111TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT 111–506

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 5486) TO AMEND THE INTERNAL REVENUE CODE OF 1986 TO PROVIDE TAX INCENTIVES FOR SMALL BUSINESS JOB CREATION, AND FOR OTHER PURPOSES; AND PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 5297) TO CREATE THE SMALL BUSINESS LENDING FUND PROGRAM TO DIRECT THE SECRETARY OF THE TREASURY TO MAKE CAPITAL INVESTMENTS IN ELIGIBLE INSTITUTIONS IN ORDER TO INCREASE THE AVAILABILITY OF CREDIT FOR SMALL BUSINESSES, AND FOR OTHER PURPOSES

JUNE 14, 2010.—Referred to the House Calendar and ordered to be printed

Ms. PINGREE, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 1436]

The Committee on Rules, having had under consideration House Resolution 1436, by a non-record vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 5486, the Small Business Jobs Tax Relief Act of 2010, under a closed rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Ways and Means. The resolution waives all points of order against consideration of the bill except those arising under clause 9 or 10 of rule XXI. The resolution provides that the bill shall be considered as read. The resolution waives all points of order against the bill. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure). The resolution provides one motion to recommit H.R. 5486 with or without instructions.

The resolution provides for consideration of H.R. 5297, the Small Business Lending Fund Act of 2010, under a structured rule. The resolution provides one hour of general debate with 30 minutes equally divided and controlled by the Chair and Ranking Minority Member of the Committee on Financial Services and 30 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Small Business. The resolution waives all points of order against consideration of the bill except for clauses 9 and 10 of rule XXI. The resolution provides that in

89–008

lieu of the amendment in the nature of a substitute recommended by the Committee on Financial Services the amendment in the nature of a substitute printed in part A of this report, modified by the amendment printed in part B of this report, shall be considered as an original bill for the purpose of amendment and shall be considered as read. The resolution waives all points of order against the amendment in the nature of a substitute. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure).

The resolution makes in order only those amendments printed in part C of this report. The resolution provides that the amendments made in order may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question. The resolution waives all points of order against the amendments printed in part C of this report except for clauses 9 and 10 of rule XXI. The resolution provides one motion to recommit H.R. 5297 with or without instructions.

The resolution provides that the Chair may entertain a motion that the Committee rise only if offered by the chair of the Committee on Financial Services or his designee and provides that the Chair may not entertain a motion to strike out the enacting words of the bill (as described in clause 9 of rule XVIII).

The resolution provides that in the engrossment of H.R. 5297, the Clerk is authorized to make technical and conforming changes to amendatory instructions. It also provides that in the engrossment of H.R. 5297, the Clerk shall add the text of H.R. 5486, as passed by the House, at the end of H.R. 5297 and that H.R. 5486 shall be laid on the table.

The resolution waives clause 6(a) of rule XIII for a two-thirds vote to consider a report from the Committee on Rules on the same day it is presented to the House with respect to any resolution reported through the legislative day of June 18, 2010, providing for consideration or disposition of any Senate amendment to the House amendment to the Senate amendment to the bill (H.R. 4213) to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

The resolution provides that measures may be considered under suspension of the rules at any time through the legislative day of June 18, 2010. The Speaker or her designee shall consult with the Minority Leader or his designee on the designation of any matter for consideration pursuant to this section.

EXPLANATION OF WAIVERS

Although the rule waives all points of order against consideration of H.R. 5486 (except for clauses 9 and 10 of rule XXI) and all points of order against H.R. 5486 the Committee is not aware of any points of order. The waivers of all points of order are prophylactic.

Although the rule waives all points of order against consideration of H.R. 5297 (except for clauses 9 and 10 of rule XXI) the Committee is not aware of any points of order. The waiver is prophylactic. The waiver of all points of order against the amendment in

the nature of a substitute to H.R. 5297 includes a waiver of clause 4 of rule XXI (prohibiting appropriations in legislative bills) and a waiver against clause 10 of rule XXI (regarding PAYGO).

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 444

Date: June 14, 2010.
Measure: H.R. 5297/H.R. 5486.
Motion by: Mr. Dreier.
Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Hensarling (TX) and Rep. Cummings (MD), #55, which would give the Special Inspector General for TARP (SIGTARP) oversight responsibility for the SBLF to ensure that bailout recipients aren't able to escape effective oversight.
Results: Defeated 2–6.
Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Foxx—Yea.

Rules Committee record vote No. 445

Date: June 14, 2010.
Measure: H.R. 5297/H.R. 5486.
Motion by: Mr. Dreier.
Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Hensarling (TX), #36, which would state that banks must have a CAMELS rating of 1 or 2 in order to be eligible for SBLF funds.
Results: Defeated 2–6.
Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Foxx—Yea.

Rules Committee record vote No. 446

Date: June 14, 2010.
Measure: H.R. 5297/H.R. 5486.
Motion by: Mr. Dreier.
Summary of motion: To make in order and provide appropriate waivers for an amendment by Reps. Bean (IL)/Rep. Dahlkemper (PA)/Lipinski (IL)/Quigley (IL)/Welch (VT)/Moore (KS)/Peters (MI)/Ellsworth (IN)/Hill (IN)/Hodes (NH)/Halvorson (IL)/Klein (FL)/Markey (CO)/Michaud (ME)/Holden (PA)/Murphy (NY), #56, which would temporarily expand the SBA 504 loan program to allow commercial real estate and fixed asset refinancing for small business owners current on payments. It would raise caps on SBA 504 guarantees to $5 million and to $5.5 million for small manufacturers.
Results: Defeated 2–6.
Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Foxx—Yea.

Rules Committee record vote No. 447

Date: June 14, 2010.
Measure: H.R. 5297/H.R. 5486.
Motion by: Dr. Foxx.
Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Bachmann (MN), #7, which would redirect federal funds withheld from States found in non-compliance with this act to pay down the national debt.
Results: Defeated 2–7.
Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Foxx—Yea.

Rules Committee record vote No. 448

Date: June 14, 2010.
Measure: H.R. 5297/H.R. 5486.
Motion by: Dr. Foxx.
Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. McClintock (CA), #15, which would prohibit authorization of appropriations by this bill from being effective following a year with a federal budget deficit.
Results: Defeated 2–7.
Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Foxx—Yea.

SUMMARY OF THE AMENDMENT IN THE NATURE OF A SUBSTITUTE IN PART A TO H.R. 5297 TO BE CONSIDERED AS ORIGINAL TEXT

The amendment includes the text of H.R. 5297 as reported from the Committee on Financial Services, with the addition of Title III, which would establish at the Small Business Administration (SBA) a program to provide equity financing support to early-stage and high growth small businesses.

SUMMARY OF AMENDMENT IN PART B TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 5297 IN PART A TO BE CONSIDERED AS ADOPTED

The amendment would (1) clarify the pricing for the investment held past the initial repayment period; (2) would add Community Development Financial Institutions as an eligible institution; (3) would clarify what "other financial instruments" include; (4) would clarify reporting requirements for banks participating in the Fund; (5) would clarify regulator consultation requirements for underwriting Fund applications; (6) would clarify how installment amounts are transferred to States and requires repayment for intentional audit misstatements; (7) would insert a requirement for States to provide a plan for access to Fund proceeds for small businesses in underserved communities; (8) would provide that the Small Business Lending Fund, the State Small Business Credit Initiative, and the Small Business Early-Stage Investment Program would receive direct appropriations, instead of authorization for appropriations; (9) would require certification that institutions participating in the programs provided for under the Act are in compliance with laws regarding immigration status and sex of-

fender status; and (10) would prohibit the viewing pornography by Federal employees working on the programs created under the Act. The amendment also includes a provision indicating that, in order to comply with the Statutory Pay-As-You-Go Act of 2010, the budgetary effects of the legislation shall be determined by reference to a statement of budgetary effects submitted for printing in the Congressional Record by the chair or chairs of the Committee on the Budget.

