

**AMENDMENT IN THE NATURE OF A SUBSTITUTE TO  
H.R. 5297, AS REPORTED**

Strike all after the enacting clause and insert the  
following:

1           **TITLE I—SMALL BUSINESS**  
2                           **LENDING FUND**

3   **SECTION 1. SHORT TITLE.**

4           This title may be cited as the “Small Business Lend-  
5   ing Fund Act of 2010”.

6   **SEC. 2. PURPOSE.**

7           The purpose of this title is to address the ongoing  
8   effects of the financial crisis on small businesses by pro-  
9   viding temporary authority to the Secretary of the Treas-  
10   ury to make capital investments in eligible institutions in  
11   order to increase the availability of credit for small busi-  
12   nesses.

13   **SEC. 3. DEFINITIONS.**

14           For purposes of this title:

15                   (1)   APPROPRIATE   COMMITTEES   OF   CON-  
16           GRESS.—The term “appropriate committees of Con-  
17           gress” means—

18                           (A) the Committee on Small Business and  
19           Entrepreneurship, the Committee on Agri-

1 culture, Nutrition, and Forestry, the Committee  
2 on Banking, Housing, and Urban Affairs, the  
3 Committee on Finance, the Committee on the  
4 Budget, and the Committee on Appropriations  
5 of the Senate; and

6 (B) the Committee on Small Business, the  
7 Committee on Agriculture, the Committee on  
8 Financial Services, the Committee on Ways and  
9 Means, the Committee on the Budget, and the  
10 Committee on Appropriations of the House of  
11 Representatives.

12 (2) APPROPRIATE FEDERAL BANKING AGEN-  
13 CY.—The term “appropriate Federal banking agen-  
14 cy” has the meaning given such term under section  
15 3(q) of the Federal Deposit Insurance Act (12  
16 U.S.C. 1813(q)).

17 (3) BANK HOLDING COMPANY.—The term  
18 “bank holding company” has the meaning given  
19 such term under section 2(a)(1) of the Bank Hold-  
20 ing Company Act of 1956 (12 U.S.C.  
21 1841(2)(a)(1)).

22 (4) CALL REPORT.—The term “call report”  
23 means—

24 (A) reports of Condition and Income sub-  
25 mitted to the Office of the Comptroller of the

1 Currency, the Board of Governors of the Fed-  
2 eral Reserve System, and the Federal Deposit  
3 Insurance Corporation;

4 (B) the Office of Thrift Supervision Thrift  
5 Financial Report; and

6 (C) any report that is designated by the  
7 Office of the Comptroller of the Currency, the  
8 Board of Governors of the Federal Reserve Sys-  
9 tem, the Federal Deposit Insurance Corpora-  
10 tion, or the Office of Thrift Supervision, as ap-  
11 plicable, as a successor to any report referred to  
12 in subparagraph (A) or (B).

13 (5) CDCI.—The term “CDCI” means the Com-  
14 munity Development Capital Initiative created by  
15 the Secretary under the Troubled Asset Relief Pro-  
16 gram established by the Emergency Economic Sta-  
17 bilization Act of 2008.

18 (6) CDCI INVESTMENT.—The term “CDCI in-  
19 vestment” means, with respect to any eligible insti-  
20 tution, the principal amount of any investment made  
21 by the Secretary in such eligible institution under  
22 the CDCI that has not been repaid.

23 (7) CPP.—The term “CPP” means the Capital  
24 Purchase Program created by the Secretary under

1 the Troubled Asset Relief Program established by  
2 the Emergency Economic Stabilization Act of 2008.

3 (8) CPP INVESTMENT.—The term “CPP in-  
4 vestment” means, with respect to any eligible insti-  
5 tution, the principal amount of any investment made  
6 by the Secretary in such eligible institution under  
7 the CPP that has not been repaid.

8 (9) ELIGIBLE INSTITUTION.—The term “eligi-  
9 ble institution” means—

10 (A) any insured depository institution,  
11 which—

12 (i) is not controlled by a bank holding  
13 company or savings and loan holding com-  
14 pany that is also an eligible institution;

15 (ii) has total assets of equal to or less  
16 than \$10,000,000,000, as reported in the  
17 call report as of the end of the fourth  
18 quarter of calendar year 2009; and

19 (iii) is not directly or indirectly con-  
20 trolled by any company or other entity that  
21 has total consolidated assets of more than  
22 \$10,000,000,000, as so reported;

23 (B) any bank holding company which has  
24 total assets of equal to or less than  
25 \$10,000,000,000; and

1 (C) any savings and loan holding company  
2 which has total assets of equal to or less than  
3 \$10,000,000,000.

4 (10) FUND.—The term “Fund” means the  
5 Small Business Lending Fund established by section  
6 4(a)(1) of this title.

7 (11) INSURED DEPOSITORY INSTITUTION.—The  
8 term “insured depository institution” has the mean-  
9 ing given such term under section 3(c)(2) of the  
10 Federal Deposit Insurance Act (12 U.S.C.  
11 1813(c)(2)).

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

15 (13) SAVINGS AND LOAN HOLDING COMPANY.—  
16 The term “savings and loan holding company” has  
17 the meaning given such term under section  
18 10(a)(1)(D) of the Home Owners’ Loan Act (12  
19 U.S.C. 1467a(a)(1)(D)).

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

22 (15) SMALL BUSINESS LENDING.—

23 (A) IN GENERAL.—The term “small busi-  
24 ness lending” means small business lending, as  
25 defined by and reported in an eligible institu-

1           tion’s quarterly call report, of the following  
2           types:

3                   (i) Commercial and industrial loans  
4                   plus.

5                   (ii) Owner-occupied nonfarm, nonresi-  
6                   dential real estate loans.

7                   (iii) Loans to finance agricultural pro-  
8                   duction and other loans to farmers.

9                   (iv) Loans secured by farmland.

10           (B) TREATMENT OF HOLDING COMPA-  
11           NIES.—In the case of eligible institutions that  
12           are bank holding companies or savings and loan  
13           holding companies having one or more insured  
14           depository institution subsidiaries, small busi-  
15           ness lending shall be measured based on the  
16           combined small business lending reported in the  
17           call report of the insured depository institution  
18           subsidiaries.

19           (16) MINORITY-OWNED AND WOMEN-OWNED  
20           BUSINESS.—The terms “minority-owned business”  
21           and “women-owned business” shall have the mean-  
22           ing given the terms “minority-owned business” and  
23           “women’s business”, respectively, under section  
24           21A(r)(4) of the Federal Home Loan Bank Act (12  
25           U.S.C. 1441A(r)(4)).

1 **SEC. 4. SMALL BUSINESS LENDING FUND.**

2 (a) FUND AND PROGRAM.—

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

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

11 (b) USE OF FUND.—

12 (1) IN GENERAL.—Subject to paragraph (2),  
13 the Fund shall be available to the Secretary, without  
14 further appropriation or fiscal year limitation, for  
15 the costs of purchases (including commitments to  
16 purchase), and modifications of such purchases, of  
17 preferred stock and other financial instruments from  
18 eligible institutions on such terms and conditions as  
19 are determined by the Secretary in accordance with  
20 this title.

21 (2) MAXIMUM PURCHASE LIMIT.—The aggregate  
22 amount of purchases (and commitments to purchase)  
23 made pursuant to paragraph (1) may not exceed  
24 \$30,000,000,000.

25 (3) PROCEEDS USED TO PAY DOWN PUBLIC  
26 DEBT.—All funds received by the Secretary in con-

1           nection with purchases made pursuant to paragraph  
2           (1), including interest payments, dividend payments,  
3           and proceeds from the sale of any financial instru-  
4           ment, shall be paid into the general fund of the  
5           Treasury for reduction of the public debt.

6           (c) CREDITS TO THE FUND.—There shall be credited  
7           to the Fund amounts made available pursuant to section  
8           9, to the extent provided by appropriations Acts.

