

1     **TITLE IV—ADDITIONAL SMALL**  
2             **BUSINESS PROVISIONS**  
3     **Subtitle A—Small Business Lending**  
4             **Fund**

5     **SEC. 4101. PURPOSE.**

6             *The purpose of this subtitle is to address the ongoing*  
7 *effects of the financial crisis on small businesses by pro-*  
8 *viding temporary authority to the Secretary of the Treasury*  
9 *to make capital investments in eligible institutions in order*  
10 *to increase the availability of credit for small businesses.*

11     **SEC. 4102. DEFINITIONS.**

12             *For purposes of this subtitle:*

13             (1) *APPROPRIATE COMMITTEES OF CONGRESS.—*

14             *The term “appropriate committees of Congress”*  
15             *means—*

16                     *(A) the Committee on Small Business and*  
17                     *Entrepreneurship, the Committee on Agriculture,*  
18                     *Nutrition, and Forestry, the Committee on*  
19                     *Banking, Housing, and Urban Affairs, the Com-*  
20                     *mittee on Finance, the Committee on the Budget,*  
21                     *and the Committee on Appropriations of the*  
22                     *Senate; and*

23                     *(B) the Committee on Small Business, the*  
24                     *Committee on Agriculture, the Committee on Fi-*  
25                     *nancial Services, the Committee on Ways and*

1           *Means, the Committee on the Budget, and the*  
2           *Committee on Appropriations of the House of*  
3           *Representatives.*

4           (2) *APPROPRIATE FEDERAL BANKING AGENCY.—*  
5           *The term “appropriate Federal banking agency” has*  
6           *the meaning given such term under section 3(q) of the*  
7           *Federal Deposit Insurance Act (12 U.S.C. 1813(q)).*

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

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

14                   (A) *reports of Condition and Income sub-*  
15                   *mitted to the Office of the Comptroller of the*  
16                   *Currency, the Board of Governors of the Federal*  
17                   *Reserve System, and the Federal Deposit Insur-*  
18                   *ance Corporation;*

19                   (B) *the Office of Thrift Supervision Thrift*  
20                   *Financial Report;*

21                   (C) *any report that is designated by the Of-*  
22                   *ice of the Comptroller of the Currency, the*  
23                   *Board of Governors of the Federal Reserve Sys-*  
24                   *tem, the Federal Deposit Insurance Corporation,*  
25                   *or the Office of Thrift Supervision, as applicable,*

1           as a successor to any report referred to in sub-  
2           paragraph (A) or (B);

3           (D) reports of Condition and Income as des-  
4           ignated through guidance developed by the Sec-  
5           retary, in consultation with the Director of the  
6           Community Development Financial Institutions  
7           Fund; and

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

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

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

24          (7) CDFI; COMMUNITY DEVELOPMENT FINANCIAL  
25          INSTITUTION.—The terms “CDFI” and “community

1 *development financial institution” have the meaning*  
2 *given the term “community development financial in-*  
3 *stitution” under the Riegle Community Development*  
4 *and Regulatory Improvement Act of 1994.*

5 (8) *CDLF; COMMUNITY DEVELOPMENT LOAN*  
6 *FUND.—The terms “CDLF” and “community devel-*  
7 *opment loan fund” mean any entity that—*

8 (A) *is certified by the Department of the*  
9 *Treasury as a community development financial*  
10 *institution loan fund;*

11 (B) *is exempt from taxation under the In-*  
12 *ternal Revenue Code of 1986; and*

13 (C) *had assets less than or equal to*  
14 *\$10,000,000,000 as of the end of the fourth quar-*  
15 *ter of calendar year 2009.*

16 (9) *CPP.—The term “CPP” means the Capital*  
17 *Purchase Program created by the Secretary under the*  
18 *Troubled Asset Relief Program established by the*  
19 *Emergency Economic Stabilization Act of 2008.*

20 (10) *CPP INVESTMENT.—The term “CPP invest-*  
21 *ment” means, with respect to any eligible institution,*  
22 *the principal amount of any investment made by the*  
23 *Secretary in such eligible institution under the CPP*  
24 *that has not been repaid.*

1           (11) *ELIGIBLE INSTITUTION.*—*The term “eligible*  
2 *institution” means—*

3           (A) *any insured depository institution,*  
4 *which—*

5                 (i) *is not controlled by a bank holding*  
6 *company or savings and loan holding com-*  
7 *pany that is also an eligible institution;*

8                 (ii) *has total assets of equal to or less*  
9 *than \$10,000,000,000, as reported in the*  
10 *call report of the insured depository institu-*  
11 *tion as of the end of the fourth quarter of*  
12 *calendar year 2009; and*

13                 (iii) *is not directly or indirectly con-*  
14 *trolled by any company or other entity that*  
15 *has total consolidated assets of more than*  
16 *\$10,000,000,000, as so reported;*

17           (B) *any bank holding company which has*  
18 *total consolidated assets of equal to or less than*  
19 *\$10,000,000,000, as reported in the call report of*  
20 *the bank holding company as of the end of the*  
21 *fourth quarter of calendar year 2009;*

