

pating State to, or for the account of, an approved State program that is made with Federal funds allocated to the State by the Secretary under section 5702 of this title.

**(5) Financial institution**

The term “financial institution” means any insured depository institution, insured credit union, or community development financial institution, as those terms are each defined in section 4702 of this title.

**(6) Participating State**

The term “participating State” means any State that has been approved for participation in the Program under section 5703 of this title.

**(7) Program**

The term “Program” means the State Small Business Credit Initiative established under this chapter.

**(8) Qualifying loan or swap funding facility**

The term “qualifying loan or swap funding facility” means a contractual arrangement between a participating State and a private financial entity under which—

(A) the participating State delivers funds to the entity as collateral;

(B) the entity provides funding from the arrangement back to the participating State; and

(C) the full amount of resulting funding from the arrangement, less any fees and other costs of the arrangement, is contributed to, or for the account of, an approved State program.

**(9) Reserve fund**

The term “reserve fund” means a fund, established by a participating State, dedicated to a particular financial institution lender, for the purposes of—

(A) depositing all required premium charges paid by the financial institution lender and by each borrower receiving a loan under an approved State program from that financial institution lender;

(B) depositing contributions made by the participating State, including State contributions made with Federal contributions; and

(C) covering losses on enrolled loans by disbursing accumulated funds.

**(10) State**

The term “State” means—

(A) a State of the United States;

(B) the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, Guam, American Samoa, and the United States Virgin Islands;

(C) when designated by a State of the United States, a political subdivision of that State that the Secretary determines has the capacity to participate in the Program; and

(D) under the circumstances described in section 5703(d) of this title, a municipality of a State of the United States to which the Secretary has given a special permission under section 5703(d) of this title.

**(11) State capital access program**

The term “State capital access program” means a program of a State that—

(A) uses public resources to promote private access to credit; and

(B) meets the eligibility criteria in section 5704(c) of this title.

**(12) State other credit support program**

The term “State other credit support program”—

(A) means a program of a State that—

(i) uses public resources to promote private access to credit;

(ii) is not a State capital access program; and

(iii) meets the eligibility criteria in section 5705(c) of this title; and

(B) includes, collateral support programs, loan participation programs, State-run venture capital fund programs, and credit guarantee programs.

**(13) State program**

The term “State program” means a State capital access program or a State other credit support program.

**(14) Secretary**

The term “Secretary” means the Secretary of the Treasury.

(Pub. L. 111-240, title III, §3002, Sept. 27, 2010, 124 Stat. 2568.)

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in par. (2)(B), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified principally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

SHORT TITLE

Pub. L. 111-240, title III, §3001, Sept. 27, 2010, 124 Stat. 2568, provided that: “This title [enacting this chapter] may be cited as the ‘State Small Business Credit Initiative Act of 2010.’”

**§ 5702. Federal funds allocated to States**

**(a) Program established; purpose**

There is established the State Small Business Credit Initiative, to be administered by the Secretary. Under the Program, the Secretary shall allocate Federal funds to participating States and make the allocated funds available to the participating States as provided in this section for the uses described in this section.

**(b) Allocation formula**

**(1) In general**

Not later than 30 days after September 27, 2010, the Secretary shall allocate Federal funds to participating States so that each State is eligible to receive an amount equal to the average of the respective amounts that the State—

(A) would receive under the 2009 allocation, as determined under paragraph (2); and

(B) would receive under the 2010 allocation, as determined under paragraph (3).

**(2) 2009 allocation formula**

**(A) In general**

The Secretary shall determine the 2009 allocation by allocating Federal funds among

the States in the proportion that each such State's 2008 State employment decline bears to the aggregate of the 2008 State employment declines for all States.

**(B) Minimum allocation**

The Secretary shall adjust the allocations under subparagraph (A) for each State to the extent necessary to ensure that no State receives less than 0.9 percent of the Federal funds.

**(C) 2008 state employment decline defined**

In this paragraph and with respect to a State, the term "2008 State employment decline" means the excess (if any) of—

(i) the number of individuals employed in such State determined for December 2007; over

(ii) the number of individuals employed in such State determined for December 2008.