SUMMARY OF THE FURTHER AMENDMENTS IN PART C TO H.R. 5297 TO BE MADE IN ORDER

1. Israel (NY), Barrow (GA): Would add veteran- and women-owned businesses to the groups that will receive outreach under the Small Business Lending Fund established by the bill. It would add veteran-owned businesses to those businesses that should receive consideration in the Fund, add veterans to the study on lending assistance, and require the study to report not just on the number of loans made to women-, veteran- and minority-owned businesses, but the percent of loans that go to them as a part of the program. (10 minutes)

2. Schrader (OR): Would establish the Small Business Borrower Assistance Program which will create a fund for 7(a) loan borrowers to use if they need help paying the principal or interest payments of their small business loans. (10 minutes)

3. Nye (VA): Would add four stipulations to the Small Business Lending Fund to safeguard small businesses in the bill: 1) base SBLF incentives on number of loans an institution makes, not just the total dollars of loans; 2) include Small Business Lending Centers with less than $10 billion in assets as qualified financial institutions to participate in the SBLF; 3) add the SBA definition to define what a small business is; and 4) change the base lending amount from a comparison of the fourth quarter of 2009, to a full year of data. (10 minutes)

4. Minnick (ID), Simpson (ID), Kosmas (FL), Quigley (IL), Marchant (TX): Would make non-owner occupied commercial real estate loans eligible for the program. (10 minutes)

5. Perlmutter (CO), Gutierrez (IL), Klein, Ron (FL), Kagen (WI): Would allow small banks to amortize losses or write-downs on commercial real estate loans over a 10-year period, freeing up more capital for these small institutions to lend to small businesses. (10 minutes)

6. Price, Tom (GA): Would express the Sense of Congress that small business lending is being hindered by mixed messages from federal financial regulators. (10 minutes)

7. Green, Al (TX): Would improve disclosures by eligible institutions receiving funding under the program. (10 minutes)

8. Driehaus (OH), Connolly (VA), Moore, Dennis (KS): Would institute a new Office of Small Business Lending Fund Oversight. (10 minutes)

9. Peters (MI): Would give Treasury the authority to recoup funds transferred to states before an audit is conducted if the audit finds that the state misused the funds. (10 minutes)

10. Miller, Brad (NC), Baca (CA): Would, for purposes of the SBLF, allow the amount of lending reported as construction, land development, and other land loans in domestic offices to be in-

cluded in the determination of the amount of a banks small business lending. To be eligible, the amendment would require the applicant that intends to use an SBLF investment for construction to notify the Secretary at the time of the application's submission. (10 minutes)

11. Michaud (ME): Would ensure that state-run venture capital fund programs will be able to qualify as "state other credit support programs," as long as they do not use funds under H.R. 5297 to lend to businesses with more than 750 employees. It would clarify that state-run venture capital fund programs will be able to qualify as "state other credit support programs," as long as they meet all other requirements. (10 minutes)

12. Jackson Lee (TX), Cao (LA): Would provide funding to eligible institutions that serve small businesses in communities that have suffered negative economic effects as a result of the Deepwater Horizon oil spill with particular consideration to States along the coast of the Gulf of Mexico. (10 minutes)

13. Sanchez, Loretta (CA): Would include as part of the selection criteria for investment companies the extent to which the applicant will concentrate investment activities on small business concerns in targeted industries. (10 minutes)

14. Cuellar (TX): Would require the Secretary to take into consideration areas with high unemployment rates that exceed the national average to increase opportunities for small business development. (10 minutes)

15. Braley (IA): Would require the use of plain writing by the Department of the Treasury and the Small Business Administration for documents relevant to obtaining a benefit or service under the bill. (10 minutes)

16. Loebsack (IA): Would include a Sense of Congress stating that agriculture operations, farms, and rural communities should receive equal consideration through lending activities for small businesses, particularly small and mid-size farms and agriculture operations; and attention should be given to ensuring there is adequate small business credit and financing availability in the agriculture and farming sectors. (10 minutes)

17. Chu (CA), Honda (CA), Green, Al (TX), Carson (IN): Would (1) require the inclusion of linguistically and culturally appropriate outreach where appropriate to the applicant's small business lending plan; (2) provide for linguistically and culturally appropriate minority outreach and advertising; (3) explicitly state minority-owned financial institutions are eligible for consideration of by the Secretary for funding; and (4) require the Secretary, to the extent possible, to disaggregate the results of the report on women-owned and minority-owned business by ethnic group and gender. (10 minutes)

PART A—TEXT OF THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 5297 TO BE CONSIDERED AS ORIGINAL TEXT

Strike all after the enacting clause and insert the following:

TITLE I—SMALL BUSINESS LENDING FUND

SECTION 1. SHORT TITLE.

This title may be cited as the "Small Business Lending Fund Act of 2010".

SEC. 2. PURPOSE.

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

SEC. 3. DEFINITIONS.

For purposes of this title:

(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; and

(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).

(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.

(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) 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.

(8) 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.

(9) 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 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 assets of equal to or less than $10,000,000,000; and

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

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

(11) 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)).

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

(13) 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)).

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

(15) SMALL BUSINESS LENDING.—

(A) IN GENERAL.—The term “small business lending” means small business lending, as defined by and reported in an eligible institution’s quarterly call report, of the following types:

(i) Commercial and industrial loans plus.

(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) 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.

(16) 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)).

SEC. 4. SMALL BUSINESS LENDING FUND.

(a) FUND AND PROGRAM.—

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

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

(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 title.

(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.

(c) CREDITS TO THE FUND.—There shall be credited to the Fund amounts made available pursuant to section 9, 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 $10,000,000,000.—Eligible insti-

tutions 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 paragraph, the term "control" with respect to a bank holding company shall have the same meaning as in section 2(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(2)(a)(2)). For purposes of this paragraph, the term "control" with respect to a savings and loan holding company shall have the same meaning as in 10(a)(2) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(2)).

(E) 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 a small business lending plan describing how the applicant's business strategy and operating goals will allow it to address the needs of small businesses in the areas it serves. This plan shall be confidential supervisory information.

(2) CONSULTATION WITH REGULATORS.—For each eligible institution that applies to receive a capital investment under the Program, the Secretary shall consult with the appropriate Federal banking agency for the eligible institution to determine whether the eligible institution may receive such capital investment.

(3) 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) FDIC PROBLEM BANK LIST DEFINED.—For purposes of this subparagraph, the term "FDIC problem bank list" means the list of institutions with 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.

(4) 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 amount of small business lending reported by the eligible institution in its call report for the last quarter in calendar year 2009 or the average amount of small business lending reported by the eligible institution in all call reports for calendar year 2009, whichever is lower, minus adjustments from each quarterly balance in respect of—

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

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

(H) REPAYMENT DEADLINE.—The capital investment received by an eligible institution under the Program shall be repaid by the end of the 10-year period that begins on the date of the capital investment under the Program.

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

(6) 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 title, 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 ever missed a dividend payment due under the CPP.

(7) MINORITY OUTREACH.—The Secretary shall require eligible institutions receiving capital investments under the Program to provide outreach and advertising in the appropriate language of 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 represent or work within or are members of minority communities.

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

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

SEC. 5. ADDITIONAL AUTHORITIES OF THE SECRETARY.

The Secretary may take such actions as the Secretary deems necessary to carry out the authorities in this title, 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 title 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 title, to perform reasonable duties related to this title.

(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 title.

(5) Subject to section 4(b)(3), the Secretary may manage any assets purchased under this title, 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 title, 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 title.

(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 title.

SEC. 6. CONSIDERATIONS.

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

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

(2) providing funding to eligible institutions that serve small businesses that are minority- 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) ensuring that all eligible institutions may apply to participate in the program established under this title, without discrimination based on geography;

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

(6) minimizing the cost to taxpayers of exercising the authorities; and

(7) promoting and engaging in financial education to would-be borrowers.

SEC. 7. REPORTS.

The Secretary shall provide to the appropriate committees of Congress—

(1) within 7 days of the end of each month commencing with the first month in which transactions are made under the Program, a written report describing all of the transactions made during the reporting period pursuant to the authorities granted under this title;

(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 month commencing with the first month 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. 8. 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 purchase (and commitments to purchase) of preferred stock and other financial instruments under the Program.

(b) GAO AUDIT.—The Comptroller General of the United States shall perform an annual audit of the Program and issue a report to the appropriate committees of Congress containing the results of such audit.

SEC. 9. CREDIT REFORM; FUNDING.

(a) CREDIT REFORM.—The cost of purchases of preferred stock and other financial instruments made as capital investments under this title 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 authorized to be 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. 10. TERMINATION AND CONTINUATION OF AUTHORITIES.

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

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

SEC. 11. PRESERVATION OF AUTHORITY.

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

SEC. 12. ASSURANCES.

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

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

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

(a) STUDY.—The Secretary shall conduct a study to determine the number of women-owned businesses and minority-owned businesses that receive assistance as a result of the Program, including—

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

(2) loan applications received;

(3) loan applications approved; and

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

(b) REPORT.—Not later than one year after the date of enactment of this Act, the Secretary shall submit to Congress a report on the results of the study conducted pursuant to subsection (a).

(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.

TITLE II—STATE SMALL BUSINESS CREDIT INITIATIVE

SEC. 201. SHORT TITLE.

This title may be cited as the "State Small Business Credit Initiative Act of 2010".

SEC. 202. DEFINITIONS.

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

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency"—

(A) has the same meaning as in section 3 of the Federal Deposit Insurance Act; 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.

(2) ENROLLED LOAN.—The term "enrolled loan" means a loan made by a financial institution lender that is enrolled by a participating State in an approved State capital access program in accordance with this title.

(3) FEDERAL CONTRIBUTION.—The term "Federal contribution" means the portion of the contribution made by a participating State to, or for the account of, an approved State program that is made with Federal funds allocated to the State by the Secretary under section 203.

(4) FINANCIAL INSTITUTION.—The term "financial institution" means any insured depository institution, insured credit union, or community development financial institution, as those terms are each defined in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994.

(5) PARTICIPATING STATE.—The term "participating State" means any State that has been approved for participation in the Program under section 204.

(6) PROGRAM.—The term "Program" means the State Small Business Credit Initiative established under this title.