22           (C) *any savings and loan holding company*  
23 *which has total consolidated assets of equal to or*  
24 *less than \$10,000,000,000, as reported in the call*  
25 *report of the savings and loan holding company*

1           *as of the end of the fourth quarter of calendar*  
2           *year 2009; and*

3           *(D) any community development financial*  
4           *institution loan fund which has total assets of*  
5           *equal to or less than \$10,000,000,000, as re-*  
6           *ported in audited financial statements for the*  
7           *fiscal year of the community development finan-*  
8           *cial institution loan fund that ends in calendar*  
9           *year 2009.*

10           *(12) FUND.—The term “Fund” means the Small*  
11           *Business Lending Fund established under section*  
12           *4103(a)(1).*

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

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

1           (15) *PROGRAM.*—*The term “Program” means the*  
2           *Small Business Lending Fund Program authorized*  
3           *under section 4103(a)(2).*

4           (16) *SAVINGS AND LOAN HOLDING COMPANY.*—  
5           *The term “savings and loan holding company” has*  
6           *the meaning given such term under section*  
7           *10(a)(1)(D) of the Home Owners’ Loan Act (12*  
8           *U.S.C. 1467a(a)(1)(D)).*

9           (17) *SECRETARY.*—*The term “Secretary” means*  
10          *the Secretary of the Treasury.*

11          (18) *SMALL BUSINESS LENDING.*—

12                (A) *IN GENERAL.*—*The term “small busi-*  
13                *ness lending” means lending, as defined by and*  
14                *reported in an eligible institutions’ quarterly call*  
15                *report, where each loan comprising such lending*  
16                *is one of the following types:*

17                        (i) *Commercial and industrial loans.*

18                        (ii) *Owner-occupied nonfarm, nonresi-*  
19                        *dential real estate loans.*

20                        (iii) *Loans to finance agricultural pro-*  
21                        *duction and other loans to farmers.*

22                        (iv) *Loans secured by farmland.*

23                (B) *EXCLUSION.*—*No loan that has an*  
24                *original amount greater than \$10,000,000 or*  
25                *that goes to a business with more than*

1           \$50,000,000 in revenues shall be included in the  
2           measure.

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

11          (19) *VETERAN-OWNED BUSINESS.*—

12           (A) The term “veteran-owned business”  
13          means a business—

14                  (i) more than 50 percent of the owner-  
15                  ship or control of which is held by 1 or  
16                  more veterans;

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

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

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

1 **SEC. 4103. SMALL BUSINESS LENDING FUND.**

2 (a) *FUND AND PROGRAM.*—

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

11 (b) *USE OF FUND.*—

12 (1) *IN GENERAL.*—*Subject to paragraph (2), the*  
13 *Fund shall be available to the Secretary, without fur-*  
14 *ther appropriation or fiscal year limitation, for the*  
15 *costs of purchases (including commitments to pur-*  
16 *chase), and modifications of such purchases, of pre-*  
17 *ferred stock and other financial instruments from eli-*  
18 *gible institutions on such terms and conditions as are*  
19 *determined by the Secretary in accordance with this*  
20 *subtitle. For purposes of this paragraph and with re-*  
21 *spect to an eligible institution, the term “other finan-*  
22 *cial instruments” shall include only debt instruments*  
23 *for which such eligible institution is fully liable or eq-*  
24 *uity equivalent capital of the eligible institution.*  
25 *Such debt instruments may be subordinated to the*  
26 *claims of other creditors of the eligible institution.*

1           (2) *MAXIMUM PURCHASE LIMIT.*—The aggregate  
2 amount of purchases (and commitments to purchase)  
3 made pursuant to paragraph (1) may not exceed  
4 \$30,000,000,000.

5           (3) *PROCEEDS USED TO PAY DOWN PUBLIC*  
6 *DEBT.*—All funds received by the Secretary in connec-  
7 tion with purchases made pursuant to paragraph (1),  
8 including interest payments, dividend payments, and  
9 proceeds from the sale of any financial instrument,  
10 shall be paid into the general fund of the Treasury for  
11 reduction of the public debt.

12           (4) *LIMITATION ON PURCHASES FROM CDLFS.*—

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

18           (B) *ELIGIBILITY STANDARDS.*—The Sec-  
19 retary, in consultation with the Community De-  
20 velopment Financial Institutions Fund, shall de-  
21 velop eligibility criteria to determine the finan-  
22 cial ability of a CDLF to participate in the Pro-  
23 gram and repay the investment. Such criteria  
24 shall include the following:

1           (i) *Ratio of net assets to total assets is*  
2           *at least 20 percent.*

3           (ii) *Ratio of loan loss reserves to loans*  
4           *and leases 90 days or more delinquent (in-*  
5           *cluding loans sold with full recourse) is at*  
6           *least 30 percent.*

7           (iii) *Positive net income measured on*  
8           *a 3-year rolling average.*

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

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

16           (C) *REQUIREMENT TO SUBMIT AUDITED FI-*  
17           *NANCIAL STATEMENTS.—CDLFs participating in*  
18           *the Program shall submit audited financial*  
19           *statements to the Secretary, have a clean audit*  
20           *opinion, and have at least 3 years of operating*  
21           *experience.*

