Program.

**(b) General approval criteria**

The Secretary shall approve a State to be a participating State, if—

(1) a specific department, agency, or political subdivision of the State has been designated to implement a State program and participate in the Program;

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

(3) the State has filed an application with the Secretary for approval of a State capital access program under section 5704 of this title or approval as a State other credit support program under section 5705 of this title, in each case within the time period provided in the respective section; and

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