

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-

ancial institution lender shall be prescribed by the financial institution lender, within minimum and maximum limits that require that the sum of the insurance premium charges paid in connection with a loan by the borrower and the financial institution lender may not be less than 2 percent nor more than 7 percent of the amount of the loan enrolled in the approved State capital access program.

(6) State contributions

In enrolling a loan in an approved State capital access program, the participating State may make a contribution to the reserve fund to supplement Federal contributions made under this Program.

(7) Loan purpose

(A) Particular loan purpose requirements and prohibitions

In connection with the filing of a loan for enrollment in an approved State capital access program, the financial institution lender—

(i) shall obtain an assurance from each borrower that—

(I) the proceeds of the loan will be used for a business purpose;

(II) the loan will not be used to finance such business activities as the Secretary, by regulation, may proscribe as prohibited loan purposes for enrollment in an approved State capital access program; and

(III) the borrower is not—

(aa) an executive officer, director, or principal shareholder of the financial institution lender;

(bb) a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lender; or

(cc) a related interest of any such executive officer, director, principal shareholder, or member of the immediate family;

(ii) shall provide assurances to the participating State that the loan has not been made in order to place under the protection of the approved State capital access program prior debt that is not covered under the approved State capital access program and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender;

(iii) shall not allow the enrollment of a loan to a borrower that is a refinancing of a loan previously made to that borrower by the financial institution lender or an affiliate of the financial institution lender; and

(iv) may include additional restrictions on the eligibility of loans or borrowers that are not inconsistent with the provisions and purposes of this chapter, including compliance with all applicable Federal and State laws, regulations, ordinances, and Executive orders.

(B) Definitions

In this paragraph, the terms “executive officer”, “director”, “principal shareholder”,

“immediate family”, and “related interest” refer to the same relationship to a financial institution lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

(8) Capital access for small businesses in underserved communities

At the time that a State applies to the Secretary to have the State capital access program approved as eligible for Federal contributions, the State shall deliver to the Secretary a report stating how the State plans to use the Federal contributions to the reserve fund to provide access to capital for small businesses in low- and moderate-income, minority, and other underserved communities, including women- and minority-owned small businesses.

(Pub. L. 111-240, title III, § 3005, Sept. 27, 2010, 124 Stat. 2574.)

§ 5705. Approving collateral support and other innovative credit access and guarantee initiatives for small businesses and manufacturers

(a) Application

A participating State that establishes a new, or has an existing, credit support program that meets the eligibility criteria in subsection (c) may apply to the Secretary to have the State other credit support program approved as eligible for Federal contributions to, or for the account of, the State program.

(b) Approval

The Secretary shall approve such State other credit support program as eligible for Federal contributions to, or for the account of, the program if—

- (1) the Secretary determines that the State satisfies the requirements of paragraphs (1) through (3) of section 5704(b) of this title;
- (2) the Secretary determines that the State other credit support program meets the eligibility criteria in subsection (c);
- (3) the Secretary determines the State other credit support program to be eligible based on the additional considerations in subsection (d); and
- (4) within 9 months after September 27, 2010, the State has filed with Treasury a complete application for Treasury approval.

(c) Eligibility criteria for State other credit support programs

For a State other credit support program to be approved under this section, that program shall be required to be a program of the State that—

- (1) can demonstrate that, at a minimum, \$1 of public investment by the State program will cause and result in \$1 of new private credit;
- (2) can demonstrate a reasonable expectation that, when considered with all other State programs of the State, such State programs together have the ability to use amounts of new Federal contributions to, or for the account of, all such programs in the State to cause and result in amounts of new

small business lending at least 10 times the new Federal contribution amount;

(3) for those State other credit support programs that provide their credit support through 1 or more financial institution lenders, requires the financial institution lenders to have a meaningful amount of their own capital resources at risk in their small business lending; and

(4) uses Federal funds allocated under this chapter to extend credit support that—

- (A) targets an average borrower size of 500 employees or less;
- (B) does not extend credit support to borrowers that have more than 750 employees;
- (C) targets support towards loans with an average principal amount of \$5,000,000 or less; and
- (D) does not extend credit support to loans that exceed a principal amount of \$20,000,000.

(d) Additional considerations

In making a determination that a State other credit support program is eligible for Federal contributions to, or for the account of, the State program, the Secretary shall take into account the following additional considerations:

- (1) The anticipated benefits to the State, its businesses, and its residents to be derived from the Federal contributions to, or for the account of, the approved State other credit support program, including the extent to which resulting small business lending will expand economic opportunities.
- (2) The operational capacity, skills, and experience of the management team of the State other credit support program.
- (3) The capacity of the State other credit support program to manage increases in the volume of its small business lending.
- (4) The internal accounting and administrative controls systems of the State other credit support program, and the extent to which they can provide reasonable assurance that funds of the State program are safeguarded against waste, loss, unauthorized use, or misappropriation.
- (5) The soundness of the program design and implementation plan of the State other credit support program.

(e) Federal contributions to approved State other credit support programs

A State other credit support program approved under this section will be eligible for receiving Federal contributions to, or for the account of, the State program in an amount consistent with the schedule describing the apportionment of allocated Federal funds among State programs delivered by the State to the Secretary under the allocation agreement.

(f) Minimum Program Requirements for State other credit support programs

(1) Fund¹ to prescribe

The Secretary shall, by regulation or other guidance, prescribe Program requirements for approved State other credit support programs.

(2) Considerations for fund

In prescribing minimum Program requirements for approved State other credit support

¹ So in original. Probably should be “Secretary”.