

111TH CONGRESS
2^D SESSION

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.

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2010

Mr. FRANK of Massachusetts (for himself, Ms. WATERS, Mrs. MALONEY, Mr. GUTIERREZ, Mr. WATT, Mr. MOORE of Kansas, Mr. HINOJOSA, Mr. MEEKS of New York, Mr. MILLER of North Carolina, Mr. SCOTT of Georgia, Mr. AL GREEN of Texas, Ms. BEAN, Ms. MOORE of Wisconsin, Mr. ELLISON, Mr. KLEIN of Florida, Mr. PERLMUTTER, Mr. PETERS, Mr. MAFFEI, and Mrs. DAHLKEMPER) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to address the ongoing
3 effects of the financial crisis on small businesses by pro-
4 viding temporary authority to the Secretary of the Treas-
5 ury to make capital investments in eligible institutions in
6 order to increase the availability of credit for small busi-
7 nesses.

8 **SEC. 3. DEFINITIONS.**

9 For purposes of this Act:

10 (1) APPROPRIATE COMMITTEES OF CON-
11 GRESS.—The term “appropriate committees of Con-
12 gress” means—

13 (A) the Committee on Small Business and
14 Entrepreneurship, the Committee on Agri-
15 culture, Nutrition, and Forestry, the Committee
16 on Banking, Housing, and Urban Affairs, the
17 Committee on Finance, the Committee on the
18 Budget, and the Committee on Appropriations
19 of the Senate; and

20 (B) the Committee on Small Business, the
21 Committee on Agriculture, the Committee on
22 Financial Services, the Committee on Ways and
23 Means, the Committee on the Budget, and the
24 Committee on Appropriations of the House of
25 Representatives.

1 (2) APPROPRIATE FEDERAL BANKING AGEN-
2 CY.—The term “appropriate Federal banking agen-
3 cy” has the meaning given such term under section
4 3(q) of the Federal Deposit Insurance Act (12
5 U.S.C. 1813(q)).

6 (3) BANK HOLDING COMPANY.—The term
7 “bank holding company” has the meaning given
8 such term under section 2(a)(1) of the Bank Hold-
9 ing Company Act of 1956 (12 U.S.C.
10 1841(2)(a)(1)).

11 (4) CALL REPORT.—The term “call report”
12 means—

13 (A) reports of Condition and Income sub-
14 mitted to the Office of the Comptroller of the
15 Currency, the Board of Governors of the Fed-
16 eral Reserve System, and the Federal Deposit
17 Insurance Corporation;

18 (B) the Office of Thrift Supervision Thrift
19 Financial Report; and

20 (C) any report that is designated by the
21 Office of the Comptroller of the Currency, the
22 Board of Governors of the Federal Reserve Sys-
23 tem, the Federal Deposit Insurance Corpora-
24 tion, or the Office of Thrift Supervision, as ap-

1 plicable, as a successor to any report referred to
2 in subparagraph (A) or (B).

3 (5) CDCI.—The term “CDCI” means the Com-
4 munity Development Capital Investment program
5 created by the Secretary under the Troubled Asset
6 Relief Program established by the Emergency Eco-
7 nomic Stabilization Act of 2008.

8 (6) CDCI INVESTMENT.—The term “CDCI in-
9 vestment” means, with respect to any eligible insti-
10 tution, the principal amount of any investment made
11 by the Secretary in such eligible institution under
12 the CDCI that has not been repaid.

13 (7) CPP.—The term “CPP” means the Capital
14 Purchase Program created by the Secretary under
15 the Troubled Asset Relief Program established by
16 the Emergency Economic Stabilization Act of 2008.

