

(4) the State has prescribed a form of participation agreement to be entered into between it and each participating financial institution that is consistent with the requirements and purposes of this subchapter; and

(5) the State and the Fund have executed a reimbursement agreement that conforms to the requirements of this subchapter.

(c) Existing State programs

(1) In general

A State that is not a participating State, but that has its own capital access program providing portfolio insurance for business loans (based on a separate loss reserve fund for each financial institution), may apply at any time to the Fund to be approved to be a participating State. The Fund shall approve such State to be a participating State, and to be eligible for reimbursements by the Fund pursuant to section 4747 of this title, if the State—

(A) satisfies the requirements of subsections (a) and (b) of this section; and

(B) certifies that each affected financial institution has satisfied the requirements of section 4744 of this title.

(2) Applicable terms of participation

(A) Status of institutions

If a State is approved for participation under paragraph (1), each financial institution with a participation agreement in effect with the participating State shall immediately be considered a participating financial institution. Reimbursements may be made under section 4747¹ of this title in connection with all contributions made to the reserve fund by the State in connection with lending that occurs on or after the date on which the Fund approves the State for participation.

(B) Effective date of participation

If an amended participation agreement that conforms with section 4745 of this title is required in order to secure participation approval by the Fund, contributions subject to reimbursement under section 4747 of this title shall include only those contributions made to a reserve fund with respect to loans enrolled on or after the date that an amended participation agreement between the participating State and the participating financial institution becomes effective.

(C) Use of accumulated reserve funds

A State that is approved for participation in accordance with this subsection may continue to implement the program² utilizing the reserve funds accumulated under the State program.

(d) Prior appropriations requirement

The Fund shall not approve a State for participation in the Program until at least \$50,000,000 has been appropriated to the Fund (subject to an appropriations Act), without fiscal year limitation, for the purpose of making reimbursements pursuant to section 4747 of this title and otherwise carrying out this subchapter.

(e) Amendments to agreements

If a State that has been approved to be a participating State wishes to amend its form of participation agreement and continue to be a participating State, such State shall submit such amendment for review by the Fund in accordance with subsection (b)(4) of this section. Any such amendment shall become effective only after it has been approved by the Fund.

(Pub. L. 103-325, title II, §253, Sept. 23, 1994, 108 Stat. 2205.)

REFERENCES IN TEXT

Section 4747 of this title, referred to in subsec. (c)(2)(A), was in the original "section 237" and was translated as reading "section 257" meaning section 257 of Pub. L. 103-325, to reflect the probable intent of Congress. Pub. L. 103-325 does not contain a section 237.

§ 4744. Participation agreements

(a) In general

A participating State may enter into a participation agreement with any financial institution determined by the participating State, after consultation with the appropriate Federal banking agency, to have sufficient commercial lending experience and financial and managerial capacity to participate in the Program. The determination by the State shall not be reviewable by the Fund.

(b) Participating financial institutions

Upon entering into the participation agreement with the participating State, the financial institution shall become a participating financial institution eligible to enroll loans under the Program.

(Pub. L. 103-325, title II, §254, Sept. 23, 1994, 108 Stat. 2207.)

§ 4745. Terms of participation agreements

(a) In general

The participation agreement to be entered into by a participating State and a participating financial institution shall include all provisions required by this section, and shall not include any provisions inconsistent with the provisions of this section.

(b) Establishment of separate reserve funds

A separate reserve fund shall be established by the participating State for each participating financial institution. All funds credited to a reserve fund shall be the exclusive property of the participating State. Each reserve fund shall be an administrative account for the purposes of—

(1) receiving all required premium charges to be paid by the borrower and participating financial institution and contributions by the participating State; and

(2) disbursing funds, either to cover losses sustained by the participating financial institution in connection with loans made under the Program, or as contemplated by subsections (d) and (r) of this section.

(c) Investment authority

Subject to applicable State law, the participating State may invest, or cause to be invested, funds held in a reserve fund by establish-

¹ See References in Text note below.

² So in original. Probably should be capitalized.