22           (c) *CREDITS TO THE FUND.—There shall be credited*  
23           *to the Fund amounts made available pursuant to section*  
24           *4108, to the extent provided by appropriations Acts.*

25           (d) *TERMS.—*

1 (1) *APPLICATION.*—

2 (A) *INSTITUTIONS WITH ASSETS OF*  
3 *\$1,000,000,000 OR LESS.*—*Eligible institutions*  
4 *having total assets equal to or less than*  
5 *\$1,000,000,000, as reported in a call report as of*  
6 *the end of the fourth quarter of calendar year*  
7 *2009, may apply to receive a capital investment*  
8 *from the Fund in an amount not exceeding 5*  
9 *percent of risk-weighted assets, as reported in the*  
10 *call report immediately preceding the date of ap-*  
11 *plication, less the amount of any CDCI invest-*  
12 *ment and any CPP investment.*

13 (B) *INSTITUTIONS WITH ASSETS OF MORE*  
14 *THAN \$1,000,000,000 AND LESS THAN OR EQUAL TO*  
15 *\$10,000,000,000.*—*Eligible institutions having total*  
16 *assets of more than \$1,000,000,000 but less than*  
17 *\$10,000,000,000, as of the end of the fourth quar-*  
18 *ter of calendar year 2009, may apply to receive*  
19 *a capital investment from the Fund in an*  
20 *amount not exceeding 3 percent of risk-weighted*  
21 *assets, as reported in the call report immediately*  
22 *preceding the date of application, less the*  
23 *amount of any CDCI investment and any CPP*  
24 *investment.*

1           (C) *TREATMENT OF HOLDING COMPANIES.*—

2           *In the case of an eligible institution that is a*  
3           *bank holding company or a savings and loan*  
4           *holding company having one or more insured de-*  
5           *pository institution subsidiaries, total assets*  
6           *shall be measured based on the combined total*  
7           *assets reported in the call report of the insured*  
8           *depository institution subsidiaries as of the end*  
9           *of the fourth quarter of calendar year 2009 and*  
10           *risk-weighted assets shall be measured based on*  
11           *the combined risk-weighted assets of the insured*  
12           *depository institution subsidiaries as reported in*  
13           *the call report immediately preceding the date of*  
14           *application.*

15           (D) *TREATMENT OF APPLICANTS THAT ARE*  
16           *INSTITUTIONS CONTROLLED BY HOLDING COMPA-*  
17           *NIES.*—*If an eligible institution that applies to*  
18           *receive a capital investment under the Program*  
19           *is under the control of a bank holding company*  
20           *or a savings and loan holding company, then the*  
21           *Secretary may use the Fund to purchase pre-*  
22           *ferred stock or other financial instruments from*  
23           *the top-tier bank holding company or savings*  
24           *and loan holding company of such eligible insti-*  
25           *tution, as applicable. For purposes of this sub-*

1 paragraph, the term “control” with respect to a  
2 bank holding company shall have the same  
3 meaning as in section 2(a)(2) of the Bank Hold-  
4 ing Company Act of 1956 (12 U.S.C.  
5 1841(2)(a)(2)). For purposes of this subpara-  
6 graph, the term “control” with respect to a sav-  
7 ings and loan holding company shall have the  
8 same meaning as in 10(a)(2) of the Home Own-  
9 ers’ Loan Act (12 U.S.C. 1467a(a)(2)).

10 (E) REQUIREMENT TO PROVIDE A SMALL  
11 BUSINESS LENDING PLAN.—At the time that an  
12 applicant submits an application to the Sec-  
13 retary for a capital investment under the Pro-  
14 gram, the applicant shall deliver to the appro-  
15 priate Federal banking agency, and, for appli-  
16 cants that are State-chartered banks, to the ap-  
17 propriate State banking regulator, a small busi-  
18 ness lending plan describing how the applicant’s  
19 business strategy and operating goals will allow  
20 it to address the needs of small businesses in the  
21 areas it serves, as well as a plan to provide lin-  
22 guistically and culturally appropriate outreach,  
23 where appropriate. In the case of eligible institu-  
24 tions that are community development loan  
25 funds, this plan shall be submitted to the Sec-

1           retary. This plan shall be confidential super-  
2           visory information.

3           (F) TREATMENT OF APPLICANTS THAT ARE  
4           COMMUNITY DEVELOPMENT LOAN FUNDS.—Eligi-  
5           ble institutions that are community development  
6           loan funds may apply to receive a capital invest-  
7           ment from the Fund in an amount not exceeding  
8           5 percent of total assets, as reported in the au-  
9           dited financial statements for the fiscal year of  
10          the eligible institution that ends in calendar  
11          year 2009.