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

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

24 (A) any insured depository institution,
25 which—

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

4 (ii) has total assets of equal to or less
5 than \$10,000,000,000, as reported in the
6 call report as of the end of the fourth
7 quarter of calendar year 2009; and

8 (iii) is not directly or indirectly con-
9 trolled by any company or other entity that
10 has total assets of equal to or less than
11 \$10,000,000,000, as so reported;

12 (B) any bank holding company, which—

13 (i) has total assets of equal to or less
14 than \$10,000,000,000; and

15 (ii) has one or more insured deposi-
16 tory institution subsidiaries that have com-
17 bined total assets of equal to or less than
18 \$10,000,000,000, as reported in the call
19 report of each insured depository institu-
20 tion subsidiary as of the end of the fourth
21 quarter of calendar year 2009; and

22 (C) any savings and loan holding company,
23 which—

24 (i) has total assets of equal to or less
25 than \$10,000,000,000; and

1 (ii) has one or more insured deposi-
2 tory institution subsidiaries that have total
3 assets of equal to or less than
4 \$10,000,000,000, as reported in the call
5 report of each insured depository institu-
6 tion subsidiary as of the end of the fourth
7 quarter of calendar year 2009.

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

11 (11) INSURED DEPOSITORY INSTITUTION.—The
12 term “insured depository institution” has the mean-
13 ing given such term under section 3(c)(2) of the
14 Federal Deposit Insurance Act (12 U.S.C.
15 1813(c)(2)).

16 (12) PROGRAM.—The term “Program” means
17 the Small Business Lending Fund Program author-
18 ized by section 4(a)(2) of this Act.

19 (13) SAVINGS AND LOAN HOLDING COMPANY.—
20 The term “savings and loan holding company” has
21 the meaning given such term under section
22 10(a)(1)(D) of the Home Owners’ Loan Act (12
23 U.S.C. 1467a(a)(1)(D)).

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

1 (15) SMALL BUSINESS LENDING.—The term
2 “small business lending” means—

3 (A) commercial and industrial loans plus
4 owner-occupied nonfarm, nonresidential real es-
5 tate loans;

6 (B) loans to finance agricultural produc-
7 tion and other loans to farmers; and

8 (C) loans secured by farmland, as defined
9 by and reported in an eligible institution’s quar-
10 terly call report.

11 In the case of eligible institutions that are bank
12 holding companies or savings and loan holding com-
13 panies having one or more insured depository insti-
14 tution subsidiaries, small business lending shall be
15 measured based on the combined small business
16 lending reported in the call report of the insured de-
17 pository institution subsidiaries.

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

19 (a) FUND AND PROGRAM.—

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

24 (2) PROGRAMS AUTHORIZED.—The Secretary is
25 authorized to establish the Small Business Lending

1 Fund Program for using the Fund consistent with
2 this Act, and a program for the allocation of Federal
3 funds to participating States to expand the avail-
4 ability of credit to small businesses.

5 (b) USE OF FUND.—

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

15 (2) MAXIMUM PURCHASE LIMIT.—The aggre-
16 gate amount of purchases (and commitments to pur-
17 chase) made pursuant to paragraph (1) may not ex-
18 ceed \$30,000,000,000.

19 (c) CREDITS TO THE FUND.—There shall be credited
20 to the Fund amounts made available pursuant to section
21 9, to the extent provided by appropriations Acts.

22 (d) TERMS.—

23 (1) APPLICATION.—

24 (A) Eligible institutions having total assets
25 equal to or less than \$1,000,000,000, as re-

1 ported in a call report 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 5 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 (B) Eligible institutions having total assets
10 of more than \$1,000,000,000 but less than
11 \$10,000,000,000, as of the end of the fourth
12 quarter of calendar year 2009, may apply to re-
13 ceive a capital investment from the Fund in an
14 amount not exceeding 3 percent of risk-weight-
15 ed assets, as reported in the call report imme-
16 diately preceding the date of application, less
17 the amount of any CDCI investment and any
18 CPP investment.

