111TH CONGRESS
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HOUSE OF REPRESENTATIVES
REPORT
111–499

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

MAY 27, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5297]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

89–006

AMENDMENT

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

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

(D) TREATMENT OF APPLICANTS THAT ARE INSTITUTIONS CONTROLLED BY HOLDING COMPANIES.—If an eligible institution that applies to receive a capital investment under the Program is under the control of a bank holding company or a savings and loan holding company, then the Secretary may use the Fund to purchase preferred stock or other financial instruments from the top-tier bank holding company or savings and loan holding company of such eligible institution, as applicable. For purposes of this 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.

PURPOSE AND SUMMARY

H.R. 5297 establishes the Small Business Lending Fund ("SBLF"), which is intended to boost small business lending by providing additional capital to depository institutions with assets of $10 billion or less. H.R. 5297 also creates the State Small Business Credit Initiative, which will allocate funding to states to support Capital Access Programs and a range of other credit support programs. Both the SBLF and the State Initiative will be administered by the U.S. Department of Treasury (Treasury).

BACKGROUND AND NEED FOR LEGISLATION

There has been a dramatic decrease in the amount of bank lending in the past several quarters. On May 20, 2010, the Federal Deposit Insurance Corporation (FDIC) released its Quarterly Banking Profile for the first quarter of 2010. The report shows that commercial and industrial loans declined for the seventh straight quarter, down more than 17 percent from the year before.[1]

Many companies, particularly small businesses, claim that it is becoming harder to get new loans to keep their business operating and that banks are tightening requirements or cutting off existing lines of credit even when the businesses are up to date on their loan repayments.[2] Treasury Secretary Timothy F. Geithner recently acknowledged the problem encountered by some banks, both healthy and troubled, which have been told to maintain capital levels in excess of those required to be considered well capitalized.[3] Some banks say they have little choice but to scale back lending,

[1] FDIC Press Release, "FDIC-Insured Institution Report Earnings of $914 Million in Fourth Quarter of 2009," February 23, 2010, *www.fdic.gov/news/news/press/2010/pr10036.html* (FDIC Quarterly Report Press Release).

[2] Michael McKee, "In this Recovery, Small Business Falls Behind," BusinessWeek, February 11, 2010. Available at: *www.businessweek.com/magazine/content/10_08/b4167016988043.htm.*

[3] Crittenden, Michael and Tom Barkley "Regulators Urge Bank Loans to Small Businesses," Wall Street Journal, February 6, 2010. Available at: *online.wsj.com/article/SB10001424052748703894304575047450391341316.html.*

even to creditworthy borrowers, and the most recent Federal Reserve data shows banks are continuing to tighten lending terms for small businesses.[4]

In January 2010, the Obama Administration announced a number of initiatives designed to increase credit availability to small business and otherwise support small businesses. The Administration sent to Congress draft legislation to establish the SBLF on May 7, 2010. On that date, the Administration also sent to Congress draft legislation to establish the State Small Business Credit Initiative.

Title I of H.R. 5297 establishes the SBLF. This fund is intended 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. H.R. 5297 authorizes appropriations to be used by the Treasury to provide up to $30 billion in capital to banks and savings associations with assets of less than $10 billion and to their parent holding companies, provided they also have assets of less than $10 billion. All banks, savings associations and holding companies must be approved by Treasury to participate in the program.

Under the program, participating institutions will pay dividend rates for the capital investment that are designed to encourage small business lending. The initial dividend rate an institution will pay for the capital investment is 5 percent. That rate will decrease as the institution increases the amount of small business lending it makes, and can go to as low as 1 percent. If the institution does not increase its small business lending after two years, the dividend rate will increase to 7 percent. After 4½ years, the dividend rate for all participating institutions, regardless of their level of small business lending, increases to 9 percent.

Title II of H.R. 5297 establishes the State Small Business Credit Initiative (State Initiative). The bill authorizes appropriations of up to $2 billion to be used by Treasury to allocate funding directly to states that will be used in state and municipal programs that support access to credit by businesses. Treasury will allocate funds to approved programs using an average of the formula used in the Recovery Zone Bond program in the American Recovery and Reinvestment Act (ARRA) and the more recent Recovery Zone Bond formula used in the House-passed Small Business and Infrastructure Jobs Tax Act of 2010. The ARRA formula takes into account a state's job losses in 2008 in proportion to the aggregate job losses of all states in 2008, and the Small Business and Infrastructure Jobs Tax Act formula uses the same comparison using 2009 numbers. Each state is guaranteed a minimum allocation of 0.9 percent.

Treasury is directed to disburse the funds in one-third increments. States can only use federal funds for approved state lending programs and paying administrative costs. Administrative costs are capped at 5 percent for the first third and 3 percent for the remaining funds. Any state allocation not transferred to the state within two years goes back to the general fund administered by Treasury.

