



# The Small Business Lending Fund

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November 14, 2011

**Congressional Research Service**

7-5700

[www.crs.gov](http://www.crs.gov)

R42045

**CRS Report for Congress**

*Prepared for Members and Committees of Congress*

R11173008

## Summary

Congressional interest in small business access to capital reflects, in part, concerns about economic growth and unemployment. Small businesses, defined as having fewer than 500 employees, have played an important role in net employment growth during previous economic recoveries. However, recent data show that net employment growth at small businesses is not increasing at the same rate as in previous economic recoveries.

Some, including President Obama, have argued that current economic conditions make it imperative that the federal government provide additional resources to assist small businesses in acquiring capital necessary to start, continue, or expand operations and create jobs. Others worry about the long-term adverse economic effects of spending programs that increase the federal deficit. They advocate business tax reduction, reform of financial credit market regulation, and federal fiscal restraint as the best means to assist small businesses and create jobs.

Several laws were enacted during the 111<sup>th</sup> Congress to enhance small business access to capital. For example, P.L. 111-5, the American Recovery and Reinvestment Act of 2009 (ARRA), provided the Small Business Administration (SBA) an additional \$730 million, including funding to temporarily subsidize SBA fees and increase the 7(a) loan guaranty program's maximum loan guaranty percentage to 90%. P.L. 111-240, the Small Business Jobs Act of 2010, authorized the Secretary of the Treasury to establish a \$30 billion Small Business Lending Fund (SBLF) (\$4.0 billion was issued) to encourage community banks with less than \$10 billion in assets to increase their lending to small businesses, a \$1.5 billion State Small Business Credit Initiative to provide funding to participating states with small business capital access programs, numerous changes to the SBA's loan guaranty and contracting programs, funding to continue the SBA's fee subsidies and the 7(a) program's 90% maximum loan guaranty percentage through December 31, 2010, and about \$12 billion in tax relief for small businesses. P.L. 111-322, the Continuing Appropriations and Surface Transportation Extensions Act, 2011, authorized the SBA to continue its fee subsidies and the 7(a) program's 90% maximum loan guaranty percentage through March 4, 2011, or until available funding was exhausted, which occurred on January 3, 2011.

This report focuses on the SBLF. It opens with a discussion of the supply and demand for small business loans. The SBLF's advocates argued that the SBLF was needed to enhance the supply of small business loans. The report then examines other arguments which were presented both for and against the program. Advocates argued that the SBLF would increase lending to small businesses and, in turn, create jobs. Opponents argued that the SBLF could lose money, lacked sufficient oversight provisions, did not require lenders to increase their lending to small businesses, could serve as a vehicle for TARP recipients to effectively refinance their TARP loans on more favorable terms with little or any resulting benefit for small businesses, and could encourage a failing lender to make even riskier loans to avoid higher dividend payments.

The report concludes with an examination of the program's implementation and a discussion of bills introduced during the 112<sup>th</sup> Congress to amend the SBLF. For example, S. 681, the Greater Accountability in the Lending Fund Act of 2011, would limit the program's authority to 15 years from enactment and prohibit TARP recipients from participating in the program. H.R. 2807, the Small Business Leg-Up Act of 2011, would transfer any unobligated and repaid funds from the SBLF to the Community Development Financial Institutions Fund "to increase the availability of credit for small businesses." H.R. 3147, the Small Business Lending Extension Act, would extend the Treasury Department's investment authority from one year to two years.

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## Small Business and Job Creation

Congressional interest in small business access to capital reflects, in part, concerns about economic growth and unemployment.<sup>1</sup> Small businesses, defined as having fewer than 500 employees, have played an important role in net job growth during previous economic recoveries, particularly in the construction, housing, and retail sectors.<sup>2</sup> For example, after the eight-month recession that began in July 1990 and ended in March 1991, small businesses increased their net employment in the first year after the recession, while larger businesses continued to experience declines in employment.<sup>3</sup> In the recession that began in March 2001 and ended in November 2001, small businesses added 1.15 million net new jobs while larger businesses lost 0.15 million net new jobs.<sup>4</sup> However, recent payroll data show that net job growth at small businesses is not increasing at the same pace as in previous economic recoveries.<sup>5</sup> For example, payroll data suggest that about 81% of the 7.5 million jobs lost during the recession (December 2007-June 2009) were in small businesses.<sup>6</sup> During the first year following the recession (July 2009-July 2010), small businesses continued to lose jobs (-287,000 jobs), as did larger firms (-258,000 jobs). Since then, small businesses have been adding jobs (1.6 million jobs from July 2010-August 2011) more rapidly than larger businesses (47,000 jobs from July 2010-August 2011), but more slowly than in previous recoveries.<sup>7</sup>

In addition, as shown in **Figure 1**, total outstanding small business loans peaked at \$780.6 billion as of June 30, 2008, and have decreased by 13.8% (-\$107.8 billion) to \$672.8 billion as of June 30, 2011.<sup>8</sup> As a result, there has been increased concern in Congress that small businesses might

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<sup>1</sup> The United States does not have a statutory definition for medium-sized businesses and a business concern can either be considered “small” or not small under section 3(a)(1) of the Small Business Act, 15 U.S.C. § 632(a)(1), which indicates that a small business concern “shall be deemed to be one that is independently owned and operated and which is not dominant in its field of operation.” The act authorizes the SBA’s Administrator to define small business size standards based on industry classifications and the SBA has denominated 42 separate size standards covering 1,158 business classifications which may be found at 13 C.F.R. §121.201. A statistical analysis of the SBA’s size standards database reveals that the median size of small business is 500 employees. In contrast, the European Union defines small business as those with fewer than 50 employees, medium-sized business as those employing between 50 to 500 workers, and large businesses as those with over 500 employees. Under the SBA size standards a small business concern can have up to 1,500 employees for certain industry categories. For additional information and analysis see CRS Report R40860, *Defining Small Business: A Historical Analysis of Contemporary Issues*, by Robert Jay Dilger.

<sup>2</sup> U.S. Small Business Administration, Office of Advocacy, *Small Business Economic Indicators for 2003*, August 2004, p. 3, <http://www.sba.gov/advo/stats/sbei03.pdf>; and Brian Headd, “Small Businesses Most Likely to Lead Economic Recovery,” *The Small Business Advocate*, vol. 28, no. 6 (July 2009), pp. 1, 2, [http://www.sba.gov/advo/july\\_09.pdf](http://www.sba.gov/advo/july_09.pdf).

<sup>3</sup> U.S. Small Business Administration, Office of Advocacy, *Small Business Economic Indicators for 2003: A reference guide to the latest data on small business activity, including state and industry data*, Washington, DC, 2003, pp. 3, footnote 3, <http://archive.sba.gov/advo/stats/sbei03.pdf>.

<sup>4</sup> *Ibid.*

<sup>5</sup> U.S. Small Business Administration, *Fiscal Year 2010 Congressional Budget Justification* (Washington, DC: GPO, 2009), p. 1, [http://www.sba.gov/sites/default/files/Congressional\\_Budget\\_Justification\\_2010.pdf](http://www.sba.gov/sites/default/files/Congressional_Budget_Justification_2010.pdf).

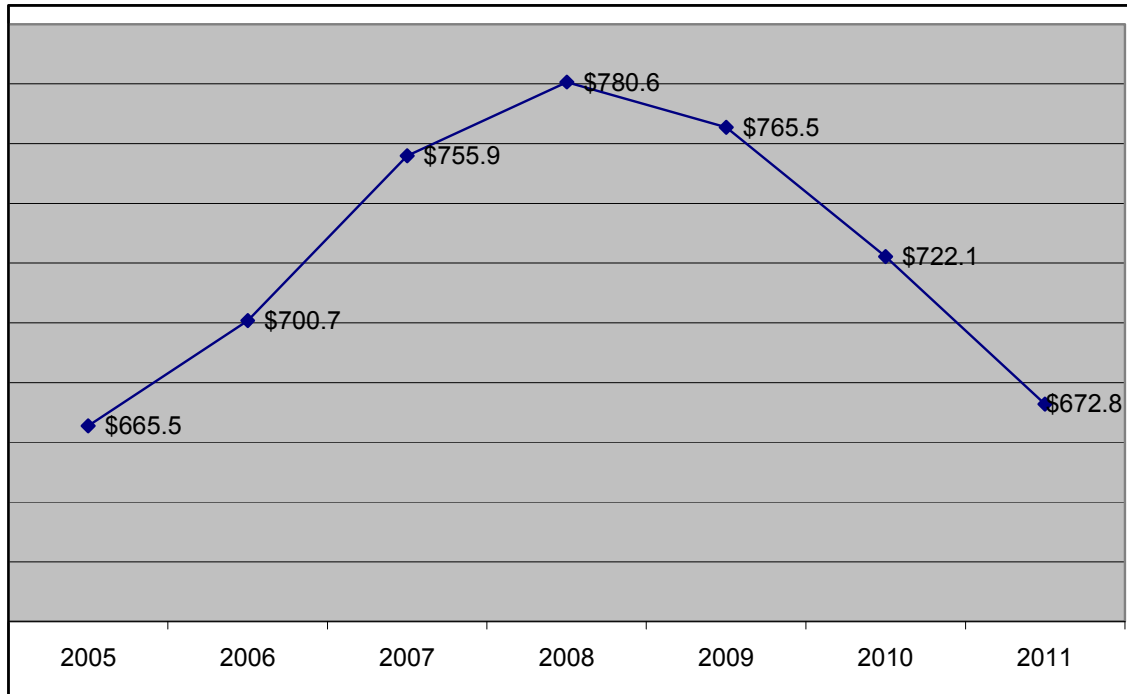
<sup>6</sup> Automatic Data Processing, Inc. (ADP), “National Employment Report, December 2007,” Roseland, NJ, p. 2, [http://www.adpemploymentreport.com/pdf/FINAL\\_Report\\_DEC\\_07.pdf](http://www.adpemploymentreport.com/pdf/FINAL_Report_DEC_07.pdf); and ADP, “National Employment Report, September 2009,” Roseland, NJ, p. 2, [http://www.adpemploymentreport.com/PDF/FINAL\\_Report\\_September\\_09.pdf](http://www.adpemploymentreport.com/PDF/FINAL_Report_September_09.pdf).

<sup>7</sup> Automatic Data Processing, Inc. (ADP), “National Employment Report, Historical Data,” Roseland, NJ, [http://www.adpemploymentreport.com/data/History\\_August\\_2011.xlsx](http://www.adpemploymentreport.com/data/History_August_2011.xlsx).

<sup>8</sup> Federal Deposit Insurance Corporation, “Statistics on Depository Institutions,” <http://www2.fdic.gov/SDI/main.asp>.

be prevented from accessing sufficient capital to enable them to lead job growth during the current recovery.