9           (d) TERMS.—

10           (1) APPLICATION.—

11           (A) INSTITUTIONS WITH ASSETS OF  
12           \$1,000,000,000 OR LESS.—Eligible institutions  
13           having total assets equal to or less than  
14           \$1,000,000,000, as reported in a call report as  
15           of the end of the fourth quarter of calendar  
16           year 2009, may apply to receive a capital in-  
17           vestment from the Fund in an amount not ex-  
18           ceeding 5 percent of risk-weighted assets, as re-  
19           ported in the call report immediately preceding  
20           the date of application, less the amount of any  
21           CDCI investment and any CPP investment.

22           (B) INSTITUTIONS WITH ASSETS OF MORE  
23           THAN \$1,000,000,000 AND LESS THAN  
24           \$10,000,000,000.—Eligible institutions having  
25           total assets of more than \$1,000,000,000 but

1 less than \$10,000,000,000, as of the end of the  
2 fourth quarter of calendar year 2009, may  
3 apply to receive a capital investment from the  
4 Fund in an amount not exceeding 3 percent of  
5 risk-weighted assets, as reported in the call re-  
6 port immediately preceding the date of applica-  
7 tion, less the amount of any CDCI investment  
8 and any CPP investment.

9 (C) TREATMENT OF HOLDING COMPA-  
10 NIES.—In the case of an eligible institution that  
11 is a bank holding company or a savings and  
12 loan holding company having one or more in-  
13 sured depository institution subsidiaries, total  
14 assets shall be measured based on the combined  
15 total assets reported in the call report of the in-  
16 sured depository institution subsidiaries as of  
17 the end of the fourth quarter of calendar year  
18 2009 and risk-weighted assets shall be meas-  
19 ured based on the combined risk-weighted as-  
20 sets of the insured depository institution sub-  
21 sidiaries as reported in the call report imme-  
22 diately preceding the date of application.

23 (D) TREATMENT OF APPLICANTS THAT  
24 ARE INSTITUTIONS CONTROLLED BY HOLDING  
25 COMPANIES.—If an eligible institution that ap-

1           plies to receive a capital investment under the  
2           Program is under the control of a bank holding  
3           company or a savings and loan holding com-  
4           pany, then the Secretary may use the Fund to  
5           purchase preferred stock or other financial in-  
6           struments from the top-tier bank holding com-  
7           pany or savings and loan holding company of  
8           such eligible institution, as applicable. For pur-  
9           poses of this paragraph, the term “control”  
10          with respect to a bank holding company shall  
11          have the same meaning as in section 2(a)(2) of  
12          the Bank Holding Company Act of 1956 (12  
13          U.S.C. 1841(2)(a)(2)). For purposes of this  
14          paragraph, the term “control” with respect to a  
15          savings and loan holding company shall have  
16          the same meaning as in 10(a)(2) of the Home  
17          Owners’ Loan Act (12 U.S.C. 1467a(a)(2)).

18                   (E) REQUIREMENT TO PROVIDE A SMALL  
19                   BUSINESS LENDING PLAN.—At the time that an  
20                   applicant submits an application to the Sec-  
21                   retary for a capital investment under the Pro-  
22                   gram, the applicant shall deliver to the appro-  
23                   priate Federal banking agency a small business  
24                   lending plan describing how the applicant’s  
25                   business strategy and operating goals will allow

1           it to address the needs of small businesses in  
2           the areas it serves. This plan shall be confiden-  
3           tial supervisory information.

4           (2) CONSULTATION WITH REGULATORS.—For  
5           each eligible institution that applies to receive a cap-  
6           ital investment under the Program, the Secretary  
7           shall consult with the appropriate Federal banking  
8           agency for the eligible institution to determine  
9           whether the eligible institution may receive such cap-  
10          ital investment.

11          (3) INELIGIBILITY OF INSTITUTIONS ON FDIC  
12          PROBLEM BANK LIST.—

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

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

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

21                (B) FDIC PROBLEM BANK LIST DE-  
22                FINED.—For purposes of this subparagraph,  
23                the term “FDIC problem bank list” means the  
24                list of institutions with a current rating of 4 or  
25                5 under the Uniform Financial Institutions

1 Rating System, or such other list designated by  
2 the Federal Deposit Insurance Corporation.

3 (4) INCENTIVES TO LEND.—

4 (A) REQUIREMENTS ON PREFERRED  
5 STOCK AND OTHER FINANCIAL INSTRU-  
6 MENTS.—Any preferred stock or other financial  
7 instrument issued to Treasury by an eligible in-  
8 stitution receiving a capital investment under  
9 the Program shall provide that—

10 (i) the rate at which dividends or in-  
11 terest are payable shall be 5 percent per  
12 annum initially;

13 (ii) within the first 2 years after the  
14 date of the capital investment under the  
15 Program, the rate may be adjusted based  
16 on the amount of an eligible institution's  
17 small business lending. Changes in the  
18 amount of small business lending shall be  
19 measured against the amount of small  
20 business lending reported by the eligible in-  
21 stitution in its call report for the last quar-  
22 ter in calendar year 2009 or the average  
23 amount of small business lending reported  
24 by the eligible institution in all call reports  
25 for calendar year 2009, whichever is lower,

1 minus adjustments from each quarterly  
2 balance in respect of—

3 (I) net loan charge offs with re-  
4 spect to small business lending; and

5 (II) gains realized by the eligible  
6 institution resulting from mergers, ac-  
7 quisitions or purchases of loans after  
8 origination and syndication; which ad-  
9 justments shall be determined in ac-  
10 cordance with guidance promulgated  
11 by the Secretary; and

12 (iii) during any calendar quarter dur-  
13 ing the initial 2-year period referred to in  
14 clause (ii), an institution's rate shall be ad-  
15 justed to reflect the following schedule,  
16 based on that institution's change in the  
17 amount of small business lending relative  
18 to the baseline—

19 (I) if the amount of small busi-  
20 ness lending has increased by less  
21 than 2.5 percent, the dividend or in-  
22 terest rate shall be 5 percent;

23 (II) if the amount of small busi-  
24 ness lending has increased by 2.5 per-  
25 cent or greater, but by less than 5.0

1 percent, the dividend or interest rate  
2 shall be 4 percent;

3 (III) if the amount of small busi-  
4 ness lending has increased by 5.0 per-  
5 cent or greater, but by less than 7.5  
6 percent, the dividend or interest rate  
7 shall be 3 percent;

8 (IV) if the amount of small busi-  
9 ness lending has increased by 7.5 per-  
10 cent or greater, and but by less than  
11 10.0 percent, the dividend or interest  
12 rate shall be 2 percent; or

13 (V) if the amount of small busi-  
14 ness lending has increased by 10 per-  
15 cent or greater, the dividend or inter-  
16 est rate shall be 1 percent.

17 (B) BASIS OF INITIAL RATE.—The initial  
18 dividend or interest rate shall be based on call  
19 report data published in the quarter imme-  
20 diately preceding the date of the capital invest-  
21 ment under the Program.

22 (C) TIMING OF RATE ADJUSTMENTS.—Any  
23 rate adjustment shall occur in the calendar  
24 quarter following the publication of call report  
25 data, such that the rate based on call report

1 data from any one calendar quarter, which is  
2 published in the first following calendar quar-  
3 ter, shall be adjusted in that first following cal-  
4 endar quarter and payable in the second fol-  
5 lowing quarter.

6 (D) RATE FOLLOWING INITIAL 2-YEAR PE-  
7 RIOD.—Generally, the rate based on call report  
8 data from the eighth calendar quarter after the  
9 date of the capital investment under the Pro-  
10 gram shall be payable until the expiration of  
11 the 4½-year period that begins on the date of  
12 the investment. In the case where the amount  
13 of small business lending has remained the  
14 same or decreased relative to the institution’s  
15 baseline in the eighth quarter after the date of  
16 the capital investment under the Program, the  
17 rate shall be 7 percent until the expiration of  
18 the 4½-year period that begins on the date of  
19 the investment.

20 (E) RATE FOLLOWING INITIAL 4½-YEAR  
21 PERIOD.—The dividend or interest rate paid on  
22 any preferred stock or other financial instru-  
23 ment issued by an eligible institution that re-  
24 ceives a capital investment under the Program  
25 shall increase to 9 percent at the end of the

1 4½-year period that begins on the date of the  
2 capital investment under the Program.