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[4] "The April 2010 Senior Loan Officer Opinion Survey on Bank Lending Practices" Federal Reserve Board of Governors, released May 3, 2010. Available at: *www.federalreserve.gov/boarddocs/SnLoanSurvey/201005/default.htm.*

Introduction of the Bill

H.R. 5297 was originally introduced on May 13, 2010, and was based on legislation that was drafted by the Obama Administration. On the same day, H.R. 5302, the State Small Business Credit Initiative Act of 2010, was introduced. This bill also was based on legislation that was drafted by the Obama Administration.

HEARINGS

The Committee on Financial Services held a hearing on May 18, 2010, entitled "Initiatives to Promote Small Business Lending, Jobs and Economic Growth". The following witnesses testified:

Mr. Gene B. Sperling, Counselor to the Secretary of the Treasury, U.S. Department of the Treasury

The Honorable Christian S. Johansson, Secretary, Maryland Department of Business and Economic Development

Mr. Paul Brown, Manager, Capital Markets Development, Michigan Economic Development Corporation

The Honorable Paul Atkins, Member of the Congressional Oversight Panel and former Securities and Exchange Commissioner

Mr. James MacPhee, Chief Executive Officer, Kalamazoo County State Bank on behalf of Independent Community Bankers of America

The Honorable Daniel A. Mica, President and Chief Executive Officer, Credit Union National Association

Mr. Jim Determan, Hord Coplan Macht, Inc. on behalf of The American Institute of Architects

In addition, on February 26, 2010, the Financial Services Committee and the Committee on Small Business held a joint hearing entitled "The Condition of Small Business and Commercial Real Estate Lending in Local Markets." This hearing focused on small business lending issues, including President Obama's announced initiative to establish the SBLF. The following witnesses provided testimony:

Panel One

- Mr. David Turnbull, Brighton Corporation, Boise, Idaho
- Ms. Margot Dorfman, Chief Executive Officer, U.S. Women's Chamber of Commerce
- Mr. Steve Gordon, President, Instant-Off, Inc.
- Mr. Todd J. Zywicki, Foundation Professor of Law, George Mason University
- Mr. Wes Smith, President of E&E Manufacturing, Plymouth, Michigan on behalf of the Motor & Equipment Manufacturers Association

Panel Two

- The Honorable Herbert M. Allison, Jr., Assistant Secretary for Financial Stability and Counselor to the Secretary, U.S. Department of the Treasury
- The Honorable Karen G. Mills, Administrator, U.S. Small Business Administration
- The Honorable Elizabeth Duke, Governor, Board of Governors of the Federal Reserve System

• The Honorable Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation
• The Honorable John C. Dugan, Comptroller, Office of the Comptroller of the Currency
• Mr. John E. Bowman, Acting Director, Office of Thrift Supervision

Panel Three

• Mr. Stephen G. Andrews, President and Chief Executive Officer, Bank of Alameda, Alameda, California, on behalf of the Independent Community Bankers of America
• Mr. David Bridgeman, Pinnacle Bank, Orange County, Florida
• Mr. William Grant, Chairman and Chief Executive Officer, First United Bank & Trust on behalf of the American Bankers Association
• Mr. Ronald Covey, President and Chief Executive Officer, St. Mary's Bank, Manchester, New Hampshire on behalf of the Credit Union National Association
• Mr. Rick Wieczorek, President and Chief Executive Officer, Mid-Atlantic Federal Credit Union on behalf of the National Association of Federal Credit Unions
• Ms. Cathleen H. Nash, President and Chief Executive Officer, Citizens Republic Bancorp, Michigan on behalf of Consumer Bankers Association
• Mr. David A. Hoyt, Senior Executive Vice President, Wholesale Banking, Wells Fargo & Company
• Mr. Charles McCusker, Co-Managing Partner Patriot Capital, L.P. on behalf of NASBIC
• Ms. Sally Robertson, Business Finance Group Inc., Fairfax County, Virginia on behalf of the National Association of Development Companies

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 19, 2010, and ordered H.R. 5297, the Small Business Lending Fund Act of 2010, as amended, favorably reported to the House by a record vote of 42 yeas and 23 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Frank to report the bill, as amended, to the House with a favorable recommendation was agreed to by a record vote of 42 yeas and 23 nays (Record vote no. FC–124). The names of Members voting for and against follow:

RECORD VOTE NO. FC–124

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X			Mr. Bachus			
Mr. Kanjorski	X			Mr. Castle		X	
Ms. Waters	X			Mr. King (NY)		X	
Mrs. Maloney	X			Mr. Royce		X	
Mr. Gutierrez	X			Mr. Lucas		X	
Ms. Velázquez	X			Mr. Paul			