12          (2) CONSULTATION WITH REGULATORS.—For  
13          each eligible institution that applies to receive a cap-  
14          ital investment under the Program, the Secretary  
15          shall—

16                (A) consult with the appropriate Federal  
17                banking agency or, in the case of an eligible in-  
18                stitution that is a nondepository community de-  
19                velopment financial institution, the Community  
20                Development Financial Institution Fund, for the  
21                eligible institution, to determine whether the eli-  
22                gible institution may receive such capital invest-  
23                ment;

24                (B) in the case of an eligible institution  
25                that is a State-chartered bank, consider any

1        *views received from the State banking regulator*  
2        *of the State of the eligible institution regarding*  
3        *the financial condition of the eligible institution;*  
4        *and*

5                *(C) in the case of a community development*  
6        *financial institution loan fund, consult with the*  
7        *Community Development Financial Institution*  
8        *Fund.*

9                *(3) CONSIDERATION OF MATCHED PRIVATE IN-*  
10        *VESTMENTS.—*

11                *(A) IN GENERAL.—For an eligible institu-*  
12        *tion that applies to receive a capital investment*  
13        *under the Program, if the entity to be consulted*  
14        *under paragraph (2) would not otherwise rec-*  
15        *ommend the eligible institution to receive the*  
16        *capital investment, the Secretary, in consulta-*  
17        *tion with the entity to be so consulted, may con-*  
18        *sider whether the entity to be consulted would*  
19        *recommend the eligible institution to receive a*  
20        *capital investment based on the financial condi-*  
21        *tion of the institution if the conditions in sub-*  
22        *paragraph (B) are satisfied.*

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

1           (i) *CAPITAL SOURCES.*—*The eligible*  
2           *institution shall receive capital both under*  
3           *the Program and from private, nongovern-*  
4           *ment investors.*

5           (ii) *AMOUNT OF CAPITAL.*—*The*  
6           *amount of capital to be received under the*  
7           *Program shall not exceed 3 percent of risk-*  
8           *weighted assets, as reported in the call re-*  
9           *port immediately preceding the date of ap-*  
10          *plication, less the amount of any CDCI in-*  
11          *vestment and any CPP investment.*

12          (iii) *TERMS.*—*The amount of capital*  
13          *to be received from private, nongovernment*  
14          *investors shall be—*

15                  (I) *equal to or greater than 100*  
16                  *percent of the capital to be received*  
17                  *under the Program; and*

18                  (II) *subordinate to the capital in-*  
19                  *vestment made by the Secretary under*  
20                  *the Program.*

21          (4) *INELIGIBILITY OF INSTITUTIONS ON FDIC*  
22          *PROBLEM BANK LIST.—*

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

1           (i) such institution is on the *FDIC*  
2           *problem bank list*; or

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

6           (B) *CONSTRUCTION.*—Nothing in subpara-  
7           graph (A) shall be construed as limiting the dis-  
8           cretion of the Secretary to deny the application  
9           of an eligible institution that is not on the *FDIC*  
10          *problem bank list*.

11          (C) *FDIC PROBLEM BANK LIST DEFINED.*—  
12          For purposes of this paragraph, the term “*FDIC*  
13          *problem bank list*” means the list of depository  
14          institutions having a current rating of 4 or 5  
15          under the *Uniform Financial Institutions Rat-*  
16          *ing System*, or such other list designated by the  
17          *Federal Deposit Insurance Corporation*.

18          (5) *INCENTIVES TO LEND.*—

19               (A) *REQUIREMENTS ON PREFERRED STOCK*  
20               *AND OTHER FINANCIAL INSTRUMENTS.*—Any pre-  
21               ferred stock or other financial instrument issued  
22               to Treasury by an eligible institution receiving  
23               a capital investment under the Program shall  
24               provide that—

1           (i) *the rate at which dividends or in-*  
2           *terest are payable shall be 5 percent per*  
3           *annum initially;*

4           (ii) *within the first 2 years after the*  
5           *date of the capital investment under the*  
6           *Program, the rate may be adjusted based on*  
7           *the amount of an eligible institution's small*  
8           *business lending. Changes in the amount of*  
9           *small business lending shall be measured*  
10           *against the average amount of small busi-*  
11           *ness lending reported by the eligible institu-*  
12           *tion in its call reports for the 4 full quar-*  
13           *ters immediately preceding the date of en-*  
14           *actment of this Act, minus adjustments*  
15           *from each quarterly balance in respect of—*

16                   (I) *net loan charge offs with re-*  
17                   *spect to small business lending; and*

18                   (II) *gains realized by the eligible*  
19                   *institution resulting from mergers, ac-*  
20                   *quisitions or purchases of loans after*  
21                   *origination and syndication; which ad-*  
22                   *justments shall be determined in ac-*  
23                   *cordance with guidance promulgated*  
24                   *by the Secretary; and*

1           *(iii) during any calendar quarter dur-*  
2           *ing the initial 2-year period referred to in*  
3           *clause (ii), an institution's rate shall be ad-*  
4           *justed to reflect the following schedule, based*  
5           *on that institution's change in the amount*  
6           *of small business lending relative to the*  
7           *baseline—*

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

12                   *(II) if the amount of small busi-*  
13                   *ness lending has increased by 2.5 per-*  
14                   *cent or greater, but by less than 5.0*  
15                   *percent, the dividend or interest rate*  
16                   *shall be 4 percent;*

17                   *(III) if the amount of small busi-*  
18                   *ness lending has increased by 5.0 per-*  
19                   *cent or greater, but by less than 7.5*  
20                   *percent, the dividend or interest rate*  
21                   *shall be 3 percent;*

22                   *(IV) if the amount of small busi-*  
23                   *ness lending has increased by 7.5 per-*  
24                   *cent or greater, and but by less than*

1                   10.0 percent, the dividend or interest  
2                   rate shall be 2 percent; or

3                   (V) if the amount of small busi-  
4                   ness lending has increased by 10 per-  
5                   cent or greater, the dividend or interest  
6                   rate shall be 1 percent.