**Figure I. Outstanding Small Business Loans, 2005-2011**  
(billions of \$)



**Source:** Federal Deposit Insurance Corporation, "Statistics on Depository Institutions," Washington, DC, <http://www2.fdic.gov/SDI/main.asp>.

**Note:** Data as of June 30 each year.

Some, including President Obama, have argued that current economic conditions make it imperative that the federal government provide additional resources to assist small businesses in acquiring capital necessary to start, continue, or expand operations and create jobs. Others worry about the long-term adverse economic effects of spending programs that increase the federal deficit. They advocate business tax reduction, reform of financial credit market regulation, and federal fiscal restraint as the best means to assist small businesses and create jobs.

Several laws were enacted during the 111<sup>th</sup> Congress to enhance small business access to capital. For example, P.L. 111-5, the American Recovery and Reinvestment Act of 2009 (ARRA), provided the Small Business Administration (SBA) an additional \$730 million, including \$375 million to temporarily subsidize SBA fees and increase the 7(a) loan guaranty program's maximum loan guaranty percentage from 85% on loans of \$150,000 or less and 75% on loans exceeding \$150,000 to 90% for all regular 7(a) loans. P.L. 111-240, the Small Business Jobs Act of 2010, authorized the Secretary of the Treasury to establish a \$30 billion Small Business Lending Fund (SBLF) (\$4.0 billion was issued) to encourage community banks with less than \$10 billion in assets to increase their lending to small businesses, a \$1.5 billion State Small Business Credit Initiative to provide funding to participating states with small business capital access programs, numerous changes to the SBA's loan guaranty and contracting programs, funding to continue the SBA's fee subsidies and the 7(a) program's 90% maximum loan guaranty

percentage through December 31, 2010, and about \$12 billion in tax relief for small businesses. P.L. 111-322, the Continuing Appropriations and Surface Transportation Extensions Act, 2011, authorized the SBA to continue its fee subsidies and the 7(a) program's 90% maximum loan guaranty percentage through March 4, 2011, or until available funding was exhausted, which occurred on January 3, 2011.

According to the SBA, the temporary fee subsidies and 90% maximum loan guaranty for the 7(a) program "engineered a significant turnaround in SBA lending.... The end result is that the agency helped put more than \$42 billion in the hands of small businesses through the Recovery Act and Jobs Act combined."<sup>9</sup>

This report focuses on the SBLF. It begins with a discussion of the supply and demand for small business loans. The SBLF's advocates argued that the SBLF was an important part of a larger effort to enhance the supply of small business loans. After describing the program's structure, the report then examines other arguments that were presented both for and against the program's enactment. Advocates argued that the SBLF would increase lending to small businesses and, in turn, create jobs. Opponents argued that the SBLF could lose money, lacked sufficient oversight provisions, did not require lenders to increase their lending to small businesses, could serve as a vehicle for TARP recipients to effectively refinance their TARP loans on more favorable terms with little or any resulting benefit for small businesses, and could encourage a failing lender to make even riskier loans to avoid higher dividend payments.

The report concludes with an examination of the SBLF's implementation by the Department of the Treasury and a discussion of bills introduced during the 112<sup>th</sup> Congress to amend the SBLF. For example, S. 681, the Greater Accountability in the Lending Fund Act of 2011, would, among other provisions, limit the program's authority to 15 years from enactment and prohibit TARP recipients from participating in the program. H.R. 2807, the Small Business Leg-Up Act of 2011, would transfer any unobligated and repaid funds from the SBLF when its investment authority expires on September 27, 2011, to the Community Development Financial Institutions Fund "to continue the program of making capital investments in eligible community development financial institutions in order to increase the availability of credit for small businesses."<sup>10</sup> H.R. 3147, the Small Business Lending Extension Act, would, among other provisions, extend the Treasury Department's investment authority from one year following the date of enactment to two years.

## **The Supply and Demand for Small Business Loans**

Each quarter, the Federal Reserve Board surveys senior loan officers concerning their bank's lending practices. The survey includes questions about both the supply and demand for small business loans. For example, the survey includes a question concerning their bank's credit standards for small business loans: "Over the past three months, how have your bank's credit standards for approving applications for C&I [commercial and industrial] loans or credit lines—other than those to be used to finance mergers and acquisitions—for small firms (defined as having annual sales of less than \$50 million) changed?" The senior loan officers are asked to

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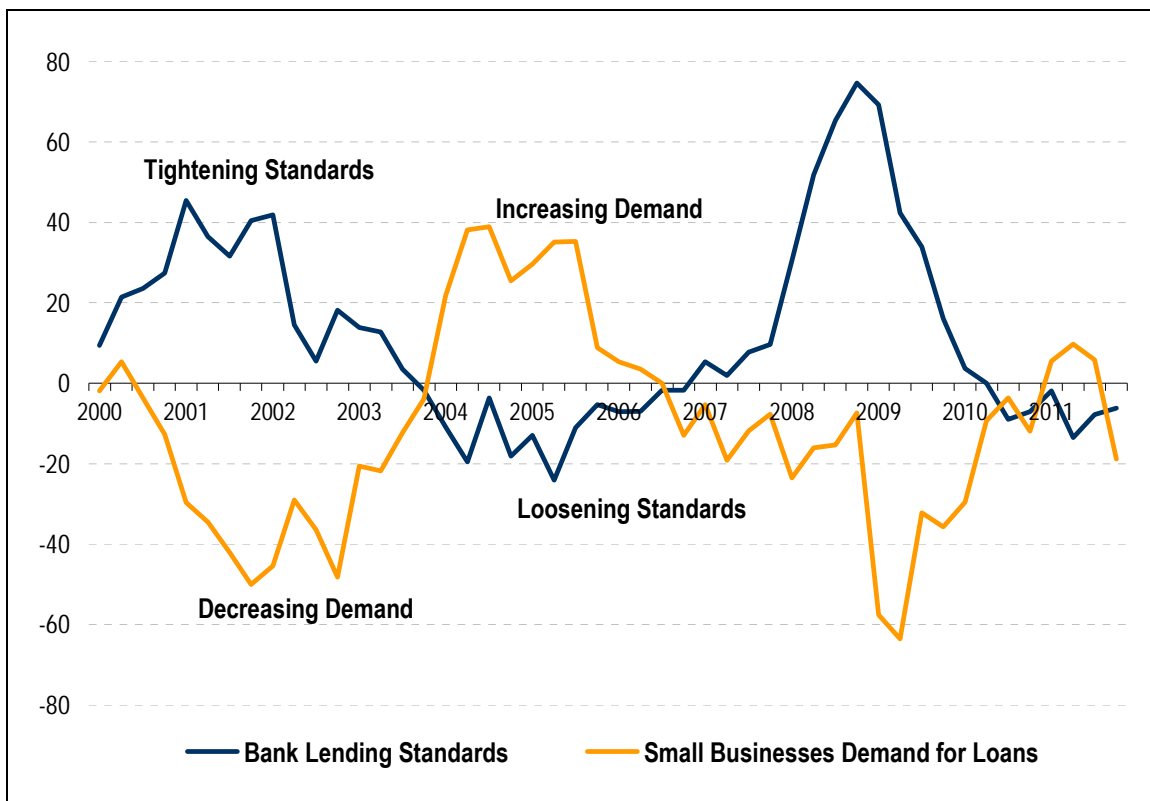
<sup>9</sup> U.S. Small Business Administration, "Jobs Act Supported More Than \$12 Billion in SBA Lending to Small Businesses in Just Three Months," Washington, DC, January 3, 2010, <http://www.sba.gov/content/jobs-act-supported-more-12-billion-sba-lending-small-businesses-just-three-months>.

<sup>10</sup> H.R. 2807, the Small Business Leg-Up Act of 2011.

indicate if their bank’s credit standards have “Tightened considerably,” “Tightened somewhat,” “Remained basically unchanged,” “Eased somewhat,” or “Eased considerably.” Subtracting the percentage of respondents reporting “Eased somewhat” and “Eased considerably” from the percentage of respondents reporting “Tightened considerably” and “Tightened somewhat” provides an indication of the market’s supply of small business loans.

As shown on **Figure 2**, senior loan officers reported that they tightened small business credit standards from 2000-2004, loosened them from 2004-late 2006, tightened them somewhat in 2007, and tightened them considerably in 2008 and 2009.<sup>11</sup> Since 2009, senior loan officers report that they have eased their small business credit standards somewhat, and most senior loan officers report that they are no longer tightening those standards. However, the Federal Reserve Board notes that those lending standards “remain quite stringent following the prolonged and widespread tightening that took place over the past few years.”<sup>12</sup>

**Figure 2. Small Business Lending Environment, 2000-2011**  
(senior loan officers’ survey responses)



**Source:** Federal Reserve Board, “Senior Loan Officer Opinion Survey on Bank Lending Practices,” Washington, DC, <http://www.federalreserve.gov/boarddocs/SnLoanSurvey/>; and Brian Headd, “Forum Seeks Solutions To

<sup>11</sup> Federal Reserve Board, “Senior Loan Officer Opinion Survey on Bank Lending Practices,” Washington, DC, <http://www.federalreserve.gov/boarddocs/SnLoanSurvey/>; and Brian Headd, “Forum Seeks Solutions To Thaw Frozen Small Business Credit,” *The Small Business Advocate*, vol. 28, no. 10 (December 2009), p. 3, <http://www.sba.gov/sites/default/files/The%20Small%20Business%20Advocate%20-%20December%202009.pdf>.

<sup>12</sup> Federal Reserve Board, “The April 2010 Senior Loan Officer Opinion Survey on Bank Lending Practices,” Washington, DC, <http://www.federalreserve.gov/boarddocs/SnLoanSurvey/201005/default.htm>.

Thaw Frozen Small Business Credit," *The Small Business Advocate*, vol. 28, no. 10 (December 2009), p. 3, <http://www.sba.gov/sites/default/files/The%20Small%20Business%20Advocate%20-%20December%202009.pdf>.

The survey also includes a question concerning the demand for small business loans: "Apart from normal seasonal variation, how has demand for C&I loans changed over the past three months for small firms (annual sales of less than \$50 million)?" Senior loan officers are asked to indicate if demand was "Substantially stronger," "Moderately stronger," "About the same," "Moderately weaker," or "Substantially weaker." Subtracting the percentage of respondents reporting "Moderately weaker" and "Substantially weaker" from the percentage of respondents reporting "Substantially stronger" and "Moderately stronger" provides an indication of the market's demand for small business loans.