RECORD VOTE NO. FC–124—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Watt	X			Mr. Manzullo		X	
Mr. Ackerman	X			Mr. Jones			
Mr. Sherman	X			Mrs. Biggert		X	
Mr. Meeks	X			Mr. Miller (CA)			
Mr. Moore (KS)	X			Mrs. Capito		X	
Mr. Capuano	X			Mr. Hensarling		X	
Mr. Hinojosa	X			Mr. Garrett (NJ)		X	
Mr. Clay	X			Mr. Barrett (SC)			
Mrs. McCarthy	X			Mr. Gerlach		X	
Mr. Baca	X			Mr. Neugebauer		X	
Mr. Lynch	X			Mr. Price (GA)		X	
Mr. Miller (NC)	X			Mr. McHenry		X	
Mr. Scott	X			Mr. Campbell		X	
Mr. Green	X			Mr. Putnam			
Mr. Cleaver	X			Mrs.Bachmann		X	
Ms. Bean	X			Mr. Marchant		X	
Ms. Moore (WI)	X			Mr. McCotter		X	
Mr. Hodes	X			Mr. McCarthy		X	
Mr. Ellison	X			Mr. Posey		X	
Mr. Klein	X			Ms. Jenkins		X	
Mr. Wilson	X			Mr. Lee		X	
Mr. Perlmutter	X			Mr. Paulsen		X	
Mr. Donnelly	X			Mr. Lance		X	
Mr. Foster	X						
Mr. Carson	X						
Ms. Speier	X						
Mr. Childers	X						
Mr. Minnick	X						
Mr. Adler	X						
Ms. Kilroy	X						
Mr. Driehaus	X						
Ms. Kosmas	X						
Mr. Grayson	X						
Mr. Himes	X						
Mr. Peters	X						
Mr. Maffei	X						

During the consideration of the bill, the following amendments were disposed of by record votes. The names of Members voting for and against follow:

An amendment by Mr. Garrett (NJ), no. 4, relating to the effective date, was not agreed to by a record vote of 19 yeas and 37 nays (Record vote no. FC–118):

RECORD VOTE NO. FC–118

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus			
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney				Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez				Mr. Paul			
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones			
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)			
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)			
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer			

RECORD VOTE NO. FC–118—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry			
Mr. Scott		X		Mr. Campbell			
Mr. Green		X		Mr. Putnam			
Mr. Cleaver		X		Mrs.Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes				Mr. McCarthy			
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers							
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes							
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Peters, no. 7, regarding a state small business credit initiative, as amended by an amendment by Mrs. Bachmann, no. 7a, making transfers contingent on Inspector General audits, was agreed to by a record vote of 39 yeas and 23 nays (Record vote no. FC–119):

RECORD VOTE NO. FC–119

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X			Mr. Bachus			
Mr. Kanjorski	X			Mr. Castle		X	
Ms. Waters	X			Mr. King (NY)		X	
Mrs. Maloney				Mr. Royce		X	
Mr. Gutierrez	X			Mr. Lucas		X	
Ms. Velázquez	X			Mr. Paul			
Mr. Watt	X			Mr. Manzullo		X	
Mr. Ackerman	X			Mr. Jones			
Mr. Sherman	X			Mrs. Biggert		X	
Mr. Meeks	X			Mr. Miller (CA)			
Mr. Moore (KS)	X			Mrs. Capito		X	
Mr. Capuano	X			Mr. Hensarling		X	
Mr. Hinojosa	X			Mr. Garrett (NJ)		X	
Mr. Clay	X			Mr. Barrett (SC)			
Mrs. McCarthy	X			Mr. Gerlach		X	
Mr. Baca	X			Mr. Neugebauer		X	
Mr. Lynch	X			Mr. Price (GA)		X	
Mr. Miller (NC)	X			Mr. McHenry		X	
Mr. Scott	X			Mr. Campbell		X	
Mr. Green	X			Mr. Putnam			
Mr. Cleaver	X			Mrs.Bachmann		X	
Ms. Bean	X			Mr. Marchant		X	
Ms. Moore (WI)	X			Mr. McCotter		X	
Mr. Hodes				Mr. McCarthy		X	
Mr. Ellison	X			Mr. Posey		X	
Mr. Klein	X			Ms. Jenkins		X	
Mr. Wilson	X			Mr. Lee		X	

RECORD VOTE NO. FC–119—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Perlmutter	X			Mr. Paulsen		X	
Mr. Donnelly	X			Mr. Lance		X	
Mr. Foster	X						
Mr. Carson	X						
Ms. Speier	X						
Mr. Childers	X						
Mr. Minnick	X						
Mr. Adler	X						
Ms. Kilroy	X						
Mr. Driehaus	X						
Ms. Kosmas	X						
Mr. Grayson	X						
Mr. Himes							
Mr. Peters	X						
Mr. Maffei	X						

An amendment by Mr. Price, no. 9, requiring offsets, was not agreed to by a record vote of 23 yeas and 41 nays (Record vote no. FC–120):

RECORD VOTE NO. FC–120

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus			
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul			
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones			
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)			
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)			
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam			
Mr. Cleaver		X		Mrs.Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes				Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					

RECORD VOTE NO. FC–120—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Hensarling (and Mr. Lance), no. 13, regarding TARP Special Inspector General oversight, was not agreed to by a record vote of 23 yeas and 42 nays (Record vote no. FC–121):