(7) QUALIFYING LOAN OR SWAP FUNDING FACILITY.—The term "qualifying loan or swap funding facility" means a contractual arrangement between a participating State and a private financial entity under which—

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

(B) the entity provides funding from the arrangement back to the participating State; and

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

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

(A) depositing all required premium charges paid by the financial institution lender and by each borrower receiving a loan under an approved State program from that financial institution lender;

(B) depositing contributions made by the participating State, including State contributions made with Federal contributions; and

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

(9) STATE.—The term "State" means—

(A) a State of the United States;

(B) the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, Guam, American Samoa, and the United States Virgin Islands;

(C) when designated by a State of the United States, a political subdivision of that State that the Secretary determines has the capacity to participate in the Program; and

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

(10) STATE CAPITAL ACCESS PROGRAM.—The term "State capital access program" means a program of a State that—

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

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

(11) STATE OTHER CREDIT SUPPORT PROGRAM.—The term "State other credit support program"—

(A) means a program of a State that—

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

(ii) is not a State capital access program; and

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

(B) includes, collateral support programs, loan participation programs, and credit guarantee programs.

(12) STATE PROGRAM.—The term "State program" means a State capital access program or a State other credit support program.

(13) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

SEC. 203. FEDERAL FUNDS ALLOCATED TO STATES.

(a) PROGRAM ESTABLISHED; PURPOSE.—There is established the State Small Business Credit Initiative (hereinafter in this title referred to as the "Program"), to be administered by the Secretary. Under the Program, the Secretary shall allocate Federal funds to participating States and make the allocated funds available to the participating States as provided in this section for the uses described in this section.

(b) ALLOCATION FORMULA.—

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

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

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

(2) 2009 ALLOCATION FORMULA.—

(A) IN GENERAL.—The Secretary shall determine the 2009 allocation by allocating Federal funds among the States in the proportion that each such State's 2008 State employment decline bears to the aggregate of the 2008 State employment declines for all States.

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

(C) 2008 STATE EMPLOYMENT DECLINE DEFINED.—For purposes of this paragraph and with respect to a State, the term "2008 State employment decline" means the excess (if any) of—

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

(ii) the number of individuals employed in such State determined for December 2008.

(3) 2010 ALLOCATION FORMULA.—

(A) IN GENERAL.—The Secretary shall determine the 2010 allocation by allocating Federal funds among the States in the proportion that each such State's 2009 unemployment number bears to the aggregate of the 2009 unemployment numbers for all of the States.

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

(C) 2009 UNEMPLOYMENT NUMBER DEFINED.—For purposes of this paragraph and with respect to a State, the term "2009 unemployment number" means the number of individuals within such State who were determined to be unemployed by the Bureau of Labor Statistics for December 2009.

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

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

(A) IN GENERAL.—The Secretary shall—

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

(ii) transfer to the participating State the first one-third when the Secretary approves the State for participation under section 204; and

(iii) transfer to the participating State each successive one-third when the State has certified to the Secretary that it has expended, transferred, or obligated 80 percent of the last transferred one-third for Federal contributions to, or for the account of, State programs.

(B) AUTHORITY TO WITHHOLD PENDING AUDIT.—The Secretary may withhold the transfer of any successive one-third pending results of a financial audit.

(C) TRANSFERS CONTINGENT ON INSPECTOR GENERAL AUDITS.—

(i) IN GENERAL.—Before a transfer to a participating State of the second one-third or the last one-third, the Inspector General of the Department of the Treasury shall carry out an audit of the participating State's use of amounts already received.

(ii) PENALTY FOR MISSTATEMENT.—Any participating State that is found to have intentionally misstated any report issued to the Secretary under the Program shall be ineligible to receive any additional funds under the Program. Funds that had been allocated or that would

otherwise have been allocated to such participating State shall be paid into the general fund of the Treasury for reduction of the public debt.

(iii) MUNICIPALITIES.—For purposes of this subparagraph, the term "participating State" shall include a municipality given special permission to participate in the Program, pursuant to section 204(d).

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

(3) USE OF TRANSFERRED FUNDS.—Each participating State may use funds transferred to it under this section only—

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

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

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

(D) in the case of each successive one-third transferred, for paying administrative costs incurred by the State in implementing an approved State program in an amount not to exceed 3 percent of that successive one-third.

(4) TERMINATION OF AVAILABILITY OF AMOUNTS NOT TRANSFERRED WITHIN 2 YEARS OF PARTICIPATION.—Any portion of a participating State's allocated amount that has not been transferred to the State under this section by the end of the 2-year period beginning on the date that the Secretary approves the State for participation may be deemed by the Secretary to be no longer allocated to the State and no longer available to the State and shall be returned to the General Fund of the Treasury.

(5) DEFINITIONS.—For purposes of this section—

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

(B) the term "one-third" means—

(i) in the case of the first and second one-thirds, an amount equal to 33 percent of a participating State's allocated amount; and

(ii) in the case of the last one-third, an amount equal to 34 percent of a participating State's allocated amount.

SEC. 204. APPROVING STATES FOR PARTICIPATION.

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

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

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

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

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

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

(A) conforms to the requirements of this title;

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

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

(D) requires that the State program be fully positioned, within 90 days of the State's execution of the allocation agreement with the Secretary, to act on providing the kind of credit support that the State program was established to provide; and

(E) includes an agreement by the State to deliver to the Secretary, and update annually, a schedule describing how the State intends to apportion among its State programs the Federal funds allocated to the State.

(c) CONTRACTUAL ARRANGEMENTS FOR IMPLEMENTATION OF STATE PROGRAMS.—A State may be approved to be a participating State, and be eligible for an allocation of Federal funds under the Program, if the State has contractual arrangements for the implementation and administration of its State program with—

(1) an existing, approved State program administered by another State; or

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

(d) SPECIAL PERMISSION.—

(1) CIRCUMSTANCES WHEN A MUNICIPALITY MAY APPLY DIRECTLY.—If a State does not, within 60 days after the date of enactment of this title, file with the Secretary a notice of its intent to apply for approval by the Secretary of a State program or within 9 months after the date of enactment of this title, file with the Secretary a complete application for approval of a State program, the Secretary may grant to municipalities of that State a special permission that will allow them to apply directly to the Secretary without the State for approval to be participating municipalities.

(2) TIMING REQUIREMENTS APPLICABLE TO MUNICIPALITIES APPLYING DIRECTLY.—To qualify for the special permission, a municipality of a State must, within 12 months after the date of enactment of this title, file with the Secretary a complete application for approval by the Secretary of a State program.

(3) NOTICES OF INTENT AND APPLICATIONS FROM MORE THAN 1 MUNICIPALITY.—A municipality of a State may combine with 1 or more other municipalities of that State to file a joint notice of intent to file and a joint application.

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

(5) ALLOCATION TO MUNICIPALITIES.—

(A) IF MORE THAN 3.—If more than 3 municipalities, or combination of municipalities as provided in paragraph (3), of a State apply for approval by the Secretary to be participating municipalities under this subsection, and the applications meet the approval criteria in paragraph (4), the Secretary shall allocate Federal funds to the 3 municipalities with the largest populations.

(B) IF 3 OR FEWER.—If 3 or fewer municipalities, or combination of municipalities as provided in paragraph (3), of a State apply for approval by the Secretary to be participating municipalities under this subsection, and the applications meet the approval criteria in paragraph (4), the Secretary shall allocate Federal funds to each applicant municipality or combination of municipalities.

(6) APPORTIONMENT OF ALLOCATED AMOUNT AMONG PARTICIPATING MUNICIPALITIES.—If the Secretary approves municipalities to be participating municipalities under this subsection, the Secretary shall apportion the full amount of the Federal funds that are allocated to that State to municipalities that are approved under this subsection in amounts proportionate to the population of those municipalities, based on the most recent available decennial census.

(7) APPROVING STATE PROGRAMS FOR MUNICIPALITIES.—If the Secretary approves municipalities to be participating municipalities under this subsection, the Secretary shall take into account the additional considerations in section 206(d) in making the determination under section 205 or 206 that the State program or programs to be implemented by the participating municipalities, including a State capital access program, is eligible for Federal contributions to, or for the account of, the State program.

SEC. 205. APPROVING STATE CAPITAL ACCESS PROGRAMS.

(a) APPLICATION.—A participating State that establishes a new, or has an existing, State capital access program that meets the eligibility criteria in subsection (c) may apply to Secretary to have the State capital access program approved as eligible for Federal contributions to the reserve fund.

(b) APPROVAL.—The Secretary shall approve such State capital access program as eligible for Federal contributions to the reserve fund if—

(1) within 60 days after the date of enactment of this title, the State has filed with the Secretary a notice of intent to apply for approval by the Secretary of a State capital access program;

(2) within 9 months after the date of enactment of this title, the State has filed with the Secretary a complete application for approval by the Secretary of a capital access program;

(3) the State satisfies the requirements of subsections (a) and (b) of section 204; and

(4) the State capital access program meets the eligibility criteria in subsection (c).