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

12                  (C) TIMING OF RATE ADJUSTMENTS.—Any  
13                  rate adjustment shall occur in the calendar quar-  
14                  ter following the publication of call report data,  
15                  such that the rate based on call report data from  
16                  any one calendar quarter, which is published in  
17                  the first following calendar quarter, shall be ad-  
18                  justed in that first following calendar quarter  
19                  and payable in the second following quarter.

20                  (D) RATE FOLLOWING INITIAL 2-YEAR PE-  
21                  RIOD.—Generally, the rate based on call report  
22                  data from the eighth calendar quarter after the  
23                  date of the capital investment under the Pro-  
24                  gram shall be payable until the expiration of the  
25                  4<sup>1</sup>/<sub>2</sub>-year period that begins on the date of the in-

1            *vestment. In the case where the amount of small*  
2            *business lending has remained the same or de-*  
3            *creased relative to the institution's baseline in*  
4            *the eighth quarter after the date of the capital*  
5            *investment under the Program, the rate shall be*  
6            *7 percent until the expiration of the 4<sup>1</sup>/<sub>2</sub>-year pe-*  
7            *riod that begins on the date of the investment.*

8            *(E) RATE FOLLOWING INITIAL 4<sup>1</sup>/<sub>2</sub> -YEAR*  
9            *PERIOD.—The dividend or interest rate paid on*  
10           *any preferred stock or other financial instrument*  
11           *issued by an eligible institution that receives a*  
12           *capital investment under the Program shall in-*  
13           *crease to 9 percent at the end of the 4<sup>1</sup>/<sub>2</sub>-year pe-*  
14           *riod that begins on the date of the capital invest-*  
15           *ment under the Program.*

16           *(F) LIMITATION ON RATE REDUCTIONS*  
17           *WITH RESPECT TO CERTAIN AMOUNT.—The re-*  
18           *duction in the dividend or interest rate payable*  
19           *to Treasury by any eligible institution shall be*  
20           *limited such that the rate reduction shall not*  
21           *apply to a dollar amount of the investment made*  
22           *by Treasury that is greater than the dollar*  
23           *amount increase in the amount of small business*  
24           *lending realized under this program. The Sec-*  
25           *retary may issue guidelines that will apply to*

1        *new capital investments limiting the amount of*  
2        *capital available to eligible institutions con-*  
3        *sistent with this limitation.*

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

18            (H) *REPAYMENT DEADLINE.—The capital*  
19        *investment received by an eligible institution*  
20        *under the Program shall be evidenced by pre-*  
21        *ferred stock or other financial instrument that—*

22                    (i) *includes, as a term and condition,*  
23                    *that the capital investment will—*

24                                    (I) *be repaid not later than the*  
25                                    *end of the 10-year period beginning on*

1           *the date of the capital investment*  
2           *under the Program; or*

3                   *(II) at the end of such 10-year pe-*  
4                   *riod, be subject to such additional*  
5                   *terms as the Secretary shall prescribe,*  
6                   *which shall include a requirement that*  
7                   *the stock or instrument shall carry the*  
8                   *highest dividend or interest rate pay-*  
9                   *able; and*

10                   *(ii) provides that the term and condi-*  
11                   *tion described under clause (i) shall not*  
12                   *apply if the application of that term and*  
13                   *condition would adversely affect the capital*  
14                   *treatment of the stock or financial instru-*  
15                   *ment under current or successor applicable*  
16                   *capital provisions compared to a capital in-*  
17                   *strument with identical terms other than*  
18                   *the term and condition described under*  
19                   *clause (i).*

20                   *(I) REQUIREMENTS ON FINANCIAL INSTRU-*  
21                   *MENTS ISSUED BY A COMMUNITY DEVELOPMENT*  
22                   *FINANCIAL INSTITUTION LOAN FUND.—Any eq-*  
23                   *uity equivalent capital issued to the Treasury by*  
24                   *a community development loan fund receiving a*  
25                   *capital investment under the Program shall pro-*

1           *vide that the rate at which interest is payable*  
2           *shall be 2 percent per annum for 8 years. After*  
3           *8 years, the rate at which interest is payable*  
4           *shall be 9 percent.*

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

12          (7) *CAPITAL PURCHASE PROGRAM REFINANCE.*—

13                 (A) *IN GENERAL.*—*The Secretary shall, in a*  
14                 *manner that the Secretary determines to be con-*  
15                 *sistent with the purposes of this subtitle, issue*  
16                 *regulations and other guidance to permit eligible*  
17                 *institutions to refinance securities issued to*  
18                 *Treasury under the CDCI and the CPP for secu-*  
19                 *rities to be issued under the Program.*