3 (F) LIMITATION ON RATE REDUCTIONS  
4 WITH RESPECT TO CERTAIN AMOUNT.—The re-  
5 duction in the dividend or interest rate payable  
6 to Treasury by any eligible institution shall be  
7 limited such that the rate reduction shall not  
8 apply to a dollar amount of the investment  
9 made by Treasury that is greater than the dol-  
10 lar amount increase in the amount of small  
11 business lending realized under this program.  
12 The Secretary may issue guidelines that will  
13 apply to new capital investments limiting the  
14 amount of capital available to eligible institu-  
15 tions consistent with this limitation.

16 (G) RATE ADJUSTMENTS FOR S CORPORA-  
17 TION.—Before making a capital investment in  
18 an eligible institution that is an S corporation  
19 or a corporation organized on a mutual basis,  
20 the Secretary may adjust the dividend or inter-  
21 est rate on the financial instrument to be issued  
22 to the Secretary, from the dividend or interest  
23 rate that would apply under subparagraphs (A)  
24 through (F), to take into account any differen-  
25 tial tax treatment of securities issued by such

1 eligible institution. For purpose of this subpara-  
2 graph, the term “S corporation” has the same  
3 meaning as in section 1361(a) of the Internal  
4 Revenue Code of 1986.

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

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

17 (6) CAPITAL PURCHASE PROGRAM REFI-  
18 NANCE.—

19 (A) IN GENERAL.—The Secretary shall, in  
20 a manner that the Secretary determines to be  
21 consistent with the purposes of this title, issue  
22 regulations and other guidance to permit eligi-  
23 ble institutions to refinance securities issued to  
24 Treasury under the CDCI and the CPP for se-  
25 curities to be issued under the Program.

1 (B) PROHIBITION ON PARTICIPATION BY  
2 NON-PAYING CPP PARTICIPANTS.—Subpara-  
3 graph (A) shall not apply to any eligible institu-  
4 tion that has ever missed a dividend payment  
5 due under the CPP.

6 (7) MINORITY OUTREACH.—The Secretary shall  
7 require eligible institutions receiving capital invest-  
8 ments under the Program to provide outreach and  
9 advertising in the appropriate language of the appli-  
10 cant pool describing the availability and application  
11 process of receiving loans from the eligible institu-  
12 tion that are made possible by the Program through  
13 the use of print, radio, television or electronic media  
14 outlets which target organizations, trade associa-  
15 tions, and individuals that represent or work within  
16 or are members of minority communities.

17 (8) ADDITIONAL TERMS.—The Secretary may,  
18 by regulation or guidance issued under section 5(9),  
19 make modifications that will apply to new capital in-  
20 vestments in order to manage risks associated with  
21 the administration of the Fund in a manner con-  
22 sistent with the purposes of this title.

23 (9) MINIMUM UNDERWRITING STANDARDS.—  
24 The appropriate Federal banking agency for an eli-  
25 gible institution that receives funds under the Pro-

1       gram shall within 60 days issue regulations defining  
2       minimum underwriting standards that must be used  
3       for loans made by the eligible institution using such  
4       funds.

5       **SEC. 5. ADDITIONAL AUTHORITIES OF THE SECRETARY.**

6       The Secretary may take such actions as the Secretary  
7       deems necessary to carry out the authorities in this title,  
8       including, without limitation, the following:

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

16              (2) The Secretary may enter into contracts, in-  
17       cluding contracts for services authorized by section  
18       3109 of title 5, United States Code.

19              (3) The Secretary may designate any bank, sav-  
20       ings association, trust company, security broker or  
21       dealer, asset manager, or investment adviser as a fi-  
22       nancial agent of the Federal Government and such  
23       institution shall perform all such reasonable duties  
24       related to this title as financial agent of the Federal  
25       Government as may be required. The Secretary shall

1 have authority to amend existing agreements with fi-  
2 nancial agents, entered into during the 2-year period  
3 before the date of enactment of this title, to perform  
4 reasonable duties related to this title.

5 (4) The Secretary may exercise any rights re-  
6 ceived in connection with any preferred stock or  
7 other financial instruments or assets purchased or  
8 acquired pursuant to the authorities granted under  
9 this title.

10 (5) Subject to section 4(b)(3), the Secretary  
11 may manage any assets purchased under this title,  
12 including revenues and portfolio risks therefrom.

13 (6) The Secretary may sell, dispose of, transfer,  
14 exchange or enter into securities loans, repurchase  
15 transactions, or other financial transactions in re-  
16 gard to, any preferred stock or other financial in-  
17 strument or asset purchased or acquired under this  
18 title, upon terms and conditions and at a price de-  
19 termined by the Secretary.

20 (7) The Secretary may manage or prohibit con-  
21 flicts of interest that may arise in connection with  
22 the administration and execution of the authorities  
23 provided under this title.

24 (8) The Secretary may establish and use vehi-  
25 cles, subject to supervision by the Secretary, to pur-

1 chase, hold, and sell preferred stock or other finan-  
2 cial instruments and issue obligations.

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

8 **SEC. 6. CONSIDERATIONS.**

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

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

13 (2) providing funding to eligible institutions  
14 that serve small businesses that are minority- and  
15 women-owned and that also serve low- and mod-  
16 erate-income, minority, and other underserved or  
17 rural communities;

18 (3) protecting and increasing American jobs;

19 (4) ensuring that all eligible institutions may  
20 apply to participate in the program established  
21 under this title, without discrimination based on ge-  
22 ography;

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

1           (6) minimizing the cost to taxpayers of exer-  
2           cising the authorities; and

3           (7) promoting and engaging in financial edu-  
4           cation to would-be borrowers.

5 **SEC. 7. REPORTS.**

6           The Secretary shall provide to the appropriate com-  
7           mittees of Congress—

8           (1) within 7 days of the end of each month  
9           commencing with the first month in which trans-  
10          actions are made under the Program, a written re-  
11          port describing all of the transactions made during  
12          the reporting period pursuant to the authorities  
13          granted under this title;

14          (2) after the end of March and the end of Sep-  
15          tember, commencing September 30, 2010, a written  
16          report on all projected costs and liabilities, all oper-  
17          ating expenses, including compensation for financial  
18          agents, and all transactions made by the Fund,  
19          which shall include participating institutions and  
20          amounts each institution has received under the Pro-  
21          gram; and

22          (3) within 7 days of the end of each month  
23          commencing with the first month in which trans-  
24          actions are made under the Program, a written re-  
25          port detailing how eligible institutions participating

1 in the Program have used the funds such institu-  
2 tions received under the Program.

3 **SEC. 8. OVERSIGHT AND AUDITS.**

4 (a) INSPECTOR GENERAL OVERSIGHT.—The Inspec-  
5 tor General of the Department of the Treasury shall con-  
6 duct, supervise, and coordinate audits and investigations  
7 of the purchase (and commitments to purchase) of pre-  
8 ferred stock and other financial instruments under the  
9 Program.

10 (b) GAO AUDIT.—The Comptroller General of the  
11 United States shall perform an annual audit of the Pro-  
12 gram and issue a report to the appropriate committees  
13 of Congress containing the results of such audit.

14 **SEC. 9. CREDIT REFORM; FUNDING.**

15 (a) CREDIT REFORM.—The cost of purchases of pre-  
16 ferred stock and other financial instruments made as cap-  
17 ital investments under this title shall be determined as  
18 provided under the Federal Credit Reform Act of 1990  
19 (2 U.S.C. 661 et seq.).

20 (b) FUNDS MADE AVAILABLE.—There are hereby au-  
21 thorized to be appropriated, out of funds in the Treasury  
22 not otherwise appropriated, such sums as may be nec-  
23 essary to pay the costs of \$30,000,000,000 of capital in-  
24 vestments in eligible institutions, including the costs of  
25 modifying such investments, and reasonable costs of ad-

1 ministering the program of making, holding, managing,  
2 and selling the capital investments.

