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SUBCHAPTER I—COMMUNITY DEVELOP- MENT BANKING AND FINANCIAL INSTI- TUTIONS

§ 4701. Findings and purposes

(a) Findings

The Congress finds that—

(1) many of the Nation's urban, rural, and Native American communities face critical social and economic problems arising in part from the lack of economic growth, people living in poverty, and the lack of employment and other opportunities;

(2) the restoration and maintenance of the economies of these communities will require coordinated development strategies, intensive supportive services, and increased access to equity investments and loans for development activities, including investment in businesses, housing, commercial real estate, human development, and other activities that promote the long-term economic and social viability of the community; and

(3) community development financial institutions have proven their ability to identify and respond to community needs for equity investments, loans, and development services.

(b) Purpose

The purpose of this subchapter is to create a Community Development Financial Institutions Fund to promote economic revitalization and community development through investment in and assistance to community development financial institutions, including enhancing the liquidity of community development financial institutions.

(Pub. L. 103-325, title I, §102, Sept. 23, 1994, 108 Stat. 2163.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in original "this subtitle", meaning subtitle A of title I of Pub. L. 103-325, Sept. 23, 1994, 108 Stat. 2163, which is classified principally to this subchapter. For complete classification of this subtitle to the Code, see Short Title note below and Tables.

Statutory Notes and Related Subsidiaries

SHORT TITLE

Pub. L. 103-325, §1(a), Sept. 23, 1994, 108 Stat. 2160, provided that: "This Act [see Tables for classification]

may be cited as the 'Riegle Community Development and Regulatory Improvement Act of 1994'."

Pub. L. 103-325, title I, §101, Sept. 23, 1994, 108 Stat. 2163, provided that: "This subtitle [subtitle A (§§101-121) of title I of Pub. L. 103-325, enacting this subchapter and section 1772c-1 of this title, amending sections 1766 and 1834a of this title, section 5313 of Title 5, Government Organization and Employees, section 11 of Pub. L. 95-452 set out in the Appendix to Title 5, section 657 of Title 18, Crimes and Criminal Procedure, and section 9101 of Title 31, Money and Finance, and enacting provisions set out as a note under section 11 of Pub. L. 95-452 set out in the Appendix to Title 5] may be cited as the 'Community Development Banking and Financial Institutions Act of 1994'."

§ 4702. Definitions

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

(1) Administrator

The term "Administrator" means the Administrator of the Fund appointed under section 4703(b) of this title.

(2) Appropriate Federal banking agency

The term "appropriate Federal banking agency" has the same meaning as in section 1813 of this title, and also includes the National Credit Union Administration Board with respect to insured credit unions.

(3) Affiliate

The term "affiliate" has the same meaning as in section 1841(k) of this title.

(4) Board

The term "Board" means the Community Development Advisory Board established under section 4703(d) of this title.

(5) Community development financial institution

(A) In general

The term "community development financial institution" means a person (other than an individual) that—

- (i) has a primary mission of promoting community development;
- (ii) serves an investment area or targeted population;
- (iii) provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate;
- (iv) maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and
- (v) is not an agency or instrumentality of the United States, or of any State or political subdivision of a State.

(B) Conditions for qualification of holding companies

(i) Consolidated treatment

A depository institution holding company may qualify as a community development financial institution only if the holding company and the subsidiaries and affiliates of the holding company collectively satisfy the requirements of subparagraph (A).

(ii) Exclusion of subsidiary or affiliate for failure to meet consolidated treatment rule

No subsidiary or affiliate of a depository institution holding company may qualify as a community development financial institution if the holding company and the subsidiaries and affiliates of the holding company do not collectively meet the requirements of subparagraph (A).

(C) Conditions for subsidiaries

No subsidiary of an insured depository institution may qualify as a community development financial institution if the insured depository institution and its subsidiaries do not collectively meet the requirements of subparagraph (A).

(6) Community partner

The term “community partner” means a person (other than an individual) that provides loans, equity investments, or development services, including a depository institution holding company, an insured depository institution, an insured credit union, a non-profit organization, a State or local government agency, a quasi-governmental entity, and an investment company authorized to operate pursuant to the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.].

(7) Community partnership

The term “community partnership” means an agreement between a community development financial institution and a community partner to provide development services, loans, or equity investments, to an investment area or targeted population.

(8) Depository institution holding company

The term “depository institution holding company” has the same meaning as in section 1813 of this title.

(9) Development services

The term “development services” means activities that promote community development and are integral to lending or investment activities, including—

- (A) business planning;
- (B) financial and credit counseling; and
- (C) marketing and management assistance.

(10) Fund

The term “Fund” means the Community Development Financial Institutions Fund established under section 4703(a) of this title.

(11) Indian reservation

The term “Indian reservation” has the same meaning as in section 1903(10) of title 25, and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], public domain Indian allotments, and former Indian reservations in the State of Oklahoma.

(12) Indian tribe

The term “Indian tribe” means any Indian tribe, band, pueblo, nation, or other organized

group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(13) Insured community development financial institution

The term “insured community development financial institution” means any community development financial institution that is an insured depository institution or an insured credit union.

(14) Insured credit union

The term “insured credit union” has the same meaning as in section 1752(7) of this title.

(15) Insured depository institution

The term “insured depository institution” has the same meaning as in section 1813 of this title.

(16) Investment area

The term “investment area” means a geographic area (or areas) including an Indian reservation that—

- (A)(i) meets objective criteria of economic distress developed by the Fund, which may include the percentage of low-income families or the extent of poverty, the rate of unemployment or underemployment, rural population outmigration, lag in population growth, and extent of blight and disinvestment; and
- (ii) has significant unmet needs for loans or equity investments; or

- (B) encompasses or is located in an empowerment zone or enterprise community designated under section 1391 of title 26.

(17) Low-income

The term “low-income” means having an income, adjusted for family size, of not more than—

- (A) for metropolitan areas, 80 percent of the area median income; and
- (B) for nonmetropolitan areas, the greater of—
 - (i) 80 percent of the area median income; or
 - (ii) 80 percent of the statewide non-metropolitan area median income.

(18) State

The term “State” has the same meaning as in section 1813 of this title.

(19) Subsidiary

The term “subsidiary” has the same meaning as in section 1813 of this title, except that a community development financial institution that is a corporation shall not be considered to be a subsidiary of any insured depository institution or depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation, and does not otherwise control in any manner the election of a majority of the directors of the corporation.

(20) Targeted population

The term “targeted population” means individuals, or an identifiable group of individuals, including an Indian tribe, who—

(A) are low-income persons; or

(B) otherwise lack adequate access to loans or equity investments.

(21) Training program

The term “training program” means the training program operated by the Fund under section 4708 of this title.

(Pub. L. 103-325, title I, § 103, Sept. 23, 1994, 108 Stat. 2163.)

Editorial Notes**REFERENCES IN TEXT**

The Small Business Investment Act of 1958, referred to in par. (6), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

The Alaska Native Claims Settlement Act, referred to in pars. (11) and (12), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

§ 4703. Establishment of national Fund for community development banking**(a) Establishment****(1) In general**

There is established a corporation to be known as the Community Development Financial Institutions Fund that shall have the duties and responsibilities specified by this subchapter and subchapter II of this chapter. The Fund shall have succession until dissolved. The offices of the Fund shall be in Washington, D.C. The Fund shall not be affiliated with or be within any other agency or department of the Federal Government.

(2) Wholly owned Government corporation

The Fund shall be a wholly owned Government corporation in the executive branch and shall be treated in all respects as an agency of the United States, except as otherwise provided in this subchapter.

(b) Management of Fund**(1) Appointment of Administrator**

The management of the Fund shall be vested in an Administrator, who shall be appointed by the President. The Administrator shall not engage in any other business or employment during service as the Administrator.

(2) Chief financial officer

The Administrator shall appoint a chief financial officer, who shall have the authority and functions of an agency Chief Financial Officer under section 902 of title 31. In the event of a vacancy in the position of the Administrator or during the absence or disability of the Administrator, the chief financial officer shall perform the duties of the position of Administrator.

(3) Other officers and employees

The Administrator may appoint such other officers and employees of the Fund as the Ad-

ministrator determines to be necessary or appropriate.

(4) Expedited hiring

During the 2-year period beginning on September 23, 1994, the Administrator may—

(A) appoint and terminate the individuals referred to in paragraphs (2) and (3) without regard to the civil service laws and regulations; and

(B) fix the compensation of the individuals referred to in paragraph (3) without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates, except that the rate of pay for such individuals may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(c) General powers

In carrying out the functions of the Fund, the Administrator—

(1) shall have all necessary and proper authority to carry out this subchapter and subchapter II of this chapter;

(2) shall have the power to adopt, alter, and use a corporate seal for the Fund, which shall be judicially noticed;

(3) may adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which business of the Fund may be conducted and such rules and regulations as may be necessary or appropriate to implement this subchapter and subchapter II of this chapter;

(4) may enter into, perform, and enforce such agreements, contracts, and transactions as may be deemed necessary or appropriate to the conduct of activities authorized under this subchapter and subchapter II of this chapter;

(5) may determine the character of and necessity for expenditures of the Fund and the manner in which they shall be incurred, allowed, and paid;

(6) may utilize or employ the services of personnel of any agency or instrumentality of the United States with the consent of the agency or instrumentality concerned on a reimbursable or nonreimbursable basis; and

(7) may execute all instruments necessary or appropriate in the exercise of any of the functions of the Fund under this subchapter and subchapter II of this chapter and may delegate to the officers of the Fund such of the powers and responsibilities of the Administrator as the Administrator deems necessary or appropriate for the administration of the Fund.

(d) Advisory Board**(1) Establishment**

There is established an advisory board to the Fund to be known as the Community Development Advisory Board, which shall be operated in accordance with the provisions of chapter 10 of title 5, except that section 1013 of title 5 does not apply to the Board.

(2) Membership

The Board shall consist of 15 members, including—

(A) the Secretary of Agriculture or his or her designee;

(B) the Secretary of Commerce or his or her designee;

(C) the Secretary of Housing and Urban Development or his or her designee;

(D) the Secretary of the Interior or his or her designee;

(E) the Secretary of the Treasury or his or her designee;

(F) the Administrator of the Small Business Administration or his or her designee; and

(G) 9 private citizens, appointed by the President, who shall be selected, to the maximum extent practicable, to provide for national geographic representation and racial, ethnic, and gender diversity, including—

(i) 2 individuals who are officers of existing community development financial institutions;

(ii) 2 individuals who are officers of insured depository institutions;

(iii) 2 individuals who are officers of national consumer or public interest organizations;

(iv) 2 individuals who have expertise in community development; and

(v) 1 individual who has personal experience and specialized expertise in the unique lending and community development issues confronted by Indian tribes on Indian reservations.

