

by the Secretary under subsection (b) to the participating State; and

(B) the term “ $\frac{1}{3}$ ” means—

(i) in the case of the first  $\frac{1}{3}$  and second  $\frac{1}{3}$ , an amount equal to 33 percent of a participating State’s allocated amount; and

(ii) in the case of the last  $\frac{1}{3}$ , an amount equal to 34 percent of a participating State’s allocated amount.

(Pub. L. 111–240, title III, §3003, Sept. 27, 2010, 124 Stat. 2570.)

### § 5703. Approving States for participation

#### (a) Application

Any State may apply to the Secretary for approval to be a participating State under the Program and to be eligible for an allocation of Federal funds under the Program.

#### (b) General approval criteria

The Secretary shall approve a State to be a participating State, if—

(1) a specific department, agency, or political subdivision of the State has been designated to implement a State program and participate in the Program;

(2) all legal actions necessary to enable such designated department, agency, or political subdivision to implement a State program and participate in the Program have been accomplished;

(3) the State has filed an application with the Secretary for approval of a State capital access program under section 5704 of this title or approval as a State other credit support program under section 5705 of this title, in each case within the time period provided in the respective section; and

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

(A) conforms to the requirements of this chapter;

(B) ensures that the State program complies with such national standards as are established by the Secretary under section 5708(a)(2) of this title;

(C) sets forth internal control, compliance, and reporting requirements as established by the Secretary, and such other terms and conditions necessary to carry out the purposes of this chapter, including an agreement by the State to allow the Secretary to audit State programs;

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

(E) includes an agreement by the State to deliver to the Secretary, and update annually, a schedule describing how the State intends to apportion among its State programs the Federal funds allocated to the State.

#### (c) Contractual arrangements for implementation of State programs

A State may be approved to be a participating State, and be eligible for an allocation of Federal funds under the Program, if the State has contractual arrangements for the implementa-

tion and administration of its State program with—

(1) an existing, approved State program administered by another State; or

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

#### (d) Special permission

##### (1) Circumstances when a municipality may apply directly

If a State does not, within 60 days after September 27, 2010, file with the Secretary a notice of its intent to apply for approval by the Secretary of a State program or within 9 months after September 27, 2010, file with the Secretary a complete application for approval of a State program, the Secretary may grant to municipalities of that State a special permission that will allow them to apply directly to the Secretary without the State for approval to be participating municipalities.

##### (2) Timing requirements applicable to municipalities applying directly

To qualify for the special permission, a municipality of a State shall be required, within 12 months after September 27, 2010, to file with the Secretary a complete application for approval by the Secretary of a State program.

##### (3) Notices of intent and applications from more than 1 municipality

A municipality of a State may combine with 1 or more other municipalities of that State to file a joint notice of intent to file and a joint application.

##### (4) Approval criteria

The general approval criteria in paragraphs (2) and (4) shall apply.

##### (5) Allocation to municipalities

###### (A) If more than 3

If more than 3 municipalities, or combination of municipalities as provided in paragraph (3), of a State apply for approval by the Secretary to be participating municipalities under this subsection, and the applications meet the approval criteria in paragraph (4), the Secretary shall allocate Federal funds to the 3 municipalities with the largest populations.

###### (B) If 3 or fewer

If 3 or fewer municipalities, or combination of municipalities as provided in paragraph (3), of a State apply for approval by the Secretary to be participating municipalities under this subsection, and the applications meet the approval criteria in paragraph (4), the Secretary shall allocate Federal funds to each applicant municipality or combination of municipalities.

##### (6) Apportionment of allocated amount among participating municipalities

If the Secretary approves municipalities to be participating municipalities under this subsection, the Secretary shall apportion the full amount of the Federal funds that are allocated to that State to municipalities that are approved under this subsection in amounts pro-

portionate to the population of those municipalities, based on the most recent available decennial census.

**(7) Approving State programs for municipalities**

If the Secretary approves municipalities to be participating municipalities under this subsection, the Secretary shall take into account the additional considerations in section 5705(d) of this title in making the determination under section 5704 or 5705 of this title that the State program or programs to be implemented by the participating municipalities, including a State capital access program, is eligible for Federal contributions to, or for the account of, the State program.

(Pub. L. 111-240, title III, § 3004, Sept. 27, 2010, 124 Stat. 2573.)

**§ 5704. Approving State capital access programs**

**(a) Application**

A participating State that establishes a new, or has an existing, State capital access program that meets the eligibility criteria in subsection (c) may apply to Secretary to have the State capital access program approved as eligible for Federal contributions to the reserve fund.

**(b) Approval**

The Secretary shall approve such State capital access program as eligible for Federal contributions to the reserve fund if—

- (1) within 60 days after September 27, 2010, the State has filed with the Secretary a notice of intent to apply for approval by the Secretary of a State capital access program;
- (2) within 9 months after September 27, 2010, the State has filed with the Secretary a complete application for approval by the Secretary of a capital access program;
- (3) the State satisfies the requirements of subsections (a) and (b) of section 5703 of this title; and
- (4) the State capital access program meets the eligibility criteria in subsection (c).

**(c) Eligibility criteria for State capital access programs**

For a State capital access program to be approved under this section, that program shall be required to be a program of the State that—

- (1) provides portfolio insurance for business loans based on a separate loan-loss reserve fund for each financial institution;
- (2) requires insurance premiums to be paid by the financial institution lenders and by the business borrowers to the reserve fund to have their loans enrolled in the reserve fund;
- (3) provides for contributions to be made by the State to the reserve fund in amounts at least equal to the sum of the amount of the insurance premium charges paid by the borrower and the financial institution to the reserve fund for any newly enrolled loan; and
- (4) provides its portfolio insurance solely for loans that meet both the following requirements:

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

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

**(d) Federal contributions to approved State capital access programs**

A State capital access program approved under this section will be eligible for receiving Federal contributions to the reserve fund in an amount equal to the sum of the amount of the insurance premium charges paid by the borrowers and by the financial institution to the reserve fund for loans that meet the requirements in subsection (c)(4). A participating State may use the Federal contribution to make its contribution to the reserve fund of an approved State capital access program.

**(e) Minimum program requirements for State capital access programs**

The Secretary shall, by regulation or other guidance, prescribe Program requirements that meet the following minimum requirements:

**(1) Experience and capacity**

The participating State shall determine for each financial institution that participates in the State capital access program, after consultation with the appropriate Federal banking agency or, in the case of a financial institution that is a nondepository community development financial institution, the Community Development Financial Institution Fund, that the financial institution has sufficient commercial lending experience and financial and managerial capacity to participate in the approved State capital access program. The determination by the State shall not be reviewable by the Secretary.

**(2) Investment authority**

Subject to applicable State law, the participating State may invest, or cause to be invested, funds held in a reserve fund by establishing a deposit account at the financial institution lender in the name of the participating State. In the event that funds in the reserve fund are not deposited in such an account, such funds shall be invested in a form that the participating State determines is safe and liquid.

**(3) Loan terms and conditions to be determined by agreement**

A loan to be filed for enrollment in an approved State capital access program may be made with such interest rate, fees, and other terms and conditions, and the loan may be enrolled in the approved State capital access program and claims may be filed and paid, as agreed upon by the financial institution lender and the borrower, consistent with applicable law.

**(4) Lender capital at-risk**

A loan to be filed for enrollment in the State capital access program shall require the financial institution lender to have a meaningful amount of its own capital resources at risk in the loan.

**(5) Premium charges minimum and maximum amounts**

The insurance premium charges payable to the reserve fund by the borrower and the fi-