3 **SEC. 10. TERMINATION AND CONTINUATION OF AUTHORI-**  
4 **TIES.**

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

10 (b) CONTINUATION OF OTHER AUTHORITIES.—The  
11 authorities of the Secretary in section 5 shall not be lim-  
12 ited by the termination date in subsection (a).

13 **SEC. 11. PRESERVATION OF AUTHORITY.**

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

17 **SEC. 12. ASSURANCES.**

18 (a) SMALL BUSINESS LENDING FUND SEPARATE  
19 FROM TARP.—The Small Business Lending Fund Pro-  
20 gram is established as separate and distinct from the  
21 Troubled Asset Relief Program established by the Emer-  
22 gency Economic Stabilization Act of 2008. An institution  
23 shall not, by virtue of a capital investment under the Small  
24 Business Lending Fund Program, be considered a recipi-  
25 ent of the Troubled Asset Relief Program.

1 (b) CHANGE IN LAW.—If, after a capital investment  
2 has been made in an eligible institution under the Pro-  
3 gram, there is a change in law that modifies the terms  
4 of the investment or program in a materially adverse re-  
5 spect for the eligible institution, the eligible institution  
6 may, after consultation with the appropriate Federal  
7 banking agency for the eligible institution, repay the in-  
8 vestment without impediment.

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

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

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

19 (2) loan applications received;

20 (3) loan applications approved; and

21 (4) and any other relevant data related to such  
22 transactions to promote the purposes of the Pro-  
23 gram as the Secretary may require.

24 (b) REPORT.—Not later than one year after the date  
25 of enactment of this Act, the Secretary shall submit to

1 Congress a report on the results of the study conducted  
2 pursuant to subsection (a).

3 (c) INFORMATION PROVIDED TO THE SECRETARY.—  
4 Eligible institutions that participate in the Program shall  
5 provide the Secretary with such information as the Sec-  
6 retary may require to carry out the study required by this  
7 section.

8 **TITLE II—STATE SMALL**  
9 **BUSINESS CREDIT INITIATIVE**

10 **SEC. 201. SHORT TITLE.**

11 This title may be cited as the “State Small Business  
12 Credit Initiative Act of 2010”.

13 **SEC. 202. DEFINITIONS.**

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

16 (1) APPROPRIATE FEDERAL BANKING AGEN-  
17 CY.—The term “appropriate Federal banking agen-  
18 cy”—

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

21 (B) includes the National Credit Union  
22 Administration Board in the case of any credit  
23 union the deposits of which are insured in ac-  
24 cordance with the Federal Credit Union Act.

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

6           (3) FEDERAL CONTRIBUTION.—The term “Fed-  
7           eral contribution” means the portion of the contribu-  
8           tion made by a participating State to, or for the ac-  
9           count of, an approved State program that is made  
10          with Federal funds allocated to the State by the Sec-  
11          retary under section 203.

12          (4) FINANCIAL INSTITUTION.—The term “fi-  
13          nancial institution” means any insured depository  
14          institution, insured credit union, or community de-  
15          velopment financial institution, as those terms are  
16          each defined in section 103 of the Riegle Community  
17          Development and Regulatory Improvement Act of  
18          1994.

19          (5) PARTICIPATING STATE.—The term “partici-  
20          pating State” means any State that has been ap-  
21          proved for participation in the Program under sec-  
22          tion 204.

23          (6) PROGRAM.—The term “Program” means  
24          the State Small Business Credit Initiative estab-  
25          lished under this title.

1           (7) QUALIFYING LOAN OR SWAP FUNDING FA-  
2           CILITY.—The term “qualifying loan or swap funding  
3           facility” means a contractual arrangement between a  
4           participating State and a private financial entity  
5           under which—

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

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

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

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

19                   (A) depositing all required premium  
20                   charges paid by the financial institution lender  
21                   and by each borrower receiving a loan under an  
22                   approved State program from that financial in-  
23                   stitution lender;

1 (B) depositing contributions made by the  
2 participating State, including State contribu-  
3 tions made with Federal contributions; and

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

6 (9) STATE.—The term “State” means—

7 (A) a State of the United States;

8 (B) the District of Columbia, the Common-  
9 wealth of Puerto Rico, the Commonwealth of  
10 Northern Mariana Islands, Guam, American  
11 Samoa, and the United States Virgin Islands;

12 (C) when designated by a State of the  
13 United States, a political subdivision of that  
14 State that the Secretary determines has the ca-  
15 pacity to participate in the Program; and

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

20 (10) STATE CAPITAL ACCESS PROGRAM.—The  
21 term “State capital access program” means a pro-  
22 gram of a State that—

23 (A) uses public resources to promote pri-  
24 vate access to credit; and

1 (B) meets the eligibility criteria in section  
2 205(c).

3 (11) STATE OTHER CREDIT SUPPORT PRO-  
4 GRAM.—The term “State other credit support pro-  
5 gram”—

6 (A) means a program of a State that—

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

9 (ii) is not a State capital access pro-  
10 gram; and

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

13 (B) includes, collateral support programs,  
14 loan participation programs, and credit guar-  
15 antee programs.

16 (12) STATE PROGRAM.—The term “State pro-  
17 gram” means a State capital access program or a  
18 State other credit support program.

19 (13) SECRETARY.—The term “Secretary”  
20 means the Secretary of the Treasury.

21 **SEC. 203. FEDERAL FUNDS ALLOCATED TO STATES.**

22 (a) PROGRAM ESTABLISHED; PURPOSE.—There is  
23 established the State Small Business Credit Initiative  
24 (hereinafter in this title referred to as the “Program”),  
25 to be administered by the Secretary. Under the Program,

1 the Secretary shall allocate Federal funds to participating  
2 States and make the allocated funds available to the par-  
3 ticipating States as provided in this section for the uses  
4 described in this section.

5 (b) ALLOCATION FORMULA.—

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

12 (A) would receive under the 2009 alloca-  
13 tion, as determined under paragraph (2); and

14 (B) would receive under the 2010 alloca-  
15 tion, as determined under paragraph (3).

16 (2) 2009 ALLOCATION FORMULA.—

17 (A) IN GENERAL.—The Secretary shall de-  
18 termine the 2009 allocation by allocating Fed-  
19 eral funds among the States in the proportion  
20 that each such State's 2008 State employment  
21 decline bears to the aggregate of the 2008  
22 State employment declines for all States.

23 (B) MINIMUM ALLOCATION.—The Sec-  
24 retary shall adjust the allocations under sub-  
25 paragraph (A) for each State to the extent nec-

1           essary to ensure that no State receives less than  
2           0.9 percent of the Federal funds.

3           (C) 2008 STATE EMPLOYMENT DECLINE  
4           DEFINED.—For purposes of this paragraph and  
5           with respect to a State, the term “2008 State  
6           employment decline” means the excess (if any)  
7           of—

8                   (i) the number of individuals em-  
9                   ployed in such State determined for De-  
10                  cember 2007; over

11                   (ii) the number of individuals em-  
12                   ployed in such State determined for De-  
13                  cember 2008.

14           (3) 2010 ALLOCATION FORMULA.—

15                   (A) IN GENERAL.—The Secretary shall de-  
16                   termine the 2010 allocation by allocating Fed-  
17                   eral funds among the States in the proportion  
18                   that each such State’s 2009 unemployment  
19                   number bears to the aggregate of the 2009 un-  
20                   employment numbers for all of the States.

21                   (B) MINIMUM ALLOCATION.—The Sec-  
22                   retary shall adjust the allocations under sub-  
23                   paragraph (A) for each State to the extent nec-  
24                   essary to ensure that no State receives less than  
25                   0.9 percent of the Federal funds.

1 (C) 2009 UNEMPLOYMENT NUMBER DE-  
2 FINED.—For purposes of this paragraph and  
3 with respect to a State, the term “2009 unem-  
4 ployment number” means the number of indi-  
5 viduals within such State who were determined  
6 to be unemployed by the Bureau of Labor Sta-  
7 tistics for December 2009.