19 (C) In the case of an eligible institution
20 that is a bank holding company or a savings
21 and loan holding company having one or more
22 insured depository institution subsidiaries, total
23 assets shall be measured based on the combined
24 total assets reported in the call report of the in-
25 sured depository institution subsidiaries as of

1 the end of the fourth quarter of calendar year
2 2009 and risk-weighted assets shall be meas-
3 ured based on the combined risk-weighted as-
4 sets of the insured depository institution sub-
5 sidiaries as reported in the call report imme-
6 diately preceding the date of application.

7 (D) If an eligible institution that applies to
8 receive a capital investment under the Program
9 is under the control of a bank holding company
10 or a savings and loan holding company, then
11 the Secretary may use the Small Business
12 Lending Fund to purchase preferred stock or
13 other financial instruments from the top-tier
14 bank holding company or savings and loan
15 holding company of such eligible institution, as
16 applicable. For purposes of this paragraph, the
17 term “control” with respect to a bank holding
18 company shall have the same meaning as in
19 section 2(a)(2) of the Bank Holding Company
20 Act of 1956 (12 U.S.C. 1841(2)(a)(2)). For
21 purposes of this paragraph, the term “control”
22 with respect to a savings and loan holding com-
23 pany shall have the same meaning as in
24 10(a)(2) of the Home Owners’ Loan Act (12
25 U.S.C. 1467a(a)(2)).

1 (E) At the time that an applicant submits
2 an application to the Secretary for a capital in-
3 vestment under the Program, the applicant
4 shall deliver to the appropriate Federal banking
5 agency a small business lending plan describing
6 how the applicant's business strategy and oper-
7 ating goals will allow it to address the needs of
8 small businesses in the areas it serves. This
9 plan shall be confidential supervisory informa-
10 tion.

11 (2) CONSULTATION WITH REGULATORS.—For
12 each eligible institution that applies to receive a cap-
13 ital investment under the Program, the Secretary
14 shall consult with the appropriate Federal banking
15 agency for the eligible institution to determine
16 whether the eligible institution may receive such cap-
17 ital investment.

18 (3) LIMITATION ON DENIAL.—The Secretary
19 may not deny an application by an eligible institu-
20 tion for a capital investment under the Program
21 solely on the basis of the composite rating of the eli-
22 gible institution under the Uniform Financial Insti-
23 tutions Rating System (or an equivalent rating
24 under a comparable rating system).

25 (4) INCENTIVES TO LEND.—

1 (A) Any preferred stock or other financial
2 instrument issued to Treasury by an eligible in-
3 stitution receiving a capital investment under
4 the Program shall provide that—

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

8 (ii) within the first 2 years after the
9 date of the capital investment under the
10 Program, the rate may be adjusted based
11 on the amount of an eligible institution's
12 small business lending. Changes in small
13 business lending shall be measured against
14 the amount of small business lending re-
15 ported by the eligible institution in its call
16 report for the last quarter in calendar year
17 2009 or the average amount of small busi-
18 ness lending reported by the eligible insti-
19 tution in all call reports for calendar year
20 2009, whichever is lower, minus adjust-
21 ments from each quarterly balance in re-
22 spect of—

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

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

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

14 (I) if small business lending has
15 increased by less than 2.5 percent, the
16 dividend or interest rate shall be 5
17 percent;

18 (II) if small business lending has
19 increased by 2.5 percent or greater,
20 but by less than 5.0 percent, the divi-
21 dend or interest rate shall be 4 per-
22 cent;

23 (III) if small business lending
24 has increased by 5.0 percent or great-
25 er, but by less than 7.5 percent, the

1 dividend or interest rate shall be 3
2 percent;

3 (IV) if small business lending has
4 increased by 7.5 percent or greater,
5 and but by less than 10.0 percent, the
6 dividend or interest rate shall be 2
7 percent; or

8 (V) if small business lending has
9 increased by 10 percent or greater,
10 the dividend or interest rate shall be
11 1 percent.

12 (B) The initial dividend or interest rate
13 shall be based on call report data published in
14 the quarter immediately preceding the date of
15 the capital investment under the Program.