RECORD VOTE NO. FC–121

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus			
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul			
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones			
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)			
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)			
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam			
Mr. Cleaver		X		Mrs.Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mrs. Biggert (and Messrs. Paulsen, Castle, Gerlach and King (NY)), no. 17, relating to the effective date, was not agreed to by a record vote of 23 yeas and 42 nays (Record vote no. FC–122):

RECORD VOTE NO. FC–122

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus			
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul			
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones			
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)			
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)			
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam			
Mr. Cleaver		X		Mrs.Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Hensarling, no. 23, extensions of credit to creditworthy persons, was not agreed to by a record vote of 23 yeas and 42 nays (Record vote no. FC–123):

RECORD VOTE NO. FC–123

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus			
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul			
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones			
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)			
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		

RECORD VOTE NO. FC–123—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Clay		X		Mr. Barrett (SC)			
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam			
Mr. Cleaver		X		Mrs.Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

The following other amendments were also considered by the Committee:

An amendment by Mr. Frank, no. 1, a manager's amendment, was agreed to by a voice vote.

An amendment by Mr. Garrett (NJ), no. 2, changing the short title, was not agreed to a voice vote.

An amendment by Ms. Kilroy, no. 3, requiring a Treasury Department report, was agreed to by a voice vote.

An amendment by Mr. Gutierrez (and Messrs. Perlmutter and Klein), no. 5, regarding temporary amortization authority, was offered and withdrawn.

An amendment by Mr. Miller (NC), no. 6, regarding the ineligibility of institutions on FDIC problem bank list, was agreed to by a voice vote. An amendment by Mr. Hensarling, no. 6a, to the amendment regarding the definition of the problem bank list, was not agreed to by a voice vote.

An amendment by Mr. Paulsen (and Messrs. Lance and Neugebauer), no. 8, regarding proceeds to pay down public debt, was agreed to by a voice vote.

An amendment by Mr. Miller (NC) (and Mrs. Maloney and Mr. Baca), no. 10, regarding a residential construction loan guarantee program, was offered and withdrawn.

An amendment by Mr. Marchant, no. 11, regarding capital investment repayment period, was agreed to by a voice vote.

An amendment by Mr. Hinojosa (and Messrs. Childers, Hodes and Wilson), no. 12, regarding consideration of rural areas, was agreed to by a voice vote.

An amendment by Mr. Baca, no. 14, regarding consideration of financial education, was agreed to by a voice vote.

An amendment by Mr. Hensarling, no. 15, a prohibition on participation by non-paying CPP recipients, was agreed to by a voice vote.

An amendment by Mr. Carson (and Mr. Baca), no. 16, regarding minority outreach, was agreed to by a voice vote.

An amendment by Mr. Cleaver, no. 18, regarding Community Development Financial Institutions, was offered and withdrawn.

An amendment by Mr. Paulsen, no. 19, a deferral of tax on income reinvested, was offered and withdrawn.

An amendment by Mr. Frank, no. 20, accelerating the effective date for penalty rates, was agreed to by a voice vote.

An amendment by Mr. Hensarling, no. 21, regarding minimum underwriting standards, was agreed to by a voice vote.

An amendment by Mr. Sherman, no. 22, regarding the term "other financial instruments", was offered and withdrawn.

An amendment by Mr. Frank, no. 24, regarding the list of recipient institutions, was agreed to by a voice vote.

An amendment by Mr. Hensarling, no. 25, regarding notification of customers, was not agreed to by a voice vote.

An amendment by Mr. Hensarling no. 26, corresponding reduction of authorization to purchase amount under TARP, was ruled out of order as not germane.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 5297 establishes the Small Business Lending Fund which is intended to boost small business lending by providing additional capital to depository institutions with assets of $10 billion or less. H.R. 5297 also creates the State Small Business Credit Initiative, which will allocate funding to states to support Capital Access Programs and a range of other credit support programs.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 25, 2010.

Hon. BARNEY FRANK,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5297, the Small Business Lending Fund Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Avi Lerner.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 5297—Small Business Lending Fund Act of 2010

Summary: H.R. 5297 would create the Small Business Lending Fund (SBLF) and authorize the appropriation of funds to the Treasury Department to make up to $30 billion of capital investments in financial institutions with total assets of less than or equal to $10 billion. Participating institutions would issue to the Treasury preferred stock or similar instruments with a dividend that would depend on the extent to which an institution increases lending to small businesses.

Under the bill, as approved by the Committee on Financial Services, the preferred stock would have to be redeemed within 10 years. Thus, the initial investments would be considered loans for federal budgetary purposes. In addition, consultations with federal regulators indicate that, for the committee-approved language, investments made through the SBLF would not be considered Tier 1 capital for the borrowing institutions, and hence would not satisfy certain regulatory capital requirements.

H.R. 5297 also would create a Small Business Credit Initiative and authorize the appropriation of $2 billion to assist states with their efforts to increase the amount of capital made available by private lenders to small businesses.

