(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-

retary, in consultation with the Director of the Community Development Financial Institutions Fund; and

''(E) with respect to an eligible institution for which no report exists that is described under subparagraph (A), (B), (C), or (D), such other report or set of information as the Secretary, in consultation with the Administrator of the Small Business Administration, may prescribe.

''(5) CDCI.—The term 'CDCI' means the Community Development Capital Initiative created by the Secretary under the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008 [div. A of Pub. L. 110–343, see Short Title note set out under section 5201 of this title].

''(6) CDCI INVESTMENT.—The term 'CDCI investment' means, with respect to any eligible institution, the principal amount of any investment made by the Secretary in such eligible institution under the CDCI that has not been repaid.

''(7) CDFI; COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The terms 'CDFI' and 'community development financial institution' have the meaning given the term 'community development financial institution' under the Riegle Community Development and Regulatory Improvement Act of 1994 [Pub. L. 103–325, see Tables for classification].

''(8) CDLF; COMMUNITY DEVELOPMENT LOAN FUND.—The terms 'CDLF' and 'community development loan fund' mean any entity that—

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

''(B) is exempt from taxation under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.]; and

''(C) had assets less than or equal to $10,000,000,000 as of the end of the fourth quarter of calendar year 2009.

''(9) CPP.—The term 'CPP' means the Capital Purchase Program created by the Secretary under the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008.

''(10) CPP INVESTMENT.—The term 'CPP investment' means, with respect to any eligible institution, the principal amount of any investment made by the Secretary in such eligible institution under the CPP that has not been repaid.

''(11) ELIGIBLE INSTITUTION.—The term 'eligible institution' means—

''(A) any insured depository institution, which—

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

''(ii) has total assets of equal to or less than $10,000,000,000, as reported in the call report of the insured depository institution as of the end of the fourth quarter of calendar year 2009; and

''(iii) is not directly or indirectly controlled by any company or other entity that has total consolidated assets of more than $10,000,000,000, as so reported;

''(B) any bank holding company which has total consolidated assets of equal to or less than $10,000,000,000, as reported in the call report of the bank holding company as of the end of the fourth quarter of calendar year 2009;

''(C) any savings and loan holding company which has total consolidated assets of equal to or less than $10,000,000,000, as reported in the call report of the savings and loan holding company as of the end of the fourth quarter of calendar year 2009; and

''(D) any community development financial institution loan fund which has total assets of equal to or less than $10,000,000,000, as reported in audited financial statements for the fiscal year of the community development financial institution loan fund that ends in calendar year 2009.

''(12) FUND.—The term 'Fund' means the Small Business Lending Fund established under section 4103(a)(1).

''(13) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the meaning given such term under section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)).

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

''(15) PROGRAM.—The term 'Program' means the Small Business Lending Fund Program authorized under section 4103(a)(2).

''(16) SAVINGS AND LOAN HOLDING COMPANY.—The term 'savings and loan holding company' has the meaning given such term under section 10(a)(1)(D) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(D)).

''(17) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(18) SMALL BUSINESS LENDING.—

''(A) IN GENERAL.—The term 'small business lending' means lending, as defined by and reported in an eligible institutions' quarterly call report, where each loan comprising such lending is one of the following types:

''(i) Commercial and industrial loans.

''(ii) Owner-occupied nonfarm, nonresidential real estate loans.

''(iii) Loans to finance agricultural production and other loans to farmers.

''(iv) Loans secured by farmland.

''(B) EXCLUSION.—No loan that has an original amount greater than $10,000,000 or that goes to a business with more than $50,000,000 in revenues shall be included in the measure.

''(C) TREATMENT OF HOLDING COMPANIES.—In the case of eligible institutions that are bank holding companies or savings and loan holding companies having one or more insured depository institution subsidiaries, small business lending shall be measured based on the combined small business lending reported in the call report of the insured depository institution subsidiaries.

''(19) VETERAN-OWNED BUSINESS.—

''(A) The term 'veteran-owned business' means a business—

''(i) more than 50 percent of the ownership or control of which is held by 1 or more veterans;

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

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

''(B) For purposes of this paragraph, the term 'veteran' has the meaning given such term in section 101(2) of title 38, United States Code.

''SEC. 4103. SMALL BUSINESS LENDING FUND.

''(a) FUND AND PROGRAM.—

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

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

''(b) USE OF FUND.—

''(1) IN GENERAL.—Subject to paragraph (2), the Fund shall be available to the Secretary, without further appropriation or fiscal year limitation, for the costs of purchases (including commitments to purchase), and modifications of such purchases, of preferred stock and other financial instruments from eligible institutions on such terms and conditions as are determined by the Secretary in accordance with this subtitle. For purposes of this paragraph and with respect to an eligible institution, the term 'other financial instruments' shall include only debt instruments for which such eligible institution is fully liable or equity equivalent capital of the eligible institution.

Such debt instruments may be subordinated to the claims of other creditors of the eligible institution.

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

''(3) PROCEEDS USED TO PAY DOWN PUBLIC DEBT.—All funds received by the Secretary in connection with purchases made pursuant to paragraph (1), including interest payments, dividend payments, and proceeds from the sale of any financial instrument, shall be paid into the general fund of the Treasury for reduction of the public debt.

''(4) LIMITATION ON PURCHASES FROM CDLFS.—

''(A) IN GENERAL.—Not more than 1 percent of the maximum purchase limit of the Program, pursuant to paragraph (2), may be used to make purchases from community development loan funds.

''(B) ELIGIBILITY STANDARDS.—The Secretary, in consultation with the Community Development Financial Institutions Fund, shall develop eligibility criteria to determine the financial ability of a CDLF to participate in the Program and repay the investment. Such criteria shall include the following:

''(i) Ratio of net assets to total assets is at least 20 percent.

''(ii) Ratio of loan loss reserves to loans and leases 90 days or more delinquent (including loans sold with full recourse) is at least 30 percent.

''(iii) Positive net income measured on a 3-year rolling average.

''(iv) Operating liquidity ratio of at least 1.0 for the 4 most recent quarters and for one or both of the two preceding years.

''(v) Ratio of loans and leases 90 days or more delinquent (including loans sold with full recourse) to total equity plus loan loss reserves is less than 40 percent.

