



LEGAL ALERT

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Capital Investment Fund Created for Community Banks

The President signed the Small Business Jobs Act of 2010 (the "Act") today which creates a \$30 billion Small Business Lending Fund (the "Fund") to provide community banks with capital to increase small business lending. Below are some FAQs regarding your bank's ability to participate in the program and the requirements of participation.

What institutions are eligible to receive a capital investment from the Fund?

Generally, a bank holding company that has total consolidated assets equal to or less than \$10 billion as reported in its call report as of the end of the fourth quarter of 2009 is eligible to apply for and, upon approval, receive a capital investment from the Fund.

Also, an insured depository institution that is not controlled by a bank holding company and has total assets equal to or less than \$10 billion as of the fourth quarter of the 2009 calendar year is eligible to apply for and, upon approval, receive a capital investment from the Fund.

However, an otherwise eligible institution may not receive any capital investment from the Fund if the institution is on the problem bank list (a current rating of 4 or 5 under the Uniform Financial Institutions Rating System) or such other list designated by the FDIC.

What is the amount of capital investment a participating institution may receive from the Fund?

Eligible institutions with \$1 billion or less of total assets as of the end of 2009 may apply to receive a capital investment not exceeding 5% of its risk-weighted assets as reported in the call report immediately preceding the date of application.

Eligible institutions with more than \$1 billion of total assets as of the end of 2009 may apply to receive a capital investment not exceeding 3% of its risk-weighted assets as reported in the call report immediately preceding the date of application.

What must be included in the application to receive a capital investment from the Fund?

At the time of application, the applicant must deliver to the appropriate federal or state banking regulators a small business lending plan describing 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.

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What factors are taken into account when considering an application to receive a capital investment from the Fund?

The Act does not specify what factors should be considered when determining whether a participant may receive a capital investment from the Fund. The U.S. Treasury will consult with the appropriate regulator of the applicant and base its decision on the recommendation of that regulator.

If the appropriate regulator does not recommend that an applicant receive a capital investment from the Fund, the U.S. Treasury and the appropriate regulator may take into consideration whether the applicant is capable of raising capital from private investors. If the appropriate regulator changes its recommendation contingent upon the institution raising capital from private investors, the applicant may receive no greater than 3% of its risk-weighted assets as of its most recent call report and no more than the total capital raised from private investors. The capital raised from private investors must be subordinate to the capital investment from the Fund.

What is the dividend rate payable on the investment from the Fund?

The investment by the Fund likely will take the form of preferred stock carrying a 5% dividend. For every calendar quarter during the initial two-year period, the dividend rate will be decreased 1% for every 2.5% increase in small business lending by the participant compared to the four quarters immediately preceding the enactment of the Act less certain adjustments for net charge-offs and gains from mergers. The dividend rate may never fall below 1%. Furthermore, an increase in lending in excess of the capital investment from the Fund will not count towards the dividend rate reduction amount.

After two years, the dividend rate will freeze. However, if small business lending has not increased during that time, the dividend rate will increase to 7%. All rates will remain in effect until the expiration of four and one-half years after the date of the investment. After that time, the dividend rate will increase to 9% for all remaining participants.

When must the capital investment be repaid?

The investment must be repaid after ten years or be subject to additional terms prescribed by the U.S. Treasury including a requirement that the instrument

carry the highest dividend or interest rate payable. Furthermore, the Treasury may subsequently establish additional incentives to repay the investment.

How does participation in the Capital Purchase Program impact an eligible institution's ability to receive a capital investment from the Fund?

Any amount of capital investment an institution is eligible to receive from the Fund is reduced by any Capital Purchase Program investment previously made by the U.S. Treasury that has not been repaid.

Otherwise, a Capital Purchase Program participant may receive a capital investment from the Fund so long as it has not missed more than one dividend payment due under the Capital Purchase Program. Furthermore, an investment from the Fund may be used to refinance an investment made under the Capital Purchase Program.

Is the Fund part of TARP?

No. The Fund is separate from TARP, and recipients of a capital investment from the Fund are not subject to the executive compensation and corporate governance requirements to which TARP recipients are subject.

May the terms of participation in the Fund be modified after the investment is made?

Yes. However, if a change in law modifies the terms of the investment in a materially adverse respect, the participant may repay the investment without impediment.

We expect more details regarding participation in the Fund such as a term sheet, a securities purchase agreement, and any preferred stock designations, to be made public soon. If you have any questions regarding the Fund, please do not hesitate to contact any of the attorneys below.

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