(3) Chairperson

The members of the Board specified in paragraph (2)(G) shall select, by majority vote, a chairperson of the Board, who shall serve for a term of 2 years.

(4) Board function

It shall be the function of the Board to advise the Administrator on the policies of the Fund regarding activities under this subchapter. The Board shall not advise the Administrator on the granting or denial of any particular application.

(5) Terms of private members

(A) In general

Each member of the Board appointed under paragraph (2)(G) shall serve for a term of 4 years.

(B) Vacancies

Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the previous member was appointed shall be appointed for the remainder of such term. Members may continue to serve following the expiration of their terms until a successor is appointed.

(6) Meetings

The Board shall meet at least annually and at such other times as requested by the Administrator or the chairperson. A majority of the members of the Board shall constitute a quorum.

(7) Reimbursement for expenses

The members of the Board may receive reimbursement for travel, per diem, and other necessary expenses incurred in the performance of their duties, in accordance with chapter 10 of title 5.

(8) Costs and expenses

The Fund shall provide to the Board all necessary staff and facilities.

(e) Omitted

(f) Government Corporation Control Act exemption

Section 9107(b) of title 31, shall not apply to deposits of the Fund made pursuant to section 4707 of this title.

(g) Limitation of Fund and Federal liability

The liability of the Fund and the United States Government arising out of any investment in a community development financial institution in accordance with this subchapter shall be limited to the amount of the investment. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State, Territory, or the District of Columbia. Nothing in this subsection shall affect the application of any Federal tax law.

(h) Prohibition on issuance of securities

The Fund may not issue stock, bonds, debentures, notes, or other securities.

(i) Omitted

(j) Assisted institutions not United States instrumentalities

A community development financial institution or other organization that receives assistance pursuant to this subchapter shall not be deemed to be an agency, department, or instrumentality of the United States.

(k) Transition period

(1) In general

During the transition period, the Secretary of the Treasury may—

(A) assist in the establishment of the administrative functions of the Fund listed in paragraph (2); and

(B) hire not more than 6 individuals to serve as employees of the Fund during the transition period.

(2) Continued service

Individuals hired in accordance with paragraph (1)(B) may continue to serve as employees of the Fund after the transition period.

(3) Administrative functions

The administrative functions referred to in paragraph (1)(A) shall be limited to—

(A) establishing accounting, information, and recordkeeping systems for the Fund; and

(B) procuring office space, equipment, and supplies.

(4) Expedited hiring

During the transition period, the Secretary of the Treasury may—

(A) appoint and terminate the individuals referred to in paragraph (1)(B) without regard to the civil service laws and regulations; and

(B) fix the compensation of the individuals referred to in paragraph (1)(B) without re-

gard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates, except that the rate of pay for such individuals may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(5) Certain employees

During the transition period, employees of the Department of the Treasury may only comprise less than one-half of the total number of individuals hired in accordance with paragraph (1)(B).

(6) Transition expenses

Amounts previously appropriated to the Department of the Treasury may be used to pay obligations and expenses of the Fund incurred under this section, and such amounts may be reimbursed by the Fund to the Department of the Treasury from amounts appropriated to the Fund for fiscal year 1995.

(7) “Transition period” defined

For purposes of this subsection, the term “transition period” means the period beginning on September 23, 1994, and ending on the date on which the Administrator is appointed.

(Pub. L. 103-325, title I, § 104, Sept. 23, 1994, 108 Stat. 2166; Pub. L. 112-166, § 2(w), Aug. 10, 2012, 126 Stat. 1289; Pub. L. 117-286, § 4(a)(57), Dec. 27, 2022, 136 Stat. 4311.)

Editorial Notes

CODIFICATION

Section is comprised of section 104 of Pub. L. 103-325. Subsecs. (e) and (i) of section 104 of Pub. L. 103-325 amended section 9101 of Title 31, Money and Finance, and section 5313 of Title 5, Government Organization and Employees, respectively.

AMENDMENTS

2022—Subsec. (d)(1). Pub. L. 117-286, § 4(a)(57)(A), substituted “chapter 10 of title 5, except that section 1013 of title 5” for “the Federal Advisory Committee Act, except that section 14 of that Act”.

Subsec. (d)(7). Pub. L. 117-286, § 4(a)(57)(B), substituted “chapter 10 of title 5.” for “the Federal Advisory Committee Act.”

2012—Subsec. (b)(1). Pub. L. 112-166 struck out “, by and with the advice and consent of the Senate” before period at end of first sentence.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-166 effective 60 days after Aug. 10, 2012, and applicable to appointments made on and after that effective date, including any nomination pending in the Senate on that date, see section 6(a) of Pub. L. 112-166, set out as a note under section 113 of Title 6, Domestic Security.

ADMINISTRATION OF FUND BY SECRETARY OF THE TREASURY

Pub. L. 104-134, title I, § 101(e) [title III], Apr. 26, 1996, 110 Stat. 1321-257, 1321-294; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327, provided in part: “That notwithstanding any other provision of law, for purposes of administering the Community Development Financial Institutions Fund, the Secretary of the Treasury shall have all powers and rights of the Administrator of the CDBFI Act [12 U.S.C. 4701 et seq.]

and the Fund shall be within the Department of the Treasury.”

Similar provisions were contained in the following prior appropriations act:

Pub. L. 104-19, title I, July 27, 1995, 109 Stat. 237.

§ 4703a. Capital investments for neighborhoods disproportionately impacted by the COVID-19 pandemic

(a) Definitions

In this section—

(1) the term “bank holding company” has the meaning given the term in section 1841 of this title;

(2) the term “eligible institution” means any low- and moderate-income community financial institution that is eligible to participate in the Program;

(3) the term “Emergency Capital Investment Fund” means the Emergency Capital Investment Fund established under subsection (b);

(4) the term “low- and moderate-income community financial institution” means any financial institution that is—

(A)(i) a community development financial institution; or

(ii) a minority depository institution; and

(B)(i) an insured depository institution that is not controlled by a bank holding company or savings and loan holding company that is also an eligible institution;

(ii) a bank holding company;

(iii) a savings and loan holding company; or

(iv) a federally insured credit union;

(5) the term “minority” means any Black American, Native American, Hispanic American, Asian American, Native Alaskan, Native Hawaiian, or Pacific Islander;

(6) the term “minority depository institution” means an entity that is—

(A) a minority depository institution, as defined in section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note); or

(B) considered to be a minority depository institution by—

(i) the appropriate Federal banking agency; or

(ii) the National Credit Union Administration, in the case of an insured credit union; or

(C) listed in the Federal Deposit Insurance Corporation’s Minority Depository Institutions List published for the Third Quarter 2020.¹

(7) the term “Program” means the Emergency Capital Investment Program established under subsection (b);

(8) the term “savings and loan holding company” has the meaning given the term under section 1467a(a) of this title; and

(9) the “Secretary” means the Secretary of the Treasury.

(b) Establishment

(1) Fund established

There is established in the Treasury of the United States a fund to be known as the

¹ So in original. The period probably should be a semicolon.

“Emergency Capital Investment Fund”, which shall be administered by the Secretary.

(2) Program authorized

The Secretary is authorized to establish an emergency program known as the “Emergency Capital Investment Program” to support the efforts of low- and moderate-income community financial institutions to, among other things, provide loans, grants, and forbearance for small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities, including persistent poverty counties, that may be disproportionately impacted by the economic effects of the COVID-19 pandemic, by providing direct and indirect capital investments in low- and moderate-income community financial institutions consistent with this section.

(c) Purchases

(1) In general

Subject to paragraph (2), the Emergency Capital Investment 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 in accordance with this section.

(2) Purchase limit

The aggregate amount of purchases pursuant to paragraph (1) may not exceed \$9,000,000,000.

(d) Application

(1) Acceptance

The Secretary shall begin accepting applications for capital investments under the Program not later than the end of the 30-day period beginning on December 27, 2020.

(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 or the National Credit Union Administration, as applicable, to determine whether the eligible institution may receive such capital investment.

(3) Eligibility

(A) In general

Only low- and moderate-income community financial institutions shall be eligible to participate in the Program.

(B) Additional criteria

The Secretary may establish additional criteria for participation by an institution in the Program, as the Secretary may determine appropriate in furtherance of the goals of the Program.

(4) Requirement to provide an emergency investment lending plan for communities that may be disproportionately impacted by the economic effects of the COVID-19 pandemic

(A) In general

At the time that an applicant submits an application to the Secretary for a capital in-

vestment under the Program, the applicant shall provide the Secretary, along with the appropriate Federal banking agency or the National Credit Union Administration, as applicable, an investment and lending plan that—

(i) demonstrates that not less than 30 percent of the lending of the applicant over the past 2 fiscal years was made directly to low- and moderate income borrowers, to borrowers that create direct benefits for low- and moderate-income populations, to other targeted populations as defined by the Fund, or any combination thereof, as measured by the total number and dollar amount of loans;

(ii) describes how the business strategy and operating goals of the applicant will address community development needs in communities that may be disproportionately impacted by the economic effects of COVID-19, which includes the needs of small businesses, consumers, nonprofit organizations, community development, and other projects providing direct benefits to low- and moderate-income communities, low-income individuals, and minorities within the minority, rural, and urban low-income and underserved areas served by the applicant;

(iii) includes a plan to provide community outreach and communication, where appropriate;²

(iv) includes details on how the applicant plans to expand or maintain significant lending or investment activity in low- or moderate-income minority communities, especially those that may be disproportionately impacted by COVID-19 to historically disadvantaged borrowers, and to minorities that have significant unmet capital or financial services needs.

(B) Documentation

In the case of an applicant that is certified as a community development financial institution as of December 27, 2020, for purposes of subparagraph (A)(i), the Secretary may rely on documentation submitted by the applicant to the Fund as part of certification compliance reporting.

(5) Incentives to increase lending and provide affordable credit

(A) Issuance and purchase of preferred stock

An eligible institution that the Secretary approves for participation in the Program may issue to the Secretary, and the Secretary may purchase from such institution, preferred stock that—

(i) provides that the preferred stock will—

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

(II) at the end of such 10-year period, be subject to such additional terms as the Secretary shall prescribe, which

² So in original. Probably should be followed by “and”.

shall include a requirement that the stock shall carry the highest dividend or interest rate payable; and

(ii) provides that the term and condition described under clause (i) shall not apply if the application of that term and condition would adversely affect the capital treatment of the stock under current or successor applicable capital provisions compared to a capital instrument with identical terms other than the term and condition described under clause (i).