''(C) REQUIREMENT TO SUBMIT AUDITED FINANCIAL STATEMENTS.—CDLFs participating in the Program shall submit audited financial statements to the Secretary, have a clean audit opinion, and have at least 3 years of operating experience.

''(c) CREDITS TO THE FUND.—There shall be credited to the Fund amounts made available pursuant to section 4108, to the extent provided by appropriations Acts.

''(d) TERMS.—

''(1) APPLICATION.—

''(A) INSTITUTIONS WITH ASSETS OF $1,000,000,000 OR LESS.—Eligible institutions having total assets equal to or less than $1,000,000,000, as reported in a call report as of the end of the fourth quarter of calendar year 2009, may apply to receive a capital investment from the Fund in an amount not exceeding 5 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

''(B) INSTITUTIONS WITH ASSETS OF MORE THAN $1,000,000,000 AND LESS THAN OR EQUAL TO $10,000,000,000.—Eligible institutions having total assets of more than $1,000,000,000 but less than $10,000,000,000, as of the end of the fourth quarter of calendar year 2009, may apply to receive a capital investment from the Fund in an amount not exceeding 3 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

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

''(D) TREATMENT OF APPLICANTS THAT ARE INSTITUTIONS CONTROLLED BY HOLDING COMPANIES.—If an eligible institution that applies to receive a capital investment under the Program is under the control of a bank holding company or a savings and loan holding company, then the Secretary may use the Fund to purchase preferred stock or other financial instruments from the top-tier bank holding company or savings and loan holding company of such eligible institution, as applicable. For purposes of this subparagraph, the term 'control' with respect to a bank holding company shall have the same meaning as in section 2(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(2)(a)(2)). For purposes of this subparagraph, the term 'control' with respect to a savings and loan holding company shall have the same meaning as in 10(a)(2) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(2)).

''(E) REQUIREMENT TO PROVIDE A SMALL BUSINESS LENDING PLAN.—At the time that an applicant submits an application to the Secretary for a capital investment under the Program, the applicant shall deliver to the appropriate Federal banking agency, and, for applicants that are State-chartered banks, to the appropriate State banking regulator, a small business lending plan describing how the applicant's business strategy and operating goals will allow it to address the needs of small businesses in the areas it serves, as well as a plan to provide linguistically and culturally appropriate outreach, where appropriate. In the case of eligible institutions that are community development loan funds, this plan shall be submitted to the Secretary. This plan shall be confidential supervisory information.

''(F) TREATMENT OF APPLICANTS THAT ARE COMMUNITY DEVELOPMENT LOAN FUNDS.—Eligible institutions that are community development loan funds may apply to receive a capital investment from the Fund in an amount not exceeding 5 percent of total assets, as reported in the audited financial statements for the fiscal year of the eligible institution that ends in calendar year 2009.

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

''(A) consult with the appropriate Federal banking agency or, in the case of an eligible institution that is a nondepository community development financial institution, the Community Development Financial Institution Fund, for the eligible institution, to determine whether the eligible institution may receive such capital investment;

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

''(C) in the case of a community development financial institution loan fund, consult with the Community Development Financial Institution Fund.

''(3) CONSIDERATION OF MATCHED PRIVATE INVESTMENTS.—

''(A) IN GENERAL.—For an eligible institution that applies to receive a capital investment under the Program, if the entity to be consulted under paragraph (2) would not otherwise recommend the eligible institution to receive the capital investment, the Secretary, in consultation with the entity to be so consulted, may consider whether the entity to be consulted would recommend the eligible institution to receive a capital investment based on the financial condition of the institution if the conditions in subparagraph (B) are satisfied.

''(B) CONDITIONS.—The conditions referred to in subparagraph (A) are as follows:

''(i) CAPITAL SOURCES.—The eligible institution shall receive capital both under the Program and from private, nongovernment investors.

''(ii) AMOUNT OF CAPITAL.—The amount of capital to be received under the Program shall not exceed 3 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

''(iii) TERMS.—The amount of capital to be received from private, nongovernment investors shall be—

''(I) equal to or greater than 100 percent of the capital to be received under the Program; and

''(II) subordinate to the capital investment made by the Secretary under the Program.

''(4) INELIGIBILITY OF INSTITUTIONS ON FDIC PROBLEM BANK LIST.—

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

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

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

''(B) CONSTRUCTION.—Nothing in subparagraph (A) shall be construed as limiting the discretion of the Secretary to deny the application of an eligible institution that is not on the FDIC problem bank list.

''(C) FDIC PROBLEM BANK LIST DEFINED.—For purposes of this paragraph, the term 'FDIC problem bank list' means the list of depository institutions having a current rating of 4 or 5 under the Uniform Financial Institutions Rating System, or such other list designated by the Federal Deposit Insurance Corporation.

''(5) INCENTIVES TO LEND.—

''(A) REQUIREMENTS ON PREFERRED STOCK AND OTHER FINANCIAL INSTRUMENTS.—Any preferred stock or other financial instrument issued to Treasury by an eligible institution receiving a capital investment under the Program shall provide that—

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

''(ii) within the first 2 years after the date of the capital investment under the Program, the rate may be adjusted based on the amount of an eligible institution's small business lending. Changes in the amount of small business lending shall be measured against the average amount of small business lending reported by the eligible institution in its call reports for the 4 full quarters immediately preceding the date of enactment of this Act [Sept. 27, 2010], minus adjustments from each quarterly balance in respect of—

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

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

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

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

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

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

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

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

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

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

''(D) RATE FOLLOWING INITIAL 2-YEAR PERIOD.—Generally, the rate based on call report data from the eighth calendar quarter after the date of the capital investment under the Program shall be payable until the expiration of the 4½-year period that begins on the date of the investment. In the case where the amount of small business lending has remained the same or decreased relative to the institution's baseline in the eighth quarter after the date of the capital investment under the Program, the rate shall be 7 percent until the expiration of the 4½-year period that begins on the date of the investment.

''(E) RATE FOLLOWING INITIAL 4½-YEAR PERIOD.—The dividend or interest rate paid on any preferred stock or other financial instrument issued by an eligible institution that receives a capital investment under the Program shall increase to 9 percent at the end of the 4½-year period that begins on the date of the capital investment under the Program.