**(3) 2010 allocation formula**

**(A) In general**

The Secretary shall determine the 2010 allocation by allocating Federal funds among the States in the proportion that each such State's 2009 unemployment number bears to the aggregate of the 2009 unemployment numbers for all of the States.

**(B) Minimum allocation**

The Secretary shall adjust the allocations under subparagraph (A) for each State to the extent necessary to ensure that no State receives less than 0.9 percent of the Federal funds.

**(C) 2009 unemployment number defined**

In this paragraph and with respect to a State, the term "2009 unemployment number" means the number of individuals within such State who were determined to be unemployed by the Bureau of Labor Statistics for December 2009.

**(c) Availability of allocated amount**

The amount allocated by the Secretary to each participating State under subsection (b) shall be made available to the State as follows:

**(1) Allocated amount generally to be available to State in one-thirds**

**(A) In general**

The Secretary shall—

(i) apportion the participating State's allocated amount into thirds;

(ii) transfer to the participating State the first  $\frac{1}{3}$  when the Secretary approves the State for participation under section 5703 of this title; and

(iii) transfer to the participating State each successive  $\frac{1}{3}$  when the State has certified to the Secretary that it has expended, transferred, or obligated 80 percent of the last transferred  $\frac{1}{3}$  for Federal contributions to, or for the account of, State programs.

**(B) Authority to withhold pending audit**

The Secretary may withhold the transfer of any successive  $\frac{1}{3}$  pending results of a financial audit.

**(C) Inspector General audits**

**(i) In general**

The Inspector General of the Department of the Treasury shall carry out an audit of the participating State's use of allocated Federal funds transferred to the State.

**(ii) Recoupment of misused transferred funds required**

The allocation agreement between the Secretary and the participating State shall provide that the Secretary shall recoup any allocated Federal funds transferred to the participating State if the results of the an audit include a finding that there was an intentional or reckless misuse of transferred funds by the State.

**(iii) Penalty for misstatement**

Any participating State that is found to have intentionally misstated any report issued to the Secretary under the Program shall be ineligible to receive any additional funds under the Program. Funds that had been allocated or that would otherwise have been allocated to such participating State shall be paid into the general fund of the Treasury for reduction of the public debt.

**(iv) Municipalities**

In this subparagraph, the term "participating State" shall include a municipality given special permission to participate in the Program, under section 5703(d) of this title.

**(D) Exception**

The Secretary may, in the Secretary's discretion, transfer the full amount of the participating State's allocated amount to the State in a single transfer if the participating State applies to the Secretary for approval to use the full amount of the allocation as collateral for a qualifying loan or swap funding facility.

**(2) Transferred amounts**

Each amount transferred to a participating State under this section shall remain available to the State until used by the State as permitted under paragraph (3).

**(3) Use of transferred funds**

Each participating State may use funds transferred to it under this section only—

(A) for making Federal contributions to, or for the account of, an approved State program;

(B) as collateral for a qualifying loan or swap funding facility;

(C) in the case of the first  $\frac{1}{3}$  transferred, for paying administrative costs incurred by the State in implementing an approved State program in an amount not to exceed 5 percent of that first  $\frac{1}{3}$ ; or

(D) in the case of each successive  $\frac{1}{3}$  transferred, for paying administrative costs incurred by the State in implementing an approved State program in an amount not to exceed 3 percent of that successive  $\frac{1}{3}$ .

**(4) Termination of availability of amounts not transferred within 2 years of participation**

Any portion of a participating State's allocated amount that has not been transferred to the State under this section by the end of the 2-year period beginning on the date that the Secretary approves the State for participation may be deemed by the Secretary to be no longer allocated to the State and no longer available to the State and shall be returned to the General Fund of the Treasury.

**(5) Transferred amounts not assistance**

The amounts transferred to a participating State under this section shall not be considered assistance for purposes of subtitle V of title 31.

**(6) Definitions**

In this section—

(A) the term “allocated amount” means the total amount of Federal funds allocated 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 implementation 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 para-