16 (C) Any rate adjustment shall occur in the
17 calendar quarter following the publication of
18 call report data, such that the rate based on
19 call report data from any one calendar quarter,
20 which is published in the first following cal-
21 endar quarter, shall be adjusted in that first
22 following calendar quarter and payable in the
23 second following quarter.

24 (D) Generally, the rate based on call re-
25 port data from the eighth calendar quarter

1 after the date of the capital investment under
2 the Program shall be payable until the expira-
3 tion of the 5-year period that begins on the
4 date of the investment. In the case where lend-
5 ing has remained the same or decreased relative
6 to the institution's baseline in the eighth quar-
7 ter after the date of the capital investment
8 under the Program, the rate shall be 7 percent
9 until the expiration of the 5-year period that
10 begins on the date of the investment.

11 (E) The dividend or interest rate paid on
12 any preferred stock or other financial instru-
13 ment issued by an eligible institution that re-
14 ceives a capital investment under the Program
15 shall increase to 9 percent at the end of the 5-
16 year period that begins on the date of the cap-
17 ital investment under the Program.

18 (F) The reduction in the dividend or inter-
19 est rate payable to Treasury by any eligible in-
20 stitution shall be limited such that the rate re-
21 duction shall not apply to an amount of the in-
22 vestment made by Treasury that is greater than
23 the increase in lending realized under this pro-
24 gram. The Secretary may issue guidelines that
25 will apply to new capital investments limiting

1 the amount of capital available to eligible insti-
2 tutions consistent with this limitation.

3 (G) Before making a capital investment in
4 an eligible institution that is an S corporation
5 or a corporation organized on a mutual basis,
6 the Secretary may adjust the dividend or inter-
7 est rate on the financial instrument to be issued
8 to the Secretary, from the dividend or interest
9 rate that would apply under subparagraphs (A)
10 through (F), to take into account any differen-
11 tial tax treatment of securities issued by such
12 eligible institution. For purpose of this subpara-
13 graph, the term “S corporation” has the same
14 meaning as in section 1361(a) of the Internal
15 Revenue Code of 1986.

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

23 (6) CAPITAL PURCHASE PROGRAM REFI-
24 NANCE.—The Secretary shall, in a manner that the
25 Secretary determines to be consistent with the pur-

1 poses of this Act, issue regulations and other guid-
2 ance to permit eligible institutions to refinance secu-
3 rities issued to Treasury under the CDCI and the
4 CPP for securities to be issued under the Program.

5 (7) **ADDITIONAL TERMS.**—The Secretary may,
6 by regulation or guidance issued under section 5(9),
7 make modifications that will apply to new capital in-
8 vestments in order to manage risks associated with
9 the administration of the Small Business Lending
10 Fund in a manner consistent with the purposes of
11 this Act.

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

13 The Secretary may take such actions as the Secretary
14 deems necessary to carry out the authorities in this Act,
15 including, without limitation, the following:

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

23 (2) The Secretary may enter into contracts, in-
24 cluding contracts for services authorized by section
25 3109 of title 5, United States Code.

1 (3) The Secretary may designate any bank, sav-
2 ings association, trust company, or security broker
3 or dealer as a financial agent of the Federal Govern-
4 ment and such institution shall perform all such rea-
5 sonable duties related to this Act as financial agent
6 of the Federal Government as may be required. The
7 Secretary shall have authority to amend existing
8 agreements with financial agents, entered into dur-
9 ing the 2-year period before the date of enactment
10 of this Act, to perform reasonable duties related to
11 this Act.

12 (4) The Secretary may exercise any rights re-
13 ceived in connection with any preferred stock or
14 other financial instruments or assets purchased or
15 acquired pursuant to the authorities granted under
16 this Act.

17 (5) The Secretary may manage any assets pur-
18 chased under this Act, including revenues and port-
19 folio risks therefrom.