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

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

14 (A) IN GENERAL.—The Secretary shall—

15 (i) apportion the participating State’s  
16 allocated amount into one-thirds;

17 (ii) transfer to the participating State  
18 the first one-third when the Secretary ap-  
19 proves the State for participation under  
20 section 204; and

21 (iii) transfer to the participating State  
22 each successive one-third when the State  
23 has certified to the Secretary that it has  
24 expended, transferred, or obligated 80 per-  
25 cent of the last transferred one-third for

1 Federal contributions to, or for the ac-  
2 count of, State programs.

3 (B) AUTHORITY TO WITHHOLD PENDING  
4 AUDIT.—The Secretary may withhold the trans-  
5 fer of any successive one-third pending results  
6 of a financial audit.

7 (C) TRANSFERS CONTINGENT ON INSPEC-  
8 TOR GENERAL AUDITS.—

9 (i) IN GENERAL.—Before a transfer  
10 to a participating State of the second one-  
11 third or the last one-third, the Inspector  
12 General of the Department of the Treasury  
13 shall carry out an audit of the partici-  
14 pating State's use of amounts already re-  
15 ceived.

16 (ii) PENALTY FOR MISSTATEMENT.—  
17 Any participating State that is found to  
18 have intentionally misstated any report  
19 issued to the Secretary under the Program  
20 shall be ineligible to receive any additional  
21 funds under the Program. Funds that had  
22 been allocated or that would otherwise  
23 have been allocated to such participating  
24 State shall be paid into the general fund of

1 the Treasury for reduction of the public  
2 debt.

3 (iii) MUNICIPALITIES.—For purposes  
4 of this subparagraph, the term “partici-  
5 pating State” shall include a municipality  
6 given special permission to participate in  
7 the Program, pursuant to section 204(d).

8 (2) TRANSFERRED AMOUNTS.—Each amount  
9 transferred to a participating State under this sec-  
10 tion shall remain available to the State until used by  
11 the State as permitted under paragraph (3).

12 (3) USE OF TRANSFERRED FUNDS.—Each par-  
13 ticipating State may use funds transferred to it  
14 under this section only—

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

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

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

24 (D) in the case of each successive one-third  
25 transferred, for paying administrative costs in-

1           curred by the State in implementing an ap-  
2           proved State program in an amount not to ex-  
3           ceed 3 percent of that successive one-third.

4           (4) TERMINATION OF AVAILABILITY OF  
5           AMOUNTS NOT TRANSFERRED WITHIN 2 YEARS OF  
6           PARTICIPATION.—Any portion of a participating  
7           State’s allocated amount that has not been trans-  
8           ferred to the State under this section by the end of  
9           the 2-year period beginning on the date that the  
10          Secretary approves the State for participation may  
11          be deemed by the Secretary to be no longer allocated  
12          to the State and no longer available to the State and  
13          shall be returned to the General Fund of the Treas-  
14          ury.

15          (5) DEFINITIONS.—For purposes of this sec-  
16          tion—

17                 (A) the term “allocated amount” means  
18                 the total amount of Federal funds allocated by  
19                 the Secretary under subsection (b) to the par-  
20                 ticipating State; and

21                 (B) the term “one-third” means—

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

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

4 **SEC. 204. APPROVING STATES FOR PARTICIPATION.**

5 (a) APPLICATION.—Any State may apply to the Sec-  
6 retary for approval to be a participating State under the  
7 Program and to be eligible for an allocation of Federal  
8 funds under the Program.

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

11 (1) a specific department, agency, or political  
12 subdivision of the State has been designated to im-  
13 plement a State program and participate in the Pro-  
14 gram;

15 (2) all legal actions necessary to enable such  
16 designated department, agency, or political subdivi-  
17 sion to implement a State program and participate  
18 in the Program have been accomplished;

19 (3) the State has filed an application with the  
20 Secretary for approval of a State capital access pro-  
21 gram under section 205 or approval as a State other  
22 credit support program under section 206, in each  
23 case within the time period provided in the respec-  
24 tive section; and

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

3                   (A) conforms to the requirements of this  
4                   title;

5                   (B) ensures that the State program com-  
6                   plies with such national standards as are estab-  
7                   lished by the Secretary under section 209(a)(2);

8                   (C) sets forth internal control, compliance,  
9                   and reporting requirements as established by  
10                  the Secretary, and such other terms and condi-  
11                  tions necessary to carry out the purposes of this  
12                  title, including an agreement by the State to  
13                  allow the Secretary to audit State programs;

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

20                  (E) includes an agreement by the State to  
21                  deliver to the Secretary, and update annually, a  
22                  schedule describing how the State intends to  
23                  apportion among its State programs the Fed-  
24                  eral funds allocated to the State.

1           (c) CONTRACTUAL ARRANGEMENTS FOR IMPLEMEN-  
2 TATION OF STATE PROGRAMS.—A State may be approved  
3 to be a participating State, and be eligible for an allocation  
4 of Federal funds under the Program, if the State has con-  
5 tractual arrangements for the implementation and admin-  
6 istration of its State program with—

7           (1) an existing, approved State program admin-  
8 istered by another State; or

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

12          (d) SPECIAL PERMISSION.—

13           (1) CIRCUMSTANCES WHEN A MUNICIPALITY  
14 MAY APPLY DIRECTLY.—If a State does not, within  
15 60 days after the date of enactment of this title, file  
16 with the Secretary a notice of its intent to apply for  
17 approval by the Secretary of a State program or  
18 within 9 months after the date of enactment of this  
19 title, file with the Secretary a complete application  
20 for approval of a State program, the Secretary may  
21 grant to municipalities of that State a special per-  
22 mission that will allow them to apply directly to the  
23 Secretary without the State for approval to be par-  
24 ticipating municipalities.

1           (2) TIMING REQUIREMENTS APPLICABLE TO  
2 MUNICIPALITIES APPLYING DIRECTLY.—To qualify  
3 for the special permission, a municipality of a State  
4 must, within 12 months after the date of enactment  
5 of this title, file with the Secretary a complete appli-  
6 cation for approval by the Secretary of a State pro-  
7 gram.

8           (3) NOTICES OF INTENT AND APPLICATIONS  
9 FROM MORE THAN 1 MUNICIPALITY.—A municipality  
10 of a State may combine with 1 or more other mu-  
11 nicipalities of that State to file a joint notice of in-  
12 tent to file and a joint application.

13           (4) APPROVAL CRITERIA.—The general ap-  
14 proval criteria in paragraphs (2) and (4) shall apply.

15           (5) ALLOCATION TO MUNICIPALITIES.—

16           (A) IF MORE THAN 3.—If more than 3 mu-  
17 nicipalities, or combination of municipalities as  
18 provided in paragraph (3), of a State apply for  
19 approval by the Secretary to be participating  
20 municipalities under this subsection, and the  
21 applications meet the approval criteria in para-  
22 graph (4), the Secretary shall allocate Federal  
23 funds to the 3 municipalities with the largest  
24 populations.

1 (B) IF 3 OR FEWER.—If 3 or fewer mu-  
2 nicipalities, or combination of municipalities as  
3 provided in paragraph (3), of a State apply for  
4 approval by the Secretary to be participating  
5 municipalities under this subsection, and the  
6 applications meet the approval criteria in para-  
7 graph (4), the Secretary shall allocate Federal  
8 funds to each applicant municipality or com-  
9 bination of municipalities.

10 (6) APPORTIONMENT OF ALLOCATED AMOUNT  
11 AMONG PARTICIPATING MUNICIPALITIES.—If the  
12 Secretary approves municipalities to be participating  
13 municipalities under this subsection, the Secretary  
14 shall apportion the full amount of the Federal funds  
15 that are allocated to that State to municipalities  
16 that are approved under this subsection in amounts  
17 proportionate to the population of those municipali-  
18 ties, based on the most recent available decennial  
19 census.

20 (7) APPROVING STATE PROGRAMS FOR MUNICI-  
21 PALITIES.—If the Secretary approves municipalities  
22 to be participating municipalities under this sub-  
23 section, the Secretary shall take into account the ad-  
24 ditional considerations in section 206(d) in making  
25 the determination under section 205 or 206 that the

1 State program or programs to be implemented by  
2 the participating municipalities, including a State  
3 capital access program, is eligible for Federal con-  
4 tributions to, or for the account of, the State pro-  
5 gram.