(B) Alternative financial instruments

If the Secretary determines that an institution cannot feasibly issue preferred stock as provided under subparagraph (A), such institution may issue to the Secretary, and the Secretary may purchase from such institution, a subordinated debt instrument whose terms are, to the extent possible, consistent with requirements under the Program applicable to the terms of preferred stock issued by institutions participating in the Program, with such adjustments as the Secretary determines appropriate, including by taking into account the tax treatment of payments made with respect to securities issued by such eligible institution.

(6) Requirements on preferred stock and other financial instrument

Any financial instrument issued to the Secretary by a low- and moderate-income community financial institution under the Program shall provide the following:

(A) No dividends, interest or other similar required payments shall have a rate exceeding 2 percent per annum for the first 10 years.

(B) The annual required payment rate of dividends, interest, or other similar payments of a low- and moderate-income community financial institution shall be adjusted downward as follows, based on lending by the institution during the most recent annual period compared to lending by the institution during the annual period ending on September 30, 2020:

(i) No dividends, interest, or other similar payments shall be due within the first 24-month period after the capital investment by the Secretary.

(ii) If the amount of lending by the institution within minority, rural, and urban low-income and underserved communities and to low- and moderate-income borrowers has increased in amount between 200 percent and 400 percent of the amount of the capital investment, the annual payment rate shall not exceed 1.25 percent per annum.

(iii) If the amount of lending by the institution within minority, rural, and urban low-income and underserved communities and to low- and moderate-income borrowers has increased by more than 400 percent of the capital investment, the annual payment rate shall not exceed 0.5 percent per annum.

(7) Contingency of payments based on certain financial criteria

(A) Deferral

Any annual payments under this section shall be deferred in any quarter or payment period if any of the following is true:

(i) The low- and moderate-income community institution fails to meet the Tier 1 capital ratio or similar ratio as determined by the Secretary.

(ii) The low- and moderate-income community financial institution fails to achieve positive net income for the quarter or payment period.

(iii) The low- and moderate-income community financial institution determines that the payment would be detrimental to the financial health of the institution and the Chief Executive Officer and Chief Financial Officer of the institution provide written notice, in a form reasonably satisfactory to the Secretary, of such determination and the basis thereof.

(B) Testing during next payment period

Any annual payment that is deferred under this section shall—

(i) be tested against the metrics described in subparagraph (A) at the beginning of the next payment period; and

(ii) continue to be deferred until the metrics described in that subparagraph are no longer applicable.

(8) Requirements in connection with failure to satisfy program goals

Any financial instrument issued to the Secretary by a low- and moderate-income community financial institution under the Program may include such additional terms and conditions as the Secretary determines may be appropriate to provide the holders with rights in the event that such institution fails to satisfy applicable requirements under the Program or to protect the interests of the Federal Government.

(e) Restrictions

(1) In general

Each low- and moderate-income community financial institution may only issue financial instruments or senior preferred stock under this subsection with an aggregate principal amount (or comparable amount) that is—

(A) not more than \$250,000,000; and

(B)(i) not more than 7.5 percent of total assets for an institution with assets of more than \$2,000,000,000;

(ii) not more than 15 percent of total assets for an institution with assets of not less than \$500,000,000 and not more than \$2,000,000,000; and

(iii) not more than 22.5 percent of total assets for an institution with assets of less than \$500,000,000.

(2) Set-asides

Of the amounts made available under subsection (c)(2), not less than \$4,000,000,000 shall be made available for eligible institutions with total assets of not more than

\$2,000,000,000 that timely apply to receive a capital investment under the Program, of which not less than \$2,000,000,000 shall be made available for eligible institutions with total assets of less than \$500,000,000 that timely apply to receive a capital investment under the Program.

(3) Holding of instruments

Holding any instrument of a low- and moderate-income community financial institution described in paragraph (1) shall not give the Secretary or any successor that owns the instrument any rights over the management of the institution in the ordinary course of business.

(4) Sale of interest

(A) In general

With respect to a capital investment made into a low- and moderate-income community financial institution under this section, the Secretary—

(i) prior to any sale of such capital investment to a third party, shall provide the low- and moderate-income community financial institution a right of first refusal to buy back the investment under terms that do not exceed a value as determined by an independent third party;

(ii) shall not sell more than 25 percent of the outstanding equity interests of any institution to a single third party without the consent of such institution, which may not be unreasonably withheld; and

(iii) with the permission of the institution, may transfer or sell the interest of the Secretary in the capital investment for no consideration or for a de minimis amount to a mission aligned nonprofit affiliate of an applicant that is an insured community development financial institution.

(B) Calculation of ownership for minority depository institutions

The calculation and determination of ownership thresholds for a depository institution to qualify as a minority depository institution shall exclude any dilutive effect of equity investments by the Federal Government, including under the Program or through the Fund.

(5) Repayment incentives

The Secretary may establish repayment incentives that will apply to capital investments under the Program in a manner that the Secretary determines to be consistent with the purposes of the Program.

(f) Treatment of capital investments

The Secretary shall seek to establish the terms of preferred stock issued under the Program to enable such preferred stock to receive Tier 1 capital treatment.

(g) Outreach to minority communities

The Secretary shall require low- and moderate-income community financial institutions receiving capital investments under the Program to provide community outreach and communication, where appropriate, describing the

availability and application process of receiving loans made possible by the Program through organizations, trade associations, and individuals that represent or work within or are members of minority communities.

(h) Restrictions

(1) In general

Not later than the end of the 30-day period beginning on December 27, 2020, the Secretary shall issue rules setting restrictions on executive compensation, share buybacks, and dividend payments for recipients of capital investments under the Program.

(2) Conflicts of interest

(A) Definitions

In this paragraph:

(i) Controlling interest

The term “controlling interest” means owning, controlling, or holding not less than 20 percent, by vote or value, of the outstanding amount of any class of equity interest in an entity.

(ii) Covered entity

The term “covered entity” means an entity in which a covered individual directly or indirectly holds a controlling interest. For the purpose of determining whether an entity is a covered entity, the securities owned, controlled, or held by 2 or more individuals who are related as described in clause (iii)(II) shall be aggregated.

(iii) Covered individual

The term “covered individual” means—

(I) the President, the Vice President, the head of an Executive department, or a Member of Congress; and

(II) the spouse, child, son-in-law, or daughter-in-law, as determined under applicable common law, of an individual described in subclause (i).

(iv) Executive department

The term “Executive department” has the meaning given the term in section 101 of title 5.

(v) Member of Congress

The term “member of Congress” means a member of the Senate or House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

(vi) Equity interest

The term “equity interest” means—

(I) a share in an entity, without regard to whether the share is—

(aa) transferable; or

(bb) classified as stock or anything similar;

(II) a capital or profit interest in a limited liability company or partnership; or

(III) a warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share or interest described in subclause (I) or (II), respectively.

(B) Prohibition

Notwithstanding any other provision of this section, no covered entity may be eligi-

ble for any investment made under the Program.

(C) Requirement

The principal executive officer and the principal financial officer, or individuals performing similar functions, of an entity seeking to receive an investment made under the Program shall, before that investment is approved, certify to the Secretary and the appropriate Federal banking agency or the National Credit Union Administration, as applicable, that the entity is eligible to receive the investment, including that the entity is not a covered entity.

(i) Ineligibility of certain institutions

An institution shall be ineligible to participate in the Program if such institution is designated in Troubled Condition by the appropriate Federal banking agency or the National Credit Union Administration, as applicable, or is subject to a formal enforcement action with its primary Federal regulator that addresses unsafe or unsound lending practices.

(j) Termination of investment authority

(1) In general

The authority to make new capital investments in low- and moderate-income community financial institutions, including commitments to purchase preferred stock or other instruments, provided under the Program shall terminate on the date that is 6 months after the date on which the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates.

(2) Rule of construction

Nothing in this subsection may be construed to limit any other authority of the Secretary not described in paragraph (1).

(k) Collection of data

Notwithstanding the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.)—

(1) any low- and moderate-income community financial institution may collect data described in section 701(a)(1) of that Act (15 U.S.C. 1691(a)(1)) from borrowers and applicants for credit for the sole purpose and exclusive use of monitoring compliance under the plan required under subsection (d)(4); and

(2) a low- and moderate-income community financial institution that collects the data described in paragraph (1) shall not be subject to adverse action related to that collection by the Bureau of Consumer Financial Protection or any other Federal agency.

(l) Deposit of funds

All funds received by the Secretary in connection with purchases made pursuant to this section, including interest payments, dividend payments, and proceeds from the sale of any financial instrument, shall be deposited into the Fund and used to provide financial and technical assistance pursuant to section 4707 of this title, except that subsection (e) of that section shall be waived.

(m) Direct appropriation

There is appropriated, out of amounts in the Treasury not otherwise appropriated, for fiscal year 2021, \$9,000,000,000, to remain available until expended and to be deposited in the Emergency Capital Investment Fund, to carry out this section.

(n) Administrative expenses

Funds appropriated pursuant to subsection (m) may be used for administrative expenses, including the costs of modifying such investments, and reasonable costs of administering the Program of making, holding, managing, and selling the capital investments.

(o) Administrative provisions

The Secretary may take such actions as the Secretary determines necessary to carry out the authorities in this section, including 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.

(3) The Secretary may designate any bank, savings association, trust company, security broker or dealer, asset manager, or investment adviser as a financial agent of the Federal Government and such institution shall perform all such reasonable duties related to this section as financial agent of the Federal Government as may be required. The Secretary shall have authority to amend existing agreements with financial agents to perform reasonable duties related to this section.

(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 section.

(5) The Secretary may manage any assets purchased under this section, 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 section, 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 section.

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

(9) The Secretary may issue such regulations and other guidance as may be necessary or appropriate to define terms or carry out the authorities or purposes of this section.

(10) The Secretary is authorized to use direct hiring authority to hire employees to administer this section.

(Pub. L. 103-325, title I, § 104A, as added Pub. L. 116-260, div. N, title V, § 522(a), Dec. 27, 2020, 134 Stat. 2079.)

Editorial Notes

REFERENCES IN TEXT

Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (a)(6)(A), is section 308 of Pub. L. 101-73, which is set out as a note under section 1463 of this title.

The National Emergencies Act, referred to in subsec. (j)(1), is Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§ 1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

The Equal Credit Opportunity Act, referred to in subsec. (k), is title VII of Pub. L. 90-321, as added by Pub. L. 93-495, title V, § 503, Oct. 28, 1974, 88 Stat. 1521, which is classified generally to subchapter IV (§ 1691 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Statutory Notes and Related Subsidiaries

PURPOSE

Pub. L. 116-260, div. N, title V, § 520, Dec. 27, 2020, 134 Stat. 2079, provided that: “The purpose of this subtitle [subtitle B (§§ 520–524) of title V of div. N of Pub. L. 116-260, enacting this section and provisions set out as notes under this section] is to establish emergency programs to revitalize and provide long-term financial products and service availability for, and provide investments in, low- and moderate-income and minority communities that have disproportionately suffered from the impacts of the COVID-19 pandemic.”