(c) ELIGIBILITY CRITERIA FOR STATE CAPITAL ACCESS PROGRAMS.—For a State capital access program to be approved under this section, it must be a program of the State that—

(1) provides portfolio insurance for business loans based on a separate loan-loss reserve fund for each financial institution;

(2) requires insurance premiums to be paid by the financial institution lenders and by the business borrowers to the reserve fund to have their loans enrolled in the reserve fund;

(3) provides for contributions to be made by the State to the reserve fund in amounts at least equal to the sum of the amount of the insurance premium charges paid by the borrower and the financial institution to the reserve fund for any newly enrolled loan; and

(4) provides its portfolio insurance solely for loans that meet both the following requirements:

(A) The borrower has 500 employees or less at the time that the loan is enrolled in the Program.

(B) The loan amount does not exceed $5,000,000.

(d) FEDERAL CONTRIBUTIONS TO APPROVED STATE CAPITAL ACCESS PROGRAMS.—A State capital access program approved under this section will be eligible for receiving Federal contributions to the reserve fund in an amount equal to the sum of the amount of the insurance premium charges paid by the borrowers and by the financial institution to the reserve fund for loans that meet the requirements in subsection (c)(4). A participating State may use the Federal contribution to make its contribution to the reserve fund of an approved State capital access program.

(e) MINIMUM PROGRAM REQUIREMENTS FOR STATE CAPITAL ACCESS PROGRAMS.—The Secretary shall, by regulation or other guidance, prescribe Program requirements that meet the following minimum requirements:

(1) EXPERIENCE AND CAPACITY.—The participating State shall determine for each financial institution that participates in the State capital access program, after consultation with the appropriate Federal banking agency or, in the case of a financial institution that is a non depository community development financial institution, the Community Development Financial Institution Fund, that the financial institution has sufficient commercial lending experience and financial and managerial capacity to participate in the approved State capital access program. The determination by the State shall not be reviewable by the Secretary.

(2) INVESTMENT AUTHORITY.—Subject to applicable State law, the participating State may invest, or cause to be invested, funds held in a reserve fund by establishing a deposit account at the financial institution lender 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.

(3) LOAN TERMS AND CONDITIONS TO BE DETERMINED BY AGREEMENT.—A loan to be filed for enrollment in an approved State capital access program may be made with such interest rate, fees, and other terms and conditions, and the loan may be enrolled in the approved State capital access program and claims may be filed and paid, as agreed upon by the financial institution lender and the borrower, consistent with applicable law.

(4) LENDER CAPITAL AT-RISK.—A loan to be filed for enrollment in the State capital access program must require the financial institution lender to have a meaningful amount of its own capital resources at risk in the loan.

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

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

(7) LOAN PURPOSE.—

(A) PARTICULAR LOAN PURPOSE REQUIREMENTS AND PROHIBITIONS.—In connection with the filing of a loan for enrollment in an approved State capital access program, the financial institution lender—

(i) shall 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 such business activities as the Secretary, by regulation, may proscribe as prohibited loan purposes for enrollment in an approved State capital access program; and

(III) the borrower is not—

(aa) an executive officer, director, or principal shareholder of the financial institution lender;

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

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

(ii) shall provide assurances to the participating State that the loan has not been made in order to place under the protection of the approved State capital access program prior debt that is not covered under the approved State capital access program and

that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender;

(iii) shall not allow the enrollment of a loan to a borrower that is a refinancing of a loan previously made to that borrower by the financial institution lender or an affiliate of the financial institution lender; and

(iv) may include additional restrictions on the eligibility of loans or borrowers that are not inconsistent with the provisions and purposes of this title, including compliance with all applicable Federal and State laws, regulations, ordinances, and Executive orders.

(B) 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 financial institution lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

SEC. 206. APPROVING COLLATERAL SUPPORT AND OTHER INNOVATIVE CREDIT ACCESS AND GUARANTEE INITIATIVES FOR SMALL BUSINESSES AND MANUFACTURERS.

(a) APPLICATION.—A participating State that establishes a new, or has an existing, credit support program that meets the eligibility criteria in subsection (c) may apply to the Secretary to have the State other credit support program approved as eligible for Federal contributions to, or for the account of, the State program.

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

(1) the Secretary determines that the State satisfies the requirements of paragraphs (1) through (3) of section 205(b);

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

(3) the Secretary determines the State other credit support program to be eligible based on the additional considerations in subsection (d); and

(4) within 9 months after the date of enactment of this title, the State has filed with Treasury a complete application for Treasury approval.

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

(1) can demonstrate that, at a minimum, 1 dollar of public investment by the State program will cause and result in 1 dollar of new private credit;

(2) can demonstrate a reasonable expectation that, when considered with all other State programs of the State, such State programs together have the ability to use amounts of new Federal contributions to, or for the account of, all such programs in the State to cause and result in amounts of new small business lending at least 10 times the new Federal contribution amount;

(3) for those State other credit support programs that provide their credit support through 1 or more financial institution lenders, requires the financial institution lenders to have

a meaningful amount of their own capital resources at risk in their small business lending; and

(4) extends credit support that—

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

(B) does not extend credit support to borrowers that have more than 750 employees;

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

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

(d) ADDITIONAL CONSIDERATIONS.—In making a determination that a State other credit support program is eligible for Federal contributions to, or for the account of, the State program, the Secretary shall take into account the following additional considerations:

(1) The anticipated benefits to the State, its businesses, and its residents to be derived from the Federal contributions to, or for the account of, the approved State other credit support program, including the extent to which resulting small business lending will expand economic opportunities.

(2) The operational capacity, skills, and experience of the management team of the State other credit support program.

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

(4) The internal accounting and administrative controls systems of the State other credit support program, and the extent to which they can provide reasonable assurance that funds of the State program are safeguarded against waste, loss, unauthorized use, or misappropriation.

(5) The soundness of the program design and implementation plan of the State other credit support program.

(e) FEDERAL CONTRIBUTIONS TO APPROVED STATE OTHER CREDIT SUPPORT PROGRAMS.—A State other credit support program approved under this section will be eligible for receiving Federal contributions to, or for the account of, the State program in an amount consistent with the schedule describing the apportionment of allocated Federal funds among State programs delivered by the State to the Secretary under the allocation agreement.

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

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

(2) CONSIDERATIONS FOR FUND.—In prescribing minimum Program requirements for approved State other credit support programs, the Secretary shall take into consideration, to the extent the Secretary determines applicable and appropriate, the minimum Program requirements for approved State capital access programs in section 205(e).

SEC. 207. REPORTS.

(a) QUARTERLY USE-OF-FUNDS REPORT.—

(1) IN GENERAL.—Not later than 30 days after the beginning of each calendar quarter, beginning after the first full calendar quarter to occur after the date the Secretary approves a State

for participation, the participating State shall submit to the Secretary a report on the use of Federal funding by the participating State during the previous calendar quarter.

(2) REPORT CONTENTS.—The report shall—

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

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

(i) the information provided in accordance with subparagraph (A) is accurate;

(ii) funds continue to be available and legally committed to contributions by the State to, or for the account of, approved State programs, less any amount that has been contributed by the State to, or for the account of, approved State programs subsequent to the State being approved for participation in the Program; and

(iii) the participating State is implementing its approved State program or programs in accordance with this title and regulations issued pursuant to section 210.

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

(1) The number of borrowers that received new loans originated under the approved State program or programs after the State program was approved as eligible for Federal contributions.

(2) The total amount of such new loans.

(3) Breakdowns by industry type, loan size, annual sales, and number of employees of the borrowers that received such new loans.

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

(5) Such other data as the Secretary, in the Secretary's sole discretion, may require to carry out the purposes of the Program.

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

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

SEC. 208. REMEDIES FOR STATE PROGRAM TERMINATION OR FAILURES.

(a) REMEDIES.—

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

(A) reduce the amount of Federal funds allocated to the State under the Program; or

(B) terminate any further transfers of allocated amounts that have not yet been transferred to the State.

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

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

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

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

(b) DEALLOCATED AMOUNTS TO BE REALLOCATED.—If, after 13 months, any portion of the amount of Federal funds allocated to a participating State is deemed by the Secretary to be no longer allocated to the State after actions taken by the Secretary under subsection (a)(1), the Secretary shall reallocate that portion among the participating States, excluding the State whose allocated funds were deemed to be no longer allocated, as provided in section 203(b).

SEC. 209. IMPLEMENTATION AND ADMINISTRATION.

(a) GENERAL AUTHORITIES AND DUTIES.—The Secretary shall—

(1) consult with the Administrator of the Small Business Administration and the appropriate Federal banking agencies on the administration of the Program;

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

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

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

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

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

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

SEC. 210. REGULATIONS.

The Secretary, in consultation with the Administrator of the Small Business Administration, shall issue such regulations and other guidance as the Secretary determines necessary or appropriate to implement this title including, but not limited to, to define terms, to establish compliance and reporting requirements, and such other terms and conditions necessary to carry out the purposes of this title.

SEC. 211. 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 use of funds made available under the Program.

(b) GAO AUDIT.—The Comptroller General of the United States shall perform an annual audit of the Program and issue a report to the appropriate committees of Congress, as such term is defined under section 3(1), containing the results of such audit.