As shown on **Figure 2**, senior loan officers reported that the demand for small business loans declined from 2000-2004, increased from 2004-late 2006, declined somewhat in 2007 and 2008, and declined significantly in 2009. Demand then leveled off (at a relatively reduced level) during the first half of 2010, declined somewhat during the third quarter of 2010, increased somewhat during the fourth quarter of 2010 and into 2011, and then declined somewhat during the latter half of 2011.<sup>13</sup>

## Factors that May Have Contributed to the Decline in the Supply of Small Business Loans

According to an SBA-sponsored study of small business lending, several factors have contributed to the recent decline in small business lending.<sup>14</sup> The report's authors noted that the 30% decline in home prices from their peak in 2006 to 2010 diminished the value of collateral for many small business borrowers. Many small business owners had relied on home equity loans to finance their small businesses during the real estate boom. They concluded that the absence of this additional source of collateral may have contributed to a decline in lending to small businesses.<sup>15</sup> They also argued that many small businesses found it increasingly difficult to renew existing lines of credit as lenders became more cautious as a result of slow economic growth and an increasing risk of loan defaults, especially among small business startups which are generally considered among the most risky investments.<sup>16</sup> About half of all new small businesses fail in their first year. They also argued that

- in this newly regulated market, smaller lenders are likely to be less profitable because they have fewer sales of products and services to spread out over the higher auditing and FDIC costs. Hence, they have less money to lend to small businesses and others, and

<sup>13</sup> Federal Reserve Board, "Senior Loan Officer Opinion Survey on Bank Lending Practices," Washington, DC, <http://www.federalreserve.gov/boarddocs/SnLoanSurvey/>.

<sup>14</sup> George W. Haynes and Victoria Williams, *Lending by Depository Lenders to Small Businesses, 2003 to 2010*, U.S. Small Business Administration, Office of Advocacy, Washington, DC, March 2011, <http://www.sba.gov/sites/default/files/rs380tot.pdf>.

<sup>15</sup> *Ibid.*, p. 25.

<sup>16</sup> *Ibid.*, p. 26. One possible contributing factor for at least some lenders becoming more cautious is that in recent years many lenders experienced an increase in non-performing loans and a depletion of their loan loss reserves, limiting the funds available for lending to small businesses.



- the relative difficulty in assessing creditworthiness due to the lack of information about potential financial performance is very high in small business lending, especially in financial markets driven by factor—rather than relationship—lending. Therefore, one would expect the small business loan market to recover more slowly than other financial markets.<sup>17</sup>

The authors also noted that FDIC data indicated that in recent years small business lending had not only declined in absolute terms (the total amount of dollars borrowed and the total number of small business loans issued), but in relative terms as well (the market share of business loans):

Over the eight years from 2003 through 2010, small business loans as a share of total business loans declined by more than 12 percentage points, from 81.7% in 2003 to 68.9% in 2010. Perhaps of most concern is the further decline in the ratios of small business loans to total assets and small business loans to total business loans. Small business loans constituted about 16.8% of total assets in 2005, but only 15.3% in 2010; hence, small business lending is becoming less significant for these lenders. Small business lending is also losing market share in the business loan market. In the eight-year period from 2003 to 2010, small business loans as a share of total business loans declined more than 10 percentage points from 81.7% in 2003 to 68.9% in 2010.<sup>18</sup>

## **Factors that May Have Contributed to the Decline in the Demand for Small Business Loans**

According to the previously mentioned SBA-sponsored study of small business lending, the demand for small business loans fell during the recession primarily because many small businesses experienced a decline in sales, and many small business owners had a heightened level of uncertainty concerning future sales. The study's authors argued that given small business owners' lack of confidence in the demand for their goods and services, many small business owners decided to save capital instead of hiring additional employees and borrowing capital to invest in business expansions and inventory.<sup>19</sup>

The responses of small business owners to a monthly survey by the National Federation of Independent Business Research Foundation (NFIB) concerning small business owner's views of the economy support the argument that declining sales contributed to the decline in the demand for small business loans. Since 2008, small business owners responding to the NFIB surveys have identified poor sales as their number one problem. Prior to 2008, taxes had been reported as their number one problem in nearly every survey since the monthly surveys began in 1986.<sup>20</sup> Also, payroll data suggests that small businesses were particularly hard hit by the recession. As mentioned previously, about 81% of the 7.5 million jobs lost during the recession (December 2007-June 2009) were in small businesses.<sup>21</sup> During the first year following the recession (July

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<sup>17</sup> Ibid., p. 26.

<sup>18</sup> Ibid., p. 25.

<sup>19</sup> Ibid.

<sup>20</sup> William C. Dunkelberg and Holly Wade, *Small Business Economic Trends* (Washington, DC: NFIB Research Foundation, September 2011), p. 18, <http://www.nfib.com/Portals/0/PDF/sbet/sbet201109.pdf>; and William J. Dennis, Jr., *Small Business Credit in a Deep Recession* (Washington, DC: NFIB Research Foundation, June 2008), p. 1, <http://www.nfib.com/LinkClick.aspx?fileticket=IPEviHUzXfE%3D&tabid=90&mid=3121>.

<sup>21</sup> Automatic Data Processing, Inc. (ADP), "National Employment Report, December 2007," Roseland, NJ, p. 2, [http://www.adpemploymentreport.com/pdf/FINAL\\_Report\\_DEC\\_07.pdf](http://www.adpemploymentreport.com/pdf/FINAL_Report_DEC_07.pdf); and ADP, "National Employment Report, (continued...)"

2009-July 2010), small businesses continued to lose jobs (-287,000 jobs), as did larger firms (-258,000 jobs). Since then, small businesses have been adding jobs (1.6 million jobs from July 2010-August 2011) more rapidly than larger businesses (47,000 jobs from July 2010-August 2011), but more slowly than in past recoveries.<sup>22</sup>

According to testimony by the Secretary of the Treasury before the House Small Business Committee on June 22, 2011, small businesses were especially hard hit by the recession because

Small businesses are concentrated in sectors that were especially hard hit by the recession and the bursting of the housing bubble: construction and real estate. More than one-third of all construction workers are employed by firms with less than 20 workers, and an additional third are employed by businesses with fewer than 100 employees. Just over half of those employed in the real estate, rental, and leasing sectors work for businesses with less than 100 workers on their payrolls. More broadly, the rate of job losses was almost twice as high in small businesses as it was in larger firms during the depths of the crisis.<sup>23</sup>

## **The Congressional Response to the Decline in the Supply and Demand for Small Business Loans**

During the 111<sup>th</sup> Congress, legislation designed to increase both the supply and demand for small business loans was adopted. For example, Congress provided over \$1.1 billion to temporarily subsidize fees for the SBA's 7(a) and 504/CDC loan guaranty programs and to increase the 7(a) program's maximum loan guaranty percentage from 85% on loans of \$150,000 or less and 75% on loans exceeding \$150,000 to 90% for all regular 7(a) loans (funding was exhausted on January 3, 2011).<sup>24</sup> The fee subsidies were designed to increase the demand for small business loans by reducing the cost of borrowing. The 90% loan guarantee was designed to increase the supply of small business loans by reducing the risk of lending.

(...continued)

September 2009," Roseland, NJ, p. 2, [http://www.adpemploymentreport.com/PDF/FINAL\\_Report\\_September\\_09.pdf](http://www.adpemploymentreport.com/PDF/FINAL_Report_September_09.pdf).

<sup>22</sup> Automatic Data Processing, Inc. (ADP), "National Employment Report, Historical Data," Roseland, NJ, [http://www.adpemploymentreport.com/data/History\\_August\\_2011.xlsx](http://www.adpemploymentreport.com/data/History_August_2011.xlsx).

<sup>23</sup> U.S. Congress, House Committee on Small Business, *The State of Small Business Access to Capital and Credit: The View from Secretary Geithner*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., June 22, 2011, p. 1.

<sup>24</sup> P.L. 111-5, the American Recovery and Reinvestment Act of 2009, provided the SBA \$375 million to subsidize fees for the SBA's 7(a) and 504/CDC loan guaranty programs and to increase the 7(a) program's maximum loan guaranty percentage from up to 85% of loans of \$150,000 or less and up to 75% of loans exceeding \$150,000 to 90% for all regular 7(a) loans through September 30, 2010, or when appropriated funding for the subsidies and loan modification was exhausted. P.L. 111-118, the Department of Defense Appropriations Act, 2010, provided the SBA \$125 million to continue the fee subsidies and 90% maximum loan guaranty percentage through February 28, 2010. P.L. 111-144, the Temporary Extension Act of 2010, provided the SBA \$60 million to continue the fee subsidies and 90% maximum loan guaranty percentage through March 28, 2010. P.L. 111-150, an act to extend the Small Business Loan Guarantee Program, and for other purposes, provided the SBA authority to reprogram \$40 million in previously appropriated funds to continue the fee subsidies and 90% maximum loan guaranty percentage through April 30, 2010. P.L. 111-157, the Continuing Extension Act of 2010, provided the SBA \$80 million to continue the SBA's fee subsidies and 90% maximum loan guaranty percentage through May 31, 2010. P.L. 111-240, the Small Business Jobs Act of 2010, provided \$505 million (plus an additional \$5 million for administrative expenses) to continue the SBA's fee subsidies and 90% maximum loan guaranty percentage from the act's date of enactment (September 27, 2010) through December 31, 2010. P.L. 111-322, the Continuing Appropriations and Surface Transportation Extensions Act, 2011, authorizes the SBA to use funds provided under the Small Business Jobs Act of 2010 to continue the SBA's fee subsidies and 90% maximum loan guaranty percentage through March 4, 2011, or until available funding is exhausted—which occurred on January 3, 2011.

Congress also provided the SBA additional resources to expand its lending to small businesses. For example, ARRA included a \$255 million temporary, two-year small business stabilization program to guarantee loans of \$35,000 or less to small businesses for qualified debt consolidation, later named the America's Recovery Capital (ARC) Loan program (the program ceased issuing new loan guarantees on September 30, 2010); an additional \$15 million for the SBA's surety bond program and a temporary increase in that program's maximum bond amount from \$2 million to \$5 million, and up to \$10 million under certain conditions (the higher maximum bond amounts ended on September 30, 2010); an additional \$6 million for the SBA's Microloan program's lending program and an additional \$24 million for the Microloan program's technical assistance program; and increased the funds ("leverage") available to SBA-licensed Small Business Investment Companies (SBICs) to no more than 300% of the company's private capital or \$150,000,000, whichever is less.<sup>25</sup>

Several other programs were also enacted during the 111<sup>th</sup> Congress to increase the supply of small business loans. For example, ARRA authorized the SBA to establish a temporary secondary market guarantee authority to provide a federal guarantee for pools of first lien 504/CDC program loans that are to be sold to third-party investors. ARRA also authorized the SBA to make below market interest rate direct loans to SBA-designated "Systemically Important Secondary Market (SISM) Broker-Dealers" who would use the loan funds to purchase SBA-guaranteed loans from commercial lenders, assemble them into pools, and sell them to investors in the secondary loan market.<sup>26</sup>

P.L. 111-240, the Small Business Jobs Act of 2010, extended the SBA's secondary market guarantee authority from two years after the date of ARRA's enactment to two years after the date of the program's first sale of a pool of first lien position 504/CDC loans to a third-party investor (which took place on September 24, 2010).<sup>27</sup> The act also increased the loan guarantee limits for the SBA's 7(a) program from \$2 million to \$5 million, and for the 504/CDC program from \$1.5 million to \$5 million for "regular" borrowers, from \$2 million to \$5 million if the loan proceeds are directed toward one or more specified public policy goals, and from \$4 million to \$5.5 million for manufacturers. It also increased the SBA's Microloan program's loan limit for borrowers from \$35,000 to \$50,000 and for microlender intermediaries after their first year in the program from \$3.5 million to \$5 million.<sup>28</sup> It also temporarily increased for one year (through September 26, 2011) the SBA 7(a) Express Program's loan limit from \$350,000 to \$1 million. The act also authorized the Secretary of the Treasury to establish the \$30 billion SBLF and a \$1.5 billion State Small Business Credit Initiative to provide funding to participating states with small business capital access programs.