CONSIDERATIONS IN EXERCISING AUTHORITIES; REQUIREMENTS FOR CREDITORS

Pub. L. 116-260, div. N, title V, § 521, Dec. 27, 2020, 134 Stat. 2079, provided that:

“(a) IN GENERAL.—In exercising the authorities under this subtitle [subtitle B (§§ 520–524) of title V of div. N of Pub. L. 116-260, enacting this section and provisions set out as notes under this section] and the amendments made by this subtitle, the Secretary of the Treasury shall take into consideration increasing the availability of affordable credit for consumers, small businesses, and nonprofit organizations, including for projects supporting affordable housing, community-serving real estate, and other projects, that provide direct benefits to low- and moderate-income communities, low-income and underserved individuals, and minorities, that have disproportionately suffered from the health and economic impacts of the COVID-19 pandemic.

“(b) REQUIREMENT FOR CREDITORS.—Any creditor participating in a program established under this subtitle or the amendments made by this subtitle shall fully comply with all applicable statutory and regulatory requirements relating to fair lending.”

INSPECTOR GENERAL OVERSIGHT

Pub. L. 116-260, div. N, title V, § 524, Dec. 27, 2020, 134 Stat. 2089, provided that:

“(a) IN GENERAL.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of any program established under this subtitle [subtitle B (§§ 520–524) of title V of div. N of Pub. L. 116-260, enacting this section and provisions set out as notes under this section] or the amendments made by this subtitle.

“(b) REPORTING.—The Inspector General of the Department of the Treasury shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Secretary of the Treasury not less frequently than 2 times per year a report relating to the oversight provided by the Office of the Inspector General, including any recommendations for improvements to the programs described in subsection (a).”

§ 4704. Applications for assistance

(a) Form and procedures

An application for assistance under this subchapter shall be submitted in such form and in accordance with such procedures as the Fund shall establish.

(b) Minimum requirements

Except as provided in sections 4705 and 4712 of this title, the Fund shall require an application—

(1) to establish that the applicant is, or will be, a community development financial institution;

(2) to include a comprehensive strategic plan for the organization that contains—

(A) a business plan of not less than 5 years in duration that demonstrates that the applicant will be properly managed and will have the capacity to operate as a community development financial institution that will not be dependent upon assistance from the Fund for continued viability;

(B) an analysis of the needs of the investment area or targeted population and a strategy for how the applicant will attempt to meet those needs;

(C) a plan to coordinate use of assistance from the Fund with existing Federal, State, local, and tribal government assistance programs, and private sector financial services;

(D) an explanation of how the proposed activities of the applicant are consistent with existing economic, community, and housing development plans adopted by or applicable to an investment area or targeted population; and

(E) a description of how the applicant will coordinate with community organizations and financial institutions which will provide equity investments, loans, secondary markets, or other services to investment areas or targeted populations;

(3) to include a detailed description of the applicant's plans and likely sources of funds to match the amount of assistance requested from the Fund;

(4) in the case of an applicant that has previously received assistance under this subchapter, to demonstrate that the applicant—

(A) has substantially met its performance goals and otherwise carried out its responsibilities under this subchapter and the assistance agreement; and

(B) will expand its operations into a new investment area or serve a new targeted population, offer more products or services, or increase the volume of its business;

(5) in the case of an applicant with a prior history of serving investment areas or tar-

geted populations, to demonstrate that the applicant—

- (A) has a record of success in serving investment areas or targeted populations; and
- (B) will expand its operations into a new investment area or to serve a new targeted population, offer more products or services, or increase the volume of its current business; and

(6) to include such other information as the Fund deems appropriate.

(c) Preapplication outreach program

The Fund shall provide an outreach program to identify and provide information to potential applicants and may provide technical assistance to potential applicants, but shall not assist in the preparation of any application.

(Pub. L. 103-325, title I, § 105, Sept. 23, 1994, 108 Stat. 2170.)

§ 4705. Community partnerships

(a) Application

An application for assistance may be filed jointly by a community development financial institution and a community partner to carry out a community partnership.

(b) Application requirements

The Fund shall require a community partnership application—

- (1) to meet the minimum requirements established for community development financial institutions under section 4704(b) of this title, except that the criteria specified in paragraphs (1) and (2)(A) of section 4704(b) of this title shall not apply to the community partner;
- (2) to describe how each coapplicant will participate in carrying out the community partnership and how the partnership will enhance activities serving the investment area or targeted population; and
- (3) to demonstrate that the community partnership activities are consistent with the strategic plan submitted by the community development financial institution coapplicant.

(c) Selection criteria

The Fund shall consider a community partnership application based on—

- (1) the community development financial institution coapplicant—
 - (A) meeting the minimum selection criteria described in section 4704 of this title; and
 - (B) satisfying the selection criteria of section 4706 of this title;
- (2) the extent to which the community partner coapplicant will participate in carrying out the partnership;
- (3) the extent to which the community partnership will enhance the likelihood of success of the community development financial institution coapplicant's strategic plan; and
- (4) the extent to which service to the investment area or targeted population will be better performed by a partnership as opposed to the individual community development financial institution coapplicant.

(d) Limitation on distribution of assistance

Assistance provided upon approval of an application under this section shall be distributed only to the community development financial institution coapplicant, and shall not be used to fund any activities carried out directly by the community partner or an affiliate or subsidiary thereof.

(e) Other requirements and limitations

All other requirements and limitations imposed by this subchapter on a community development financial institution assisted under this subchapter shall apply (in the manner that the Fund determines to be appropriate) to assistance provided to carry out community partnerships. The Fund may establish additional guidelines and restrictions on the use of Federal funds to carry out community partnerships.

(Pub. L. 103-325, title I, § 106, Sept. 23, 1994, 108 Stat. 2171.)

§ 4706. Selection of institutions

(a) Selection criteria

Except as provided in section 4712 of this title, the Fund shall, in its sole discretion, select community development financial institution applicants meeting the requirements of section 4704 of this title for assistance based on—

- (1) the likelihood of success of the applicant in meeting the goals of its comprehensive strategic plan;
- (2) the experience and background of the management team;
- (3) the extent of need for equity investments, loans, and development services within the investment areas or targeted populations;
- (4) the extent of economic distress within the investment areas or the extent of need within the targeted populations, as those factors are measured by objective criteria;
- (5) the extent to which the applicant will concentrate its activities on serving its investment areas or targeted populations;
- (6) the amount of firm commitments to meet or exceed the matching requirements and the likely success of the plan for raising the balance of the match;
- (7) the extent to which the matching funds are derived from private sources;
- (8) the extent to which the proposed activities will expand economic opportunities within the investment areas or the targeted populations;
- (9) whether the applicant is, or will become, an insured community development financial institution;
- (10) the extent of support from the investment areas or targeted populations;
- (11) the extent to which the applicant is, or will be, community-owned or community-governed;
- (12) the extent to which the applicant will increase its resources through coordination with other institutions or participation in a secondary market;
- (13) in the case of an applicant with a prior history of serving investment areas or targeted populations, the extent of success in serving them; and

(14) other factors deemed to be appropriate by the Fund.

(b) Geographic diversity

In selecting applicants for assistance, the Fund shall seek to fund a geographically diverse group of applicants, which shall include applicants from metropolitan, nonmetropolitan, and rural areas.

(Pub. L. 103-325, title I, § 107, Sept. 23, 1994, 108 Stat. 2172.)

§ 4707. Assistance provided by Fund

(a) Forms of assistance

(1) In general

The Fund may provide—

(A) financial assistance through equity investments, deposits, credit union shares, loans, and grants; and

(B) technical assistance—

(i) directly;

(ii) through grants; or

(iii) by contracting with organizations that possess expertise in community development finance, without regard to whether the organizations receive or are eligible to receive assistance under this subchapter.

(2) Equity investments

(A) Limitation on equity investments

The Fund shall not own more than 50 percent of the equity of a community development financial institution and may not control the operations of such institution. The Fund may hold only transferable, nonvoting equity investments in the institution. Such equity investments may provide for convertibility to voting stock upon transfer by the Fund.

(B) Fund deemed not to control

Notwithstanding any other provision of law, the Fund shall not be deemed to control a community development financial institution by reason of any assistance provided under this subchapter for the purpose of any other applicable law to the extent that the Fund complies with subparagraph (A). Nothing in this subparagraph shall affect the application of any Federal tax law.

(3) Deposits

Deposits made pursuant to this section in an insured community development financial institution shall not be subject to any requirement for collateral or security.

(4) Limitations on obligations

Direct loan obligations may be incurred by the Fund only to the extent that appropriations of budget authority to cover their cost, as defined in section 661a(5) of title 2, are made in advance.

(b) Uses of financial assistance

(1) In general

Financial assistance made available under this subchapter may be used by assisted community development financial institutions to serve investment areas or targeted populations by developing or supporting—

(A) commercial facilities that promote revitalization, community stability, or job creation or retention;

(B) businesses that—

(i) provide jobs for low-income people or are owned by low-income people; or

(ii) enhance the availability of products and services to low-income people;

(C) community facilities;

(D) the provision of basic financial services;

(E) housing that is principally affordable to low-income people, except that assistance used to facilitate homeownership shall only be used for services and lending products—

(i) that serve low-income people; and

(ii) that—

(I) are not provided by other lenders in the area; or

(II) complement the services and lending products provided by other lenders that serve the investment area or targeted population; and

(F) other businesses and activities deemed appropriate by the Fund.

(2) Limitations

No assistance made available under this subchapter may be expended by a community development financial institution (or an organization receiving assistance under section 4712 of this title) to pay any person to influence or attempt to influence any agency, elected official, officer, or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan, or cooperative agreement (as such terms are defined in section 1352 of title 31).

(c) Uses of technical assistance

(1) Types of activities

Technical assistance may be used for activities that enhance the capacity of a community development financial institution, such as training of management and other personnel and development of programs and investment or loan products.

(2) Availability of technical assistance

The Fund may provide technical assistance, regardless of whether or not the recipient also receives financial assistance under this section.

(d) Amount of assistance

(1) In general

Except as provided in paragraph (2), the Fund may provide not more than \$5,000,000 of assistance, in the aggregate, during any 3-year period to any 1 community development financial institution and its subsidiaries and affiliates.