''(F) LIMITATION ON RATE REDUCTIONS WITH RESPECT TO CERTAIN AMOUNT.—The reduction in the dividend or interest rate payable to Treasury by any eligible institution shall be limited such that the rate reduction shall not apply to a dollar amount of the investment made by Treasury that is greater than the dollar amount increase in the amount of small business lending realized under this program. The Secretary may issue guidelines that will apply to new capital investments limiting the amount of capital available to eligible institutions consistent with this limitation.

''(G) RATE ADJUSTMENTS FOR S CORPORATION.—Before making a capital investment in an eligible institution that is an S corporation or a corporation organized on a mutual basis, the Secretary may adjust the dividend or interest rate on the financial instrument to be issued to the Secretary, from the dividend or interest rate that would apply under subparagraphs (A) through (F), to take into account any differential tax treatment of securities issued by such eligible institution. For purpose of this subparagraph, the term 'S corporation' has the same meaning as in section 1361(a) of the Internal Revenue Code of 1986 [26 U.S.C. 1361(a)].

''(H) REPAYMENT DEADLINE.—The capital investment received by an eligible institution under the Program shall be evidenced by preferred stock or other financial instrument that—

''(i) includes, as a term and condition, that the capital investment 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 shall include a requirement that the stock or instrument 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 or financial instrument under current or suc-

cessor applicable capital provisions compared to a capital instrument with identical terms other than the term and condition described under clause (i).

''(I) REQUIREMENTS ON FINANCIAL INSTRUMENTS ISSUED BY A COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION LOAN FUND.—Any equity equivalent capital issued to the Treasury by a community development loan fund receiving a capital investment under the Program shall provide that the rate at which interest is payable shall be 2 percent per annum for 8 years. After 8 years, the rate at which interest is payable shall be 9 percent.

''(6) ADDITIONAL INCENTIVES TO REPAY.—The Secretary may, by regulation or guidance issued under section 4104(9), establish repayment incentives in addition to the incentive in paragraph (5)(E) that will apply to new capital investments in a manner that the Secretary determines to be consistent with the purposes of this subtitle.

''(7) CAPITAL PURCHASE PROGRAM REFINANCE.—

''(A) IN GENERAL.—The Secretary shall, in a manner that the Secretary determines to be consistent with the purposes of this subtitle, issue regulations and other guidance to permit eligible institutions to refinance securities issued to Treasury under the CDCI and the CPP for securities to be issued under the Program.

''(B) PROHIBITION ON PARTICIPATION BY NON-PAYING CPP PARTICIPANTS.—Subparagraph (A) shall not apply to any eligible institution that has missed more than one dividend payment due under the CPP. For purposes of this subparagraph, a CPP dividend payment that is submitted within 60 days of the due date of such payment shall not be considered a missed dividend payment.

''(8) OUTREACH TO MINORITIES, WOMEN, AND VETERANS.—The Secretary shall require eligible institutions receiving capital investments under the Program to provide linguistically and culturally appropriate outreach and advertising in the applicant pool describing the availability and application process of receiving loans from the eligible institution that are made possible by the Program through the use of print, radio, television or electronic media outlets which target organizations, trade associations, and individuals that—

''(A) represent or work within or are members of minority communities;

''(B) represent or work with or are women; and

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

''(9) ADDITIONAL TERMS.—The Secretary may, by regulation or guidance issued under section 4104(9), make modifications that will apply to new capital investments in order to manage risks associated with the administration of the Fund in a manner consistent with the purposes of this subtitle.

''(10) MINIMUM UNDERWRITING STANDARDS.—The appropriate Federal banking agency for an eligible institution that receives funds under the Program shall within 60 days issue guidance regarding prudent underwriting standards that must be used for loans made by the eligible institution using such funds.

''SEC. 4104. ADDITIONAL AUTHORITIES OF THE SECRETARY.

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

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

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

''(3) The Secretary may designate any bank, savings association, trust company, 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 subtitle as financial agent of the Federal Government as may be required. The Secretary shall have authority to amend existing agreements with financial agents, entered into during the 2-year period before the date of enactment of this Act [Sept. 27, 2010], to perform reasonable duties related to this subtitle.

''(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 subtitle.

''(5) Subject to section 4103(b)(3), the Secretary may manage any assets purchased under this subtitle, 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 subtitle, 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 subtitle.

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

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

''SEC. 4105. CONSIDERATIONS.

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

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

''(2) providing funding to minority-owned eligible institutions and other eligible institutions that serve small businesses that are minority-, veteran-, and women-owned and that also serve low- and moderate-income, minority, and other underserved or rural communities;

''(3) protecting and increasing American jobs;

''(4) increasing the opportunity for small business development in areas with high unemployment rates that exceed the national average;

''(5) ensuring that all eligible institutions may apply to participate in the program established under this subtitle, without discrimination based on geography;

''(6) providing transparency with respect to use of funds provided under this subtitle;

''(7) minimizing the cost to taxpayers of exercising the authorities;

''(8) promoting and engaging in financial education to would-be borrowers; and

''(9) providing funding to eligible institutions that serve small businesses directly affected by the discharge of oil arising from the explosion on and sinking of the mobile offshore drilling unit Deepwater Horizon and small businesses in communities that have suffered negative economic effects as a result of that discharge with particular consideration to States along the coast of the Gulf of Mexico.

''SEC. 4106. REPORTS.

''The Secretary shall provide to the appropriate committees of Congress—

''(1) within 7 days of the end of each month commencing with the first month in which transactions are made under the Program, a written report de-

scribing all of the transactions made during the reporting period pursuant to the authorities granted under this subtitle;

''(2) after the end of March and the end of September, commencing September 30, 2010, a written report on all projected costs and liabilities, all operating expenses, including compensation for financial agents, and all transactions made by the Fund, which shall include participating institutions and amounts each institution has received under the Program; and

''(3) within 7 days of the end of each calendar quarter commencing with the first calendar quarter in which transactions are made under the Program, a written report detailing how eligible institutions participating in the Program have used the funds such institutions received under the Program.

''SEC. 4107. OVERSIGHT AND AUDITS.

''(a) INSPECTOR GENERAL OVERSIGHT.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of the Program through the Office of Small Business Lending Fund Program Oversight established under subsection (b).

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

''(1) ESTABLISHMENT.—There is hereby established within the Office of the Inspector General of the Department of the Treasury a new office to be named the 'Office of Small Business Lending Fund Program Oversight' to provide oversight of the Program.