6 **SEC. 205. APPROVING STATE CAPITAL ACCESS PROGRAMS.**

7 (a) APPLICATION.—A participating State that estab-  
8 lishes a new, or has an existing, State capital access pro-  
9 gram that meets the eligibility criteria in subsection (c)  
10 may apply to Secretary to have the State capital access  
11 program approved as eligible for Federal contributions to  
12 the reserve fund.

13 (b) APPROVAL.—The Secretary shall approve such  
14 State capital access program as eligible for Federal con-  
15 tributions to the reserve fund if—

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

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

24 (3) the State satisfies the requirements of sub-  
25 sections (a) and (b) of section 204; and

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

3           (c) ELIGIBILITY CRITERIA FOR STATE CAPITAL AC-  
4           CESS PROGRAMS.—For a State capital access program to  
5           be approved under this section, it must be a program of  
6           the State that—

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

10          (2) requires insurance premiums to be paid by  
11          the financial institution lenders and by the business  
12          borrowers to the reserve fund to have their loans en-  
13          rolled in the reserve fund;

14          (3) provides for contributions to be made by the  
15          State to the reserve fund in amounts at least equal  
16          to the sum of the amount of the insurance premium  
17          charges paid by the borrower and the financial insti-  
18          tution to the reserve fund for any newly enrolled  
19          loan; and

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

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

1 (B) The loan amount does not exceed  
2 \$5,000,000.

3 (d) FEDERAL CONTRIBUTIONS TO APPROVED STATE  
4 CAPITAL ACCESS PROGRAMS.—A State capital access pro-  
5 gram approved under this section will be eligible for receiv-  
6 ing Federal contributions to the reserve fund in an  
7 amount equal to the sum of the amount of the insurance  
8 premium charges paid by the borrowers and by the finan-  
9 cial institution to the reserve fund for loans that meet the  
10 requirements in subsection (c)(4). A participating State  
11 may use the Federal contribution to make its contribution  
12 to the reserve fund of an approved State capital access  
13 program.

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

18 (1) EXPERIENCE AND CAPACITY.—The partici-  
19 pating State shall determine for each financial insti-  
20 tution that participates in the State capital access  
21 program, after consultation with the appropriate  
22 Federal banking agency or, in the case of a financial  
23 institution that is a non depository community devel-  
24 opment financial institution, the Community Devel-  
25 opment Financial Institution Fund, that the finan-

1        cial institution has sufficient commercial lending ex-  
2        perience and financial and managerial capacity to  
3        participate in the approved State capital access pro-  
4        gram. The determination by the State shall not be  
5        reviewable by the Secretary.

6            (2) INVESTMENT AUTHORITY.—Subject to ap-  
7        plicable State law, the participating State may in-  
8        vest, or cause to be invested, funds held in a reserve  
9        fund by establishing a deposit account at the finan-  
10       cial institution lender in the name of the partici-  
11       pating State. In the event that funds in the reserve  
12       fund are not deposited in such an account, such  
13       funds shall be invested in a form that the partici-  
14       pating State determines is safe and liquid.

15           (3) LOAN TERMS AND CONDITIONS TO BE DE-  
16        TERMINED BY AGREEMENT.—A loan to be filed for  
17        enrollment in an approved State capital access pro-  
18        gram may be made with such interest rate, fees, and  
19        other terms and conditions, and the loan may be en-  
20        rolled in the approved State capital access program  
21        and claims may be filed and paid, as agreed upon  
22        by the financial institution lender and the borrower,  
23        consistent with applicable law.

24           (4) LENDER CAPITAL AT-RISK.—A loan to be  
25        filed for enrollment in the State capital access pro-

1       gram must require the financial institution lender to  
2       have a meaningful amount of its own capital re-  
3       sources at risk in the loan.

4               (5) PREMIUM CHARGES MINIMUM AND MAX-  
5       IMUM AMOUNTS.—The insurance premium charges  
6       payable to the reserve fund by the borrower and the  
7       financial institution lender shall be prescribed by the  
8       financial institution lender, within minimum and  
9       maximum limits that require that the sum of the in-  
10      surance premium charges paid in connection with a  
11      loan by the borrower and the financial institution  
12      lender may not be less than 2 percent nor more than  
13      7 percent of the amount of the loan enrolled in the  
14      approved State capital access program.

15              (6) STATE CONTRIBUTIONS.—In enrolling a  
16      loan in an approved State capital access program,  
17      the participating State may make a contribution to  
18      the reserve fund to supplement Federal contribu-  
19      tions made under this Program.

20              (7) LOAN PURPOSE.—

21                      (A) PARTICULAR LOAN PURPOSE REQUIRE-  
22                      MENTS AND PROHIBITIONS.—In connection  
23                      with the filing of a loan for enrollment in an  
24                      approved State capital access program, the fi-  
25                      nancial institution lender—

1 (i) shall obtain an assurance from  
2 each borrower that—

3 (I) the proceeds of the loan will  
4 be used for a business purpose;

5 (II) the loan will not be used to  
6 finance such business activities as the  
7 Secretary, by regulation, may pro-  
8 scribe as prohibited loan purposes for  
9 enrollment in an approved State cap-  
10 ital access program; and

11 (III) the borrower is not—

12 (aa) an executive officer, di-  
13 rector, or principal shareholder of  
14 the financial institution lender;

15 (bb) a member of the imme-  
16 diate family of an executive offi-  
17 cer, director, or principal share-  
18 holder of the financial institution  
19 lender; or

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

24 (ii) shall provide assurances to the  
25 participating State that the loan has not

1           been made in order to place under the pro-  
2           tection of the approved State capital access  
3           program prior debt that is not covered  
4           under the approved State capital access  
5           program and that is or was owed by the  
6           borrower to the financial institution lender  
7           or to an affiliate of the financial institution  
8           lender;

9           (iii) shall not allow the enrollment of  
10          a loan to a borrower that is a refinancing  
11          of a loan previously made to that borrower  
12          by the financial institution lender or an af-  
13          filiate of the financial institution lender;  
14          and

15          (iv) may include additional restric-  
16          tions on the eligibility of loans or bor-  
17          rowers that are not inconsistent with the  
18          provisions and purposes of this title, in-  
19          cluding compliance with all applicable Fed-  
20          eral and State laws, regulations, ordi-  
21          nances, and Executive orders.

22          (B) DEFINITIONS.—For purposes of this  
23          subsection, the terms “executive officer”, “di-  
24          rector”, “principal shareholder”, “immediate  
25          family”, and “related interest” refer to the

1 same relationship to a financial institution lend-  
2 er as the relationship described in part 215 of  
3 title 12 of the Code of Federal Regulations, or  
4 any successor to such part.

5 **SEC. 206. APPROVING COLLATERAL SUPPORT AND OTHER**  
6 **INNOVATIVE CREDIT ACCESS AND GUAR-**  
7 **ANTEE INITIATIVES FOR SMALL BUSINESSES**  
8 **AND MANUFACTURERS.**

9 (a) APPLICATION.—A participating State that estab-  
10 lishes a new, or has an existing, credit support program  
11 that meets the eligibility criteria in subsection (c) may  
12 apply to the Secretary to have the State other credit sup-  
13 port program approved as eligible for Federal contribu-  
14 tions to, or for the account of, the State program.

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

18 (1) the Secretary determines that the State sat-  
19 isfies the requirements of paragraphs (1) through  
20 (3) of section 205(b);

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

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

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

7           (c) ELIGIBILITY CRITERIA FOR STATE OTHER CRED-  
8           IT SUPPORT PROGRAMS.—For a State other credit sup-  
9           port program to be approved under this section, it must  
10          be a program of the State that—

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

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

22           (3) for those State other credit support pro-  
23           grams that provide their credit support through 1 or  
24           more financial institution lenders, requires the finan-  
25           cial institution lenders to have a meaningful amount

1 of their own capital resources at risk in their small  
2 business lending; and

3 (4) extends credit support that—

4 (A) targets an average borrower size of  
5 500 employees or less;

6 (B) does not extend credit support to bor-  
7 rowers that have more than 750 employees;

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

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

13 (d) ADDITIONAL CONSIDERATIONS.—In making a de-  
14 termination that a State other credit support program is  
15 eligible for Federal contributions to, or for the account  
16 of, the State program, the Secretary shall take into ac-  
17 count the following additional considerations:

18 (1) The anticipated benefits to the State, its  
19 businesses, and its residents to be derived from the  
20 Federal contributions to, or for the account of, the  
21 approved State other credit support program, includ-  
22 ing the extent to which resulting small business  
23 lending will expand economic opportunities.

