



REP. TOM PRICE, M.D. (R-GA), CHAIRMAN
PAUL TELLER, EXECUTIVE DIRECTOR
424 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

rsc.price.house.gov

ph (202) 226-9717 / fax (202) 226-1633

Legislative Bulletin.....June 16, 2010

Contents:

H.R. 5297—Small Business Lending Fund Act

Key Conservative Concerns

Take-Away Points

--**\$33 Billion Bailout Fund:** The legislation establishes a \$33 billion bailout fund modeled on the TARP program. Most conservatives would advocate ending infusions of taxpayer money into the banking system. The principle of this legislation is that the TARP model should be extended to evermore sectors of the economy.

--**Federalism Concerns:** The \$2 billion Small Business Credit Initiative provides incentives for states to create programs intended to increase the amount of capital made available by private lenders to small businesses, which would punish states that chose to instead be frugal with taxpayer money. This turns the concept of federalism on its head

For more details on these concerns, see below.

H.R. 5297—Small Business Lending Fund Act (Rep. Frank, D-MA)

Order of Business: The House will consider H.R. 5297 under a closed rule ([H.Res. 1436](#)). The rule waives all points of order against consideration of the bill except those arising under clause 9 (earmark rule) and 10 (“PAYGO”) of rule XXI. The rule provides for 30 minutes of debate equally divided between the chair and minority ranking member of the House Financial Services Committee, and 30 minutes equally divided and controlled by the chair and ranking member of the Committee on Small Business. The rule waives all points of order against consideration of the bill except those arising under clause 9 (earmark rule) and 10 (“PAYGO”) of rule XXI. The rule makes in order 17 amendments described below (beginning on page 4). The rule self-executes an amendment in the nature of a substitute to H.R. 5297. The summary below analyzes the bill as modified by this amendment.

The same rule also provided for consideration of H.R. 5486 under a structured rule. The rule would further direct the Clerk to add the text of H.R. 5486 to the text of H.R. 5297 in engrossment of the bill (upon passage of both).

Finally, the rule waives the two-thirds majority requirement for same day rules through June 18, 2010 for any rule providing for consideration of “extenders” legislation. The rule also provides for consideration of legislation under suspension of the rules through June 18, 2010.

Summary:

Small Business Lending Fund: The legislation establishes a \$30 billion Small Business Lending Fund to be administered by the Secretary of the Treasury.

The bill defines eligible institutions as:

- Any insured depository institution that is not controlled by a bank holding company or savings and loan holding company that is also an eligible institution;
- Any insured depository institution that has assets equal to or less than \$10 billion (as reported in fourth quarter 2009);
- Any insured depository institution that is not directly or indirectly controlled by any company or other entity that has total consolidated assets of more than \$10 billion;
- Any bank holding company with assets equal to or less than \$10 billion; and
- Any savings and loan holding company with total assets equal to or less than \$10 billion.

Applications:

- Eligible institutions with **\$1 billion or less** may apply to receive a capital investment from the fund in an amount not to exceed 5 percent of risk-weighted assets;
- Eligible institutions with assets of between **\$1 billion and \$10 billion** may apply to receive a capital investment from the fund not exceeding 3 percent of risk-weighted assets;
- For eligible institutions that are **banking holding companies**, total assets shall be measured based on the combined total assets reported in the call report of the insured depository institution subsidiaries as of the end of the fourth quarter of calendar year 2009, and risk-weighted assets shall be measured based on the combined risk-weighted assets of the insured depository institution subsidiaries, as reported in the call report immediately preceding the date of application; and
- The Secretary may use the fund to purchase preferred stock or other financial instruments from the top-tier bank holding company or savings and loan holding company eligible institutions that are **controlled by holding companies**.

Small business lending plan: To apply for a capital investment under the program, the applicant must deliver to the appropriate federal banking agency a small business lending plan describing how the applicant’s strategy and operating goals will allow it to address the needs of small businesses in the areas it serves.