''(2) LEADERSHIP.—The Inspector General shall appoint a Special Deputy Inspector General for SBLF Program Oversight to lead the Office, with commensurate staff, who shall report directly to the Inspector General and who shall be responsible for the performance of all auditing and investigative activities relating to the Program.

''(3) REPORTING.—

''(A) IN GENERAL.—The Inspector General shall issue a report no less than two times a year to the Congress and the Secretary devoted to the oversight provided by the Office, including any recommendations for improvements to the Program.

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

''(i) take actions to address such deficiencies; or

''(ii) certify to the appropriate committees of Congress that no action is necessary or appropriate.

''(4) COORDINATION.—The Inspector General, in maximizing the effectiveness of the Office, shall work with other Offices of Inspector General, as appropriate, to minimize duplication of effort and ensure comprehensive oversight of the Program.

''(5) TERMINATION.—The Office shall terminate at the end of the 6-month period beginning on the date on which all capital investments are repaid under the Program or the date on which the Secretary determines that any remaining capital investments will not be repaid.

''(6) DEFINITIONS.—For purposes of this subsection:

''(A) OFFICE.—The term 'Office' means the Office of Small Business Lending Fund Program Oversight established under paragraph (1).

''(B) INSPECTOR GENERAL.—The term 'Inspector General' means the Inspector General of the Department of the Treasury.

''(c) REQUIRED CERTIFICATIONS.—

''(1) ELIGIBLE INSTITUTION CERTIFICATION.—Each eligible institution that participates in the Program must certify that such institution is in compliance with the requirements of section 103.121 of title 31, Code of Federal Regulations, a regulation that, at a minimum, requires financial institutions, as that term is defined in 31 U.S.C. 5312(a)(2) and (c)(1)(A), to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify the person's identity, and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

''(2) LOAN RECIPIENTS.—With respect to funds received by an eligible institution under the Program, any business receiving a loan from the eligible institution using such funds after the date of the enactment of this Act [Sept. 27, 2010] shall certify to such eligible institution that the principals of such business have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911) [now 34 U.S.C. 20911]).

''(d) PROHIBITION ON PORNOGRAPHY.—None of the funds made available under this subtitle may be used to pay the salary of any individual engaged in activities related to the Program who has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

''SEC. 4108. CREDIT REFORM; FUNDING.

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

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

''SEC. 4109. TERMINATION AND CONTINUATION OF AUTHORITIES.

''(a) TERMINATION OF INVESTMENT AUTHORITY.—The authority to make capital investments in eligible institutions, including commitments to purchase preferred stock or other instruments, provided under this subtitle shall terminate 1 year after the date of enactment of this Act [Sept. 27, 2010].

''(b) CONTINUATION OF OTHER AUTHORITIES.—The authorities of the Secretary under section 4104 shall not be limited by the termination date in subsection (a).

''SEC. 4110. PRESERVATION OF AUTHORITY.

''Nothing in this subtitle may be construed to limit the authority of the Secretary under any other provision of law.

''SEC. 4111. ASSURANCES.

''(a) SMALL BUSINESS LENDING FUND SEPARATE FROM TARP.—The Small Business Lending Fund Program is established as separate and distinct from the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008 [div. A of Pub. L. 110–343, see Short Title note set out under section 5201 of this title]. An institution shall not, by virtue of a capital investment under the Small Business Lending Fund Program, be considered a recipient of the Troubled Asset Relief Program.

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

''SEC. 4112. STUDY AND REPORT WITH RESPECT TO WOMEN-OWNED, VETERAN-OWNED, AND MINORITY-OWNED BUSINESSES.

''(a) STUDY.—The Secretary shall conduct a study of the impact of the Program on women-owned businesses,

veteran-owned businesses, and minority-owned businesses.

''(b) REPORT.—Not later than one year after the date of enactment of this Act [Sept. 27, 2010], the Secretary shall submit to Congress a report on the results of the study conducted pursuant to subsection (a). To the extent possible, the Secretary shall disaggregate the results of such study by ethnic group and gender.

''(c) INFORMATION PROVIDED TO THE SECRETARY.—Eligible institutions that participate in the Program shall provide the Secretary with such information as the Secretary may require to carry out the study required by this section.

''SEC. 4113. SENSE OF CONGRESS.

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

§ 4742. Definitions

For purposes of this subchapter—

(1) the term ''Fund'' means the Community Development Financial Institutions Fund established under section 4703 of this title;

(2) the term ''appropriate Federal banking agency''—

(A) has the same meaning as in section 1813 of this title; and

(B) includes the National Credit Union Administration Board in the case of any credit union the deposits of which are insured in accordance with the Federal Credit Union Act [12 U.S.C. 1751 et seq.];

(3) the term ''early loan'' means a loan enrolled at a time when the aggregate covered amount of loans previously enrolled under the Program by a particular participating financial institution is less than $5,000,000;

(4) the term ''enrolled loan'' means a loan made by a participating financial institution that is enrolled by a participating State in accordance with this subchapter;

(5) the term ''financial institution'' means any federally chartered or State-chartered commercial bank, savings association, savings bank, or credit union;

(6) the term ''participating financial institution'' means any financial institution that has entered into a participation agreement with a participating State in accordance with section 4744 of this title;

(7) the term ''participating State'' means any State that has been approved for participation in the Program in accordance with section 4743 of this title;

(8) the term ''passive real estate ownership'' means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, except that such term shall not include—

(A) the ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate (other than the business of passive ownership of real estate); or

(B) the ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase;

(9) the term ''Program'' means the Small Business Capital Enhancement Program established under this subchapter;

(10) the term ''reserve fund'' means a fund, established by a participating State, earmarked for a particular participating financial institution, for the purposes of—

(A) depositing all required premium charges paid by the participating financial institution and by each borrower receiving a loan under the Program from a participating financial institution;

(B) depositing contributions made by the participating State; and

(C) covering losses on enrolled loans by disbursing accumulated funds; and

(11) the term ''State'' means—

(A) a State of the United States;

(B) the District of Columbia;

(C) any political subdivision of a State of the United States, which subdivision has a population in excess of the population of the least populated State of the United States; and

(D) any other political subdivision of a State of the United States that the Fund determines has the capacity to participate in the program.[1]

(Pub. L. 103–325, title II, § 252, Sept. 23, 1994, 108 Stat. 2204.)