20 (6) The Secretary may sell, dispose of, transfer,
21 exchange or enter into securities loans, repurchase
22 transactions, or other financial transactions in re-
23 gard to, any preferred stock or other financial in-
24 strument or asset purchased or acquired under this

1 Act, upon terms and conditions and at a price deter-
2 mined by the Secretary.

3 (7) The Secretary may manage or prohibit con-
4 flicts of interest that may arise in connection with
5 the administration and execution of the authorities
6 provided under this Act.

7 (8) The Secretary may establish and use vehi-
8 cles, subject to supervision by the Secretary, to pur-
9 chase, hold, and sell preferred stock or other finan-
10 cial instruments and issue obligations.

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

16 **SEC. 6. CONSIDERATIONS.**

17 In exercising the authorities granted in this Act, the
18 Secretary shall take into consideration—

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

21 (2) providing funding to eligible institutions
22 that serve small businesses in low- and moderate-in-
23 come, minority and other underserved communities;

24 (3) protecting and increasing American jobs;

1 (4) ensuring that all eligible institutions may
2 apply to participate in the program established
3 under this Act, without discrimination based on ge-
4 ography;

5 (5) providing transparency with respect to use
6 of funds provided under this Act; and

7 (6) minimizing the cost to taxpayers of exer-
8 cising the authorities.

9 **SEC. 7. REPORTS.**

10 The Secretary shall provide to the appropriate com-
11 mittees of Congress—

12 (1) within 7 days of the end of each month
13 commencing with the first month in which trans-
14 actions are made under the Program, a written re-
15 port describing all of the transactions made during
16 the reporting period pursuant to the authorities
17 granted under this Act; and

18 (2) after the end of March and the end of Sep-
19 tember, commencing September 30, 2010, a written
20 report on all projected costs and liabilities, all oper-
21 ating expenses, including compensation for financial
22 agents, and all transactions made by the Fund.

23 **SEC. 8. OVERSIGHT AND AUDITS.**

24 (a) **INSPECTOR GENERAL OVERSIGHT.**—The Inspec-
25 tor General of the Department of the Treasury shall con-

1 duct, supervise, and coordinate audits and investigations
2 of the purchase (and commitments to purchase) of pre-
3 ferred stock and other financial instruments under the
4 Program.

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

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

10 (a) CREDIT REFORM.—The cost of purchases of pre-
11 ferred stock and other financial instruments made as cap-
12 ital investments under this Act shall be determined as pro-
13 vided under the Federal Credit Reform Act of 1990 (2
14 U.S.C. 661 et seq.).

15 (b) FUNDS MADE AVAILABLE.—There are hereby au-
16 thorized to be appropriated, out of funds in the Treasury
17 not otherwise appropriated, such sums as may be nec-
18 essary to pay the costs of \$30,000,000,000 of capital in-
19 vestments in eligible institutions, including the costs of
20 modifying such investments, and reasonable costs of ad-
21 ministering the program of making, holding, managing,
22 and selling the capital investments.

1 **SEC. 10. TERMINATION AND CONTINUATION OF AUTHORI-**
2 **TIES.**

3 (a) **TERMINATION OF INVESTMENT AUTHORITY.—**

4 The authority to make capital investments in eligible insti-
5 tutions, including commitments to purchase preferred
6 stock or other instruments, provided under this Act shall
7 terminate 1 year after the date of enactment of this Act.

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

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

12 Nothing in this Act may be construed to limit the
13 authority of the Secretary under any other provision of
14 law.

15 **SEC. 12. ASSURANCES.**

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

24 (b) **CHANGE IN LAW.—**If, after a capital investment
25 has been made in an eligible institution under the Pro-
26 gram, there is a change in law that modifies the terms

1 of the investment or program in a materially adverse re-
2 spect for the eligible institution, the eligible institution
3 may, after consultation with the appropriate Federal
4 banking agency for the eligible institution, repay the in-
5 vestment without impediment.

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