(2) Exception

The Fund may provide not more than \$3,750,000 of assistance in addition to the amount specified in paragraph (1) during the same 3-year period to an existing community development financial institution that pro-

poses to establish a subsidiary or affiliate for the purpose of serving an investment area or targeted population outside of any State and outside of any metropolitan area presently served by the institution, if—

(A) the subsidiary or affiliate—

(i) would be a community development financial institution; and

(ii) independently—

(I) meets the selection criteria described in section 4704 of this title; and

(II) satisfies the selection criteria of section 4706 of this title; and

(B) no other application for assistance to serve the investment area or targeted population has been submitted to the Administrator within a reasonable period of time preceding the date of receipt of the application at issue.

(3) Timing of assistance

Assistance may be provided as described in paragraphs (1) and (2) in a lump sum or over a period of time, as determined by the Fund.

(e) Matching requirements

(1) In general

Assistance other than technical assistance shall be matched with funds from sources other than the Federal Government on the basis of not less than one dollar for each dollar provided by the Fund. Such matching funds shall be at least comparable in form and value to assistance provided by the Fund. The Fund shall provide no assistance (other than technical assistance) until a community development financial institution has secured firm commitments for the matching funds required.

(2) Exception

In the case of an applicant with severe constraints on available sources of matching funds, the Fund may permit an applicant to comply with the matching requirements of paragraph (1) by—

(A) reducing such matching requirement by 50 percent; or

(B) permitting an applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such applicant—

(i) has total assets of less than \$100,000;

(ii) serves nonmetropolitan or rural areas; and

(iii) is not requesting more than \$25,000 in assistance.

(3) Limitation

Not more than 25 percent of the total funds disbursed in any fiscal year by the Fund may be matched as authorized under paragraph (2).

(4) Construction of “Federal Government funds”

For purposes of this subsection, notwithstanding section 105(a)(9) of the Housing and Community Development Act of 1974 [42 U.S.C. 5305(a)(9)], funds provided pursuant to such Act shall be considered to be Federal Government funds.

(f) Terms and conditions

(1) Soundness of unregulated institutions

The Fund shall—

(A) ensure, to the maximum extent practicable, that each community development financial institution (other than an insured community development financial institution or depository institution holding company) assisted under this subchapter is financially and managerially sound and maintains appropriate internal controls;

(B) require such institution to submit, not less than once during each 18-month period, a statement of financial condition audited by an independent certified public accountant as part of the report required by section 4714(e)(1) of this title; and

(C) require that all assistance granted under this section is used by the community development financial institution or community development partnership in a manner consistent with the purposes of this subchapter.

(2) Assistance agreement

(A) In general

Before providing any assistance under this subchapter, the Fund and each community development financial institution to be assisted shall enter into an agreement that requires the institution to comply with performance goals and abide by other terms and conditions pertinent to assistance received under this subchapter.

(B) Performance goals

Performance goals shall be negotiated between the Fund and each community development financial institution receiving assistance based upon the strategic plan submitted pursuant to section 4704(b)(2) of this title. Such goals may be modified with the consent of the parties, or as provided in subparagraph (C). Performance goals for insured community development financial institutions shall be determined in consultation with the appropriate Federal banking agency.

(C) Sanctions

The agreement shall provide that, in the event of fraud, mismanagement, noncompliance with this subchapter, or noncompliance with the terms of the agreement, the Fund, in its discretion, may—

(i) require changes to the performance goals imposed pursuant to subparagraph (B);

(ii) require changes to the strategic plan submitted pursuant to section 4704(b)(2) of this title;

(iii) revoke approval of the application;

(iv) reduce or terminate assistance;

(v) require repayment of assistance;

(vi) bar an applicant from reapplying for assistance from the Fund; and

(vii) take such other actions as the Fund deems appropriate.

(D) Consultation with tribal governments

In reviewing the performance of any assisted community development financial institution, the investment area of which includes an Indian reservation, or the targeted population of which includes an Indian tribe,

the Fund shall consult with, and seek input from, any appropriate tribal government.

(g) Authority to sell equity investments and loans

The Fund may, at any time, sell its equity investments and loans, but the Fund shall retain the power to enforce limitations on assistance entered into in accordance with the requirements of this subchapter until the performance goals related to the investment or loan have been met.

(h) No authority to limit supervision and regulation

Nothing in this subchapter shall affect any authority of the appropriate Federal banking agency to supervise and regulate any institution or company.

(Pub. L. 103-325, title I, §108, Sept. 23, 1994, 108 Stat. 2172.)

Editorial Notes

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsec. (e)(4), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

§ 4708. Training

(a) In general

The Fund may operate a training program to increase the capacity and expertise of community development financial institutions and other members of the financial services industry to undertake community development finance activities.

(b) Program activities

The training program shall provide educational programs to assist community development financial institutions and other members of the financial services industry in developing lending and investment products, underwriting and servicing loans, managing equity investments, and providing development services targeted to areas of economic distress, low-income persons, and persons who lack adequate access to loans and equity investments.

(c) Participation

The training program shall be made available to community development financial institutions and other members of the financial services industry that serve or seek to serve areas of economic distress, low-income persons, and persons who lack adequate access to loans and equity investments.

(d) Contracting

The Fund may offer the training program described in this section directly or through a contract with other organizations. The Fund may contract to provide the training program through organizations that possess special expertise in community development, without regard to whether the organizations receive or are eligible to receive assistance under this subchapter.

(e) Coordination

The Fund shall coordinate with other appropriate Federal departments or agencies that operate similar training programs in order to prevent duplicative efforts.

(f) Regulatory fee for providing training services

(1) General rule

The Fund may, at the discretion of the Administrator and in accordance with this subsection, assess and collect regulatory fees solely to cover the costs of the Fund in providing training services under a training program operated in accordance with this section.

(2) Persons subject to fee

Fees may be assessed under paragraph (1) only on persons who participate in the training program.

(3) Limitation on manner of collection

Fees may be assessed and collected under this subsection only in such manner as may reasonably be expected to result in the collection of an aggregate amount of fees during any fiscal year which does not exceed the aggregate costs of the Fund for such year in providing training services under a training program operated in accordance with this section¹

(4) Limitation on amount of fee

The amount of any fee assessed under this subsection on any person may not exceed the amount which is reasonably based on the proportion of the training services provided under a training program operated in accordance with this section which relate to such person.

(Pub. L. 103-325, title I, §109, Sept. 23, 1994, 108 Stat. 2176.)

§ 4709. Encouragement of private entities

The Fund may facilitate the organization of corporations in which the Federal Government has no ownership interest. The purpose of any such entity shall be to assist community development financial institutions in a manner that is complementary to the activities of the Fund under this subchapter. Any such entity shall be managed exclusively by persons not employed by the Federal Government or any agency or instrumentality thereof, or by any State or local government or any agency or instrumentality thereof.

(Pub. L. 103-325, title I, §110, Sept. 23, 1994, 108 Stat. 2177.)

§ 4710. Collection and compilation of information

The Fund shall—

(1) collect and compile information pertinent to community development financial institutions that will assist in creating, developing, expanding, and preserving such institutions; and

(2) make such information available to promote the purposes of this subchapter.

(Pub. L. 103-325, title I, §111, Sept. 23, 1994, 108 Stat. 2177.)

¹ So in original. Probably should be followed by a period.

§ 4711. Investment of receipts and proceeds**(a) Establishment of account**

Any dividends on equity investments and proceeds from the disposition of investments, deposits, or credit union shares that are received by the Fund as a result of assistance provided pursuant to section 4707 or 4712 of this title, and any fees received pursuant to section 4708(f) of this title shall be deposited and accredited to an account of the Fund in the United States Treasury (hereafter in this section referred to as “the account”) established to carry out the purpose of this subchapter.

(b) Investments

Upon request of the Administrator, the Secretary of the Treasury shall invest amounts deposited in the account in public debt securities with maturities suitable to the needs of the Fund, as determined by the Administrator, and bearing interest at rates determined by the Secretary of the Treasury, comparable to current market yields on outstanding marketable obligations of the United States of similar maturities.

(c) Availability

Amounts deposited into the account and interest earned on such amounts pursuant to this section shall be available to the Fund until expended.

(Pub. L. 103-325, title I, § 112, Sept. 23, 1994, 108 Stat. 2177.)

§ 4712. Capitalization assistance to enhance liquidity**(a) Assistance****(1) In general**

The Fund may provide assistance for the purpose of providing capital to organizations to purchase loans or otherwise enhance the liquidity of community development financial institutions, if—

(A) the primary purpose of such organizations is to promote community development; and

(B) any assistance received is matched with funds—

(i) from sources other than the Federal Government;

(ii) on the basis of not less than one dollar for each dollar provided by the Fund; and

(iii) that are comparable in form and value to the assistance provided by the Fund.

(2) Limitation on other assistance

An organization that receives assistance under this section may not receive other financial or technical assistance under this subchapter.

(3) Construction of Federal Government funds

For purposes of this subsection, notwithstanding section 105(a)(9) of the Housing and Community Development Act of 1974 [42 U.S.C. 5305(a)(9)], funds provided pursuant to such Act shall be considered to be Federal Government funds.

(b) Selection

The selection of organizations to receive assistance under this section shall be at the discretion of the Fund and in accordance with criteria established by the Fund. In establishing such criteria, the Fund shall take into account the criteria contained in sections 4704(b) and 4706 of this title, as appropriate.

(c) Amount of assistance

The Fund may provide a total of not more than \$5,000,000 of assistance to an organization or its subsidiaries or affiliates under this section during any 3-year period. Assistance may be provided in a lump sum or over a period of time, as determined by the Fund.

(d) Audit and report requirements

Organizations that receive assistance from the Fund in accordance with this section shall—

(1) submit to the Fund, not less than once in every 18-month period, financial statements audited by an independent certified public accountant, as part of the report required by paragraph (2);

(2) submit an annual report on its activities; and

(3) keep such records as may be necessary to disclose the manner in which any assistance under this section is used.

(e) Limitations on liability**(1) Liability of Fund**

The liability of the Fund and the United States Government arising out of the provision of assistance to any organization in accordance with this section shall be limited to the amount of such assistance. The Fund shall be exempt from any assessments and any other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State, or territory. Nothing in this paragraph shall affect the application of Federal tax law.

(2) Liability of Government

This section does not oblige the Federal Government, either directly or indirectly, to provide any funds to any organization assisted pursuant to this section, or to honor, reimburse, or otherwise guarantee any obligation or liability of such an organization. This section shall not be construed to imply that any such organization or any obligations or securities of any such organization are backed by the full faith and credit of the United States.

(f) Use of proceeds

Any proceeds from the sale of loans by an organization assisted under this section shall be used by the seller for community development purposes.

(Pub. L. 103-325, title I, § 113, Sept. 23, 1994, 108 Stat. 2178.)

Editorial Notes**REFERENCES IN TEXT**

The Housing and Community Development Act of 1974, referred to in subsec. (a)(3), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633. For complete classification of this Act to the Code, see Short Title note set out under sec-

tion 5301 of Title 42, The Public Health and Welfare, and Tables.