TITLE III—SMALL BUSINESS EARLY-STAGE INVESTMENT PROGRAM

SEC. 301. SHORT TITLE.

This title may be cited as the "Small Business Early-Stage Investment Program Act of 2010".

SEC. 302. SMALL BUSINESS EARLY-STAGE INVESTMENT PROGRAM.

Title III of the Small Business Investment Act of 1958 (15 U.S.C. 681 et seq.) is amended by adding at the end the following:

"PART D—SMALL BUSINESS EARLY-STAGE INVESTMENT PROGRAM

"SEC. 399A. ESTABLISHMENT OF PROGRAM.

"The Administrator shall establish and carry out an early-stage investment program (hereinafter referred to in this part as the 'program') to provide equity investment financing to support early-stage small businesses in accordance with this part.

"SEC. 399B. ADMINISTRATION OF PROGRAM.

"The program shall be administered by the Administrator acting through the Associate Administrator described under section 201.

"SEC. 399C. APPLICATIONS.

"(a) IN GENERAL.—Any existing or newly formed incorporated body, limited liability company, or limited partnership organized and chartered or otherwise existing under Federal or State law for the purpose of performing the functions and conducting the activities contemplated under the program and any manager of any small business investment company may submit to the Administrator an application to participate in the program.

"(b) REQUIREMENTS FOR APPLICATION.—An application to participate in the program shall include the following:

"(1) A business plan describing how the applicant intends to make successful venture capital investments in early-stage small businesses and direct capital to small business concerns in targeted industries or other business sectors.

"(2) Information regarding the relevant venture capital investment qualifications and backgrounds of the individuals responsible for the management of the applicant.

"(3) A description of the extent to which the applicant meets the selection criteria under section 399D.

"(c) APPLICATIONS FROM MANAGERS OF SMALL BUSINESS INVESTMENT COMPANIES.—The Administrator shall establish an abbreviated application process for applicants that are managers of small business investment companies that are licensed under section 301 and that are applying to participate in the program. Such abbreviated process shall incorporate a presumption that such

managers satisfactorily meet the selection criteria under paragraphs (3) and (5) of section 399D(b).

"SEC. 399D. SELECTION OF PARTICIPATING INVESTMENT COMPANIES.

"(a) IN GENERAL.—Not later than 90 days after the date on which the Administrator receives an application from an applicant under section 399C, the Administrator shall make a determination to conditionally approve or disapprove such applicant to participate in the program and shall transmit such determination to the applicant in writing. A determination to conditionally approve an applicant shall identify all conditions necessary for a final approval and shall provide a period of not less than one year for satisfying such conditions.

"(b) SELECTION CRITERIA.—In making a determination under subsection (a), the Administrator shall consider each of the following:

"(1) The likelihood that the applicant will meet the goals specified in the business plan of the applicant.

"(2) The likelihood that the investments of the applicant will create or preserve jobs, both directly and indirectly.

"(3) The character and fitness of the management of the applicant.

"(4) The experience and background of the management of the applicant.

"(5) The extent to which the applicant will concentrate investment activities on early-stage small businesses.

"(6) The likelihood that the applicant will achieve profitability.

"(7) The experience of the management of the applicant with respect to establishing a profitable investment track record.

"(c) FINAL APPROVAL.—For each applicant provided a conditional approval under subsection (a), the Administrator shall provide final approval to participate in the program not later than 90 days after the date the applicant satisfies the conditions specified by the Administrator under such subsection or, in the case of applicants whose partnership or management agreements conform to models approved by the Administrator, the Administrator shall provide final approval to participate in the program not later than 30 days after the date the applicant satisfies the conditions specified under such subsection. If an applicant provided conditional approval under subsection (a) fails to satisfy the conditions specified by the Administrator in the time period designated under such subsection, the Administrator shall revoke the conditional approval.

"SEC. 399E. EQUITY FINANCINGS.

"(a) IN GENERAL.—The Administrator may make one or more equity financings to a participating investment company.

"(b) EQUITY FINANCING AMOUNTS.—

"(1) NON-FEDERAL CAPITAL.—An equity financing made to a participating investment company under the program may not be in an amount that exceeds the amount of the capital of such company that is not from a Federal source and that is available for investment on or before the date on which an equity financing is drawn upon. Such capital may include legally binding commitments with respect to capital for investment.

"(2) LIMITATION ON AGGREGATE AMOUNT.—The aggregate amount of all equity financings made to a participating investment company under the program may not exceed $100,000,000.

"(c) EQUITY FINANCING PROCESS.—In making an equity financing under the program, the Administrator shall commit an equity financing amount to a participating investment company and the amount of each such commitment shall remain available to be drawn upon by such company—

"(1) for new-named investments during the 5-year period beginning on the date on which each such commitment is first drawn upon; and

"(2) for follow-on investments and management fees during the 10-year period beginning on the date on which each such commitment is first drawn upon, with not more than 2 additional 1-year periods available at the discretion of the Administrator.

"(d) COMMITMENT OF FUNDS.—The Administrator shall make commitments for equity financings not later than 2 years after the date funds are appropriated for the program.

"SEC. 399F. INVESTMENTS IN EARLY-STAGE SMALL BUSINESSES.

"(a) IN GENERAL.—As a condition of receiving an equity financing under the program, a participating investment company shall make all of the investments of such company in small business concerns, of which at least 50 percent shall be early-stage small businesses.

"(b) EVALUATION OF COMPLIANCE.—With respect to an equity financing amount committed to a participating investment company under section 399E, the Administrator shall evaluate the compliance of such company with the requirements under this section if such company has drawn upon 50 percent of such commitment.

"SEC. 399G. PRO RATA INVESTMENT SHARES.

"Each investment made by a participating investment company under the program shall be treated as comprised of capital from equity financings under the program according to the ratio that capital from equity financings under the program bears to all capital available to such company for investment.

"SEC. 399H. EQUITY FINANCING INTEREST.

"(a) EQUITY FINANCING INTEREST.—

"(1) IN GENERAL.—As a condition of receiving an equity financing under the program, a participating investment company shall convey an equity financing interest to the Administrator in accordance with paragraph (2).

"(2) EFFECT OF CONVEYANCE.—The equity financing interest conveyed under paragraph (1) shall have all the rights and attributes of other investors attributable to their interests in the participating investment company, but shall not denote control or voting rights to the Administrator. The equity financing interest shall entitle the Administrator to a pro rata portion of any distributions made by the participating investment company equal to the percentage of capital in the participating investment company that the equity financing comprises. The Administrator shall receive distributions from the participating investment company at the same times and in the same amounts as any other investor in the company with a similar

interest. The investment company shall make allocations of income, gain, loss, deduction, and credit to the Administrator with respect to the equity financing interest as if the Administrator were an investor.

"(b) MANAGER PROFITS.—As a condition of receiving an equity financing under the program, the manager profits interest payable to the managers of a participating investment company under the program shall not exceed 20 percent of profits, exclusive of any profits that may accrue as a result of the capital contributions of any such managers with respect to such company. Any excess of this amount, less taxes payable thereon, shall be returned by the managers and paid to the investors and the Administrator in proportion to the capital contributions and equity financings paid in. No manager profits interest (other than a tax distribution) shall be paid prior to the repayment to the investors and the Administrator of all contributed capital and equity financings made.

"(c) DISTRIBUTION REQUIREMENTS.—As a condition of receiving an equity financing under the program, a participating investment company shall make all distributions to all investors in cash and shall make distributions within a reasonable time after exiting investments, including following a public offering or market sale of underlying investments.

"SEC. 399I. FUND.

"There is hereby created within the Treasury a separate fund for equity financings which shall be available to the Administrator subject to annual appropriations as a revolving fund to be used for the purposes of the program. All amounts received by the Administrator, including any moneys, property, or assets derived by the Administrator from operations in connection with the program, shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to the operations of the Administrator under the program shall be paid from the fund.

"SEC. 399J. APPLICATION OF OTHER SECTIONS.

"To the extent not inconsistent with requirements under this part, the Administrator may apply sections 309, 311, 312, 313, and 314 to activities under this part and an officer, director, employee, agent, or other participant in a participating investment company shall be subject to the requirements under such sections.

"SEC. 399K. ANNUAL REPORTING.

"The Administrator shall report on the performance of the program in the annual performance report of the Administration.

"SEC. 399L. DEFINITIONS.

"In this part, the following definitions apply:

"(1) EARLY-STAGE SMALL BUSINESS.—The term 'early-stage small business' means a small business concern that—

"(A) is domiciled in a State; and

"(B) has not generated gross annual sales revenues exceeding $15,000,000 in any of the previous 3 years.

"(2) PARTICIPATING INVESTMENT COMPANY.—The term 'participating investment company' means an applicant approved under section 399D to participate in the program.

"(3) TARGETED INDUSTRIES.—The term 'targeted industries' means any of the following business sectors:

"(A) Agricultural technology.
"(B) Energy technology.
"(C) Environmental technology.
"(D) Life science.
"(E) Information technology.
"(F) Digital media.
"(G) Clean technology.
"(H) Defense technology.
"(I) Photonics technology.