CBO estimates that implementing H.R. 5297 would cost about $3.3 billion over the 2011–2015 period, assuming appropriation of the necessary amounts. We estimate that enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

H.R. 5297 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5297 is shown in the following table. The costs

of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—					
	2011	2012	2013	2014	2015	2011–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Small Business Lending Fund:						
Estimated Authorization Level	1,366	0	0	0	0	1,366
Estimated Outlays	1,366	0	0	0	0	1,366
Small Business Credit Initiative:						
Authorization Level	2,000	0	0	0	0	2,000
Estimated Outlays	335	335	495	655	75	1,895
Studies and Reports:						
Estimated Authorization Level	1	1	1	1	1	5
Estimated Outlays	1	1	1	1	1	5
Total Changes:						
Estimated Authorization Level	3,367	1	1	1	1	3,371
Estimated Outlays	1,702	336	496	656	76	3,266

Basis of estimate: For the purposes of this estimate, CBO assumes that H.R. 5297 will be enacted by the end of fiscal year 2010 and that the amounts necessary to implement the bill will be appropriated for fiscal year 2011 (and subsequent years in the case of the required studies and reports).

Small Business Lending Fund

H.R. 5297 would authorize the Treasury to purchase preferred stock and similar instruments in financial institutions, with dividend payments initially set at 5 percent. For the first four and one-half years from the date of disbursement, the dividend payable to the Treasury would be adjusted downward from 5 percent per annum to a rate that depends on the extent to which an institution increases lending to small businesses; for example, institutions that increase such lending by 10 percent or more would pay a dividend of just 1 percent per annum. However, institutions that do not increase their small business lending within the first two years would owe a 7 percent annual dividend after that time. At the end of that initial four-and-a-half-year term, the annual dividend rate for all borrowers would be fixed at 9 percent.

Under the legislation, CBO expects that the Treasury would disburse about $23 billion of the $30 billion of available funds in fiscal year 2011, but would not disburse the remaining $7 billion. Because the legislation specifies that the funds must be repaid within 10 years, the investments would not be classified as Tier 1 capital. From regulators' perspectives, Tier 1 capital is the core measure of a bank's financial strength; such capital consists primarily of common stock and retained earnings, but may also include preferred stocks. If the securities could qualify as Tier 1 capital, the demand for the funds would probably be higher. Still, the SBLF would provide relatively inexpensive financing for the eligible institutions, especially those that currently provide only moderate amounts of small business loans and could more easily reach thresholds for growth in lending and thereby achieve lower dividend rates.

CBO expects that early repayments would be small in the first few years, but become significant at the end of the four-and-a-half-year term when the dividend would reset to the higher rate. In particular, the increase in dividends to 9 percent would probably spur

most borrowers to repay the loans much earlier than the 10-year limit on outstanding funds.

Credit Reform Budget Treatment. The budgetary accounting for loans from the SBLF is governed by the Federal Credit Reform Act of 1990 (FCRA), which requires an appropriation of the subsidy and administrative costs associated with federal loan guarantees and federal direct loans. Although the purchase of preferred stock requiring a dividend payment differs from a traditional loan requiring an interest payment, CBO believes the capital investments from the SBLF under this bill would meet the definition of a loan under FCRA because of the bill's specific requirement that those investments be repaid to the federal government within 10 years.

Under FCRA, the subsidy is the estimated lifetime cost to the government of a loan or loan guarantee, calculated on a net-present-value basis excluding administrative costs. FCRA further specifies that the present-value computation should be done by discounting the expected net cash flows from the government at interest rates on Treasury securities of comparable maturity. On that basis, CBO estimates that the subsidy cost for the SBLF would total $1.4 billion over the 2010–2015 period (6 percent of the roughly $23 billion in expected loans), resulting from a projected level of defaults and missed dividend payments.

Fair-Value Evaluation. Alternatively, the potential costs of the SBLF under H.R. 5297 can be measured using procedures similar to those specified by FCRA but adjusted for market risk—as is specified by law for estimating the costs of the Troubled Asset Relief Program.

Cost estimates made under FCRA do not provide a comprehensive measure of the cost to taxpayers primarily because the FCRA methodology does not include the costs that stem from certain risks involved in lending—risks that private investors would require compensation to bear. In particular, although the FCRA methodology accounts for average losses from defaults, it does not recognize a cost for the risk that losses from defaults will be higher during periods of market stress, when resources are scarce and hence most valuable. Such "market risk" is excluded from FCRA estimates because that methodology discounts expected cash flows at Treasury borrowing rates rather than at higher interest rates that incorporate the price of risk.

Estimates prepared on a "fair-value" basis include the cost of the risk that the government has assumed; as a result, they provide a more comprehensive measure of the cost of the financial commitments than estimates done on a FCRA basis or on a cash basis. CBO estimates that if the budgetary impact of the SBLF under H.R. 5297 was calculated on such a fair-value basis (that is, reflecting market risk), the cost would be approximately $3.4 billion (15 percent of the roughly $23 billion in expected loans).