§ 4713. Incentives for depository institution participation

(a) Function of Administrator

(1) In general

Of any funds appropriated pursuant to the authorization in section 4718(a) of this title, the funds made available for use in carrying out this section in accordance with section 4718(a)(4) of this title shall be administered by the Administrator of the Fund, in consultation with—

(A) the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) and the National Credit Union Administration;

(B) the individuals named pursuant to clauses (ii) and (iv) of section 4703(d)(2)(G) of this title; and

(C) any other representatives of insured depository institutions or other persons as the Administrator may determine to be appropriate.

(2) Applicability of Bank Enterprise Act of 1991

Subject to subsection (b) and the consultation requirement of paragraph (1)—

(A) section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a] shall be applicable to the Administrator, for purposes of this section, in the same manner and to the same extent that such section is applicable to the Community Enterprise Assessment Credit Board;

(B) the Administrator shall, for purposes of carrying out this section and section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a]—

(i) have all powers and rights of the Community Enterprise Assessment Credit Board under section 233 of the Bank Enterprise Act of 1991 to administer and enforce any provision of such section 233 which is applicable to the Administrator under this section; and

(ii) shall be subject to the same duties and restrictions imposed on the Community Enterprise Assessment Credit Board; and

(C) the Administrator shall—

(i) have all powers and rights of an appropriate Federal banking agency under section 233(b)(2) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(b)(2)] to approve or disapprove the designation of qualified distressed communities for purposes of this section and provide information and assistance with respect to any such designation; and

(ii) shall be subject to the same duties imposed on the appropriate Federal banking agencies under such section 233(b)(2).

(3) Awards

The Administrator shall determine the amount of assessment credits, and shall make awards of those credits.

(4) Regulations and guidelines

The Administrator may prescribe such regulations and issue such guidelines as the Ad-

ministrator determines to be appropriate to carry out this section.

(5) Exceptions to applicability

Notwithstanding paragraphs (1) through (4) of this subsection, subsections (a)(1) and (e)(2) of section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(a)(1), (e)(2)], and any other provision of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] relating to the Bank Enterprise Act of 1991, do not apply to the Administrator for purposes of this subchapter.

(b) Provisions relating to administration of this section

(1) New lifeline accounts

In applying section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a] for purposes of this section, the Administrator shall treat the provision of new lifeline accounts by an insured depository institution as an activity which is qualified to be taken into account under section 233(a)(2)(A) of such Act.

(2) Determination of assessment credit

For the purpose of this subchapter, section 233(a)(3) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(a)(3)] shall be applied by substituting the following text:

“(3) Amount of assessment credit

“The amount of an assessment credit which may be awarded to an insured depository institution to carry out the qualified activities of the institution or of the subsidiaries of the institution pursuant to this section for any semiannual period shall be equal to the sum of—

“(A) with respect to qualifying activities described in paragraph (2)(A), the amount which is equal to—

“(i) 5 percent of the sum of the amounts determined under such subparagraph, in the case of an institution which is not a community development financial institution; or

“(ii) 15 percent of the sum of the amounts determined under such subparagraph, in the case of an institution which is a community development financial institution; and

“(B) with respect to qualifying activities described in paragraph (2)(C), 15 percent of the amounts determined under such subparagraph.”

(3) Adjustment of percentage

Section 233(a)(5) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(a)(5)] shall be applied for purposes of this section by—

(A) substituting “institutions which are community development financial institutions” for “institutions which meet the community development organization requirements under section 234 [12 U.S.C. 1834b]”; and

(B) substituting “institutions which are not community development financial institutions” for “institutions which do not meet such requirements”.

(4) Designation of QDC

Section 233(b)(2) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(b)(2)] shall be applied

for purposes of this section without regard to subparagraph (A)(ii) of such section 233(b)(2).

(5) Operation on annual basis

The Administrator may, in the Administrator's discretion, apply section 233 of the Bank Enterprise Act of 1991 for purposes of this section by providing community enterprise assessment credits with respect to annual periods rather than semiannual periods.

(6) Outreach

The Administrator shall ensure that information about the Bank Enterprise Act of 1991 under this section is widely disseminated to all interested parties.

(7) Qualified activities

For the purpose of this subchapter, section 233(a)(2)(A) of the Bank Enterprise Act of 1991 shall be applied by inserting "of the increase" after "the amount".

(Pub. L. 103-325, title I, § 114, Sept. 23, 1994, 108 Stat. 2179.)

Editorial Notes

REFERENCES IN TEXT

The Bank Enterprise Act of 1991, referred to in subsecs. (a)(2), (5) and (b)(6), is subtitle C (§§ 231-234) of title II of Pub. L. 102-242, Dec. 19, 1991, 105 Stat. 2308-2315, which enacted sections 1834 to 1834b of this title, amended section 1817 of this title, and enacted provisions set out as a note under section 1811 of this title. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1811 of this title and Tables.

The Federal Deposit Insurance Act, referred to in subsec. (a)(5), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

Section is comprised of section 114 of Pub. L. 103-325. Subsec. (c) of section 114 of Pub. L. 103-325 amended section 1834a of this title.

§ 4713a. Guarantees for bonds and notes issued for community or economic development purposes

(a) Definitions

In this section, the following definitions shall apply:

(1) Eligible community development financial institution

The term "eligible community development financial institution" means a community development financial institution (as described in section 1805.201 of title 12, Code of Federal Regulations, or any successor thereto) certified by the Secretary that has applied to a qualified issuer for, or been granted by a qualified issuer, a loan under the Program.

(2) Eligible community or economic development purpose

The term "eligible community or economic development purpose"—

(A) means any purpose described in section 4707(b) of this title; and

(B) includes the provision of community or economic development in low-income or underserved rural areas.

(3) Guarantee

The term "guarantee" means a written agreement between the Secretary and a qualified issuer (or trustee), pursuant to which the Secretary ensures repayment of the verifiable losses of principal, interest, and call premium, if any, on notes or bonds issued by a qualified issuer to finance or refinance loans to eligible community development financial institutions.

(4) Loan

The term "loan" means any credit instrument that is extended under the Program for any eligible community or economic development purpose.

(5) Master servicer

(A) In general

The term "master servicer" means any entity approved by the Secretary in accordance with subparagraph (B) to oversee the activities of servicers, as provided in subsection (f)(4).

(B) Approval criteria for master servicers

The Secretary shall approve or deny any application to become a master servicer under the Program not later than 90 days after the date on which all required information is submitted to the Secretary, based on the capacity and experience of the applicant in—

(i) loan administration, servicing, and loan monitoring;

(ii) managing regional or national loan intake, processing, or servicing operational systems and infrastructure;

(iii) managing regional or national originator communication systems and infrastructure;

(iv) developing and implementing training and other risk management strategies on a regional or national basis; and

(v) compliance monitoring, investor relations, and reporting.

(6) Program

The term "Program" means the guarantee Program for bonds and notes issued for eligible community or economic development purposes established under this section.

(7) Program administrator

The term "Program administrator" means an entity designated by the issuer to perform administrative duties, as provided in subsection (f)(2).

(8) Qualified issuer

(A) In general

The term "qualified issuer" means a community development financial institution (or any entity designated to issue notes or bonds on behalf of such community development financial institution) that meets the qualification requirements of this paragraph.

(B) Approval criteria for qualified issuers

(i) In general

The Secretary shall approve a qualified issuer for a guarantee under the Program

in accordance with the requirements of this paragraph, and such additional requirements as the Secretary may establish, by regulation.

(ii) Terms and qualifications

A qualified issuer shall—

(I) have appropriate expertise, capacity, and experience, or otherwise be qualified to make loans for eligible community or economic development purposes;

(II) provide to the Secretary—

(aa) an acceptable statement of the proposed sources and uses of the funds; and

(bb) a capital distribution plan that meets the requirements of subsection (c)(1); and

(III) certify to the Secretary that the bonds or notes to be guaranteed are to be used for eligible community or economic development purposes.

(C) Department opinion; timing

(i) Department opinion

Not later than 30 days after the date of a request by a qualified issuer for approval of a guarantee under the Program, the Secretary shall provide an opinion regarding compliance by the issuer with the requirements of the Program under this section.

(ii) Timing

The Secretary shall approve or deny a guarantee under this section after consideration of the opinion provided to the Secretary under clause (i), and in no case later than 90 days after receipt of all required information by the Secretary with respect to a request for such guarantee.

(9) Secretary

The term “Secretary” means the Secretary of the Treasury.

(10) Servicer

The term “servicer” means an entity designated by the issuer to perform various servicing duties, as provided in subsection (f)(3).

(b) Guarantees authorized

The Secretary shall guarantee payments on bonds or notes issued by any qualified issuer, if the proceeds of the bonds or notes are used in accordance with this section to make loans to eligible community development financial institutions—

(1) for eligible community or economic development purposes; or

(2) to refinance loans or notes issued for such purposes.

(c) General program requirements

(1) In general

A capital distribution plan meets the requirements of this subsection, if not less than 90 percent of the principal amount of guaranteed bonds or notes (other than costs of issuance fees) are used to make loans for any eligible community or economic development

purpose, measured annually, beginning at the end of the 1-year period beginning on the issuance date of such guaranteed bonds or notes.

(2) Relending account

Not more than 10 percent of the principal amount of guaranteed bonds or notes, multiplied by an amount equal to the outstanding principal balance of issued notes or bonds, minus the risk-share pool amount under subsection (d), may be held in a relending account and may be made available for new eligible community or economic development purposes.

(3) Limitations on unpaid principal balances

The proceeds of guaranteed bonds or notes under the Program may not be used to pay fees (other than costs of issuance fees), and shall be held in—

(A) community or economic development loans;

(B) a relending account, to the extent authorized under paragraph (2); or

(C) a risk-share pool established under subsection (d).

(4) Repayment

If a qualified issuer fails to meet the requirements of paragraph (1) by the end of the 90-day period beginning at the end of the annual measurement period, repayment shall be made on that portion of bonds or notes necessary to bring the bonds or notes that remain outstanding after such repayment into compliance with the 90 percent requirement of paragraph (1).

(5) Prohibited uses

The Secretary shall, by regulation—

(A) prohibit, as appropriate, certain uses of amounts from the guarantee of a bond or note under the Program, including the use of such funds for political activities, lobbying, outreach, counseling services, or travel expenses; and

(B) provide that the guarantee of a bond or note under the Program may not be used for salaries or other administrative costs of—

(i) the qualified issuer; or

(ii) any recipient of amounts from the guarantee of a bond or note.

(d) Risk-share pool

Each qualified issuer shall, during the term of a guarantee provided under the Program, establish a risk-share pool, capitalized by contributions from eligible community development financial institution participants an amount equal to 3 percent of the guaranteed amount outstanding on the subject notes and bonds.