Any preferred stock or other financial instrument issued to the Treasury by an eligible institution receiving a capital investment under the program shall provide that:

- The rate at which the dividends or interests are payable is 5 percent annually;

- Within two years after date of enactment, the date of capital investment under the program, the rate may be adjusted based on the amount of an eligible institution's small business lending. Changes in the amount of small business lending shall be measured against the amount of small business lending reported by the eligible institution in its call report for the last quarter in calendar year 2009 or the average amount of small business lending reported by the eligible institution in all call reports for calendar year 2009, whichever is lower minus: a) net loan charge offs with respect to small business lending; and b) gains realized by the eligible institution resulting from mergers, acquisitions or purchases of loans after originations and syndication, which adjustments shall be determined in accordance with guidance promulgated by the Secretary.

Repayment deadline: The capital reinvestment received by an eligible institution under the program shall be repaid by the end of the 10-year period that begins on the date of the capital investment under the program.

Minority Outreach: The bill requires participating institutions to make “use of print, radio, television or electronic media outlets which target organizations, trade associations, and individuals that represent or work within or are member of minority communities.” The legislation delegates to the Secretary of the Treasury broad authority to carry out the provisions of the bill. The bill directs the Secretary of the Treasury to consider the impact on “providing funding to eligible institutions that serve small businesses that are minority- and women-owned and that also serve low- and moderate-income, minority, and other underserved or rural communities.” Finally, the legislation requires the Secretary to do a study to determine the number of women-owned businesses and minority-owned businesses that receive assistance from the legislation. The legislation directs the Secretary to use this data to “promote the purposes of the program as the Secretary may require.”

The authority to make capital investments in eligible institutions, including commitments to purchase preferred stock or other instruments, provided under this title terminates 1 year after the date of enactment.

Proceeds from the fund will be used to reduce the public debt (though the fund is expected to, on *net*, increase the deficit assuming appropriation of funds).

Small Business Credit Initiative: The legislation establishes a \$2 billion State Small Business Credit Initiative to be administered by the Secretary of the Treasury. The formula would require that all states receive at least 0.9% of funds under program.

The legislation requires states make use of funds as follows:

- For making federal contributions to, or for the account of, an approved state program.
- As collateral for a qualifying loan or swap funding facility.
- Paying administrative costs incurred by the state in implementing an approved state program in an amount not to exceed 3 percent of costs.

For a state capital access program to be approved, it must:

- Provide portfolio insurance for business loans based on a separate loan-loss reserve fund for each financial institution;
- Require insurance premiums to be paid by the financial institution lenders and by the business borrowers to the reserve fund to have their loans enrolled in the reserve fund;
- Provide for contributions to be made by the state to the reserve fund in amounts at least equal to the sum of the amount of the insurance premium charges paid by the borrower and the financial institution to the reserve fund for any newly enrolled loan;
- Provide its portfolio insurance solely for loans that have 500 employees or less or a loan amount that does not exceed \$5 million.

Small Business Early-Stage Investment Program: The legislation creates a small business early-stage investment program to be carried out by the SBA Administrator. An applicant for the program must:

- Include a business plan describing how the applicant intends to make successful venture capital investments in early-stage small businesses and direct capital to small business concerns in targeted industries or other business sectors.
- Include information regarding the relevant venture capital investment qualifications and backgrounds of the individuals responsible for the management of the applicant.

The legislation places a limit of \$100 million on equity financings made to a participating investment company.

AMENDMENTS MADE IN ORDER UNDER THE RULE

1. ***Israel (D-NY)***. The amendment adds veteran-owned businesses (defined as a business that is more than 50% owned by veterans) to the groups that will receive outreach under the Small Business Lending Fund, to the considerations the Secretary of the Treasury should consider in carrying out this bill, and to the study required by the bill on the numbers of certain individuals that are receiving assistance from the bill.
2. ***Schraeder (D-OR)***. The amendment creates a \$300 million (authorization level, funds subject to appropriation) small business borrower assistance program, to be administered by the Small Business Administrator, to provide payments of principal and interest on qualifying small business loans.
3. ***Nye (D-VA)***. The amendment makes four changes to the Small Business Lending Fund, which according to the sponsor, are intended to ensure small businesses are not excluded from certain programs in the bill: 1) change the measuring tool determining a banks increase of small business lending from dollar amount to the actual number of loans made to small businesses; 2) include Small Business Lending Centers with less than \$10 billion in assets as qualified financial institutions to participate in the SBLF; 3) add the SBA definition to define

what a small business is; and 4) change the base lending amount from a comparison of the 4Q 2009, to a full year of data.