Small Business Credit Initiative

H.R. 5297 would also authorize the appropriation of $2 billion to be allocated to states (or in some cases, municipalities) that have created programs to increase the amount of capital made available by private lenders to small businesses. The federal funds would be allocated among the states based on certain employment statistics; states would have nine months from the date of enactment of the

bill to apply to participate in the program. The Department of the Treasury would release funds to participating states in three installments. The first installment would be released upon approval of a state's application, and the second and third installments would be released after the Department of the Treasury completes an audit of the state's spending of the previous installment. Assuming appropriation of the specified amount, CBO estimates that implementing this program would cost $1.9 billion over the 2010–2015 period.

H.R. 5297 also would require the Department of the Treasury and the Government Accountability Office to prepare certain reports and to audit both the Small Business Lending Fund program and the Small. Business Credit Initiative on a regular basis. Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill's reporting and auditing requirements would cost $5 million over the 2010–2015 period.

Pay-As-You-Go considerations: None.

Intergovernmental and private-sector impact: H.R. 5297 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would benefit state and local governments by providing funding for lending to small businesses. Any costs to those entities participating in the program would be incurred voluntarily.

Estimate prepared by: Federal costs: Avi Lerner, Wendy Kiska, and Joe Mattey (Small Business Lending Fund) and Susan Willie (Small Business Credit Initiative); Impact on state, local, and tribal governments: Elizabeth Cove Delisle; Impact on the private sector: Sam Wice.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis; Deborah Lucas, Assistant Director for Financial Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 5297 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

TITLE I—SMALL BUSINESS LENDING FUND

Section 1. Short title

Designates Title I as the "Small Business Lending Fund Act of 2010."

Section 2. Purpose

Describes the purpose of Title I as addressing 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.

Section 3. Definitions

This section defines terms used in Title I, including eligible institutions. Eligible institutions are insured depository institutions with total assets of $10 billion or less (as of the end of 2009) and their parent bank holding companies and saving & loan holding companies.

Section 4. Small Business Lending Fund

Establishment of Fund and Authorization to Invest. This section establishes the Small Business Lending Fund (SBLF) and authorizes the Secretary of Treasury to invest $30 billion in preferred stock or other financial instruments from eligible institutions.

Applications. Applications to receive investments from the fund must include 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. An eligible institution with $1 billion or less in total assets may apply to receive an amount up to 5 percent of its risk-weighted assets. An eligible institution with $10 billion or less in total assets, but more than $1 billion in total assets may apply to receive an amount up to 3 percent of its risk-weighted assets. The Secretary may not deny an application solely on the basis of the institution's CAMELS rating.

Incentives to Lend. The SBLF will have built-in incentives for participants to increase small business lending by reducing the dividend or interest rate on the investment the more the participant increases its small business lending as compared to the baseline year-end 2009 level of small business lending, as low as 1 percent. If small business lending has increased by less than 2.5 percent, the dividend or interest rate shall remain 5 percent; if small business lending has increased by 2.5 percent or greater, but by less than 5.0 percent, the dividend or interest rate shall be 4 percent if small business lending has increased by 5.0 percent, but by less than 7.5 percent, the dividend or interest rate shall be 3 percent; if 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 if small business lending has increased by 10 percent or greater, the dividend or interest rate shall be 1 percent. There will be a penalty rate of 7 percent for institutions that do not increase their small business lending by at least 2.5 percent, and a 9 percent rate for institutions that do not pay back the investment within 4½ years.

Other Capital Investment Programs. This section also requires that the Secretary of Treasury issue regulations and other guidance to permit eligible institutions to refinance securities issued to Treasury under the TARP Capital Purpose Program and the Community Development Capital Investment for securities to be issued under the SBLF.

Minority Outreach. This provision requires that recipients of SBLF funds provide outreach and advertising to minority communities about the availability of small business loans. The outreach and advertising must be through various print and electronic media in the appropriate language of the applicant pool.

Minimum Underwriting Standards. This provision requires the appropriate federal banking agencies to issue regulations within 60 days of enactment defining minimum underwriting standards for loans made using SBLF funds.

Section 5. Additional authorities of the Secretary

This section provides additional authorities of the Secretary to manage the program, including authorization to issue regulations in consultation with the Administrator of the Small Business Administration.

Section 6. Considerations

This section directs the Secretary to take into consideration (1) increasing the availability of credit for small businesses; (2) providing funding to eligible institutions that serve small businesses in low- and moderate-income, minority and other underserved communities; (3) protecting and increasing American jobs; (4) ensuring that all eligible institutions may apply to participate in the program established under this 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.

Section 7. Reports

This section requires the Secretary to file monthly reports to appropriate Congressional committees regarding transactions entered into and how SBLF participants are using such funds as well as semiannual reports regarding operating expenses, liabilities, and how much funding each participant has received.

Section 8. Oversight and audits

This section provides for an annual GAO audit of the SBLF and oversight through the Treasury Department Inspector General.

Section 9. Credit reform; Funding

This section authorizes appropriation of such sums as shall be necessary to pay the costs of $30 billion in capital investments to eligible institutions through the SBLF, and clarifies that cost of capital investments under the SBLF will be determined as provided under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

Section 10. Termination and continuation of authorities

This section terminates the authority to make capital investments in eligible institutions one year after the date of enactment, but continues the authorities of the Secretary in section 5 to manage the SBLF.