(e) Guarantees

(1) In general

A guarantee issued under the Program shall—

(A) be for the full amount of a bond or note, including the amount of principal, interest, and call premiums;

(B) be fully assignable and transferable to the capital market, on terms and conditions that are consistent with comparable Govern-

ment-guaranteed bonds, and satisfactory to the Secretary;

(C) represent the full faith and credit of the United States; and

(D) not exceed 30 years.

(2) Limitations

(A) Annual number of guarantees

The Secretary shall issue not more than 10 guarantees in any calendar year under the Program.

(B) Guarantee amount

The Secretary may not guarantee any amount under the Program equal to less than \$100,000,000, but the total of all such guarantees in any fiscal year may not exceed \$1,000,000,000.

(f) Servicing of transactions

(1) In general

To maximize efficiencies and minimize cost and interest rates, loans made under this section may be serviced by qualified Program administrators, bond servicers, and a master servicer.

(2) Duties of Program administrator

The duties of a Program administrator shall include—

(A) approving and qualifying eligible community development financial institution applications for participation in the Program;

(B) compliance monitoring;

(C) bond packaging in connection with the Program; and

(D) all other duties and related services that are customarily expected of a Program administrator.

(3) Duties of servicer

The duties of a servicer shall include—

(A) billing and collecting loan payments;

(B) initiating collection activities on past-due loans;

(C) transferring loan payments to the master servicing accounts;

(D) loan administration and servicing;

(E) systematic and timely reporting of loan performance through remittance and servicing reports;

(F) proper measurement of annual outstanding loan requirements; and

(G) all other duties and related services that are customarily expected of servicers.

(4) Duties of master servicer

The duties of a master servicer shall include—

(A) tracking the movement of funds between the accounts of the master servicer and any other servicer;

(B) ensuring orderly receipt of the monthly remittance and servicing reports of the servicer;

(C) monitoring the collection comments and foreclosure actions;

(D) aggregating the reporting and distribution of funds to trustees and investors;

(E) removing and replacing a servicer, as necessary;

(F) loan administration and servicing;

(G) systematic and timely reporting of loan performance compiled from all bond servicers' reports;

(H) proper distribution of funds to investors; and

(I) all other duties and related services that are customarily expected of a master servicer.

(g) Fees

(1) In general

A qualified issuer that receives a guarantee issued under this section on a bond or note shall pay a fee to the Secretary, in an amount equal to 10 basis points of the amount of the unpaid principal of the bond or note guaranteed.

(2) Payment

A qualified issuer shall pay the fee required under this subsection on an annual basis.

(3) Use of fees

Fees collected by the Secretary under this subsection shall be used to reimburse the Department of the Treasury for any administrative costs incurred by the Department in implementing the Program established under this section.

(h) Authorization of appropriations

(1) In general

There are authorized to be appropriated to the Secretary, such sums as are necessary to carry out this section.

(2) Use of fees

To the extent that the amount of funds appropriated for a fiscal year under paragraph (1) are not sufficient to carry out this section, the Secretary may use the fees collected under subsection (g) for the cost of providing guarantees of bonds and notes under this section.

(i) Investment in guaranteed bonds ineligible for Community Reinvestment Act purposes

Notwithstanding any other provision of law, any investment by a financial institution in bonds or notes guaranteed under the Program shall not be taken into account in assessing the record of such institution for purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 [et seq.]).

(j) Administration

(1) Regulations

Not later than 1 year after September 27, 2010, the Secretary shall promulgate regulations to carry out this section.

(2) Implementation

Not later than 2 years after September 27, 2010, the Secretary shall implement this section.

(k) Termination

This section is repealed, and the authority provided under this section shall terminate, on September 30, 2014.¹

(Pub. L. 103-325, title I, § 114A, as added Pub. L. 111-240, title I, § 1134, Sept. 27, 2010, 124 Stat. 2515.)

¹ See Termination of Section note below.

TERMINATION OF SECTION

For delay of termination of section by Pub. L. 117–328, see Termination Date note below.

Editorial Notes

REFERENCES IN TEXT

The Community Reinvestment Act of 1977, referred to in subsec. (i), is title VIII of Pub. L. 95–128, Oct. 12, 1977, 91 Stat. 1147, which is classified generally to chapter 30 (§2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

Statutory Notes and Related Subsidiaries

TERMINATION DATE

Pub. L. 117–328, div. E, title I, Dec. 29, 2022, 136 Stat. 4655, provided in part: “That such section 114A [this section] shall remain in effect until December 31, 2023”.

Additional provisions delaying the termination of this section were contained in the following prior appropriation acts:

Pub. L. 117–103, div. E, title I, Mar. 15, 2022, 136 Stat. 244.

Pub. L. 116–260, div. E, title I, Dec. 27, 2020, 134 Stat. 1385.

Pub. L. 116–93, div. C, title I, Dec. 20, 2019, 133 Stat. 2439.

Pub. L. 116–6, div. D, title I, Feb. 15, 2019, 133 Stat. 143.

Pub. L. 115–141, div. E, title I, Mar. 23, 2018, 132 Stat. 540.

Pub. L. 115–31, div. E, title I, May 5, 2017, 131 Stat. 331.

Pub. L. 114–113, div. E, title I, Dec. 18, 2015, 129 Stat. 2427.

Pub. L. 113–235, div. E, title I, Dec. 16, 2014, 128 Stat. 2336.

§ 4714. Recordkeeping

(a) In general

A community development financial institution receiving assistance from the Fund shall keep such records, for such periods as may be prescribed by the Fund and necessary to disclose the manner in which any assistance under this subchapter is used and to demonstrate compliance with the requirements of this subchapter.

(b) User profile information

The Fund shall require each community development financial institution or other organization receiving assistance from the Fund to compile such data, as is determined to be appropriate by the Fund, on the gender, race, ethnicity, national origin, or other pertinent information concerning individuals that utilize the services of the assisted institution to ensure that targeted populations and low-income residents of investment areas are adequately served.

(c) Access to records

The Fund shall have access on demand, for the purpose of determining compliance with this subchapter, to any records of a community development financial institution or other organization that receives assistance from the Fund.

(d) Review

Not less than annually, the Fund shall review the progress of each assisted community development financial institution in carrying out its strategic plan, meeting its performance goals, and satisfying the terms and conditions of its assistance agreement.

(e) Reporting

(1) Annual reports

The Fund shall require each community development financial institution receiving assistance under this subchapter to submit an annual report to the Fund on its activities, its financial condition, and its success in meeting performance goals, in satisfying the terms and conditions of its assistance agreement, and in complying with other requirements of this subchapter, in such form and manner as the Fund shall specify.

(2) Availability of reports

The Fund, after deleting or redacting any material as appropriate to protect privacy or proprietary interests, shall make such reports submitted under paragraph (1) available for public inspection.

(Pub. L. 103–325, title I, §115, Sept. 23, 1994, 108 Stat. 2184.)

§ 4715. Special provisions with respect to institutions that are supervised by Federal banking agencies

(a) Consultation with appropriate agencies

The Fund shall consult with and consider the views of the appropriate Federal banking agency prior to providing assistance under this subchapter to—

(1) an insured community development financial institution;

(2) any community development financial institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency; or

(3) any community development financial institution that has as its community partner an institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency.

(b) Requests for information, reports, or records

(1) In general

Except as provided in paragraph (4), notwithstanding any other provisions of this subchapter, prior to directly requesting information from or imposing reporting or recordkeeping requirements on an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency, the Fund shall consult with the appropriate Federal banking agency to determine if the information requested is available from or may be obtained by such agency in the form, format, or detail required by the Fund.

(2) Timing of response from appropriate Federal banking agency

If the information, reports, or records requested by the Fund pursuant to paragraph (1) are not provided by the appropriate Federal banking agency in less than 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the recordkeeping or reporting requirements directly on such institutions with notice to the appropriate Federal banking agency.

(3) Elimination of duplicative information and reporting requirements

The Fund shall use any information provided the appropriate Federal banking agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and recordkeeping by an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency.

(4) Exception

Notwithstanding paragraphs (1) and (2), the Fund may require an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency to provide information with respect to the institution's implementation of its strategic plan or compliance with the terms of its assistance agreement under this subchapter, after providing notice to the appropriate Federal banking agency.

(c) Exclusion for examination reports

Nothing in this section shall be construed to permit the Fund to require an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency, to obtain, maintain, or furnish an examination report of any appropriate Federal banking agency or records contained in or related to such a report.

(d) Sharing of information

The Fund and the appropriate Federal banking agency shall promptly notify each other of material concerns about an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency, and share appropriate information relating to such concerns.

(e) Disclosure prohibited

Neither the Fund nor the appropriate Federal banking agency shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(f) Privilege maintained

The Fund, the appropriate Federal banking agency, and any other party providing information under this section shall not be deemed to have waived any privilege applicable to any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

(g) Exceptions

Nothing in this section shall authorize the Fund or the appropriate Federal banking agency to withhold information from the Congress or prevent it from complying with a request for information from a Federal department or agency in compliance with applicable law.

(h) Sanctions

(1) Notification

The Fund shall notify the appropriate Federal banking agency before imposing any sanction pursuant to the authority in section 4707(f)(2)(C) of this title on an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of that agency.

(2) Exceptions

The Fund shall not impose a sanction referred to in paragraph (1) if the appropriate Federal banking agency, in writing, not later than 30 calendar days after receiving notice from the Fund—

(A) objects to the proposed sanction;

(B) determines that the sanction would—

(i) have a material adverse effect on the safety and soundness of the institution; or

(ii) impede or interfere with an enforcement action against that institution by that agency;

(C) proposes a comparable alternative action; and

(D) specifically explains—

(i) the basis for the determination under subparagraph (B) and, if appropriate, provides documentation to support the determination; and

(ii) how the alternative action suggested pursuant to subparagraph (C) would be as effective as the sanction proposed by the Fund in securing compliance with this subchapter and deterring future non-compliance.

(i) Safety and soundness considerations

The Fund and each appropriate Federal banking agency shall cooperate and respond to requests from each other and from other appropriate Federal banking agencies in a manner that ensures the safety and soundness of the insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency.

(Pub. L. 103-325, title I, § 116, Sept. 23, 1994, 108 Stat. 2185.)

§ 4716. Studies and reports; examination and audit

(a) Annual report by Fund

The Fund shall conduct an annual evaluation of the activities carried out by the Fund and the community development financial institutions and other organizations assisted pursuant to this subchapter, and shall submit a report of its findings to the President and the Congress not later than 120 days after the end of each fiscal year of the Fund. The report shall include financial statements audited in accordance with subsection (f).