1           (2) The operational capacity, skills, and experi-  
2           ence of the management team of the State other  
3           credit support program.

4           (3) The capacity of the State other credit sup-  
5           port program to manage increases in the volume of  
6           its small business lending.

7           (4) The internal accounting and administrative  
8           controls systems of the State other credit support  
9           program, and the extent to which they can provide  
10          reasonable assurance that funds of the State pro-  
11          gram are safeguarded against waste, loss, unauthor-  
12          ized use, or misappropriation.

13          (5) The soundness of the program design and  
14          implementation plan of the State other credit sup-  
15          port program.

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

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

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

5           (2) CONSIDERATIONS FOR FUND.—In pre-  
6           scribing minimum Program requirements for ap-  
7           proved State other credit support programs, the Sec-  
8           retary shall take into consideration, to the extent the  
9           Secretary determines applicable and appropriate, the  
10          minimum Program requirements for approved State  
11          capital access programs in section 205(e).

12 **SEC. 207. REPORTS.**

13          (a) QUARTERLY USE-OF-FUNDS REPORT.—

14           (1) IN GENERAL.—Not later than 30 days after  
15          the beginning of each calendar quarter, beginning  
16          after the first full calendar quarter to occur after  
17          the date the Secretary approves a State for partici-  
18          pation, the participating State shall submit to the  
19          Secretary a report on the use of Federal funding by  
20          the participating State during the previous calendar  
21          quarter.

22           (2) REPORT CONTENTS.—The report shall—

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

1 (B) include a certification by the partici-  
2 pating State that—

3 (i) the information provided in accord-  
4 ance with subparagraph (A) is accurate;

5 (ii) funds continue to be available and  
6 legally committed to contributions by the  
7 State to, or for the account of, approved  
8 State programs, less any amount that has  
9 been contributed by the State to, or for the  
10 account of, approved State programs sub-  
11 sequent to the State being approved for  
12 participation in the Program; and

13 (iii) the participating State is imple-  
14 menting its approved State program or  
15 programs in accordance with this title and  
16 regulations issued pursuant to section 210.

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

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

25 (2) The total amount of such new loans.



1 (A) reduce the amount of Federal funds al-  
2 located to the State under the Program; or

3 (B) terminate any further transfers of allo-  
4 cated amounts that have not yet been trans-  
5 ferred to the State.

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

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

10 (B) failure on the part of a participating  
11 State to submit complete reports under section  
12 207 on a timely basis; or

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

16 (b) DEALLOCATED AMOUNTS TO BE REALLO-  
17 CATED.—If, after 13 months, any portion of the amount  
18 of Federal funds allocated to a participating State is  
19 deemed by the Secretary to be no longer allocated to the  
20 State after actions taken by the Secretary under sub-  
21 section (a)(1), the Secretary shall reallocate that portion  
22 among the participating States, excluding the State whose  
23 allocated funds were deemed to be no longer allocated, as  
24 provided in section 203(b).

1 **SEC. 209. IMPLEMENTATION AND ADMINISTRATION.**

2 (a) GENERAL AUTHORITIES AND DUTIES.—The Sec-  
3 retary shall—

4 (1) consult with the Administrator of the Small  
5 Business Administration and the appropriate Fed-  
6 eral banking agencies on the administration of the  
7 Program;

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

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

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

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

19 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
20 are authorized to be appropriated to the Secretary, out  
21 of funds in the Treasury not otherwise appropriated,  
22 \$2,000,000,000 to carry out the Program, including to  
23 pay reasonable costs of administering the Program.

24 (c) TERMINATION OF SECRETARY'S PROGRAM AD-  
25 MINISTRATION FUNCTIONS.—The authorities and duties  
26 of the Secretary to implement and administer the Program

1 shall terminate at the end of the 7-year period beginning  
2 on the date of enactment of this title.

3 **SEC. 210. REGULATIONS.**

4       The Secretary, in consultation with the Administrator  
5 of the Small Business Administration, shall issue such  
6 regulations and other guidance as the Secretary deter-  
7 mines necessary or appropriate to implement this title in-  
8 cluding, but not limited to, to define terms, to establish  
9 compliance and reporting requirements, and such other  
10 terms and conditions necessary to carry out the purposes  
11 of this title.

12 **SEC. 211. OVERSIGHT AND AUDITS.**

13       (a) **INSPECTOR GENERAL OVERSIGHT.**—The Inspec-  
14 tor General of the Department of the Treasury shall con-  
15 duct, supervise, and coordinate audits and investigations  
16 of the use of funds made available under the Program.

17       (b) **GAO AUDIT.**—The Comptroller General of the  
18 United States shall perform an annual audit of the Pro-  
19 gram and issue a report to the appropriate committees  
20 of Congress, as such term is defined under section 3(1),  
21 containing the results of such audit.

1 **TITLE III—SMALL BUSINESS**  
2 **EARLY-STAGE INVESTMENT**  
3 **PROGRAM**

4 **SEC. 301. SHORT TITLE.**

5 This title may be cited as the “Small Business Early-  
6 Stage Investment Program Act of 2010”.

7 **SEC. 302. SMALL BUSINESS EARLY-STAGE INVESTMENT**  
8 **PROGRAM.**

9 Title III of the Small Business Investment Act of  
10 1958 (15 U.S.C. 681 et seq.) is amended by adding at  
11 the end the following:

12 **“PART D—SMALL BUSINESS EARLY-STAGE**  
13 **INVESTMENT PROGRAM**

14 **“SEC. 399A. ESTABLISHMENT OF PROGRAM.**

15 “The Administrator shall establish and carry out an  
16 early-stage investment program (hereinafter referred to in  
17 this part as the ‘program’) to provide equity investment  
18 financing to support early-stage small businesses in ac-  
19 cordance with this part.

20 **“SEC. 399B. ADMINISTRATION OF PROGRAM.**

21 “The program shall be administered by the Adminis-  
22 trator acting through the Associate Administrator de-  
23 scribed under section 201.

1 **“SEC. 399C. APPLICATIONS.**

2 “(a) IN GENERAL.—Any existing or newly formed in-  
3 corporated body, limited liability company, or limited part-  
4 nership organized and chartered or otherwise existing  
5 under Federal or State law for the purpose of performing  
6 the functions and conducting the activities contemplated  
7 under the program and any manager of any small business  
8 investment company may submit to the Administrator an  
9 application to participate in the program.

10 “(b) REQUIREMENTS FOR APPLICATION.—An appli-  
11 cation to participate in the program shall include the fol-  
12 lowing:

13 “(1) A business plan describing how the appli-  
14 cant intends to make successful venture capital in-  
15 vestments in early-stage small businesses and direct  
16 capital to small business concerns in targeted indus-  
17 tries or other business sectors.

18 “(2) Information regarding the relevant venture  
19 capital investment qualifications and backgrounds of  
20 the individuals responsible for the management of  
21 the applicant.

22 “(3) A description of the extent to which the  
23 applicant meets the selection criteria under section  
24 399D.

25 “(c) APPLICATIONS FROM MANAGERS OF SMALL  
26 BUSINESS INVESTMENT COMPANIES.—The Administrator

1 shall establish an abbreviated application process for ap-  
2 plicants that are managers of small business investment  
3 companies that are licensed under section 301 and that  
4 are applying to participate in the program. Such abbrevi-  
5 ated process shall incorporate a presumption that such  
6 managers satisfactorily meet the selection criteria under  
7 paragraphs (3) and (5) of section 399D(b).