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<sup>25</sup> P.L. 111-5, the American Recovery and Reinvestment Act of 2009.

<sup>26</sup> *Ibid.*

<sup>27</sup> U.S. Small Business Administration, Office of Congressional and Legislative Affairs, correspondence with the author, Washington, DC, January 4, 2010.

<sup>28</sup> The act also temporarily allows the SBA to waive, in whole or in part, for successive fiscal years, the non-federal share requirement for loans to the Microloan program's intermediaries and for grants made to Microloan intermediaries for small business marketing, management, and technical assistance under specified circumstances (e.g., the economic conditions affecting the intermediary). See P.L. 111-240, the Small Business Jobs Act of 2010, Sec. 1401. Matching Requirements Under Small Business Programs.

## The SBLF's Legislative Origin

On March 16, 2009, President Obama announced the first SBLF-like proposal. Under that proposal, the Department of the Treasury would have used TARP funds to purchase up to \$15 billion of SBA-guaranteed loans.<sup>29</sup> The purchases were intended to “immediately unfreeze the secondary market for SBA loans and increase the liquidity of community banks.”<sup>30</sup> The plan was dropped after it met resistance from lenders. Some lenders objected to TARP’s requirement that participating lenders comply with executive compensation limits and issue warrants to the federal government. Smaller, community banks objected to the program’s paperwork requirements, such as the provision of a small-business lending plan and quarterly reports.<sup>31</sup>

In his January 2010 State of the Union address, President Obama proposed the creation of a \$30 billion SBLF to enhance access to credit for small businesses:

when you talk to small business owners in places like Allentown, Pennsylvania, or Elyria, Ohio, you find out that even though banks on Wall Street are lending again, they’re mostly lending to bigger companies. Financing remains difficult for small business owners across the country, even those that are making a profit.

Tonight, I’m proposing that we take \$30 billion of the money Wall Street banks have repaid and use it to help community banks give small businesses the credit they need to stay afloat.<sup>32</sup>

In response to the opposition community lenders had expressed concerning TARP’s restrictions in 2009, the Obama Administration proposed that Congress approve legislation authorizing the transfer of up to \$30 billion in TARP spending authority to the SBLF, and statutorily establish the new program as distinct and independent from TARP and its restrictions.<sup>33</sup> The Administration’s legislative proposal was finalized and sent to Congress on May 7, 2010.<sup>34</sup> Representative Barney

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<sup>29</sup> P.L. 110-343, the Emergency Economic Stabilization Act of 2008, was designed to enhance the supply of loans to businesses of all sizes. The act authorized the Troubled Asset Relief Program (TARP) to “restore liquidity and stability to the financial system of the United States” by purchasing or insuring up to \$700 billion in troubled assets from banks and other financial institutions. TARP’s purchase authority was later reduced from \$700 billion to \$475 billion by P.L. 111-203, the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Department of the Treasury has disbursed \$389 billion in TARP funds, including \$337 million to purchase SBA 7(a) loan guaranty program securities. The authority to make new TARP commitments expired on October 3, 2010. U.S. Department of the Treasury, *Troubled Assets Relief Program Monthly 105(a) Report*—November 2010, Washington, DC, December 10, 2010, pp. 2-4, [http://www.financialstability.gov/docs/November%20105\(a\)%20FINAL.pdf](http://www.financialstability.gov/docs/November%20105(a)%20FINAL.pdf). For further analysis see CRS Report R41427, *Troubled Asset Relief Program (TARP): Implementation and Status*, by Baird Webel.

<sup>30</sup> The White House, “Remarks by the President to Small Business Owners, Community Leaders, and Members of Congress,” March 16, 2009, [http://www.whitehouse.gov/the\\_press\\_office/Remarks-by-the-President-to-small-business-owners/](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-to-small-business-owners/).

<sup>31</sup> Emily Flitter, “Fix for SBA Snagged by Tarp’s Exec Comp Limits,” *American Banker*, vol. 174, no. 61 (March 31, 2009), p. 1.

<sup>32</sup> The White House, “Remarks by the President in State of the Union Address,” January 27, 2010, <http://www.whitehouse.gov/the-press-office/remarks-president-state-union-address>.

<sup>33</sup> The White House, “President Obama Outlines New Small Business Lending Fund,” February 2, 2010, <http://www.whitehouse.gov/the-press-office/president-obama-outlines-new-small-business-lending-fund>.

<sup>34</sup> The White House, “Remarks by the President on the Monthly Job Numbers,” May 7, 2010, <http://m.whitehouse.gov/the-press-office/remarks-president-monthly-jobs-numbers>.

Frank, then-chair of the House Committee on Financial Services, introduced H.R. 5297, the Small Business Lending Fund Act of 2010, on May 13, 2010.

The House Committee on Financial Services held a hearing on H.R. 5297 on May 18, 2010, and passed it, as amended to include a State Small Business Credit Initiative, the following day. The House passed the bill, as amended to include a Small Business Early-Stage Investment Program, a Small Business Borrower Assistance Program, and some small business tax reduction provisions, on June 17, 2010.

## **The House-Passed Version of the SBLF**

Title I of the House-passed version of H.R. 5297 authorized the Secretary of the Treasury to establish a \$30 billion SBLF “to address the ongoing effects of the financial crisis on small businesses by providing temporary authority to the Secretary of the Treasury to make capital investments in eligible institutions” with total assets equal to or less than \$1 billion or \$10 billion (as of the end of the fourth quarter of calendar year 2009) “in order to increase the availability of credit for small businesses.”<sup>35</sup> The authority to make capital investments in eligible institutions was limited to one year after enactment.

Eligible financial institutions having total assets equal to or less than \$1 billion as of the end of the fourth quarter of calendar year 2009 could apply to receive a capital investment from the SBLF in an amount not exceeding 5% of risk-weighted assets, as reported in the FDIC call report immediately preceding the date of application. During the fourth quarter of 2009, 7,340 FDIC-insured lending institutions reported having assets amounting to less than \$1 billion.<sup>36</sup>

Eligible financial institutions having total assets equal to or less than \$10 billion as of the end of the fourth quarter of calendar year 2009 could apply to receive a capital investment from the fund in an amount not exceeding 3% of risk-weighted assets, as reported in the FDIC call report immediately preceding the date of application. During the fourth quarter of 2009, 565 FDIC-insured lending institutions reported having assets of \$1 billion to \$10 billion.<sup>37</sup>

Risk-weighted assets are assets such as cash, loans, investments, and other financial institution assets that have different risks associated with them. FDIC regulations (12 C.F.R. §567.6) establish that cash and government bonds have a 0% risk-weighting; residential mortgage loans have a 50% risk-weighting; other types of assets (such as small business loans) have a higher risk-weighting.<sup>38</sup>

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<sup>35</sup> H.R. 5297, the Small Business Jobs and Credit Act of 2010, Sec. 101. Small Business Lending Fund Purpose. In 2011, there were 7,513 FDIC-insured lending institutions in the United States. Of that number, 6,846 lending institutions had assets amounting to less than \$1 billion (totaling \$1.42 trillion), 561 lending institutions had assets of \$1 billion to \$10 billion (totaling \$1.43 trillion), and 106 lending institutions had assets greater than \$10 billion (totaling \$10.76 trillion). See FDIC, “Quarterly Banking Profile: Second Quarter 2011,” Washington, DC, <http://www2.fdic.gov/qbp/2011jun/qbp.pdf>.

<sup>36</sup> FDIC, “Quarterly Banking Profile: Fourth Quarter 2009,” Washington, DC, <http://www2.fdic.gov/qbp/2009dec/qbp.pdf>.

<sup>37</sup> Ibid. In the fourth quarter of 2009, 107 FDIC-insured lending institutions had assets greater than \$10 billion.

<sup>38</sup> For further analysis of risk-weighted assets, see CRS Report R40249, *Who Regulates Whom? An Overview of U.S. Financial Supervision*, by Mark Jickling and Edward V. Murphy.

Lending institutions on the FDIC problem bank list, or institutions that have been removed from the FDIC problem bank list for less than 90 days were ineligible to participate in the program. Lending institutions could refinance securities issued through the Treasury Capital Purchase Program (CPP) and the Community Development Capital Incentive (CDCI) program under TARP, but only if the institution had not missed more than one dividend payment due under those programs.

Participating banks would be charged a dividend rate of 5% per annum initially, with reduced rates available if the bank increased its small business lending. For example, during any calendar quarter in the initial two years of the capital investments under the program, the bank’s rate would be lowered if it had increased its small business lending compared to the average small business lending it made in the four previous quarters immediately preceding the enactment of the bill, minus some allowable adjustments. A 2.5% to 5% increase in small business lending would have lowered the rate to 4%, a 5% to 7.5% increase would have lowered the rate to 3%, a 7.5% to 10% increase would have lowered the rate to 2%, and an increase greater than 10% would have lowered the rate to 1%. **Table 1** shows the dividend rates associated with small business lending increases by financial institutions.

**Table 1. Small Business Lending Increases and Dividend Rates Under the House-Passed Version of H.R. 5297**

Small Business Lending Increase	Dividend Rate
10% or greater	1%
at least 7.5% but less than 10%	2%
at least 5% but less than 7.5%	3%
at least 2.5% but less than 5%	4%
Less than 2.5%	5%
No increase	7%

**Source:** H.R. 5297, the Small Business Jobs and Credit Act of 2010, Sec. 103. Small Business Lending Fund.

**Note:** The dividend rate would increase to 9% at the end of the five-year period that begins on the date of the capital investment under the program. The Senate-passed version of H.R. 5297, which became the Small Business Jobs Act of 2010, authorizes the same dividend rates.