(b) Optional studies

The Fund may conduct such studies as the Fund determines necessary to further the purpose of this subchapter and to facilitate investment in distressed communities. The findings of

any studies conducted pursuant to this subsection shall be included in the report required by subsection (a).

(c) Native American lending study

(1) In general

The Fund shall conduct a study on lending and investment practices on Indian reservations and other land held in trust by the United States. Such study shall—

- (A) identify barriers to private financing on such lands; and
- (B) identify the impact of such barriers on access to capital and credit for Native American populations.

(2) Report

Not later than 12 months after the date on which the Administrator is appointed, the Fund shall submit a report to the President and the Congress that—

- (A) contains the findings of the study conducted under paragraph (1);
- (B) recommends any necessary statutory and regulatory changes to existing Federal programs; and
- (C) makes policy recommendations for community development financial institutions, insured depository institutions, secondary market institutions, and other private sector capital institutions to better serve such populations.

(d) Investment, governance, and role of Fund

Thirty months after the appointment and qualification of the Administrator, the Comptroller General of the United States shall submit to the President and the Congress a study evaluating the structure, governance, and performance of the Fund.

(e) Consultation

In the conduct of the studies required under this section, the Fund shall consult, as appropriate, with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Agency, the Farm Credit Administration, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, Indian tribal governments, community reinvestment organizations, civil rights organizations, consumer organizations, financial organizations, and such representatives of agencies or other persons, at the discretion of the Fund.

(f) Examination and audit

The financial statements of the Fund shall be audited in accordance with section 9105 of title 31, except that audits required by section 9105(a) of such title shall be performed annually.

(Pub. L. 103-325, title I, § 117, Sept. 23, 1994, 108 Stat. 2187; Pub. L. 110-289, div. A, title II, § 1216(b), July 30, 2008, 122 Stat. 2792.)

Editorial Notes

AMENDMENTS

2008—Subsec. (e). Pub. L. 110-289 substituted “Federal Housing Finance Agency” for “Federal Housing Finance Board”.

§ 4717. Enforcement

(a) Regulations

(1) In general

Not later than 180 days after the appointment and qualification of the Administrator, the Fund shall promulgate such regulations as may be necessary to carry out this subchapter.

(2) Regulations required

The regulations promulgated under paragraph (1) shall include regulations applicable to community development financial institutions that are not insured depository institutions to—

- (A) prevent conflicts of interest on the part of directors, officers, and employees of community development financial institutions as the Fund determines to be appropriate; and
- (B) establish such standards with respect to loans by a community development financial institution to any director, officer, or employee of such institution as the Fund determines to be appropriate, including loan amount limitations.

(b) Administrative enforcement

The provisions of this subchapter, and regulations prescribed and agreements entered into under this subchapter, shall be enforced under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] by the appropriate Federal banking agency, in the case of an insured community development financial institution. A violation of this subchapter, or any regulation prescribed under or any agreement entered into under this subchapter, shall be treated as a violation of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

(Pub. L. 103-325, title I, § 119, Sept. 23, 1994, 108 Stat. 2188.)

Editorial Notes

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in subsec. (b), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

Section is comprised of section 119 of Pub. L. 103-325. Subsec. (c) of section 119 of Pub. L. 103-325 amended section 657 of Title 18, Crimes and Criminal Procedure.

§ 4718. Authorization of appropriations

(a) Fund authorization

(1) In general

To carry out this subchapter, there are authorized to be appropriated to the Fund, to remain available until expended—

- (A) \$60,000,000 for fiscal year 1995;
- (B) \$104,000,000 for fiscal year 1996;
- (C) \$107,000,000 for fiscal year 1997; and
- (D) \$111,000,000 for fiscal year 1998;

or such greater sums as may be necessary to carry out this subchapter.

(2) Administrative expenses**(A) In general**

Of amounts authorized to be appropriated to the Fund pursuant to this section, not more than \$5,550,000 may be used by the Fund in each fiscal year to pay the administrative costs and expenses of the Fund. Costs associated with the training program established under section 4708 of this title and the technical assistance program established under section 4707 of this title shall not be considered to be administrative expenses for purposes of this paragraph.

(B) Calculations

The amounts referred to in paragraphs (3) and (4) shall be calculated after subtracting the amount referred to in subparagraph (A) of this paragraph from the total amount appropriated to the Fund in accordance with paragraph (1) in any fiscal year.

(3) Capitalization assistance

Not more than 5 percent of the amounts authorized to be appropriated under paragraph (1) may be used as provided in section 4712 of this title.

(4) Availability for funding section 4713 of this title

33⅓ percent of the amounts appropriated to the Fund for any fiscal year pursuant to the authorization in paragraph (1) shall be available for use in carrying out section 4713 of this title.

(5) Support of community development financial institutions

The Administrator shall allocate funds authorized under this section, to the maximum extent practicable, for the support of community development financial institutions.

(b) Community Development Credit Union Revolving Loan Fund

There are authorized to be appropriated for the purposes of the Community Development Credit Union Revolving Loan Fund—

- (1) \$4,000,000 for fiscal year 1995;
- (2) \$2,000,000 for fiscal year 1996;
- (3) \$2,000,000 for fiscal year 1997; and
- (4) \$2,000,000 for fiscal year 1998.

(c) Budgetary treatment

Amounts authorized to be appropriated under this section shall be subject to discretionary spending caps, as provided in section 665¹ of title 2, and therefore shall reduce by an equal amount funds made available for other discretionary spending programs.

(Pub. L. 103-325, title I, § 121, Sept. 23, 1994, 108 Stat. 2189.)

Editorial Notes**REFERENCES IN TEXT**

Section 665 of title 2, referred to in subsec. (c), was repealed by Pub. L. 105-33, title X, § 10118(a), Aug. 5, 1997, 111 Stat. 695.

§ 4719. Grants to establish loan-loss reserve funds**(a) Purposes**

The purposes of this section are—

¹ See References in Text note below.

(1) to make financial assistance available from the Fund in order to help community development financial institutions defray the costs of operating small dollar loan programs, by providing the amounts necessary for such institutions to establish their own loan loss reserve funds to mitigate some of the losses on such small dollar loan programs; and

(2) to encourage community development financial institutions to establish and maintain small dollar loan programs that would help give consumers access to mainstream financial institutions and combat high cost small dollar lending.

(b) Grants**(1) Loan-loss reserve fund grants**

The Fund shall make grants to community development financial institutions or to any partnership between such community development financial institutions and any other federally insured depository institution with a primary mission to serve targeted investment areas, as such areas are defined under section 4702(16) of this title, to enable such institutions or any partnership of such institutions to establish a loan-loss reserve fund in order to defray the costs of a small dollar loan program established or maintained by such institution.

(2) Matching requirement

A community development financial institution or any partnership of institutions established pursuant to paragraph (1) shall provide non-Federal matching funds in an amount equal to 50 percent of the amount of any grant received under this section.

(3) Use of funds

Any grant amounts received by a community development financial institution or any partnership between or among such institutions under paragraph (1)—

(A) may not be used by such institution to provide direct loans to consumers;

(B) may be used by such institution to help recapture a portion or all of a defaulted loan made under the small dollar loan program of such institution; and

(C) may be used to designate and utilize a fiscal agent for services normally provided by such an agent.

(4) Technical assistance grants

The Fund shall make technical assistance grants to community development financial institutions or any partnership between or among such institutions to support and maintain a small dollar loan program. Any grant amounts received under this paragraph may be used for technology, staff support, and other costs associated with establishing a small dollar loan program.

(c) Definitions

For purposes of this section—

(1) the term “consumer reporting agency that compiles and maintains files on consumers on a nationwide basis” has the same meaning given such term in section 1681a(p) of title 15; and

(2) the term “small dollar loan program” means a loan program wherein a community development financial institution or any partnership between or among such institutions offers loans to consumers that—

- (A) are made in amounts not exceeding \$2,500;
- (B) must be repaid in installments;
- (C) have no pre-payment penalty;
- (D) the institution has to report payments regarding the loan to at least 1 of the consumer reporting agencies that compiles and maintains files on consumers on a nationwide basis; and
- (E) meet any other affordability requirements as may be established by the Administrator.

(Pub. L. 103–325, title I, §122, as added Pub. L. 111–203, title XII, §1206, July 21, 2010, 124 Stat. 2131.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

SUBCHAPTER II—SMALL BUSINESS CAPITAL ENHANCEMENT

§ 4741. Findings and purposes

(a) Findings

The Congress finds that—

- (1) small business concerns are a vital part of the economy, accounting for the majority of new jobs, new products, and new services created in the United States;
- (2) adequate access to debt capital is a critical component for small business development, productivity, expansion, and success in the United States;
- (3) commercial banks are the most important suppliers of debt capital to small business concerns in the United States;
- (4) commercial banks and other depository institutions have various incentives to minimize their risk in financing small business concerns;
- (5) as a result of such incentives, many small business concerns with economically sound financing needs are unable to obtain access to needed debt capital;
- (6) the small business capital access programs implemented by certain States are a flexible and efficient tool to assist financial institutions in providing access to needed debt capital for many small business concerns in a manner consistent with safety and soundness regulations;
- (7) a small business capital access program would complement other programs which assist small business concerns in obtaining access to capital; and
- (8) Federal policy can stimulate and accelerate efforts by States to implement small business capital access programs by providing an incentive to States, while leaving the administration of such programs to each participating State.

(b) Purposes

By encouraging States to implement administratively efficient capital access programs that encourage commercial banks and other depository institutions to provide access to debt capital for a broad portfolio of small business concerns, and thereby promote a more efficient and effective debt market, the purposes of this subchapter are—

- (1) to promote economic opportunity and growth;
- (2) to create jobs;
- (3) to promote economic efficiency;
- (4) to enhance productivity; and
- (5) to spur innovation.

(Pub. L. 103–325, title II, §251, Sept. 23, 1994, 108 Stat. 2203.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 103–325, title II, §261, Sept. 23, 1994, 108 Stat. 2214, provided that: “This subtitle [subtitle B (§§251–261) of title II of Pub. L. 103–325, enacting this subchapter] shall become effective on January 6, 1996.”

SMALL BUSINESS LENDING FUND

Pub. L. 111–240, title IV, subtitle A, Sept. 27, 2010, 124 Stat. 2582, as amended by Pub. L. 113–188, title IX, §901(e), Nov. 26, 2014, 128 Stat. 2020, provided that:

“SEC. 4101. PURPOSE.

“The purpose of this subtitle 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. 4102. DEFINITIONS.

“For purposes of this subtitle:

“(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 meaning given such term under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

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

“(4) CALL REPORT.—The term ‘call report’ means—

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

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

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

“(D) reports of Condition and Income as designated through guidance developed by the Sec-