8 **“SEC. 399D. SELECTION OF PARTICIPATING INVESTMENT**  
9 **COMPANIES.**

10 “(a) IN GENERAL.—Not later than 90 days after the  
11 date on which the Administrator receives an application  
12 from an applicant under section 399C, the Administrator  
13 shall make a determination to conditionally approve or dis-  
14 approve such applicant to participate in the program and  
15 shall transmit such determination to the applicant in writ-  
16 ing. A determination to conditionally approve an applicant  
17 shall identify all conditions necessary for a final approval  
18 and shall provide a period of not less than one year for  
19 satisfying such conditions.

20 “(b) SELECTION CRITERIA.—In making a determina-  
21 tion under subsection (a), the Administrator shall consider  
22 each of the following:

23 “(1) The likelihood that the applicant will meet  
24 the goals specified in the business plan of the appli-  
25 cant.

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

4           “(3) The character and fitness of the manage-  
5           ment of the applicant.

6           “(4) The experience and background of the  
7           management of the applicant.

8           “(5) The extent to which the applicant will con-  
9           centrate investment activities on early-stage small  
10          businesses.

11          “(6) The likelihood that the applicant will  
12          achieve profitability.

13          “(7) The experience of the management of the  
14          applicant with respect to establishing a profitable in-  
15          vestment track record.

16          “(c) FINAL APPROVAL.—For each applicant provided  
17          a conditional approval under subsection (a), the Adminis-  
18          trator shall provide final approval to participate in the  
19          program not later than 90 days after the date the appli-  
20          cant satisfies the conditions specified by the Administrator  
21          under such subsection or, in the case of applicants whose  
22          partnership or management agreements conform to mod-  
23          els approved by the Administrator, the Administrator shall  
24          provide final approval to participate in the program not  
25          later than 30 days after the date the applicant satisfies

1 the conditions specified under such subsection. If an appli-  
2 cant provided conditional approval under subsection (a)  
3 fails to satisfy the conditions specified by the Adminis-  
4 trator in the time period designated under such sub-  
5 section, the Administrator shall revoke the conditional ap-  
6 proval.

7 **“SEC. 399E. EQUITY FINANCINGS.**

8 “(a) IN GENERAL.—The Administrator may make  
9 one or more equity financings to a participating invest-  
10 ment company.

11 “(b) EQUITY FINANCING AMOUNTS.—

12 “(1) NON-FEDERAL CAPITAL.—An equity fi-  
13 nancing made to a participating investment company  
14 under the program may not be in an amount that  
15 exceeds the amount of the capital of such company  
16 that is not from a Federal source and that is avail-  
17 able for investment on or before the date on which  
18 an equity financing is drawn upon. Such capital may  
19 include legally binding commitments with respect to  
20 capital for investment.

21 “(2) LIMITATION ON AGGREGATE AMOUNT.—

22 The aggregate amount of all equity financings made  
23 to a participating investment company under the  
24 program may not exceed \$100,000,000.



1           “(b) **EVALUATION OF COMPLIANCE.**—With respect to  
2 an equity financing amount committed to a participating  
3 investment company under section 399E, the Adminis-  
4 trator shall evaluate the compliance of such company with  
5 the requirements under this section if such company has  
6 drawn upon 50 percent of such commitment.

7           **“SEC. 399G. PRO RATA INVESTMENT SHARES.**

8           “Each investment made by a participating invest-  
9 ment company under the program shall be treated as com-  
10 prised of capital from equity financings under the program  
11 according to the ratio that capital from equity financings  
12 under the program bears to all capital available to such  
13 company for investment.

14           **“SEC. 399H. EQUITY FINANCING INTEREST.**

15           “(a) **EQUITY FINANCING INTEREST.**—

16                   “(1) **IN GENERAL.**—As a condition of receiving  
17 an equity financing under the program, a partici-  
18 pating investment company shall convey an equity fi-  
19 nancing interest to the Administrator in accordance  
20 with paragraph (2).

21                   “(2) **EFFECT OF CONVEYANCE.**—The equity fi-  
22 nancing interest conveyed under paragraph (1) shall  
23 have all the rights and attributes of other investors  
24 attributable to their interests in the participating in-  
25 vestment company, but shall not denote control or

1 voting rights to the Administrator. The equity fi-  
2 nancing interest shall entitle the Administrator to a  
3 pro rata portion of any distributions made by the  
4 participating investment company equal to the per-  
5 centage of capital in the participating investment  
6 company that the equity financing comprises. The  
7 Administrator shall receive distributions from the  
8 participating investment company at the same times  
9 and in the same amounts as any other investor in  
10 the company with a similar interest. The investment  
11 company shall make allocations of income, gain, loss,  
12 deduction, and credit to the Administrator with re-  
13 spect to the equity financing interest as if the Ad-  
14 ministrator were an investor.

15 “(b) MANAGER PROFITS.—As a condition of receiv-  
16 ing an equity financing under the program, the manager  
17 profits interest payable to the managers of a participating  
18 investment company under the program shall not exceed  
19 20 percent of profits, exclusive of any profits that may  
20 accrue as a result of the capital contributions of any such  
21 managers with respect to such company. Any excess of  
22 this amount, less taxes payable thereon, shall be returned  
23 by the managers and paid to the investors and the Admin-  
24 istrator in proportion to the capital contributions and eq-  
25 uity financings paid in. No manager profits interest (other

1 than a tax distribution) shall be paid prior to the repay-  
2 ment to the investors and the Administrator of all contrib-  
3 uted capital and equity financings made.

4 “(c) DISTRIBUTION REQUIREMENTS.—As a condition  
5 of receiving an equity financing under the program, a par-  
6 ticipating investment company shall make all distributions  
7 to all investors in cash and shall make distributions within  
8 a reasonable time after exiting investments, including fol-  
9 lowing a public offering or market sale of underlying in-  
10 vestments.

11 **“SEC. 399I. FUND.**

12 “There is hereby created within the Treasury a sepa-  
13 rate fund for equity financings which shall be available  
14 to the Administrator subject to annual appropriations as  
15 a revolving fund to be used for the purposes of the pro-  
16 gram. All amounts received by the Administrator, includ-  
17 ing any moneys, property, or assets derived by the Admin-  
18 istrator from operations in connection with the program,  
19 shall be deposited in the fund. All expenses and payments,  
20 excluding administrative expenses, pursuant to the oper-  
21 ations of the Administrator under the program shall be  
22 paid from the fund.

23 **“SEC. 399J. APPLICATION OF OTHER SECTIONS.**

24 “To the extent not inconsistent with requirements  
25 under this part, the Administrator may apply sections

1 309, 311, 312, 313, and 314 to activities under this part  
2 and an officer, director, employee, agent, or other partici-  
3 pant in a participating investment company shall be sub-  
4 ject to the requirements under such sections.

5 **“SEC. 399K. ANNUAL REPORTING.**

6 “The Administrator shall report on the performance  
7 of the program in the annual performance report of the  
8 Administration.

9 **“SEC. 399L. DEFINITIONS.**

10 “In this part, the following definitions apply:

11 “(1) EARLY-STAGE SMALL BUSINESS.—The  
12 term ‘early-stage small business’ means a small busi-  
13 ness concern that—

14 “(A) is domiciled in a State; and

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

18 “(2) PARTICIPATING INVESTMENT COMPANY.—

19 The term ‘participating investment company’ means  
20 an applicant approved under section 399D to par-  
21 ticipate in the program.

22 “(3) TARGETED INDUSTRIES.—The term ‘tar-  
23 geted industries’ means any of the following business  
24 sectors:

25 “(A) Agricultural technology.

1 “(B) Energy technology.

2 “(C) Environmental technology.

3 “(D) Life science.

4 “(E) Information technology.

5 “(F) Digital media.

6 “(G) Clean technology.

7 “(H) Defense technology.

8 “(I) Photonics technology.

9 **“SEC. 399M. AUTHORIZATION OF APPROPRIATIONS.**

10 “There are authorized to be appropriated to carry out  
11 the program \$1,000,000,000.”

12 **SEC. 303. REGULATIONS.**

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

16 **SEC. 304. PROHIBITIONS ON EARMARKS.**

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