SBLF applicants were also required to submit a small business lending plan to the appropriate federal banking agency and, for applicants that are state-chartered banks, to the appropriate state banking regulator. The plan was to describe how the applicant’s business strategy and operating goals will allow it to address the needs of small businesses in the areas it serves, as well as a plan to provide linguistically and culturally appropriate outreach, where appropriate. The plan was to be treated as confidential supervisory information. The Secretary of the Treasury was required to consult with the appropriate federal banking agency or, in the case of an eligible institution that is a non-depository community development financial institution, the Community Development Financial Institution Fund, before determining if the eligible institution was to participate in the program.<sup>39</sup>

<sup>39</sup> If the appropriate banking agency would not otherwise recommend that the eligible institution receive the capital investment, the Secretary of the Treasury was authorized, in consultation with the appropriate banking agency, to consider allowing the eligible institution to participate in the program if the eligible institution provided matching (continued...)

The bill specified that the SBLF would be “established as separate and distinct from the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008. An institution shall not, by virtue of a capital investment under the Small Business Lending Fund Program, be considered a recipient of the Troubled Asset Relief Program.”<sup>40</sup>

The bill also directed that all funds received by the Secretary of the Treasury in connection with purchases made by the SBLF, “including interest payments, dividend payments, and proceeds from the sale of any financial instrument, shall be paid into the general fund of the Treasury for reduction of the public debt.”<sup>41</sup>

## **The Senate-Passed Version of the SBLF**

Title IV of the Senate-passed version of H.R. 5297, which later became law, authorized the Secretary of the Treasury to establish a \$30 billion SBLF to make capital investments in eligible community banks with total assets equal to or less than \$1 billion or \$10 billion. There were several differences between the Senate-passed version of H.R. 5297’s SBLF provisions and the SBLF provisions in the House-passed version of H.R. 5297. Specifically,

- the House-passed version of H.R. 5297 indicated that eligible institutions may be insured depository institutions that are not controlled by a bank holding company or a savings and loan holding company that is also an eligible institution and is not directly or indirectly controlled by any company or other entity that has total consolidated assets of more than \$10 billion, bank holding companies, savings and loan holding companies, community development financial institution loan funds, and small business lending companies, all with total assets of \$10 billion or less (as of the end of 2009).<sup>42</sup> The Senate-passed version of H.R. 5297 did not provide eligibility to small business lending companies.<sup>43</sup>
- the House-passed version of H.R. 5297 defined small business lending “as small business lending as defined by and reported in an eligible institution’s quarterly call report, where each loan comprising such lending is made to a small business and is one the following types: (1) commercial and industrial loans; (2) owner-occupied nonfarm, nonresidential real estate loans; (3) loans to finance agricultural production and other loans to farmers; (4) loans secured by farmland; (5) nonowner-occupied commercial real estate loans; and (6) construction, land

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(...continued)

capital from private, non-governmental sources that is equal to or greater than 100% of the SBLF investment and that matching capital was subordinate to the capital investment from the SBLF.

<sup>40</sup> H.R. 5297, the Small Business Lending Fund Act of 2010, Sec. 111. Assurances.

<sup>41</sup> H.R. 5297, the Small Business Lending Fund Act of 2010, Sec. 103. Small Business Lending Fund. Using a cost-based estimate, the Congressional Budget Office estimated that the SBLF would result in net outlays of \$3.3 billion over 2010-2015, and would reduce outlays by \$1.1 billion over the 2010-2020 period. Using an alternative fair-value estimate, the Congressional Budget Office estimated that the SBLF would result in net outlays of \$6.2 billion over the 2010-2020 period. See U.S. Congressional Budget Office, “Cost Estimate: H.R. 5297, Small Business Lending Fund Act of 2010,” Washington, DC, June 28, 2010, pp. 3, 4, [http://www.cbo.gov/ftpdocs/115xx/doc11595/hr5297\\_HousePassed.pdf](http://www.cbo.gov/ftpdocs/115xx/doc11595/hr5297_HousePassed.pdf).

<sup>42</sup> H.R. 5297, the Small Business Lending Fund Act of 2010, Sec. 102. Definitions.

<sup>43</sup> P.L. 111-240, the Small Business Jobs Act of 2010, Sec. 4102. Definitions.

- development and other land loans.”<sup>44</sup> The Senate-passed version of H.R. 5297’s definition of small business lending did not include nonowner-occupied commercial real estate or construction, land development and other land loans.<sup>45</sup>
- the Senate-passed version of H.R. 5297 had an exclusion provision prohibiting recipient lending institutions from using the funds to issue loans that have an original amount greater than \$10 million or that would be made to a business with more than \$50 million in revenues.<sup>46</sup> The House-passed version of H.R. 5297 did not contain this provision.
  - the House-passed version of H.R. 5297 indicated that the incentives received in the form of reduced dividend rates during the first 4.5-year period following the date on which an eligible institution received a capital investment under the program would be contingent on an increase in the number of loans made.<sup>47</sup> If the number of loans made by the institution did not increase by 2.5% for each 2.5% increase of small business lending, then the rate at which dividends and interest would be payable during the following quarter on preferred stock or other financial instruments issued to the Treasury by the eligible institution would be (i) 5%, if this quarter is within the two-year period following the date on which the eligible institution received the capital investment under the program; or (ii) 7%, if the quarter is after the two-year period. The Senate-passed version of H.R. 5297 did not contain this legislative language.
  - the House-passed version of H.R. 5297 included an alternative computation provision that would have allowed eligible institutions to compute their small business lending amounts for incentive purposes as if the definition of their small business lending amounts did not require that the loans comprising such lending be made to small business.<sup>48</sup> This alternative computation would have been allowed if the eligible institution certified that all lending included by the institution for purposes of computing the increase in lending was made to small businesses. The Senate-passed version of H.R. 5297 did not contain this provision.
  - the House-passed version of H.R. 5297 indicated that an eligible institution that is a community development loan fund may apply to receive a capital investment from the SBLF in an amount not exceeding 10% of total assets, as reported in the audited financial statements for the fiscal year of the eligible institution that ended in calendar year 2009.<sup>49</sup> The Senate-passed version of H.R. 5297 specifies 5%.<sup>50</sup>
  - the House-passed version of H.R. 5297 would have required the Secretary of the Treasury, in consultation with the Community Development Financial Institutions Fund, to develop eligibility criteria to determine the financial ability

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<sup>44</sup> H.R. 5297, the Small Business Lending Fund Act of 2010, Sec. 102. Definitions.

<sup>45</sup> P.L. 111-240, the Small Business Jobs Act of 2010, Sec. 4102. Definitions.

<sup>46</sup> H.R. 5297, the Small Business Lending Fund Act of 2010, Sec. 103. Small Business Lending Fund.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> P.L. 111-240, the Small Business Jobs Act of 2010, Sec. 4103. Small Business Lending Fund.



of a Community Development Loan Fund to participate in the program and repay the investment. It provided a list of recommended eligibility criteria that the Secretary of the Treasury could use for this purpose.<sup>51</sup> The Senate-passed version of H.R. 5297 provided a similar, but mandatory, list of eligibility criteria that must be used for this purpose.<sup>52</sup>

- the House-passed version of H.R. 5297 contained a temporary amortization authority provision which would have allowed an eligible institution to amortize any loss or write-down on a quarterly straight-line basis over a period of time, adjusted to reflect the institution's change in the amount of small business lending relative to the baseline.<sup>53</sup> The Senate-passed version of H.R. 5297 did not contain this provision.

The Senate's version of H.R. 5297 was agreed to in the Senate on September 16, 2010, after considerable debate and amendment to remove the Small Business Early-Stage Investment Program and Small Business Borrower Assistance Program, revise the SBLF, and add numerous other provisions to assist small businesses, including additional small business tax reduction provisions.<sup>54</sup> The House agreed to the Senate amendments on September 23, 2010, and President Obama signed the bill, renamed the Small Business Jobs Act of 2010 (P.L. 111-240), into law on September 27, 2010.

## **Arguments For and Against the SBLF**

The SBLF's advocates argued that it would create jobs by encouraging lenders, especially those experiencing liquidity problems (access to cash and easily tradable assets),<sup>55</sup> to increase their lending to small businesses. For example, the House report accompanying H.R. 5297 argued that the SBLF was needed to enhance small business's access to capital, which, in turn, was necessary to enable those businesses to create jobs and assist in the economic recovery:

There has been a dramatic decrease in the amount of bank lending in the past several quarters. On May 20, 2010, the Federal Deposit Insurance Corporation (FDIC) released its Quarterly Banking Profile for the first quarter of 2010. The report shows that commercial and industrial loans declined for the seventh straight quarter, down more than 17% from the year before.

Many companies, particularly small businesses, claim that it is becoming harder to get new loans to keep their business operating and that banks are tightening requirements or cutting off existing lines of credit even when the businesses are up to date on their loan repayments. Treasury Secretary Timothy F. Geithner recently acknowledged the problem encountered by some banks, both healthy and troubled, which have been told to maintain capital levels in excess of those required to be considered well capitalized.

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<sup>51</sup> H.R. 5297, the Small Business Lending Fund Act of 2010, Sec. 103. Small Business Lending Fund.

<sup>52</sup> P.L. 111-240, the Small Business Jobs Act of 2010, Sec. 4103. Small Business Lending Fund.

<sup>53</sup> H.R. 5297, the Small Business Lending Fund Act of 2010, Sec. 113. Temporary Amortization Authority.

<sup>54</sup> For additional information and analysis concerning P.L. 111-240, the Small Business Jobs Act of 2010, see CRS Report R40985, *Small Business: Access to Capital and Job Creation*, by Robert Jay Dilger.

<sup>55</sup> For further information and analysis concerning lender liquidity issues see CRS Report R41073, *Government Interventions in Response to Financial Turmoil*, by Baird Webel and Marc Labonte.

Some banks say they have little choice but to scale back lending, even to creditworthy borrowers, and the most recent Federal Reserve data shows banks are continuing to tighten lending terms for small businesses.<sup>56</sup>

A dissenting view, endorsed by the House Committee on Financial Services' minority members, was included in the report. They argued that the SBLF does not properly deal with the lack of financing for small businesses:

Instead of addressing the problem by stimulating demand for credit by small businesses, H.R. 5297 injects capital into banks with no guarantees that they will actually lend. The bill allows a qualifying bank to obtain a capital infusion from the government without even requiring the bank to make a loan for two years. In fact, if a bank reduces or fails to increase lending to small business during those first two years, it would not face any penalty. It defies logic that the Majority would support a bill to increase lending that does not actually require increased lending. A more effective response to the challenges facing America's small businesses was offered by Representatives Biggert, Paulsen, Castle, Gerlach, and King, whose amendment would have extended a series of small business tax credits before implementing the Small Business Lending Fund.<sup>57</sup>

They also argued that even if the SBLF was authorized “the program probably would not be fully operational for months; banks could shun the program for fear of being stigmatized by its association with TARP; and many banks would avoid taking on new liabilities when their existing assets are troubled.”<sup>58</sup> They also argued that the bill did not provide sufficient oversight for effectively monitoring the program because the Inspector General of the Department of the Treasury, who was given that responsibility under the bill, “might not be able to direct sufficient attention to this task given its other responsibilities.”<sup>59</sup> They argued that the Special Inspector General of TARP would be in a better position to provide effective oversight of the program.<sup>60</sup>

These, and other, arguments were presented during House floor debate on the bill. For example, Representative Melissa Bean advocated the bill's passage, arguing that the SBLF

builds on the effective financial stabilization measures Congress has previously taken by establishing a new \$30 billion small business loan fund to provide additional capital to community banks that increase lending to small businesses. This \$30 billion investment on which the government will be collecting dividends and earning a profit per the CBO estimates can be leveraged by banks into over \$300 billion in new small business loans. This is an important investment by the Federal Government in our small business that brings tremendous returns.