"SEC. 399M. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out the program $1,000,000,000.".

SEC. 303. REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Administrator shall issue regulations to carry out this title and the amendments made by this title.

SEC. 304. PROHIBITIONS ON EARMARKS.

None of the funds appropriated for the program established under part D of title III of the Small Business Investment Act of 1958, as added by this Act, may be used for a Congressional earmark as defined in clause 9(e) of rule XXI of the Rules of the House of Representatives.

PART B—TEXT OF AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 5297 IN PART A TO BE CONSIDERED AS ADOPTED

Page 1, beginning on line 4, strike "Small Business Lending Fund Act of 2010" and insert "Small Business Jobs and Credit Act of 2010".

Page 3, line 5, strike "and".

Page 3, line 12, strike the period and insert "; and"

Page 3, after line 12, insert the following:

(D) standard reports of Condition and Income submitted by Community Development Financial Institution loan funds to the Community Development Financial Institutions Fund.

Page 4, line 24, after "total" insert "consolidated".

Page 4, line 25, strike "and".

Page 5, line 3, strike the period and insert "; and".

Page 5, line 2, after "total" insert "consolidated".

Page 5, after line 3, insert the following:

(D) any community development financial institution loan fund which has total assets of equal to or less than $10,000,000,000.

Page 6, beginning on line 3, strike "loans plus." and insert "loans.".

Page 6, after line 25, insert the following paragraphs:

(17) 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.

(18) 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; and

(C) has assets under $10,000,000,000 as of the fourth quarter of calendar year 2009.

Page 7, line 20, insert after the period the following: "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".

Page 8, after line 5, insert the following new paragraph:

(4) LIMITATION ON PURCHASES FROM CDLFS.—

(A) IN GENERAL.—Not more than 1 percent of the value of purchases made by the Secretary in carrying out the Program 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 may include net asset ratio to total assets, ratio of loan loss reserves to loans and leases 90 days or more delinquent (including loans sold with full recourse), positive net income measured on a 3-year rolling average, operating liquidity ratio, ratio of loans and leases 90 days or more delinquent (including loans sold with full recourse) to total equity plus loan loss reserves or any other measures deemed appropriate. In addition, CDLFs participating in the Program shall submit audited financial statements to the Secretary, have a clean audit opinion, and have at least three years of operating experience.

Page 10, line 23, after "agency" insert the following: "and, for applicants that are State-chartered banks, to the appropriate State banking regulator,".

Page 11, after line 3, insert the following subparagraph:

(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 10 percent of total assets, as reported in the call report immediately preceding the date of application.

Page 11, strike lines 7 through 10 and insert the following:

shall—

(A) consult with the appropriate Federal banking agency 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.

Page 11, line 8, after "agency" insert the following: "or, in the case of an eligible institution that is a non-depository community development financial institution, the Community Development Financial Institution Fund,".

Page 11, after line 20, insert the following new subparagraph:

(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.

Page 11, line 21, strike "(B)" and insert "(C)".

Page 17, beginning on line 7, strike "shall be repaid by the end of the 10-year period that begins on the date of the capital investment under the Program." and insert the following:

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

Page 17, after line 9, insert the following new subparagraph:

(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 Financial Institution 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.

Page 18, strike lines 1 through 5 and insert the following new subparagraph:

(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.

Page 19, beginning on line 1, strike "regulations defining minimum underwriting standards" and insert "guidance regarding prudent underwriting standards".

Page 19, line 4, insert after the period the following: "In the case of a community development financial institution loan fund, the Community Development Financial Institutions Fund shall within 60 days issue regulations defining minimum underwriting standards that must be used for loans made by the eligible institution using such funds".

Page 19, after line 4, insert the following new paragraph:

(10) REPORTING.—Each eligible institution receiving a capital investment under the Program shall issue a quarterly report to the Secretary detailing the percentage of new loans to small businesses the institution makes that are—

(A) guaranteed by the Small Business Administration;

(B) made to Small Business Investment Companies;

(C) other loans made to small business concerns (as defined under the Small Business Act), if the internal reporting of the concern distinguishes the size of businesses to which loans are made; and

(D) other loans made to entities that the internal reporting of the concern classifies as a small business.

Page 19, strike lines 16 through 18 (and redesignate subsequent paragraphs accordingly).

Page 23, after line 13, insert the following new subsections:

(c) REQUIRED CERTIFICATIONS.—

(1) ELIGIBLE INSTITUTION CERTIFICATION.—Each eligible institution that participate 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 title 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)).

(d) PROHIBITION ON PORNOGRAPHY.—None of the funds made available under this title 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.

Page 23, beginning on line 20, strike "authorized to be".

Page 35, after line 7, insert the following new subparagraph:

(D) EXCEPTION.—

(i) IN GENERAL.—The Secretary may, in the Secretary's discretion, transfer the full amount of the participating State's allocated amount to the State in a single transfer if the participating State applies to the Secretary for approval to use the full amount of the allocation as collateral for a qualifying loan or swap funding facility.

(ii) RECOUPMENT TRIGGERED BY INTENTIONAL MISSTATEMENT.—If, in any audit of a report issued by a participating State that receives a single transfer pursuant to clause (i), the Secretary or the Inspector General of the Department of the Treasury determines that such State intentionally misstated information in such report, the participating State shall be required to fully repay all amounts received by the State under the Program, and such amounts shall be paid into the general fund of the Treasury for reduction of the public debt.

Page 36, after line 14, insert the following new paragraph:

(5) TRANSFERRED AMOUNTS NOT ASSISTANCE.—The amounts transferred to a participating State under this section shall not be considered "assistance" for purposes of subtitle V of title 31, United States Code.

Page 36, line 15, strike "(5)" and insert "(6)".

Page 49, after line 4, insert the following new paragraph:

(8) CAPITAL ACCESS FOR SMALL BUSINESSES IN UNDERSERVED COMMUNITIES.—At the time that a State applies to the Secretary to have the State capital access program approved as eligible for Federal contributions, the State shall deliver to the Secretary a report stating how the State plans to use the Federal contributions to the reserve fund to provide access to capital for small businesses in low- and moderate-income, minority, and other underserved communities, including women- and minority-owned small businesses.

Page 57, line 19, strike "AUTHORIZATION OF".

Page 57, line 20, strike "are authorized to be" and insert "is hereby".

Page 58, after line 21, insert the following new subsections:

(c) REQUIRED CERTIFICATION.—

(1) FINANCIAL INSTITUTIONS CERTIFICATION.—With respect to funds received by a participating State under the Program, any financial institution that receives a loan, a loan guarantee, or other financial assistance using such funds after the date of the enactment of this title 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) SEX OFFENSE CERTIFICATION.—With respect to funds received by a participating State under the Program, any private entity that receives a loan, a loan guarantee, or other financial assistance using such funds after the date of the enactment of this title shall certify to the participating State that the principals of such entity 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)).

(d) PROHIBITION ON PORNOGRAPHY.—None of the funds made available under this title 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.

Page 69, strike lines 9 through 11 and insert the following new sections:

"SEC. 399M. APPROPRIATION.

"From funds not otherwise appropriated, there is hereby appropriated $1,000,000,000 to carry out the program.

"SEC. 399N. CERTIFICATION.

"(a) IMMIGRATION CERTIFICATION.—

"(1) PARTICIPATING INVESTMENT COMPANIES.—Each participating investment company that receives an equity financing under this part after the date of the enactment of this part must, if applicable, certify that such company 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 sus-

pected terrorists or terrorist organizations provided to the financial institution by any government agency.

"(2) EARLY-STAGE SMALL BUSINESSES.—Each early-stage small business that receives funds from a participating investment company that receives an equity financing under this part after the date of the enactment of this part must, if applicable, certify that such company 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.

"(b) SEX OFFENDER CERTIFICATION.—

"(1) PARTICIPATING INVESTMENT COMPANIES.—Each participating investment company that receives an equity financing under this part after the date of the enactment of this part shall certify to the Administrator that the principals of such company 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)).

"(2) EARLY-STAGE SMALL BUSINESSES.—Each early-stage small business that receives funds from a participating investment company that receives an equity financing under this part after the date of the enactment of this part shall certify to the Administrator 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)).

"(c) PORNOGRAPHY CERTIFICATION.—None of the funds made available under this part may be used to pay the salary of any individual engaged in activities related to the provisions of this part 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.".

Add at the end the following new title:

TITLE ___—MISCELLANEOUS

SEC. ___. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled "Budgetary Effects of PAYGO Legislation" for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

PART C—TEXT OF THE FURTHER AMENDMENTS TO H.R. 5297 TO BE MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ISRAEL, OF NEW YORK, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 6, insert after line 25 the following:

(17) 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.

Page 18, line 6, strike "MINORITY OUTREACH" and insert the following: "OUTREACH TO MINORITIES, WOMEN, AND VETERANS".

Page 18, strike lines 15–16 and insert the following:

tions, 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.

Page 21, line 14, insert after "minority-" the following: ", veteran-,".