20                 (B) *PROHIBITION ON PARTICIPATION BY*  
21                 *NON-PAYING CPP PARTICIPANTS.*—*Subparagraph*  
22                 *(A) shall not apply to any eligible institution*  
23                 *that has missed more than one dividend pay-*  
24                 *ment due under the CPP. For purposes of this*  
25                 *subparagraph, a CPP dividend payment that is*

1           *submitted within 60 days of the due date of such*  
2           *payment shall not be considered a missed divi-*  
3           *dend payment.*

4           (8) *OUTREACH TO MINORITIES, WOMEN, AND*  
5           *VETERANS.—The Secretary shall require eligible insti-*  
6           *tutions receiving capital investments under the Pro-*  
7           *gram to provide linguistically and culturally appro-*  
8           *priate outreach and advertising in the applicant pool*  
9           *describing the availability and application process of*  
10          *receiving loans from the eligible institution that are*  
11          *made possible by the Program through the use of*  
12          *print, radio, television or electronic media outlets*  
13          *which target organizations, trade associations, and*  
14          *individuals that—*

15                 (A) *represent or work within or are mem-*  
16                 *bers of minority communities;*

17                 (B) *represent or work with or are women;*  
18                 *and*

19                 (C) *represent or work with or are veterans.*

20           (9) *ADDITIONAL TERMS.—The Secretary may, by*  
21           *regulation or guidance issued under section 4104(9),*  
22           *make modifications that will apply to new capital in-*  
23           *vestments in order to manage risks associated with*  
24           *the administration of the Fund in a manner con-*  
25           *sistent with the purposes of this subtitle.*

1           (10) *MINIMUM UNDERWRITING STANDARDS.*—*The*  
2           *appropriate Federal banking agency for an eligible*  
3           *institution that receives funds under the Program*  
4           *shall within 60 days issue guidance regarding pru-*  
5           *dent underwriting standards that must be used for*  
6           *loans made by the eligible institution using such*  
7           *funds.*

8 **SEC. 4104. ADDITIONAL AUTHORITIES OF THE SECRETARY.**

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

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

19                 (2) *The Secretary may enter into contracts, in-*  
20                 *cluding contracts for services authorized by section*  
21                 *3109 of title 5, United States Code.*

22                 (3) *The Secretary may designate any bank, sav-*  
23                 *ings association, trust company, security broker or*  
24                 *dealer, asset manager, or investment adviser as a fi-*  
25                 *nancial agent of the Federal Government and such in-*

1     *stitution shall perform all such reasonable duties re-*  
2     *lated to this subtitle as financial agent of the Federal*  
3     *Government as may be required. The Secretary shall*  
4     *have authority to amend existing agreements with fi-*  
5     *nancial agents, entered into during the 2-year period*  
6     *before the date of enactment of this Act, to perform*  
7     *reasonable duties related to this subtitle.*

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

13            *(5) Subject to section 4103(b)(3), the Secretary*  
14            *may manage any assets purchased under this subtitle,*  
15            *including revenues and portfolio risks therefrom.*

16            *(6) The Secretary may sell, dispose of, transfer,*  
17            *exchange or enter into securities loans, repurchase*  
18            *transactions, or other financial transactions in regard*  
19            *to, any preferred stock or other financial instrument*  
20            *or asset purchased or acquired under this subtitle,*  
21            *upon terms and conditions and at a price determined*  
22            *by the Secretary.*

23            *(7) The Secretary may manage or prohibit con-*  
24            *flicts of interest that may arise in connection with the*

1     *administration and execution of the authorities pro-*  
2     *vided under this subtitle.*

3             *(8) The Secretary may establish and use vehicles,*  
4     *subject to supervision by the Secretary, to purchase,*  
5     *hold, and sell preferred stock or other financial in-*  
6     *struments and issue obligations.*

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

12    **SEC. 4105. CONSIDERATIONS.**

13     *In exercising the authorities granted in this subtitle,*  
14    *the Secretary shall take into consideration—*

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

17             *(2) providing funding to minority-owned eligible*  
18     *institutions and other eligible institutions that serve*  
19     *small businesses that are minority-, veteran-, and*  
20     *women-owned and that also serve low- and moderate-*  
21     *income, minority, and other underserved or rural*  
22     *communities;*

23             *(3) protecting and increasing American jobs;*

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

4           (5) *ensuring that all eligible institutions may*  
5           *apply to participate in the program established under*  
6           *this subtitle, without discrimination based on geog-*  
7           *raphy;*

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

10          (7) *minimizing the cost to taxpayers of exer-*  
11          *cising the authorities;*

12          (8) *promoting and engaging in financial edu-*  
13          *cation to would-be borrowers; and*