The terms of the capital provided to banks are performance based; the more a bank increases its small business lending, the lower the dividend rate is for the SBLF capital. If a bank decreases its small business lending, it will be penalized with higher dividend rates.

This legislation includes strong safeguards to ensure that banks adequately utilize available funds to increase lending to small businesses, not for other lending or to improve their

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<sup>56</sup> H.Rept. 111-499, p. 16.

<sup>57</sup> *Ibid.*, p. 37.

<sup>58</sup> *Ibid.*, pp. 37, 38.

<sup>59</sup> *Ibid.*, p. 38.

<sup>60</sup> *Ibid.*

balance sheet. There will be oversight consistently throughout the program, plus it requires that the capital be invested only in strong financial institutions at little risk of default and the best positioned to increase small business lending.

It's important for Americans to understand that although this fund has a maximum value of \$30 billion, it is estimated to make a profit for taxpayers in the long run. And the money will ultimately go not to banks, but to the small businesses and their communities that they lend to. As our financial system stabilizes and our community banks recapitalize, these funds will be repaid to Treasury with full repayment required over the next 10 years.<sup>61</sup>

Representative Nydia Velázquez, then the chair of the House Committee on Small Business, added that the legislation had sufficient safeguards in place to ensure that the funds were targeted at small businesses:

First, banks must apply to the Treasury to receive funds, with a detailed plan on how to increase small business lending at their institution. This language was included at my insistence that we need to make sure that small businesses will get the benefit of this legislation.

Second, this capital, repayment of the government loans will be at a dividend rate starting at 5% per year. This rate will be lowered by 1% for every 2.5% increase in small business lending over 2009 levels. It can go as low as a total dividend rate of just 1% if the bank increases its business lending by 10% or more, incentivizing banks to do the right thing. To ensure that banks actually use the funding they receive, the rate will increase—and there are penalties—to 7% if the bank fails to increase its small business lending at their institution within 2 years. To ensure that all federal funds are paid back within 5 years, the dividend rate will increase to 9% for all banks, irrespective of their small business lending, after 4 1/2 years.<sup>62</sup>

Representative Velázquez added “let me just make it clear ... CBO estimates that [the SBLF] will save taxpayers \$1 billion over 10 years, as banks are expected to pay back this loan over 10 years, with interest.”<sup>63</sup>

Representative Randy Neugebauer opposed the bill's adoption, arguing that

the majority is repeating the same failed initiatives that have helped our national debt grow to \$13 trillion in the past 2 years. This bill follows the model of the TARP program, minus [TARP's] stronger oversight, and it puts another \$30 billion into banks in the hopes that lending to small businesses will increase. In the words of Neil Barofsky, the Special Inspector General who oversees the TARP, “In terms of its basic design,” he says, “its participants, its application process, from an oversight perspective, the Small Business Lending Fund would essentially be an extension of the TARP's Capital Purchase Program.” From the Congressional Oversight Panel for TARP, chaired by Elizabeth Warren, she says, “The SBLF's prospects are far from certain. The SBLF also raises questions about whether, in light of the Capital Purchase Program's poor performance in improving credit access, any capital infusion program can successfully jump-start small business lending.”

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<sup>61</sup> Representative Melissa Bean, “Consideration of the Small Business Jobs and Credit Act of 2010,” House debate, *Congressional Record*, daily edition, vol. 156, no. 90 (June 16, 2010), p. H4514.

<sup>62</sup> Representative Nydia Velázquez, “Consideration of the Small Business Jobs and Credit Act of 2010,” House debate, *Congressional Record*, daily edition, vol. 156, no. 90 (June 16, 2010), p. H4518.

<sup>63</sup> Ibid.

This bill allows for another \$33 billion in spending that will be added to the government's credit card. The CBO tells us that the bank lending portion will ultimately cost taxpayers \$3.4 billion when market risk is taken into account.<sup>64</sup>

The arguments presented during House floor debate on H.R. 5297 were also presented during Senate consideration of the bill. Advocates argued that the SBLF would encourage higher levels of small business lending and jobs. For example, Senator Mary Landrieu argued on July 21, 2010, that the SBLF should be adopted because it "is not a government program for banks. It is a public-private partnership lending strategy for small business."<sup>65</sup> She added that as chair of the Senate Committee on Small Business and Entrepreneurship she talked with her colleagues, including the SBLF's opponents, and revised the program to address their concerns. She also argued that the SBLF has

hundreds of endorsements from independent banks, the community banks and almost every small business association in America ... makes \$1 billion [according to the CBO score] ... is not direct lending from the federal government. It is not creating a new bureaucracy ... [It is] voluntary ... there are no onerous restrictions.... The small business gets the loans. We create jobs. People are employed. The recession starts ending.... It has nothing to do with TARP money. It is not a TARP program. It is not a bank program. It doesn't have anything to do with banks except that we are working in partnership with banks to lend money to small businesses which are desperate for money.<sup>66</sup>

Opponents argued that the SBLF could lose money, lacked sufficient oversight provisions, did not require lenders to increase their lending to small businesses, could serve as a vehicle for TARP recipients to effectively refinance their TARP loans on more favorable terms with little or any resulting benefit for small businesses, and could encourage a failing lender to make even riskier loans to avoid higher dividend payments. In addition, there were disagreements over the number of amendments that could be offered by the minority, which led several Senators to oppose further consideration of the bill until that issue was resolved to their satisfaction. For example, on July 22, 2010, Senator Olympia Snowe argued that although "under a cash-based estimate, CBO listed the official score for the lending fund as raising \$1.1 billion over 10 years," SBLF proponents "fail to mention" that when CBO scored the SBLF using an alternative methodology that adjusts for market risk, it estimated that the SBLF could cost \$6.2 billion.<sup>67</sup> Senator Snowe also argued that the bipartisan Congressional Oversight Panel for TARP stated in its May 2010 oversight report that the proposed SBLF "substantially resembles" the TARP program and "is a bank-focused capital infusion program that is being contemplated despite little, if any, evidence that such programs increase lending."<sup>68</sup> Senator Snowe also stated that she regretted "that we are in a position where we have not been able to reach agreement allowing the minority to offer amendments, which is confounding and perplexing as well as disappointing."<sup>69</sup> Senator Snowe

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<sup>64</sup> Representative Randy Neugebauer, "Consideration of the Small Business Jobs and Credit Act of 2010," House debate, *Congressional Record*, daily edition, vol. 156, no. 90 (June 16, 2010), p. H4515.

<sup>65</sup> Senator Mary Landrieu, "Small Business Lending," remarks in the Senate, *Congressional Record*, daily edition, vol. 156, no. 108 (July 21, 2010), p. S6070.

<sup>66</sup> *Ibid.*, p. S6071.

<sup>67</sup> Senator Olympia Snowe, "Small Business Lending," remarks in the Senate, *Congressional Record*, daily edition, vol. 156, no. 108 (July 22, 2010), pp. S6158.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*, p. S6156.

later added that the SBLF's incentives to encourage lending to small businesses also "could encourage unnecessarily risky behavior by banks ... to avoid paying higher interest rates."<sup>70</sup>

Opponents also questioned the SBLF's use of quarterly call report data as submitted by lenders to their appropriate banking regulator to determine what counts as a small business loan.<sup>71</sup> Call report data denotes loans of \$1 million or less as small business loans, regardless of the size of the business receiving the loan. As a result, the SBLF's opponents argued that "the data used to measure small business lending in the SBLF covers an entirely different set of small businesses than those that fall within the definition set out in the Small Business Act or used by the SBA."<sup>72</sup>

As mentioned previously, the Senate's version of H.R. 5297 was agreed to on September 16, 2010, by a vote of 68-38.<sup>73</sup> The House agreed to the Senate-passed version of H.R. 5297 on September 23, 2010, by a vote of 237-187, and the bill was signed into law by President Obama on September 27, 2010.

## The SBLF's Implementation

On February 14, 2011, the Obama Administration issued its budget recommendation for FY2012. It anticipated that the SBLF would provide \$17.399 billion in financings, well below its authorized amount of \$30 billion.<sup>74</sup> This was the first indication that the SBLF's implementation may not proceed as expected.<sup>75</sup> The second indication that the program's implementation may not proceed as expected was an unanticipated delay in the writing of the program's regulations.

The U.S. Treasury was criticized by some for not implementing the program quickly enough.<sup>76</sup> The first financing took place on June 21, 2011, about nine months after the program's enactment. The delay was largely due to the Treasury's need to finalize the SBLF's investment decision

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<sup>70</sup> Senator Olympia Snowe, "Small Business Lending Fund Act of 2010," remarks in the Senate, *Congressional Record*, daily edition, vol. 156, no. 125 (September 16, 2010), pp. S7157.

<sup>71</sup> The act specified that the SBLF could not be used to provide loans greater than \$10 million or that go to a business with more than \$50 million in revenues. See P.L. 111-240, the Small Business Jobs Act of 2010, Sec. 4102. Definitions.

<sup>72</sup> Representative Sam Graves, "Full Committee Hearing, The State of Small Business Access to Credit and Capital: The View from Secretary Geithner," Letter to Members of the House Small Business Committee, Washington, DC, June 20, 2011, p. 19, [http://smbiz.house.gov/UploadedFiles/6-22\\_Memo.pdf](http://smbiz.house.gov/UploadedFiles/6-22_Memo.pdf).

<sup>73</sup> Senator Kay Hagen, "Motion to Invoke Cloture on H.R. 5297, the Small Business Lending Fund Act of 2010," Rollcall Vote No. 236 Leg., *Congressional Record*, daily edition, vol. 156, part 125 (September 16, 2010), p. S7158; and Senator Al Franken, "Small Business Lending Fund Act of 2010," Rollcall Vote No. 237 Leg., *Congressional Record*, daily edition, vol. 156, part 125 (September 16, 2010), p. S7158.