Editorial Notes

REFERENCES IN TEXT

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

§ 4743. Approving States for participation

(a) Application

Any State may apply to the Fund for approval to be a participating State under the Program and to be eligible for reimbursement by the Fund pursuant to section 4747 of this title.

(b) Approval criteria

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

(1) a specific department or agency of the State has been designated to implement the Program;

(2) all legal actions necessary to enable such designated department or agency to implement the Program have been accomplished;

(3) funds in the amount of at least $1 for every 2 people residing in the State (as of the last decennial census for which data have been released) are available and have been legally committed to contributions by the State to reserve funds, with such funds being available without time limit and without requiring additional legal action, except that such requirements shall not be construed to limit the authority of the State to take action at a later time that results in the termination of its obligation to enroll loans and make contributions to reserve funds;

[1] So in original. Probably should be capitalized.

(4) the State has prescribed a form of participation agreement to be entered into between it and each participating financial institution that is consistent with the requirements and purposes of this subchapter; and

(5) the State and the Fund have executed a reimbursement agreement that conforms to the requirements of this subchapter.

(c) Existing State programs

(1) In general

A State that is not a participating State, but that has its own capital access program providing portfolio insurance for business loans (based on a separate loss reserve fund for each financial institution), may apply at any time to the Fund to be approved to be a participating State. The Fund shall approve such State to be a participating State, and to be eligible for reimbursements by the Fund pursuant to section 4747 of this title, if the State—

(A) satisfies the requirements of subsections (a) and (b); and

(B) certifies that each affected financial institution has satisfied the requirements of section 4744 of this title.

(2) Applicable terms of participation

(A) Status of institutions

If a State is approved for participation under paragraph (1), each financial institution with a participation agreement in effect with the participating State shall immediately be considered a participating financial institution. Reimbursements may be made under section 4747[1] of this title in connection with all contributions made to the reserve fund by the State in connection with lending that occurs on or after the date on which the Fund approves the State for participation.

(B) Effective date of participation

If an amended participation agreement that conforms with section 4745 of this title is required in order to secure participation approval by the Fund, contributions subject to reimbursement under section 4747 of this title shall include only those contributions made to a reserve fund with respect to loans enrolled on or after the date that an amended participation agreement between the participating State and the participating financial institution becomes effective.

(C) Use of accumulated reserve funds

A State that is approved for participation in accordance with this subsection may continue to implement the program[2] utilizing the reserve funds accumulated under the State program.

(d) Prior appropriations requirement

The Fund shall not approve a State for participation in the Program until at least $50,000,000 has been appropriated to the Fund (subject to an appropriations Act), without fiscal year limitation, for the purpose of making reimbursements pursuant to section 4747 of this title and otherwise carrying out this subchapter.

[1] See References in Text note below.

[2] So in original. Probably should be capitalized.

(e) Amendments to agreements

If a State that has been approved to be a participating State wishes to amend its form of participation agreement and continue to be a participating State, such State shall submit such amendment for review by the Fund in accordance with subsection (b)(4). Any such amendment shall become effective only after it has been approved by the Fund.

(Pub. L. 103–325, title II, § 253, Sept. 23, 1994, 108 Stat. 2205.)

Editorial Notes

REFERENCES IN TEXT

Section 4747 of this title, referred to in subsec. (c)(2)(A), was in the original ''section 237'' and was translated as reading ''section 257'' meaning section 257 of Pub. L. 103–325, to reflect the probable intent of Congress. Pub. L. 103–325 does not contain a section 237.

§ 4744. Participation agreements

(a) In general

A participating State may enter into a participation agreement with any financial institution determined by the participating State, after consultation with the appropriate Federal banking agency, to have sufficient commercial lending experience and financial and managerial capacity to participate in the Program. The determination by the State shall not be reviewable by the Fund.

(b) Participating financial institutions

Upon entering into the participation agreement with the participating State, the financial institution shall become a participating financial institution eligible to enroll loans under the Program.

(Pub. L. 103–325, title II, § 254, Sept. 23, 1994, 108 Stat. 2207.)

§ 4745. Terms of participation agreements

(a) In general

The participation agreement to be entered into by a participating State and a participating financial institution shall include all provisions required by this section, and shall not include any provisions inconsistent with the provisions of this section.

(b) Establishment of separate reserve funds

A separate reserve fund shall be established by the participating State for each participating financial institution. All funds credited to a reserve fund shall be the exclusive property of the participating State. Each reserve fund shall be an administrative account for the purposes of—

(1) receiving all required premium charges to be paid by the borrower and participating financial institution and contributions by the participating State; and

(2) disbursing funds, either to cover losses sustained by the participating financial institution in connection with loans made under the Program, or as contemplated by subsections (d) and (r).

(c) Investment authority

Subject to applicable State law, the participating State may invest, or cause to be in-

vested, funds held in a reserve fund by establishing a deposit account at the participating financial institution in the name of the participating State. In the event that funds in the reserve fund are not deposited in such an account, such funds shall be invested in a form that the participating State determines is safe and liquid.

(d) Earned income and interest

Interest or income earned on the funds credited to a reserve fund shall be deemed to be part of the reserve fund, except that a participating State may, as further specified in the participation agreement, provide authority for the participating State to withdraw some or all of such interest or income earned.

(e) Loan terms and conditions

(1) In general

A loan to be filed for enrollment under the Program may be made with such interest rate, fees, and other terms and conditions as agreed upon by the participating financial institution and the borrower, consistent with applicable law.

(2) Lines of credit

If a loan to be filed for enrollment is in the form of a line of credit, the amount of the loan shall be considered to be the maximum amount that can be drawn by the borrower against the line of credit.

(f) Enrollment process

(1) Filing

(A) In general

A participating financial institution shall file each loan made under the Program for enrollment by completing and submitting to the participating State a form prescribed by the participating State.

(B) Form

The form referred to in subparagraph (A) shall include a representation by the participating financial institution that it has complied with the participation agreement in enrolling the loan with the State.

(C) Premium charges

Accompanying the completed form shall be the nonrefundable premium charges paid by the borrower and the participating financial institution, or evidence that such premium charges have been deposited into the deposit account containing the reserve fund, if applicable.

(D) Submission

The participation agreement shall require that the items required by this subsection shall be submitted to the participating State by the participating financial institutions not later than 10 calendar days after a loan is made.