Section 11. Preservation of authority

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

Section 12. Assurances

This section clarifies that the SBLF is not part of the Troubled Asset Relief Program, and provides that participants may repay the investment without impediment in the event that a change in law modifies the terms of the SBLF in a materially adverse respect.

Section 13. Study and report with respect to women-owned and minority-owned businesses

This section requires the Secretary of Treasury to conduct a study regarding the number of women- and minority-owned businesses that receive assistance as a result of the SBLF, and report such finding to the Congress no later than one year after the date of enactment.

TITLE II—STATE SMALL BUSINESS CREDIT INITIATIVE

Section 201. Short title

Designates Title II as the "State Small Business Credit Initiative Act of 2010"

Section 202. Definitions

Includes a number of definitions for Title II.

Section 203. Federal funds allocated to states

Establishes the State Small Business Credit Initiative. Funding is allocated to states using an average of the formula used in the Recovery Zone Bond program in the American Recovery and Reinvestment Act (ARRA) and the more recent Recovery Zone Bond formula used in the House-passed Small Business and Infrastructure Jobs Tax Act of 2010. The ARRA formula takes into account a state's job losses in 2008 in proportion to the aggregate job losses of all states in 2008, and the Small Business and Infrastructure Jobs Tax Act formula uses the same comparison using 2009 numbers. Each state is guaranteed a minimum allocation of 0.9 percent.

Treasury is directed to disburse the funds in one-third increments. The first third is released to the state after approval of

their plan. The remaining one-third allocations are released when the state has utilized or obligated 80 percent of the previous allocation, and the Treasury Department Inspector General has audited the use of such funds. Treasury can withhold any allocation pending the results of an audit. A state can seek approval to receive its entire allocation at one time, at the discretion of the Secretary.

States can only use federal funds for an approved state lending program, as collateral for a qualifying loan or swap lending facility, and to pay administrative costs. Administrative costs are capped at 5 percent for the first third and 3 percent for the remaining funds.

Any state allocation not transferred to the state within two years goes back to the General Fund.

Sec. 204. Approving states for participation

In order to receive approval from Treasury to participate, a state must designate a department or agency to implement the program; submit an application to Treasury, and enter into an agreement with Treasury that binds the state to comply with national standards set forth in the title; have internal control and compliance and reporting conditions, gives the Secretary the power to audit the program; require the state program to begin extending credit within 90 days; and require the state to provide an annual update to Treasury detailing how it allocates its federal funds amongst the state programs in place.

The state can enter into a contract with another state or with a private for-profit or non-profit to implement and administer its program.

If a state does not file its intent to apply within 60 days of enactment or file a complete application within 9 months of enactment, Treasury can allow individual municipalities or groups of municipalities jointly to apply. Municipalities must apply within 12 months of enactment. If multiple municipalities individually apply, the three largest will receive funding in proportion to their population.

Section 205. Approving state capital access programs

State Capital Access Programs must provide portfolio insurance for business loans based on a separate loan-loss reserve fund for each financial institution supported by premium insurance payments from lenders and borrowers to the reserve fund for each loan. The state must also make a payment to the reserve fund for each loan matching the premium insurance payment made by the borrower and lender, and can use its federal funds for this purpose. The borrower must have 500 employees or less and the loan cannot exceed five million dollars.

The state must ensure that participating financial institutions have the capacity to successfully participate in the program. The state creates the reserve fund at each lending institution by opening an account at that institution under the states' name. Loan terms are set between the lender and borrower. The lender must have a meaningful amount of its own capital at risk. The premium insurance charges are set by the financial institution, but must be between 2 percent and 7 percent of the loan amount. The state can make an additional contribution to the loan fund using non-federal funds.

The borrower must agree to use the loan for a business purpose and cannot be an officer, director, or principal shareholder of the financial institution, or an immediate family member of such a person. The financial institution can't use the CAP loan fund to cover a prior debt or refinance an existing loan.

Sec. 206. Approving collateral support and other innovative credit access and guarantee initiatives for small businesses and manufacturers

In order to have its program approved, a state must establish that every dollar of federal investment will be matched by at least one dollar of private funds in each program funded. States must also show that, in total, their programs will support at least ten dollars in private lending for every one dollar in federal support. Participating lenders must share in the risk of default with the government.

The credit support must target an average borrower size of 500 employees or less, and cannot extend credit support to borrowers with more than 750 employees. The credit support must target loans with an average principal amount of $5 million, and cannot extend credit for loans with principal amounts of over $20 million.

When determining whether to approve an application, Treasury must also consider the anticipated benefit to the state, the extent that increased lending will expand economic opportunities, the operational capacity of the state to carry out the program, the ability of the state program to manage increased lending capacity, whether the administrative accounting and internal controls of the program are sufficient to safeguard against waste or fraud, and the soundness of the program design and implementation plan.