14          (9) *providing funding to eligible institutions*  
15          *that serve small businesses directly affected by the dis-*  
16          *charge of oil arising from the explosion on and sink-*  
17          *ing of the mobile offshore drilling unit Deepwater Ho-*  
18          *rizon and small businesses in communities that have*  
19          *suffered negative economic effects as a result of that*  
20          *discharge with particular consideration to States*  
21          *along the coast of the Gulf of Mexico.*

22 **SEC. 4106. REPORTS.**

23          *The Secretary shall provide to the appropriate com-*  
24          *mittees of Congress—*

1           (1) *within 7 days of the end of each month com-*  
2 *mencing with the first month in which transactions*  
3 *are made under the Program, a written report de-*  
4 *scribing all of the transactions made during the re-*  
5 *porting period pursuant to the authorities granted*  
6 *under this subtitle;*

7           (2) *after the end of March and the end of Sep-*  
8 *tember, commencing September 30, 2010, a written*  
9 *report on all projected costs and liabilities, all oper-*  
10 *ating expenses, including compensation for financial*  
11 *agents, and all transactions made by the Fund, which*  
12 *shall include participating institutions and amounts*  
13 *each institution has received under the Program; and*

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

20 **SEC. 4107. OVERSIGHT AND AUDITS.**

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

1       **(b) OFFICE OF SMALL BUSINESS LENDING FUND PRO-**  
2 **GRAM OVERSIGHT.**—

3           **(1) ESTABLISHMENT.**—*There is hereby estab-*  
4 *lished within the Office of the Inspector General of the*  
5 *Department of the Treasury a new office to be named*  
6 *the “Office of Small Business Lending Fund Program*  
7 *Oversight” to provide oversight of the Program.*

8           **(2) LEADERSHIP.**—*The Inspector General shall*  
9 *appoint a Special Deputy Inspector General for*  
10 *SBLF Program Oversight to lead the Office, with*  
11 *commensurate staff, who shall report directly to the*  
12 *Inspector General and who shall be responsible for the*  
13 *performance of all auditing and investigative activi-*  
14 *ties relating to the Program.*

15           **(3) REPORTING.**—

16           **(A) IN GENERAL.**—*The Inspector General*  
17 *shall issue a report no less than two times a year*  
18 *to the Congress and the Secretary devoted to the*  
19 *oversight provided by the Office, including any*  
20 *recommendations for improvements to the Pro-*  
21 *gram.*

22           **(B) RECOMMENDATIONS.**—*With respect to*  
23 *any deficiencies identified in a report under sub-*  
24 *paragraph (A), the Secretary shall either—*

1                   (i) take actions to address such defi-  
2                   ciencies; or

3                   (ii) certify to the appropriate commit-  
4                   tees of Congress that no action is necessary  
5                   or appropriate.

6                   (4) *COORDINATION.*—The Inspector General, in  
7                   maximizing the effectiveness of the Office, shall work  
8                   with other Offices of Inspector General, as appro-  
9                   priate, to minimize duplication of effort and ensure  
10                  comprehensive oversight of the Program.

11                  (5) *TERMINATION.*—The Office shall terminate at  
12                  the end of the 6-month period beginning on the date  
13                  on which all capital investments are repaid under the  
14                  Program or the date on which the Secretary deter-  
15                  mines that any remaining capital investments will  
16                  not be repaid.

17                  (6) *DEFINITIONS.*—For purposes of this sub-  
18                  section:

19                         (A) *OFFICE.*—The term “Office” means the  
20                         Office of Small Business Lending Fund Program  
21                         Oversight established under paragraph (1).

22                         (B) *INSPECTOR GENERAL.*—The term “In-  
23                         spectator General” means the Inspector General of  
24                         the Department of the Treasury.

1       (c) *GAO AUDIT.*—*The Comptroller General of the*  
2 *United States shall perform an annual audit of the Pro-*  
3 *gram and issue a report to the appropriate committees of*  
4 *Congress containing the results of such audit.*

5       (d) *REQUIRED CERTIFICATIONS.*—

6           (1) *ELIGIBLE INSTITUTION CERTIFICATION.*—  
7 *Each eligible institution that participates in the Pro-*  
8 *gram must certify that such institution is in compli-*  
9 *ance with the requirements of section 103.121 of title*  
10 *31, Code of Federal Regulations, a regulation that, at*  
11 *a minimum, requires financial institutions, as that*  
12 *term is defined in 31 U.S.C. 5312(a)(2) and*  
13 *(c)(1)(A), to implement reasonable procedures to*  
14 *verify the identity of any person seeking to open an*  
15 *account, to the extent reasonable and practicable,*  
16 *maintain records of the information used to verify the*  
17 *person's identity, and determine whether the person*  
18 *appears on any lists of known or suspected terrorists*  
19 *or terrorist organizations provided to the financial*  
20 *institution by any government agency.*

21           (2) *LOAN RECIPIENTS.*—*With respect to funds*  
22 *received by an eligible institution under the Program,*  
23 *any business receiving a loan from the eligible insti-*  
24 *tution using such funds after the date of the enact-*  
25 *ment of this Act shall certify to such eligible institu-*

1        *tion that the principals of such business have not been*  
2        *convicted of a sex offense against a minor (as such*  
3        *terms are defined in section 111 of the Sex Offender*  
4        *Registration and Notification Act (42 U.S.C. 16911)).*