(2) Enrollment by State

Upon receipt by the participating State of the filing submitted in accordance with paragraph (1), the participating State shall promptly enroll the loan and make a matching contribution to the reserve fund in accordance with subsection (j), unless the information submitted indicates that the participating financial institution has not complied with the participation agreement in enrolling the loan.

(g) Coverage amount

In filing a loan for enrollment under the Program, the participating financial institution may specify an amount to be covered under the Program that is less than the full amount of the loan.

(h) Premium charges

(1) Minimum and maximum amounts

The premium charges payable to the reserve fund by the borrower and the participating financial institution shall be prescribed by the participating financial institution, within minimum and maximum limits set forth in the participation agreement. The participation agreement shall establish minimum and maximum limits whereby the sum of the premium charges paid in connection with a loan by the borrower and the participating financial institution is not less than 3 percent nor more than 7 percent of the amount of the loan covered under the Program.

(2) Allocation of premium charges

The participation agreement shall specify terms for allocating premium charges between the borrower and the participating financial institution. However, if the participating financial institution is required to pay any of the premium charges, the participation agreement shall authorize the participating financial institution to recover from the borrower the cost of the payment of the participating financial institution, in any manner on which the participating financial institution and the borrower agree.

(i) Restrictions

(1) Actions prohibited

Except as provided in subsection (h) and paragraph (2) of this subsection, the participating State may not—

(A) impose any restrictions or requirements, relating to the interest rate, fees, collateral, or other business terms and conditions of the loan; or

(B) condition enrollment of a loan in the Program on the review by the State of the risk or creditworthiness of a loan.

(2) Effect on other law

Nothing in this subchapter shall affect the applicability of any other law to the conduct by a participating financial institution of its business.

(j) State contributions

In enrolling a loan under the Program, the participating State shall contribute to the reserve fund an amount, as provided for in the participation agreement, which shall not be less than the sum of the amount of premium charges paid by the borrower and the participating financial institution.

(k) Submission of claims

(1) Filing

If a participating financial institution charges off all or part of an enrolled loan, such

participating financial institution may file a claim for reimbursement with the participating State by submitting a form that—

(A) includes the representation by the participating financial institution that it is filing the claim in accordance with the terms of the applicable participation agreement; and

(B) contains such other information as may be required by the participating State.

(2) Timing

Any claim filed under paragraph (1) shall be filed contemporaneously with the action of the participating financial institution to charge off all or part of an enrolled loan. The participating financial institution shall determine when and how much to charge off on an enrolled loan, in a manner consistent with its usual method for making such determinations on business loans that are not enrolled loans under this subchapter.

(*l*) Elements of claims

A claim filed by a participating financial institution may include the amount of principal charged off, not to exceed the covered amount of the loan. Such claim may also include accrued interest and out-of-pocket expenses, if and to the extent provided for under the participation agreement.

(m) Payment of claims

(1) In general

Except as provided in subsection (n) and paragraph (2) of this subsection, upon receipt of a claim filed in accordance with this section and the participation agreement, the participating State shall promptly pay to the participating financial institution, from funds in the reserve fund, the full amount of the claim as submitted.

(2) Insufficient reserve funds

If there are insufficient funds in the reserve fund to cover the entire amount of a claim of a participating financial institution, the participating State shall pay to the participating financial institution an amount equal to the current balance in the reserve fund. If the enrolled loan for which the claim has been filed—

(A) is not an early loan, such payment shall be deemed fully to satisfy the claim, and the participating financial institution shall have no other or further right to receive any amount from the reserve fund with respect to such claim; or

(B) is an early loan, such payment shall not be deemed fully to satisfy the claim of the participating financial institution, and at such time as the remaining balance of the claim does not exceed 75 percent of the balance in the reserve fund, the participating State shall, upon the request of the participating financial institution, pay any remaining amount of the claim.

(n) Denial of claims

A participating State may deny a claim if a representation or warranty made by the participating financial institution to the participating State at the time that the loan was filed for enrollment or at the time that the claim was submitted was known by the participating financial institution to be false.

(*o*) Subsequent recovery of claim amount

If, subsequent to payment of a claim by the participating State, a participating financial institution recovers from a borrower any amount for which payment of the claim was made, the participating financial institution shall promptly pay to the participating State for deposit into the reserve fund the amount recovered, less any expenses incurred by the institution in collection of such amount.

(p) Participation agreement terms

(1) In general

In connection with the filing of a loan for enrollment in the Program, the participation agreement—

(A) shall require the participating financial institution to obtain an assurance from each borrower that—

(i) the proceeds of the loan will be used for a business purpose;

(ii) the loan will not be used to finance passive real estate ownership; and

(iii) the borrower is not—

(I) an executive officer, director, or principal shareholder of the participating financial institution;

(II) a member of the immediate family of an executive officer, director, or principal shareholder of the participating financial institution; or

(III) a related interest of any such executive officer, director, principal shareholder, or member of the immediate family;

(B) shall require the participating financial institution to provide assurances to the participating State that the loan has not been made in order to place under the protection of the Program prior debt that is not covered under the Program and that is or was owed by the borrower to the participating financial institution or to an affiliate of the participating financial institution;

(C) may provide that if—

(i) a participating financial institution makes a loan to a borrower that is a refinancing of a loan previously made to the borrower by the participating financial institution or an affiliate of the participating financial institution;

(ii) such prior loan was not enrolled in the Program; and

(iii) additional or new financing is extended by the participating financial institution as part of the refinancing,

the participating financial institution may file the loan for enrollment, with the amount to be covered under the Program not to exceed the amount of any additional or new financing; and

(D) may include additional restrictions on the eligibility of loans or borrowers that are not inconsistent with the provisions and purposes of this subchapter.

(2) Definitions

For purposes of this subsection, the terms ''executive officer'', ''director'', ''principal shareholder'', ''immediate family'', and ''related interest'' refer to the same relationship to a participating financial institution as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

(q) Termination clause

In each participation agreement, the participating State shall reserve for itself the ability to terminate its obligation to enroll loans under the Program. Any such termination shall be prospective only, and shall not apply to amounts of loans enrolled under the Program prior to such termination.