Page 25, line 10, insert after "**women-owned**" the following: "**, veteran-owned,**".

Page 25, line 12, insert after "women-owned businesses" the following: ", veteran-owned businesses,".

Page 25, line 14, insert after "Program" the following: "(including determining the percentage of the total number of all businesses that receive assistance that such number represents)".

Page 25, line 17, insert after "minority-" the following: ", veteran-,".

---

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SCHRADER, OF OREGON, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end the following new title:

TITLE IV—SMALL BUSINESS BORROWER ASSISTANCE PROGRAM

SEC. 401. SMALL BUSINESS BORROWER ASSISTANCE PROGRAM.

(a) IN GENERAL.—The Administrator shall carry out a program to be called the "Small Business Borrower Assistance Program" to provide payments of principal and interest on qualifying small business loans.

(b) AUTOMATIC ENROLLMENT; COMMITMENT OF FUNDS.—

(1) IN GENERAL.—To the extent funds are available under the Program, each borrower that receives a qualifying small business loan after the date on which the Administrator issues regulations pursuant to subsection (e) shall be automatically enrolled in the Program, unless the borrower requests otherwise, and the Administrator shall commit an amount to each borrower equal to 6 percent of the principal disbursed amount of such borrower's qualifying small business loan.

(2) ONE YEAR WINDOW FOR PARTICIPATING IN PROGRAM.—Notwithstanding paragraph (1), a borrower may only be enrolled in the Program if the borrower is approved for a qualifying small business loan before the end of the 1-year period following the date on which the Administrator issues final regulations pursuant to subsection (e).

(3) TERMINATION OF PARTICIPATION IN CERTAIN CIRCUMSTANCES.—In any instance in which the Administrator determines that a borrower participating in the Program has committed fraud or made a material misrepresentation related to such participation, the Administrator may terminate such borrower's participation in the Program and ban such borrower from any future participation in the Program.

(c) DISBURSEMENT OF FUNDS.—

(1) IN GENERAL.—A borrower enrolled in the Program may submit a request for the payment of committed funds by a method to be developed by the Administrator.

(2) MULTIPLE DISBURSEMENTS PERMITTED.—A borrower enrolled in the Program may request multiple payments under paragraph (1), as long as the aggregate amount of such payments does not exceed the amount committed to such borrower under subsection (b).

(d) TERMS.—

(1) PAYMENTS ONLY TO LENDER OR SERVICER.—Payments made by the Administrator under the Program shall only be made to the lender or servicer of a qualifying small business loan to be applied against outstanding principal or interest, and may not be made to the borrower.

(2) PROGRAM PARTICIPATION ONLY PERMITTED DURING FIRST 2 YEARS.—

(A) IN GENERAL.—Payments made by the Administrator under the Program may only be made with respect to a payment of interest or principal due on a qualifying small business loan within the 2-year period following the date on which such loan is disbursed.

(B) UNEXPENDED COMMITTED FUNDS.—

(i) IN GENERAL.—With respect to any funds committed to a borrower enrolled in the Program that remain unexpended at the end of the 2-year period described under subparagraph (A), such funds shall be paid to the lender or servicer of the borrower's loan and applied to the principal of such loan.

(ii) EXCEPTION.—In any case in which the amount of committed funds that remain unexpended is greater than the remaining principal of a borrower's loan, the amount of any excess shall be returned to the Treasury.

(e) RULEMAKING.—Not later than 180 days after the date of the enactment of this section, the Administrator shall issue regulations necessary to carry out this section.

(f) CONTRACTING WITH AGENTS.—The Administrator may contract with one or more entities as necessary to carry out the provisions of the Program. The Secretary of the Treasury is authorized to designate financial institutions, including any bank, savings association, or trust company, as financial agents of the Federal government to carry out the authorities of this section, and such institutions shall perform all such reasonable duties related to the Program as financial agents of the Federal government as the Secretary may require. In engaging any such third parties to carry out the Program, the Administrator or the Secretary shall seek to involve small businesses in the provision of the core direct services required under the engagement.

(g) DEFINITIONS.—For purposes of this section:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Small Business Administration.

(2) PROGRAM.—The term "Program" means the Small Business Borrower Assistance Program established under subsection (a).

(3) QUALIFYING SMALL BUSINESS LOAN.—The term "qualifying small business loan" means any loan, up to $300,000, made to a small business concern and guaranteed under section 7(a) of the Small Business Act (15 U.S.C. 636(a)), other than a loan made pursuant to section 7(a)(31) of such Act, a revolving credit line, or any other revolving loan.

(4) SMALL BUSINESS CONCERN.—The term "small business concern" has the meaning given such term under section 3 of the Small Business Act (15 U.S.C. 632).

(h) APPROPRIATIONS.—From funds not otherwise appropriated, there is hereby appropriated to the Administrator $300,000,000 to carry out this section.

---

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE NYE, OF VIRGINIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 3, line 5, strike "and".

Page 3, line 12, strike the period and insert "; and".

Page 3, after line 12, insert the following new subparagraph:

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

Page 4, line 25, strike "and".

Page 5, line 3, strike the period and insert "; and".

Page 5, after line 3, insert the following new subparagraph:

(D) any small business lending company that has total assets of equal to or less than $10,000,000,000.

Page 6, line 1, after "report," insert the following: "where each loan comprising such lending is made to a small business and is one".

Page 6, after line 25 insert the following new paragraphs:

(1) SMALL BUSINESS.—The term "small business" has the meaning given the term "small business concern" under section 3 of the Small Business Act (15 U.S.C. 632).

(2) SMALL BUSINESS LENDING COMPANY.—The term "small business lending company" has the meaning given such term under section 3(r)(1) of the Small Business Act (15 U.S.C. 632(r)(1)).

Page 12, beginning on line 19, strike "the amount of small business lending reported by the eligible institution in its call report for the last quarter in calendar year 2009 or the average amount of small business lending reported by the eligible institution in all call reports for calendar year 2009, whichever is lower" and insert "the average amount of small business lending reported by the eligible institution in its call reports for the 4 full quarters immediately preceding the enactment of this title".

Page 17, after line 9, insert the following new subparagraph:

(I) INCENTIVES CONTINGENT ON AN INCREASE IN THE NUMBER OF LOANS MADE.—For any quarter during the first 4½-year period following the date on which an eligible institution receives a capital investment under the Program, other than the first such quarter, in which the institution's change in the amount of small business lending relative to the baseline is positive, if the number of loans made by the institution does not increase by 2.5 percent for each 2.5 percent increase of small business lending, then the rate at which dividends and interest shall be payable during the following quarter on preferred stock or other financial instruments issued to the Treasury by the eligible institution shall be—

(i) 5 percent, if such quarter is within the 2-year period following the date on which the eligible institution receives the capital investment under the Program; or

(ii) 7 percent, if such quarter is after such 2-year period.

(J) ALTERNATIVE COMPUTATION.—An eligible institution may choose to compute their small business lending amount by computing the amount of small business lending, as if the definition of such term did not require that the loans comprising such lending be made to small business. Any eligible institution choosing to compute their small business lending in this manner shall certify that all lending included by the institution for purposes of computing the increase in lending under this paragraph was made to small businesses.

---

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MINNICK, OF IDAHO, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 11, after line 3, insert the following new subparagraph:

(F) ELECTION TO INCLUDE OTHER NONFARM, NONRESIDENTIAL REAL ESTATE LOANS IN AMOUNT OF SMALL BUSINESS LENDING.—At the time that an applicant submits an application to the Secretary for a capital investment under the Program, the applicant may notify the Secretary that it

elects to have included in the determination of the amount of its small business lending, for purposes of the computations made under paragraph (4), the amount of lending reported as other nonfarm, nonresidential real estate loans in its quarterly call report, but for purposes of this subparagraph, other nonfarm, nonresidential real estate loans shall not include a loan having an original amount greater than $10,000,000. If an applicant makes the election under this subparagraph, the amount of lending reported as other nonfarm, nonresidential real estate loans shall be included in the determination of the amount of its small business lending for purposes of the computations made under paragraph (4).

---

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PERLMUTTER, OF COLORADO, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end of title I the following new section:

SEC. 14. TEMPORARY AMORTIZATION AUTHORITY.

(a) PURPOSE.—The purpose this section is to address the ongoing effects of the financial crisis on small businesses by providing temporary authority to amortize losses or write-downs in order to increase the availability of credit for small businesses.

(b) IN GENERAL.—For purposes of capital calculation under the Financial Institutions Examination Council's Consolidated Reports of Condition, an eligible institution may choose to amortize any loss or write-down, on a quarterly straight line basis over a period determined under subsection (c), beginning with the month in which such loss or write-down occurs, resulting from the application of FASB Statement 114 or 144 to—

(1) other real estate owned (as defined under section 34.81 of title 12, Code of Federal Regulation), or

(2) an impared loan secured by real estate,

provided that the institution discloses the difference in the amount of the institution's capital, when calculated taking into account the temporary amortization, from the amount of the institution's capital when calculated without taking into account the temporary amortization on the Financial Institutions Examination Council's Consolidated Reports of Condition.