<sup>74</sup> U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2012, Appendix: Department of the Treasury* (Washington DC, GPO, 2011), p. 989, <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/tre.pdf>

<sup>75</sup> The Department of the Treasury based its forecast on an "analysis of demand for the program." See U.S. Department of the Treasury, "FY2012 Congressional Justification, Small Business Lending Fund," Washington, DC, page 7, [http://www.treasury.gov/about/budget-performance/Documents/CJ\\_FY2012\\_SBLF\\_508.pdf](http://www.treasury.gov/about/budget-performance/Documents/CJ_FY2012_SBLF_508.pdf)

<sup>76</sup> Representative Sam Graves, Press Release, "Graves Questions Treasury Secretary Timothy Geithner on Access to Capital for Small Businesses," Washington, DC, June 22, 2011, <http://www.smallbusiness.house.gov/News/DocumentSingle.aspx?DocumentID=248058>; and U.S. Congress, House Committee on Small Business, *The State of Small Business Access to Capital and Credit: The View From Secretary Geithner*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., June 22, 2011, Small Business Committee Document No. 112-023 (Washington: GPO, 2011), pp. 3, 9-11, 22, 25.

process with federal banking agencies<sup>77</sup> and the need to create separate SBLF regulations for financial institutions established as C Corporations, Subchapter S Corporations, mutual lending institutions, and community development financial institutions (CDFIs).

A “C corporation” is a legal entity established under state law and includes shareholders, directors, and officers. The profit of a C corporation is taxed to the corporation when earned, and then is taxed to the shareholders when distributed as dividends.<sup>78</sup> The majority of insured depository institutions, bank holding companies, and savings and loan holding companies are C corporations.<sup>79</sup> A “Subchapter S Corporation” refers to a section of the Internal Revenue Code (IRS) that allows a corporation to pass corporate income, losses, deductions, and credits through to their shareholders for federal tax purposes. Shareholders of S corporations report the flow-through of income and losses on their personal tax returns and are assessed tax at their individual income tax rates. This allows S corporations to avoid double taxation on the corporate income.<sup>80</sup> Mutual lending institutions, which include many thrifts and savings and loans associations, are owned by its depositors or policyholders. They have no stockholders. CDFIs are financial entities certified by the Community Development Financial Institutions Fund (CDFI Fund) in the U.S. Department of the Treasury, and provide capital and financial services to underserved communities.

The establishment of separate regulations for each of these different types of financial institutions was largely related to issues involving whether the SBLF’s financings would be counted by banking regulatory agencies as Tier 1 capital (core capital that is relatively liquid, such as common shareholders’ equity, disclosed reserves, most retained earnings, and perpetual non-cumulative preferred stocks) or as Tier 2 capital (supplementary capital that consists mainly of undisclosed reserves, revaluation reserves, general provisions, hybrid instruments and subordinated term debt).<sup>81</sup>

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<sup>77</sup> Treasury and the federal banking agencies ultimately agreed that the banking agencies “would advise Treasury only on the financial viability of applicants and their capacity to increase small business lending, and that they would not make investment recommendations as they had for TARP. It was agreed that an applicant would be considered “viable” if it was (1) adequately capitalized; (2) not expected to become undercapitalized; and (3) not expected to be placed into conservatorship or receivership. Further, the [agencies’] validation of viability of an applicant would reflect only currently available supervisory information and rating assessments at the time the validation was made and would not predict Treasury’s loss from making an investment in the institution.” See U.S. Department of the Treasury, Office of the Inspector General. *Small Business Lending Fund: Investment Decision Process for the Small Business Lending Fund*, Washington, DC, May 13, 2011, p. 8, [http://www.treasury.gov/about/organizational-structure/ig/Documents/SBLF%20Report%20\(OIG-SBLF-11-001\).pdf](http://www.treasury.gov/about/organizational-structure/ig/Documents/SBLF%20Report%20(OIG-SBLF-11-001).pdf).

<sup>78</sup> Internal Revenue Service, “Corporations,” Washington, DC, <http://www.irs.gov/businesses/small/article/0,,id=98240,00.html>.

<sup>79</sup> U.S. Department of the Treasury, Office of the Inspector General. *Small Business Lending Fund: Investment Decision Process for the Small Business Lending Fund*, Washington, DC, May 13, 2011, p. 7, [http://www.treasury.gov/about/organizational-structure/ig/Documents/SBLF%20Report%20\(OIG-SBLF-11-001\).pdf](http://www.treasury.gov/about/organizational-structure/ig/Documents/SBLF%20Report%20(OIG-SBLF-11-001).pdf).

<sup>80</sup> Internal Revenue Service, “S Corporations,” Washington, DC, <http://www.irs.gov/businesses/small/article/0,,id=98263,00.html>.

<sup>81</sup> 12 C.F.R. §325.2: “Tier 1 capital or core capital means the sum of common stockholders’ equity, noncumulative perpetual preferred stock (including any related surplus), and minority interests in consolidated subsidiaries, minus all intangible assets (other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships eligible for inclusion in core capital pursuant to §325.5(f)), minus credit-enhancing interest-only strips that are not eligible for inclusion in core capital minus deferred tax assets in excess of the limit set forth in §325.5(g), minus identified losses (to the extent that Tier 1 capital would have been reduced if the appropriate accounting entries to reflect the identified losses had been recorded on the insured depository institution’s books), and minus investments in financial subsidiaries subject to 12 CFR part 362, subpart E, and minus the amount of the total adjusted carrying (continued...)

The treatment of the SBLF's financings was important given that banks must maintain a minimum total risk-based capital ratio of 8% (the ratio measures bank capital against assets, with asset values risk-weighted, or adjusted on a scale of riskiness) to be considered adequately capitalized by federal banking regulators. In addition, banks must maintain a minimum Tier 1 risk-based ratio to assets, typically 3% for banking institutions with the highest financial ratings and 4% for others.<sup>82</sup>

According to Treasury officials, under Internal Revenue Service (IRS) rules, S corporations can have only a single class of stock (common shares). Consequently, these institutions cannot issue preferred stock to Treasury. As a result, Treasury had to consider purchasing subordinated debt from these institutions, which the banking regulatory agencies would likely designate as Tier 2 capital.<sup>83</sup> Treasury officials believed that providing Tier 2 capital would probably result in fewer S corporation participants. Additionally, because mutual institutions do not issue stock, Treasury officials were unable to receive preferred stock as consideration for an investment in this type of institution. Therefore, Treasury had to consider purchasing subordinated debt from these institutions as well.<sup>84</sup>

Treasury completed its regulations for C corporation banks first. For C Corporations, SBLF funds will be treated as Tier I capital and the Treasury will purchase senior perpetual noncumulative preferred stock (or an equivalent). The stock will pay a quarterly dividend on the first day of each quarter after closing of the SBLF capital program funding. Tier 1 capital is the core measure of a bank's financial strength from a regulator's point of view. It is composed of core capital, which consists primarily of common stock and disclosed reserves (or retained earnings), but may also include non-redeemable non-cumulative preferred stock. In contrast, S Corporations and mutual lending institutions will receive unsecured subordinated debentures from the Treasury, which will be considered Tier 2 capital for regulatory capital requirements.<sup>85</sup>

The application deadline for C corporation banks was May 16, 2011. The application deadline for Subchapter S corporations and mutual lending institutions was June 6, 2011, and the application deadline for CDFIs was June 22, 2011. A total of 926 institutions applied for \$11.8 billion in SBLF funding.<sup>86</sup>

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(...continued)

value of nonfinancial equity investments that is subject to a deduction from Tier 1 capital as set forth in section II.B.(6) of appendix A to this part.”

<sup>82</sup> For further information and analysis of federal banking regulations see CRS Report R40249, *Who Regulates Whom? An Overview of U.S. Financial Supervision*, by Mark Jickling and Edward V. Murphy.

<sup>83</sup> U.S. Department of the Treasury, Office of the Inspector General. *Small Business Lending Fund: Investment Decision Process for the Small Business Lending Fund*, Washington, DC, May 13, 2011, p. 7, [http://www.treasury.gov/about/organizational-structure/ig/Documents/SBLF%20Report%20\(OIG-SBLF-11-001\).pdf](http://www.treasury.gov/about/organizational-structure/ig/Documents/SBLF%20Report%20(OIG-SBLF-11-001).pdf).

<sup>84</sup> Ibid.

<sup>85</sup> 12 C.F.R. Appendix A to Part 3 - Risk-Based Capital Guidelines: “The following elements comprise a national bank's Tier 2 capital: (1) Allowance for loan and lease losses, up to a maximum of 1.25% of risk-weighted assets, 3 subject to the transition rules in section 4(a)(2) of this appendix A; 3 The amount of the allowance for loan and lease losses that may be included in capital is based on a percentage of risk-weighted assets.”

<sup>86</sup> U.S. Department of the Treasury, “Small Business Lending Fund Cost Report, Report to Congress submitted pursuant to Section 4106(2) of the Small Business Jobs Act of 2010,” Washington, DC, July 19, 2011, p. 1, [http://www.treasury.gov/resource-center/sb-programs/Documents/SBLFTransactions/SBLF%204106\(2\)%20Cost%20Report.pdf](http://www.treasury.gov/resource-center/sb-programs/Documents/SBLFTransactions/SBLF%204106(2)%20Cost%20Report.pdf).

Treasury approved \$4,027,703,880 in SBLF financing to 332 lending institutions.<sup>87</sup> SBLF recipients have offices located in 47 states and the District of Columbia. The average financing was \$12,131,638, ranging from \$42,000 to \$141,000,000.<sup>88</sup>

Of the 332 lending institutions which received financing, 137 institutions had participated in TARP's Community Development Capital Initiative or its Capital Purchase Program. These institutions received \$2,689,763,790 in SBLF financing (66.8% of the total).<sup>89</sup>

## Proposed Legislation

Several bills have been introduced in the 112<sup>th</sup> Congress to amend the SBLF. For example, Senator Snowe introduced S. 681, the Greater Accountability in the Lending Fund Act of 2011, on March 30, 2011. Senator Snowe argued that

While I would prefer to terminate this fund altogether, it is unlikely based on the current political environment, which is why we must work to protect taxpayers from some of its most egregious provisions. My goal with this legislation is to ensure that only healthy banks have access to taxpayer money, that they are required to repay loans within a reasonable period of time, and that small businesses find the affordable credit they need.<sup>90</sup>

The bill would, among other things,

- require recipients to repay SBLF distributions within 10 years of the receipt of the investment,<sup>91</sup>
- terminate the program no later than 15 years after the date of the bill's enactment,<sup>92</sup>
- prohibit the Secretary of the Treasury from making capital investments under the program if the FDIC is appointed receiver of 5% or more of the institutions receiving an investment under the program,
- prohibit participation by any institution that received an investment under TARP (effective on the date of the bill's enactment),

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<sup>87</sup> U.S. Department of the Treasury, "SBLF Investments as of September 27, 2011," Washington DC, [http://www.treasury.gov/resource-center/sb-programs/DocumentsSBLFTransactions/SBLF\\_Bi-Weekly\\_Transactions\\_Report\\_THRU\\_09272011.pdf](http://www.treasury.gov/resource-center/sb-programs/DocumentsSBLFTransactions/SBLF_Bi-Weekly_Transactions_Report_THRU_09272011.pdf).

