

Time is Running Out to Apply to Participate in the Small Business Lending Fund

March 8, 2011

Special Bulletin

The Small Business Lending Fund ("SBLF") is a \$30 billion fund created to provide low-cost capital to community banking institutions and encourage them to increase their lending to small businesses. The SBLF was formed by Senator Kay Hagan's amendment to the Small Business Jobs Act of 2010 and was signed into law on September 27, 2010. It is intended to stimulate economic growth and job creation by facilitating small businesses lending.

Investment

The SBLF program is designed for use by community banks and thrifts; only banks, thrifts and their holding companies with consolidated assets of less than \$10 billion are eligible to participate. Participating institutions will issue preferred stock to the U.S. Department of the Treasury ("UST"), and the funds received from the UST will qualify as Tier 1 capital. The UST will invest amounts up to 5 % of the risk-weighted assets of institutions with assets of \$1 billion or less. For institutions with assets of \$1 billion to \$10 billion, the UST will invest amounts up to 3 % of risk-weighted assets. The UST may, after consulting with an applicant's primary state and federal regulators, decide to require matching investments from private investors as a condition to approval.

Lending Expectations

SBLF investments are intended to support qualifying loans, which include commercial and industrial loans, agricultural loans and certain other loans of up to \$10 million to businesses with up to \$50 million in annual revenue. To encourage qualified small business lending, the dividend rate on the preferred shares will be re-set quarterly for the first nine quarters in response to increases or decreases in the institution's level of small business lending. Rates may reach as low as 1% or as high as 9%, but for the first nine quarters will not exceed 5 %. Loans guaranteed by the government do not qualify. A participating institution will report on its qualified small business lending in a supplement to its Call Report.

Outreach Requirements

SBLF participation carries outreach and advertising requirements for publicizing the SBLF program. These requirements specifically involve efforts directed toward female-, minority-, and veteran-owned small businesses.

Not TARP

The SBLF is not a TARP program and, unlike the TARP Capital Purchase Program ("TARP CPP"), carries no executive compensation restrictions and does not require the issuance of any warrants. The SBLF, however,

may present an opportunity to exit the TARP CPP by refinancing the preferred stock issued under the TARP CPP.

Restrictions on Participation

TARP CPP participants are not eligible to participate in the SBLF program simultaneously. Institutions that have been assigned a composite UFIRS rating (also known as CAMELS rating) of 4 or 5 by their primary regulators may not be eligible to participate.

Repayment

A participating institution may exit the SBLF program at any time by redeeming the preferred shares, subject to the approval of the institution's primary federal regulator. Any incremental redemption must be at least 25 % of the original funding amount. An institution is expected to exit the SBLF program within ten years, after which time the dividend rate may be increased and the institution may be prohibited from paying dividends on any shares ranking *pari passu* or junior to the SBLF preferred shares (even if dividends on the SBLF preferred shares are current).

Option to Participate

Submission and approval of an application to participate in the SBLF program does not obligate the institution to actually participate. An approved institution will be given a reasonable amount of time to decide whether or not to participate.

Application

Interested institutions should apply to participate by **March 31, 2011**, by submitting a one-page SBLF Application to the UST and a small business lending plan to the institution's primary state and federal regulators.

Upcoming Discussion with SBLF Director

The North Carolina Bankers Association has arranged for SBLF Director Jason Tepperman to discuss the SBLF program at a meeting in Greensboro on March 28, 2011. You may register to attend by contacting the NCBA directly at (800) 662-7044. Because this meeting will be held just before the application deadline, you may wish to prepare or submit your institution's SBLF Application prior to the meeting.

Updates

UST has extended the general deadline to submit applications to participate in the SBLF to **May 16, 2011**.

On March 31, 2011, Maine Senator Olympia Snowe introduced a bill, "Greater Accountability in the Lending Fund Act of 2011" (S. 681), to limit the SBLF. The bill would render any financial institution that had taken TARP funds ineligible to participate in the SBLF, even if the TARP funds have already been repaid. Among other things, the bill would change the baseline against which small business lending would be measured to 2007 levels, making it much harder for banks to achieve lower dividend rates under the SBLF. The bill has been referred to Committee on Small Business and Entrepreneurship (of which Sen. Snowe is the Chair), and its future is uncertain at this time.

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For further information regarding the issues described above, please contact one of our Financial Institutions Attorneys, William R. Lathan, Jr., E. Knox Proctor V, and David L. Ward, Jr.

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