(c) AMORTIZATION REQUIREMENTS.—During the initial 2-year period referred to in section 4(d)(4), an eligible institution's amortization period shall be adjusted to reflect the following schedule based on the institution's change in the amount of small business lending relative to the baseline:

(1) If the amount of small business lending has increased by less than 2.5 percent, the amortization period shall be 6 years.

(2) If the amount of small business lending has increased by 2.5 percent or greater, but by less than 5.0 percent, the amortization period shall be 7 years.

(3) If the amount of small business lending has increased by 5.0 percent or greater, but by less than 7.5 percent, the amortization period shall be 8 years.

(4) If the amount of small business lending has increased by 7.5 percent or greater, but by less than 10.0 percent, the amortization period shall be 9 years.

(5) If the amount of small business lending has increased by 10 percent or greater, the amortization period shall be 10 years.

(d) MINIMUM UNDERWRITING STANDARDS.—The appropriate Federal banking agency for an eligible institution that chooses to amortize any loss or write-down as permitted under subsection (b) shall, within 60 days of the date of the enactment of this title, issue regulations defining minimum underwriting standards that must be used for loans made by the eligible institution.

(e) EFFECTIVE DATE.—The provisions of this section shall apply to loan origination that occurred on or after January 1, 2003, and before January 1, 2008.

---

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE TOM PRICE, OF GEORGIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 26, after line 7, insert the following new section:

SEC. 14. 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.

---

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE AL GREEN, OF TEXAS, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 19, after line 4, insert the following new subsection:

(e) NOTIFICATION TO CUSTOMERS.—Any eligible institution receiving funds under the Program shall—

(1) disclose on every applicable loan transaction that the loan is being made possible by the Program; and

(2) if such institution has an established internet website, such institution shall make available on its internet website—

(A) the written reports made by the Secretary pursuant to paragraphs (1) and (2) of section 7; and

(B) a statement that the institution, as a participant in the Program, is seeking to make small business loans to qualified borrowers and may not discriminate on the basis of any factor prohibited under the Equal Credit Opportunity Act, including the race, color, religion, national origin, sex, marital status, or age.

---

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DRIEHAUS, OF OHIO, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 23, strike lines 7 through 9 and insert the following: "of the Program through the Office of Small Business Lending Fund Program Oversight established under subsection (b)".

Page 23, after line 9, insert the following new subsection:

(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.

Page 23, line 10, strike "(b)" and insert "(c)".

---

9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PETERS, OF MICHIGAN, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 34, beginning on line 7, strike "TRANSFERS CONTINGENT ON INSPECTOR" and insert "INSPECTOR".

Page 34, line 9, strike "Before" and insert "Following".

Page 34, after line 15, insert the following new clause:

(ii) RECOUPMENT OF MISUSED TRANSFERRED FUNDS REQUIRED.—The allocation agreement between the Secretary and the participating State shall provide that the Secretary shall recoup any allocated Federal funds transferred to the participating State before the

start of the audit if the results of the audit include a finding that there was an intentional or reckless misuse of transferred funds by the State before the audit began.

Page 34, line 16, strike "(ii)" and insert "(iii)".

Page 35, line 3, strike "(iii)" and insert "(iv)".

---

10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BRAD MILLER, OF NORTH CAROLINA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 11, after line 3, insert the following new subparagraph:

(F) ELECTION TO INCLUDE CONSTRUCTION, LAND DEVELOPMENT, AND OTHER LAND LOANS IN DOMESTIC OFFICES IN AMOUNT OF SMALL BUSINESS LENDING.—At the time that an applicant submits an application to the Secretary for a capital investment under the Program, the applicant may notify the Secretary that it elects to have included in the determination of the amount of its small business lending, for purposes of the computations made under paragraph (4), the amount of lending reported as construction, land development, and other land loans in domestic offices in its quarterly call report. If an applicant makes the election under this subparagraph, the amount of lending reported as construction, land development, and other land loans in domestic offices shall be included in the determination of the amount of its small business lending for purposes of the computations made under paragraph (4).

---

11. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MICHAUD, OF MAINE, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 30, line 14, after "programs," insert the following: "State-run venture capital fund programs,".

Page 51, line 3, strike "extends credit support that" and insert "uses Federal funds allocated under this title to extend credit support that".

---

12. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON LEE, OF TEXAS, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 6(6) of the bill, strike "and" at the end.

In section 6(7) of the bill, strike the period at the end and insert "; and".

In section 6 of the bill, add at the end the following:

(8) 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.

---

13. An Amendment To Be Offered by Representative Loretta Sanchez, of California, or Her Designee, Debatable for 10 Minutes

Page 62, after line 15, insert the following:

"(8) The extent to which the applicant will concentrate investment activities on small business concerns in targeted industries.

---

14. An Amendment To Be Offered by Representative Cuellar, of Texas, or His Designee, Debatable for 10 Minutes

Page 21, after line 18, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

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

---

15. An Amendment To Be Offered by Representative Braley, of Iowa, or His Designee, Debatable for 10 Minutes

Add at the end the following new title:

TITLE IV—PLAIN WRITING ACT

SECTION 401. SHORT TITLE.

This title may be cited as the "Plain Writing Act of 2010".

SEC. 402. PURPOSE.

The purpose of this title is to improve the effectiveness and accountability of Federal agencies to the public by promoting clear Government communication that the public can understand and use.

SEC. 403. DEFINITIONS.

In this title:

(1) Agency.—The term "agency" means the Department of the Treasury and the Small Business Administration.

(2) Covered document.—The term "covered document"—

(A) means any document that—

(i) is relevant to obtaining any Federal Government benefit or service provided under title I, II, or III;

(ii) provides information about any Federal Government benefit or service provided under title I, II, or III; or

(iii) explains to the public how to comply with a requirement the Federal Government administers or enforces under title I, II, or III;

(B) includes (whether in paper or electronic form) a letter, publication, form, notice, or instruction; and

(C) does not include a regulation.

(3) Plain writing.—The term "plain writing" means writing that the intended audience can readily understand and use because that writing is clear, concise, well-organized, and follows other best practices of plain writing.

SEC. 404. RESPONSIBILITIES OF FEDERAL AGENCIES.

(a) PREPARATION FOR IMPLEMENTATION OF PLAIN WRITING REQUIREMENTS.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this title, the head of each agency shall—

(A) designate 1 or more senior officials within the agency to oversee the agency implementation of this title;

(B) communicate the requirements of this title to the employees of the agency;

(C) train employees of the agency in plain writing;

(D) establish a process for overseeing the ongoing compliance of the agency with the requirements of this title;

(E) create and maintain a plain writing section of the agency's website that is accessible from the homepage of the agency's website; and

(F) designate 1 or more agency points-of-contact to receive and respond to public input on—

(i) agency implementation of this title; and

(ii) the agency reports required under section 405.

(2) WEBSITE.—The plain writing section described under paragraph (1)(E) shall—

(A) inform the public of agency compliance with the requirements of this title; and

(B) provide a mechanism for the agency to receive and respond to public input on—

(i) agency implementation of this title; and

(ii) the agency reports required under section 405.

(b) REQUIREMENT TO USE PLAIN WRITING IN NEW DOCUMENTS.—Beginning not later than 1 year after the date of enactment of this title, each agency shall use plain writing in every covered document of the agency that the agency issues or substantially revises.

(c) GUIDANCE.—In carrying out the provisions of this title, agencies may follow the guidance of—

(1) the writing guidelines developed by the Plain Language Action and Information Network; or

(2) guidance provided by the head of the agency.

SEC. 405. REPORTS TO CONGRESS.

(a) INITIAL REPORT.—Not later than 9 months after the date of enactment of this title, the head of each agency shall publish on the plain writing section of the agency's website a report that describes the agency plan for compliance with the requirements of this title.

(b) ANNUAL COMPLIANCE REPORT.—Not later than 18 months after the date of enactment of this title, and annually thereafter, the head of each agency shall publish on the plain writing section of the agency's website a report on agency compliance with the requirements of this title.

---

16. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LOEBSACK, OF IOWA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end the following new title:

TITLE IV—SENSE OF CONGRESS ON AGRICULTURE AND FARMING SMALL BUSINESS LOANS

SEC. 401. SENSE OF CONGRESS.

It is the sense of the Congress that—

(1) agriculture operations, farms, and rural communities should receive equal consideration through lending activities for small businesses in this Act, particularly small- and mid-size farms and agriculture operations; and

(2) attention should be given to ensuring there is adequate small business credit and financing availability under this Act in the agriculture and farming sectors.

---

17. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CHU, OF CALIFORNIA, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 11, line 2, before the period insert the following: ", as well as a plan to provide linguistically and culturally appropriate outreach, where appropriate".

Page 18, line 8, after "provide" insert the following: "linguistically and culturally appropriate".

Page 18, line 9, strike "appropriate language of the".

Page 21, line 13, after "funding to" insert the following: "minority-owned eligible institutions and other".

Page 26, line 2, insert after the period the following: "To the extent possible, the Secretary shall disaggregate the results of such study by ethnic group and gender.".

○