Section 207. Reports

States must submit quarterly use of funds reports indicating the total amount of funding used. States must submit annual reports indicating the number of loans offered, the amounts of loans, breakdowns of industry type, size, annual sales, and number of employees, and the zip code of each borrower receiving a loan.

Section 208. Remedies for state program termination or failures

Federal funding can be reduced or eliminated if a state terminates its program, fails to submit required reports, or violates the terms of the agreement entered into with Treasury. De-allocated funds are reallocated to participating states.

Section 209. Implementation and administration

Treasury must coordinate with the Small Business Administration (SBA) and bank regulators in the administration of the program; establish minimum national standards, provide technical assistance to states and disseminate best practices; manage, administer, and perform program integrity functions; and ensure adequate oversight.

$2 billion of funding is authorized to be appropriated.

Treasury can utilize expedited contracting procedures during the first year after enactment to carry out the program. Treasury's responsibility to administer the program expires after seven years.

Treasury, in consultation with the SBA, shall issue regulations necessary to carry out this title.

DISSENTING VIEWS

The following represents the views of the Republican Members of the Committee on the following issues, consistent with H.R. 5297, Small Business Lending Fund Act of 2010.

Because bank lending to small businesses remains constrained, policymakers have looked for ways to facilitate lending and for explanations why qualified borrowers are struggling to get credit. Many believe that banks are holding back because of regulatory pressure to reduce risks and conserve capital; others wonder whether the problem is actually a lack of demand for small business loans. Yet, whatever the cause, there is consensus that unless commercial credit becomes more broadly available, a sustainable economic recovery will remain elusive.

Thus far, the Administration and the Majority in Congress have experimented with a series of programs that have failed to help small businesses or create jobs, and have succeeded only in adding hundreds of billions of dollars to the national debt. H.R. 5297, the "Small Business Lending Fund Act," is unlikely to be any more successful than these earlier failed initiatives. The legislation opens the door to another government infusion of taxpayer cash into the banking system. By creating a new $32 billion bailout fund and modeling it on the Troubled Asset Relief Program (TARP), the Majority has decided that the mistakes of the past are worth repeating.

H.R. 5297 does not properly deal with the lack of financing for small businesses. Instead of addressing the problem by stimulating demand for credit by small businesses, H.R. 5297 injects capital into banks with no guarantees that they will actually lend. The bill allows a qualifying bank to obtain a capital infusion from the government without even requiring the bank to make a loan for two years. In fact, if a bank reduces or fails to increase lending to small business during those first two years, it would not face any penalty. It defies logic that the Majority would support a bill to increase lending that does not actually require increased lending. A more effective response to the challenges facing America's small businesses was offered by Representatives Biggert, Paulsen, Castle, Gerlach, and King, whose amendment would have extended a series of small business tax credits before implementing the Small Business Lending Fund. Their amendment was defeated on a party-line vote.

Independent observers have also criticized the efficacy of the Majority's approach. The TARP Congressional Oversight Panel ("COP"), chaired by Elizabeth Warren, released a report on May 13, 2010, expressing deep skepticism that the Small Business Lending Fund established by H.R. 5297 could ever be successful. The report said that even if the Small Business Lending Fund were created by Congress immediately, the program probably would not

be fully operational for months; banks could shun the program for fear of being stigmatized by its association with the TARP; and many banks would avoid taking on new liabilities when their existing assets are troubled.

Finally, H.R. 5297 does not even provide effective oversight over the fund it creates. The Inspector General of the Department of the Treasury would be given the responsibility of oversight, but it might not be able to direct sufficient attention to this task given its other responsibilities. Representatives Hensarling and Lance offered an amendment that would have provided oversight authority to the Special Inspector General of TARP (SIGTARP), which has invested time, personnel and infrastructure to develop the expertise necessary to effectively monitor capital investment programs. Unfortunately, the amendment was defeated on a party-line vote.

During debate in Committee, the Majority denied Republican claims that H.R. 5297 is nothing more than "TARP Junior," the enactment of which would have the effect of extending the TARP beyond its scheduled October 3, 2010 expiration date. Yet no less an authority than the SIGTARP, Neil Barofsky, has emphatically rejected the Democrats' attempt to differentiate their new bank bailout from the program he oversees. In a May 17, 2010 letter to Chairman Frank and Ranking Member Bachus, Mr. Barofsky wrote that "in terms of its basic design, its participants, its application process, and, perhaps, its funding source from an oversight perspective, the [Small Business Lending Fund] would essentially be an extension of TARP's [Capital Purchase Program]."

Because the solutions to America's economic problems do not lie in more taxpayer-funded bailouts, Committee Republicans were unanimous in our opposition to this misguided legislation.

SPENCER BACHUS.
RANDY NEUGEBAUER.
DONALD A. MANZULLO.
MIKE CASTLE.
JUDY BIGGERT.
CHRISTOPHER LEE.
SCOTT GARRETT.
SHELLEY MOORE CAPITO.
LYNN JENKINS.

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