(r) Allowable withdrawals from fund

The participation agreement may provide that, if, for any consecutive period of not less than 24 months, the aggregate outstanding balance of all enrolled loans for a participating financial institution is continually less than the outstanding balance in the reserve fund for that participating financial institution, the participating State, in its discretion, may withdraw an amount from the reserve fund to bring the balance in the reserve fund down to the outstanding balance of all such enrolled loans.

(s) Grandfathered provision

(1) Special treatment of premium charges

Notwithstanding subsection (b) or (d), the participation agreement, if explicitly authorized by a statute enacted by the State before September 23, 1994, may allow a participating financial institution to treat the premium charges paid by the participating financial institution and the borrower into the reserve fund, and interest or income earned on funds in the reserve fund that are deemed to be attributable to such premium charges, as assets of the participating financial institution for accounting purposes, subject to withdrawal by the participating financial institution only—

(A) for the payment of claims approved by the participating State in accordance with this section; and

(B) upon the participating financial institution's withdrawal from authority to make new loans under the Program.

(2) Payment of post-withdrawal claims

After any withdrawal of assets from the reserve fund pursuant to paragraph (1)(B), any future claims filed by the participating financial institution on loans remaining in its capital access program portfolio shall only be paid from funds remaining in the reserve fund to the extent that, in the aggregate, such claims exceed the sum of the amount of such withdrawn assets, and interest on that amount, imputed at the same rate as income would have accrued had the amount not been withdrawn.

(3) Conditions for terminating special authority

If the Fund determines that the inclusion in a participation agreement of the provisions authorized by this subsection is resulting in the enrollment of loans under the Program that are likely to have been made without assistance provided under this subchapter, the Fund may notify the participating State that henceforth, the Fund will only make reimbursements to the State under section 4747 of this title with respect to a loan if the participation agreement between the participating State and each participating financial institution has been amended to conform with this section, without exercise of the special authority granted by this subsection.

(Pub. L. 103–325, title II, § 255, Sept. 23, 1994, 108 Stat. 2207.)

§ 4746. Reports

(a) Reserve funds report

On or before the last day of each calendar quarter, a participating State shall submit to the Fund a report of contributions to reserve funds made by the participating State during the previous calendar quarter. If the participating State has made contributions to one or more reserve funds during the previous quarter, the report shall—

(1) indicate the total amount of such contributions;

(2) indicate the amount of contributions which is subject to reimbursement, which shall be equal to the total amount of contributions, unless one of the limitations contained in section 4747 of this title is applicable;

(3) if one of the limitations in section 4747 of this title is applicable, provide documentation of the applicability of such limitation for each loan for which the limitation applies; and

(4) include a certification by the participating State that—

(A) the information provided in accordance with paragraphs (1), (2), and (3) is accurate;

(B) funds in an amount meeting the minimum requirements of section 4743(b)(3) of this title continue to be available and legally committed to contributions by the State to reserve funds, less any amount that has been contributed by the State to reserve funds subsequent to the State being approved for participation in the Program;

(C) there has been no unapproved amendment to any participation agreement or the form of participation agreements; and

(D) the participating State is otherwise implementing the Program in accordance with this subchapter and regulations issued pursuant to section 4749 of this title.

(b) Annual data

Not later than March 31 of each year, each participating State shall submit to the Fund annual data indicating the number of borrowers financed under the Program, the total amount of covered loans, and breakdowns by industry type, loan size, annual sales, and number of employees of the borrowers financed.

(c) Form

The reports and data filed pursuant to subsections (a) and (b) shall be in such form as the Fund may require.

(Pub. L. 103–325, title II, § 256, Sept. 23, 1994, 108 Stat. 2212.)

§ 4747. Reimbursement by Fund

(a) Reimbursements

Not later than 30 calendar days after receiving a report filed in compliance with section 4746 of this title, the Fund shall reimburse the participating State in an amount equal to 50 percent of the amount of contributions by the participating State to the reserve funds that are subject to reimbursement by the Fund pursuant to section 4746 of this title and this section. The Fund shall reimburse participating States, as it receives reports pursuant to section 4746(a) of this title, until available funds are expended.

(b) Size of assisted borrower

The Fund shall not provide any reimbursement to a participating State with respect to an enrolled loan made to a borrower that has 500 or more employees at the time that the loan is enrolled in the Program.

(c) Three-year maximum

The amount of reimbursement to be provided by the Fund to a participating State over any 3-year period in connection with loans made to any single borrower or any group of borrowers among which a common enterprise exists shall not exceed $75,000. For purposes of this subsection, ''common enterprise'' shall have the same meaning as in part 32 of title 12 of the Code of Federal Regulations, or any successor to that part.

(d) Loans totaling less than $2,000,000

In connection with a loan in which the covered amount of the loan plus the covered amount of all previous loans enrolled by a participating financial institution does not exceed $2,000,000, the amount of reimbursement by the Fund to the participating State shall not exceed the lesser of—

(1) 75 percent of the sum of the premium charges paid to the reserve fund by the borrower and the participating financial institution; or

(2) 5.25 percent of the covered amount of the loan.

(e) Loans totaling more than $2,000,000

In connection with a loan in which the sum of the covered amounts of all previous loans enrolled by the participating financial institution in the Program equals or exceeds $2,000,000, the amount of reimbursement to be provided by the Fund to the participating State shall not exceed the lesser of—

(1) 50 percent of the sum of the premium charges paid by the borrower and the participating financial institution; or

(2) 3.5 percent of the covered amount of the loan.

(f) Other amounts

In connection with the enrollment of a loan that will cause the aggregate covered amount of all enrolled loans to exceed $2,000,000, the amount of reimbursement by the Fund to the participating State shall be determined—

(1) by applying subsection (d) to the portion of the loan, which when added to the aggregate covered amount of all previously enrolled loans equals $2,000,000; and

(2) by applying subsection (e) to the balance of the loan.

(Pub. L. 103–325, title II, § 257, Sept. 23, 1994, 108 Stat. 2212.)

§ 4748. Reimbursement to Fund

(a) In general

If a participating State withdraws funds from a reserve fund pursuant to terms of the participation agreement permitted by subsection (d) or (r) of section 4745 of this title, such participating State shall, not later than 15 calendar days after such withdrawal, submit to the Fund an amount computed by multiplying the amount withdrawn by the appropriate factor, as determined under subsection (b).