5        *(e) PROHIBITION ON PORNOGRAPHY.—None of the*  
6        *funds made available under this subtitle may be used to*  
7        *pay the salary of any individual engaged in activities re-*  
8        *lated to the Program who has been officially disciplined for*  
9        *violations of subpart G of the Standards of Ethical Conduct*  
10       *for Employees of the Executive Branch for viewing,*  
11       *downloading, or exchanging pornography, including child*  
12       *pornography, on a Federal Government computer or while*  
13       *performing official Federal Government duties.*

14       **SEC. 4108. 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 subtitle shall be determined as*  
18       *provided under the Federal Credit Reform Act of 1990 (2*  
19       *U.S.C. 661 et seq.).*

20       *(b) FUNDS MADE AVAILABLE.—There are hereby ap-*  
21       *propriated, out of funds in the Treasury not otherwise ap-*  
22       *propriated, such sums as may be necessary to pay the costs*  
23       *of \$30,000,000,000 of capital investments in eligible institu-*  
24       *tions, including the costs of modifying such investments,*

1 *and reasonable costs of administering the program of mak-*  
2 *ing, holding, managing, and selling the capital investments.*

3 **SEC. 4109. TERMINATION AND CONTINUATION OF AUTHORI-**  
4 **TIES.**

5 (a) *TERMINATION OF INVESTMENT AUTHORITY.—The*  
6 *authority to make capital investments in eligible institu-*  
7 *tions, including commitments to purchase preferred stock*  
8 *or other instruments, provided under this subtitle shall ter-*  
9 *minate 1 year after the date of enactment of this Act.*

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

13 **SEC. 4110. PRESERVATION OF AUTHORITY.**

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

16 **SEC. 4111. ASSURANCES.**

17 (a) *SMALL BUSINESS LENDING FUND SEPARATE*  
18 *FROM TARP.—The Small Business Lending Fund Pro-*  
19 *gram is established as separate and distinct from the Trou-*  
20 *bled Asset Relief Program established by the Emergency*  
21 *Economic Stabilization Act of 2008. An institution shall*  
22 *not, by virtue of a capital investment under the Small Busi-*  
23 *ness Lending Fund Program, be considered a recipient of*  
24 *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 Program,  
3 there is a change in law that modifies the terms of the in-  
4 vestment or program in a materially adverse respect for the  
5 eligible institution, the eligible institution may, after con-  
6 sultation with the appropriate Federal banking agency for  
7 the eligible institution, repay the investment without im-  
8 pediment.

9       **SEC. 4112. STUDY AND REPORT WITH RESPECT TO WOMEN-**  
10                   **OWNED, VETERAN-OWNED, AND MINORITY-**  
11                   **OWNED BUSINESSES.**

12       (a) *STUDY.*—The Secretary shall conduct a study of  
13 the impact of the Program on women-owned businesses, vet-  
14 eran-owned businesses, and minority-owned businesses.

15       (b) *REPORT.*—Not later than one year after the date  
16 of enactment of this Act, the Secretary shall submit to Con-  
17 gress a report on the results of the study conducted pursuant  
18 to subsection (a). To the extent possible, the Secretary shall  
19 disaggregate the results of such study by ethnic group and  
20 gender.

21       (c) *INFORMATION PROVIDED TO THE SECRETARY.*—  
22 Eligible institutions that participate in the Program shall  
23 provide the Secretary with such information as the Sec-  
24 retary may require to carry out the study required by this  
25 section.

1 **SEC. 4113. SENSE OF CONGRESS.**

2 *It is the sense of Congress that the Federal Deposit In-*  
 3 *surance Corporation and other bank regulators are sending*  
 4 *mixed messages to banks regarding regulatory capital re-*  
 5 *quirements and lending standards, which is a contributing*  
 6 *cause of decreased small business lending and increased reg-*  
 7 *ulatory uncertainty at community banks.*

8 **Subtitle B—Other Provisions**9 **PART I—SMALL BUSINESS EXPORT PROMOTION**10 **INITIATIVES**11 **SEC. 4221. SHORT TITLE.**

12 *This part may be cited as the “Export Promotion Act*  
 13 *of 2010”.*

14 **SEC. 4222. GLOBAL BUSINESS DEVELOPMENT AND PRO-**  
 15 **MOTION ACTIVITIES OF THE DEPARTMENT OF**  
 16 **COMMERCE.**

17 *(a) INCREASE IN EMPLOYEES WITH RESPONSIBILITY*  
 18 *FOR GLOBAL BUSINESS DEVELOPMENT AND PROMOTION*  
 19 *ACTIVITIES.—*

20 *(1) IN GENERAL.—During the 24-month period*  
 21 *beginning on the date of the enactment of this Act, the*  
 22 *Secretary of Commerce shall increase the number of*  
 23 *full-time departmental employees whose primary re-*  
 24 *sponsibilities involve promoting or facilitating par-*  
 25 *ticipation by United States businesses in the global*  
 26 *marketplace and facilitating the entry into, or expan-*