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> U.S. Senator Olympia Snowe, "Snowe Calls for Comprehensive Fixes to Small Business Lending Fund," Washington DC, March 30, 2011, [http://snowe.senate.gov/public/index.cfm/pressreleases?ContentRecord\\_id=b1507369-8193-44ff-94ae-ceb94d5debe8&ContentType\\_id=ae7a6475-a01f-4da5-aa94-0a98973de620&Group\\_id=2643ccf9-0d03-4d09-9082-3807031cb84a&MonthDisplay=3&YearDisplay=2011](http://snowe.senate.gov/public/index.cfm/pressreleases?ContentRecord_id=b1507369-8193-44ff-94ae-ceb94d5debe8&ContentType_id=ae7a6475-a01f-4da5-aa94-0a98973de620&Group_id=2643ccf9-0d03-4d09-9082-3807031cb84a&MonthDisplay=3&YearDisplay=2011).

<sup>91</sup> Current law provides the Treasury Secretary the discretion to extend the repayment period beyond 10 years. P.L. 111-240, the Small Business Jobs Act of 2010, Sec. 4103(d)(5)(h); 12 U.S.C. § 4741.

<sup>92</sup> Current law does not include a termination date for the program, other than terminating the authority to make capital investments in eligible institutions one year after the date of enactment. P.L. 111-240, the Small Business Jobs Act of 2010, Sec. 4109. Termination and Continuation of Authorities.



- remove provisions allowing the Secretary of Treasury to make a capital investment in institutions that would otherwise not be recommended to receive the investment based on the institution's financial condition, but are able to provide a matching investment from private, nongovernmental investors,
- require the approval of appropriate financial regulators when determining whether an institution should receive a capital investment,<sup>93</sup> and
- revise the benchmark against which changes in the amount of small business lending is measured from the four full quarters immediately preceding the date of enactment to calendar year 2007.<sup>94</sup>

Representative Patrick McHenry introduced H.R. 1387, the Small Business Lending Fund Accountability Act of 2011, on May 2, 2011. It would give the Special Inspector General for TARP responsibility for providing oversight over the SBLF.

Senator Tom Coburn proposed S.Amdt. 279 to S. 493, the Small Business Innovation Research, Small Business Technology Transfer Reauthorization Act of 2011, on March 31, 2011. It would prevent TARP recipients from using funds received in any form under any other federal assistance program, including the SBLF program.

Representative Cedric Richmond, introduced H.R. 2807, the Small Business Leg-Up Act of 2011, on August 5, 2011. It would transfer any unobligated and repaid funds from the SBLF to the Community Development Financial Institutions Fund beginning on the date when the Secretary of the Treasury's authority to make capital investments in eligible institutions expires (on September 27, 2011). The bill's stated intent is "to increase the availability of credit for small businesses."<sup>95</sup>

Representative John Carney introduced H.R. 3147, the Small Business Lending Extension Act, on October 21, 2011. It would extend the Treasury Department's investment authority from one year following enactment to two years and require the Treasury Secretary to provide any institution not selected for participation in the program the reason for the rejection, ensure that the rejection reason remains confidential, and establish an appeal process that provides the institution an opportunity to contest the reason provided for the rejection of its application.

## **Concluding Observations**

The SBLF was enacted as part of a larger effort to enhance the supply of capital to small businesses. Advocates argued that the SBLF would help to address the recent decline in small

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<sup>93</sup> Current law requires the Treasury Secretary to consult with appropriate financial regulators to determine if the eligible institution may receive a capital investment under the program. P.L. 111-240, the Small Business Jobs Act of 2010, Sec. 4103(d); 12 U.S.C. § 4741.

<sup>94</sup> Senator Snowe indicated that this change "would address concerns that the existing benchmark may be too low, by historical standards, and that an adjustment could result in additional small business lending. See U.S. Senator Olympia Snowe, "Snowe Calls for Comprehensive Fixes to Small Business Lending Fund," Washington DC, March 30, 2011, [http://snowe.senate.gov/public/index.cfm/pressreleases?ContentRecord\\_id=b1507369-8193-44ff-94ae-ceb94d5debe8&ContentType\\_id=ae7a6475-a01f-4da5-aa94-0a98973de620&Group\\_id=2643ccf9-0d03-4d09-9082-3807031cb84a&MonthDisplay=3&YearDisplay=2011](http://snowe.senate.gov/public/index.cfm/pressreleases?ContentRecord_id=b1507369-8193-44ff-94ae-ceb94d5debe8&ContentType_id=ae7a6475-a01f-4da5-aa94-0a98973de620&Group_id=2643ccf9-0d03-4d09-9082-3807031cb84a&MonthDisplay=3&YearDisplay=2011).

<sup>95</sup> H.R. 2807, the Small Business Leg-Up Act of 2011.

business lending and create jobs. Opponents were not convinced that it would enhance small business lending, and worried about the program's potential cost to the federal treasury and its similarities to TARP.

It is too early to determine the extent, if any, of the program's affect on small business lending. Under the Small Business Jobs Act, the Department of the Treasury's Inspector General is required to conduct audits and investigations of the SBLF and to report its findings to Congress and the Secretary of the Treasury no less than two times a year. The Inspector General's first semiannual audit was reported on May 13, 2011.<sup>96</sup> In addition, the Government Accountability Office is required to audit the program annually.<sup>97</sup> Although not specifically mandated by law, these audits could address the program's affect on small business lending.<sup>98</sup> However, any analysis of the program's influence on small business lending is likely to be more suggestive than definitive because differentiating the SBLF's affect on small business lending from other factors, such as changes in the lender's local economy, is methodologically challenging, especially given the relatively small amount of financing involved relative to the national market for small business loans. The SBLF's \$4.0 billion in financing represents less than 0.6% of outstanding small business loans.

It is also too early to fully address opponents' concerns about the program's potential cost to the Treasury. However, one issue that has arisen relative to the program's cost is the non-cumulative treatment of dividends. The Treasury's Inspector General reported in May 2011 that

Under the terms set by legislation, dividend payments are non-cumulative, meaning that institutions are under no obligation to make dividend payments as scheduled or to pay off previously missed payments before exiting the program. This dividend treatment differs from the TARP programs, in which many dividend payments were cumulative. This change in dividend treatment was driven by changes in capital requirements mandated by the Collins Amendment to the Dodd-Frank Act.

The amendment equalizes the consolidated capital requirements for Tier 1 capital of bank holding companies by requiring that, at a minimum, regulators apply the same capital and risk standards for FDIC-insured banks to bank holding companies. Under TARP, the FRB [Federal Reserve Board] and FDIC treated capital differently at the holding company and depository institution levels. The FRB treated cumulative securities issued by holding companies as Tier 1 capital, while FDIC treated non-cumulative securities issued by depository institutions as Tier 1 capital. In order to comply with the Dodd-Frank Act requirement that securities purchased from holding companies receive the same capital treatment as those purchased from depository institutions, Treasury made the dividends under SBLF non-cumulative.

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<sup>96</sup> U.S. Department of the Treasury, Office of the Inspector General. *Small Business Lending Fund: Investment Decision Process for the Small Business Lending Fund*, Washington, DC, May 13, 2011, [http://www.treasury.gov/about/organizational-structure/ig/Documents/SBLF%20Report%20\(OIG-SBLF-11-001\).pdf](http://www.treasury.gov/about/organizational-structure/ig/Documents/SBLF%20Report%20(OIG-SBLF-11-001).pdf).

<sup>97</sup> P.L. 111-240, the Small Business Jobs Act of 2010, Sec. 4107. Oversight and Audits.

<sup>98</sup> Representative Sam Graves, "Full Committee Hearing, The State of Small Business Access to Credit and Capital: The View from Secretary Geithner," Letter to Members of the House Small Business Committee, Washington, DC, June 20, 2011, p. 19, [http://smbiz.house.gov/UploadedFiles/6-22\\_Memo.pdf](http://smbiz.house.gov/UploadedFiles/6-22_Memo.pdf).

Additionally, given that Tier 1 capital must be perpetual and cannot have a mandatory redemption date, the 10-year repayment period in the Small Business Jobs Act cannot be enforced.<sup>99</sup>

Treasury has addressed this issue by placing the following additional requirements and restrictions on participants who miss dividend payments:

- the participant’s CEO [Chief Executive Office] and CFO [Chief Financial Officer] must provide written notice regarding the rationale of the board of directors (BOD) for not declaring a dividend,
- no repurchases may be affected and no dividends may be declared on any securities for the applicable quarter and the following three quarters,
- after four missed payments (consecutive or not), the issuer’s BOD must certify in writing that the issuer used best efforts to declare and pay dividends appropriately,
- after five missed payments (consecutive or not), Treasury may appoint a representative to serve as an observer on the issuer’s BOD, and
- after six missed payments (consecutive or not), Treasury may elect two directors to the issuer’s BOD if the liquidation preference is \$25 million or more.<sup>100</sup>

The Treasury’s Inspector General agreed that Treasury’s equity investment policy is consistent with the legislation and that “it has reasonably structured the program to incentivize payment of dividends.”<sup>101</sup> However, it recommended that “Congress consider whether an amendment to the Small Business Jobs Act and/or waiver from the Collins Amendment to the Dodd-Frank Act is needed to make the repayment of dividends a requirement for exiting the program.”<sup>102</sup>

In conclusion, congressional oversight of the SBLF is currently focused on the program’s potential long-term costs and affect on small business lending. Underlying those concerns are fundamental disagreements concerning the best way to assist small businesses. Some advocate the provision of additional federal resources to assist small businesses in acquiring capital necessary to start, continue, or expand operations and create jobs. Others worry about the long-term adverse economic effects of spending programs that increase the federal deficit. They advocate business tax reduction, reform of financial credit market regulation, and federal fiscal restraint as the best means to assist small businesses and create jobs.

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<sup>99</sup> U.S. Department of the Treasury, Office of the Inspector General. *Small Business Lending Fund: Investment Decision Process for the Small Business Lending Fund*, Washington, DC, May 13, 2011, p. 19, [http://www.treasury.gov/about/organizational-structure/ig/Documents/SBLF%20Report%20\(OIG-SBLF-11-001\).pdf](http://www.treasury.gov/about/organizational-structure/ig/Documents/SBLF%20Report%20(OIG-SBLF-11-001).pdf).

<sup>100</sup> *Ibid.*, pp. 19, 20.

<sup>101</sup> *Ibid.*, p. 20.

<sup>102</sup> *Ibid.*, p. 25.

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