(b) Factor

The appropriate factor shall be obtained by dividing the total amount of contributions that have been made by the participating State to all reserve funds which were subject to reimbursement—

(1) by 2; and

(2) by the total amount of contributions made by the participating State to all reserve funds, including if applicable, contributions that have been made by the State prior to becoming a participating State if the State continued its own capital access program in accordance with section 4743(b) of this title.

(c) Use of reimbursements

The Fund may use funds reimbursed pursuant to this section to make reimbursements under section 4747 of this title.

(Pub. L. 103–325, title II, § 258, Sept. 23, 1994, 108 Stat. 2213.)

§ 4749. Regulations

The Fund shall promulgate appropriate regulations to implement this subchapter.

(Pub. L. 103–325, title II, § 259, Sept. 23, 1994, 108 Stat. 2214.)

§ 4750. Authorization of appropriations

(a) Amount

There are authorized to be appropriated to the Fund $50,000,000 to carry out this subchapter.

(b) Budgetary treatment

The amount authorized to be appropriated under subsection (a) shall be subject to discretionary spending caps, as provided in section 665[1] of title 2, and therefore shall reduce by an equal amount funds made available for other discretionary spending programs.

(Pub. L. 103–325, title II, § 260, Sept. 23, 1994, 108 Stat. 2214.)

Editorial Notes

REFERENCES IN TEXT

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

[1] See References in Text note below.

CHAPTER 48—FINANCIAL INSTITUTIONS REGULATORY IMPROVEMENT

§ 4801. Incorporated definitions

Unless otherwise specifically provided in this chapter, for purposes of this chapter—

(1) the terms ''appropriate Federal banking agency'', ''Federal banking agencies'', ''insured depository institution'', and ''State bank supervisor'' have the same meanings as in section 1813 of this title; and

(2) the term ''insured credit union'' has the same meaning as in section 1752 of this title.

(Pub. L. 103–325, title III, § 301, Sept. 23, 1994, 108 Stat. 2214.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in original ''this title'' meaning title III of Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2214, which enacted this chapter, sections 633 and 2606 of this title, and section 5329 of Title 31, Money and Finance, amended sections 1, 24, 27, 72, 93, 161, 248, 250, 324, 375a, 375b, 482, 1462a, 1464, 1468, 1813, 1815, 1817, 1819 to 1821, 1823, 1828, 1831f, 1831m, 1831p–1, 1831t, 1842, 1843, 1849, 1865, 1953, 2605, 3201, 3205, 3207, 3351, and 4313 of this title and sections 77c, 78c, 1667c, and 1681g of Title 15, Commerce and Trade, enacted provisions set out as notes under this section, sections 24, 633, 1468, 1820, 1831p–1, and 1831t of this title, and sections 78c and 1667c of Title 15, and amended provisions set out as notes under sections 1825 and 1828 of this title. For complete classification of title III to the Code, see Tables.

Statutory Notes and Related Subsidiaries

USE OF SUBORDINATED DEBT TO PROTECT FINANCIAL SYSTEM AND DEPOSIT FUNDS FROM ''TOO BIG TO FAIL'' INSTITUTIONS

Pub. L. 106–102, title I, § 108, Nov. 12, 1999, 113 Stat. 1361, provided that:

''(a) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall conduct a study of—

''(1) the feasibility and appropriateness of establishing a requirement that, with respect to large insured depository institutions and depository institution holding companies the failure of which could have serious adverse effects on economic conditions or financial stability, such institutions and holding companies maintain some portion of their capital in the form of subordinated debt in order to bring market forces and market discipline to bear on the operation of, and the assessment of the viability of, such institutions and companies and reduce the risk to economic conditions, financial stability, and any deposit insurance fund;

''(2) if such requirement is feasible and appropriate, the appropriate amount or percentage of capital that should be subordinated debt consistent with such purposes; and

''(3) the manner in which any such requirement could be incorporated into existing capital standards and other issues relating to the transition to such a requirement.

''(b) REPORT.—Before the end of the 18-month period beginning on the date of the enactment of this Act [Nov. 12, 1999], the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall submit a report to the Congress containing the findings and conclusions of the Board and the Secretary in connection with the study required under subsection (a), together with such legislative and administrative proposals as the Board and the Secretary may determine to be appropriate.

''(c) DEFINITIONS.—For purposes of subsection (a), the following definitions shall apply:

''(1) BANK HOLDING COMPANY.—The term 'bank holding company' has the meaning given the term in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841].

''(2) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)].

''(3) SUBORDINATED DEBT.—The term 'subordinated debt' means unsecured debt that—

''(A) has an original weighted average maturity of not less than 5 years;

''(B) is subordinated as to payment of principal and interest to all other indebtedness of the bank, including deposits;

''(C) is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and

''(D) is not held in whole or in part by any affiliate or institution-affiliated party of the insured depository institution or bank holding company.''

STUDY AND REPORT ON ADAPTING EXISTING LEGISLATIVE REQUIREMENTS TO ONLINE BANKING AND LENDING

Pub. L. 106–102, title VII, § 729, Nov. 12, 1999, 113 Stat. 1476, required the Federal banking agencies (as defined in 12 U.S.C. 1813(z)) to study banking regulations regarding the delivery of financial services, including those regulations that may assume that there will be person-to-person contact during the course of a financial services transaction, and report their recommendations on adapting those existing requirements to online banking and lending, and report to Congress on the findings and conclusions, together with appropriate recommendations for legislative or regulatory action, before the end of the 2-year period beginning on Nov. 12, 1999.

TREASURY REPORT ON REDUCED TAXATION AND VIABILITY OF SMALL BANKS

Pub. L. 105–219, title IV, § 403, Aug. 7, 1998, 112 Stat. 935, required the Secretary of the Treasury to submit, not later than 1 year after Aug. 7, 1998, a report to the Congress containing recommendations for appropriate legislative and administrative action that would reduce and simplify the tax burden for small banking institutions.

STUDY AND REPORT ON CAPITAL STANDARDS AND THEIR IMPACT ON ECONOMY

Pub. L. 103–325, title III, § 328, Sept. 23, 1994, 108 Stat. 2230, directed the Secretary of the Treasury, in consultation with the Federal banking agencies, to conduct a study of the effect that the implementation of risk-based capital standards for depository institutions, including the Basle international capital standards, was having on the safety and soundness of insured depository institutions and economic growth and to submit a report and any capital standard recommendations to Congress before end of the 1-year period beginning on Sept. 23, 1994.