4. ***Minnick (D-ID)***. The amendment would make non-owner occupied commercial real estate loans eligible for the program.
5. ***Perlmutter (D-CO)***. The amendment allows small banks to amortize any loss or write-down on a quarterly straight line basis over a period of up to ten years.
6. ***Price (R-GA)***. The amendment expresses the sense of Congress that: “the Federal Deposit Insurance Corporation and other bank regulators are sending mixed messages to banks regarding regulatory capital requirements and lending standards, which is a contributing cause of decreased small business lending and increased regulatory uncertainty community banks.”
7. ***Green (D-TX)***. The amendment requires institutions participating in the Small Business Lending program to:
 - Disclose on every applicable loan transaction that the loan is being made possible by the program;
 - Disclose the same information on its website, as well as other information specified by the amendment.
8. ***Driehaus (D-OH)***. The amendment establishes an Office of Small Business Lending Fund Program Oversight.
9. ***Peters (D-MI)***. The amendment requires the Secretary to recoup funds under the Small Business Credit Initiative program if an audit includes a finding that there was an intentional or reckless misuse of transferred funds by the state before the audit began.
10. ***Miller (D-NC)***. Allows an applicant to the Small Business Lending Program to include lending reported as construction, land development, and other land loans in its quarterly call report as small business lending.
11. ***Michaud (D-ME)***. The amendment would allow state-run venture capital fund programs to count as state other credit support programs for purposes of qualifying for the Small Business Lending Program and the Small Business Credit Initiative Program.
12. ***Jackson-Lee (D-TX)***. The amendment would add the goal of providing funding for eligible institutions that serve small businesses directly affected by the oil spill in the Gulf to the list of considerations the Secretary of the Treasury should consider in carrying out this bill.
13. ***Sanchez (D-CA)***. The amendment adds as part of the selection criteria for investment companies the extent to which the applicant will concentrate investment activities on small business concerns in targeted industries.

- 14. Cuellar (D-TX).** The amendment adds “increasing the opportunity for small business development in areas with high unemployment rates that exceed the national average” to the list of considerations the Secretary of the Treasury should consider in carrying out this bill.
- 15. Braley (D-IA).** The amendment adds a “Plain Writing Act” to the legislation. Among other things, this amendment requires, within one year after enactment, each agency to use plain writing in every covered document of the agency.
- 16. Loeb sack (D-IA).** The amendment expresses the sense of the Congress that agriculture operations, farms, and rural communities should receive equal considerations through lending activities for small businesses in the bill.
- 17. Chu (D-CA).** The amendment expands several minority outreach provisions in the bill. Specifically, the amendment requires applicants for the small business lending program to “provide linguistically and culturally appropriate outreach, where appropriate.” In addition, the underlying bill requires a study on the number of minority-owned businesses that receive assistance as a result of the program. This amendment requires the Secretary to disaggregate the results of the report on women-owned and minority-owned business by ethnic group and gender.

Cost to Taxpayers: Based on the reported version of the bill, CBO estimates the legislation would increase authorized discretionary spending (subject to appropriation) by \$3.37 billion over five years.

Committee Action: The legislation was introduced on May 13, 2010, and was subsequently considered by the House Financial Services Committee, and ordered to be reported (as amended), on May 19, 2010 by a vote of 42 to 23.

Administration Position: The Statement of Administration Policy (SAP) may be found [here](#). It states in part: “The Administration strongly supports House passage of H.R. 5297.”

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the legislation creates a **\$33 billion** bailout fund modeled on the TARP program.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: The CBO report states (for the version reported out of committee): “H.R. 5297 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.”

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: According to the [committee report](#): “H.R. 5297 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

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

RSC Staff Contact: Brad Watson, brad.watson@mail.house.gov, (202) 226-9719