

Aldrich Bonnefin & Moore, PLC

[COMMERCIAL LENDING UPDATE]

JANUARY 2011

TREASURY RELEASES TERMS AND APPLICATION DOCUMENTS FOR SMALL BUSINESS LENDING FUND

The U.S. Treasury has now announced the terms for the Small Business Lending Fund (SBLF) capital program, which was established by the Small Business Jobs Act of 2010. Most notably, Treasury released an application and other program information in the form of a detailed "Getting Started Guide for Community Banks." Treasury also issued the following documents:

- Fact sheet summarizing the SBLF program
- Program term sheet
- Program term sheet for institutions refinancing their CPP investment
- Application form
- Guidelines for drafting a small business lending plan (a plan must be submitted in order to apply)
- Frequently asked questions

To access these documents and other program information, see <http://www.treasury.gov/resource-center/sb-programs/Pages/Small-Business-Lending-Fund.aspx>.

In related action, the federal banking agencies have issued underwriting standards for loans made under the SBLF program. (See the next article.)

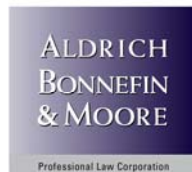
PROGRAM ELIGIBILITY

Under the \$30 billion SBLF program, institutions not currently (or within the last 90 days) on the FDIC's problem bank list (the list generally includes 4- and 5-CAMELS-rated institutions) and their holding companies with consolidated assets of less than \$10 billion will be eligible to apply for a capital investment in the following amounts:

- Institutions with less than \$1 billion in assets, as reported in their Q4 2009 Call Report, may apply for up to 5% of risk-weighted assets (less the amount of any prior Capital Purchase Program investment) based on the Call Report immediately preceding the date of application.
- Institutions with between \$1 billion and \$10 billion in assets, as reported in their Q4 2009 Call Report, may apply for up to 3% of risk-weighted assets (less the amount of any prior Capital Purchase Program investment) based on the Call Report immediately preceding the date of application.

Institutions controlled by holding companies must apply at the holding company level. Also, Treasury may in some circumstances require a matching private capital investment or limit SBLF funding to 3% of risk-weighted assets.

In addition, Capital Purchase Program (CPP) participants will be able to "refinance" their TARP investment into the SBLF program, which will not be



The Banking and Business Law Firm

www.abmlawfirm.com ■ 949.474.1944

18500 VonKarman Ave., Suite 300, Irvine, California 92612

Authors: Mark E. Aldrich, Esq. and Michael N. Delune, Esq.

subject to the executive compensation restrictions of TARP recipients. However institutions will not be permitted to simultaneously participate in the CPP and the SBLF program. Unlike the CPP, the SBLF program will not require participating institutions to issue warrants to Treasury.

DIVIDEND RATES

The SBLF program establishes a system of varying dividend rates designed to encourage increases in "qualified small business lending." The initial dividend rate will be at most 5% and will vary from there based upon the percentage increase in an institution's qualified small business lending. For example, if an institution's level of qualified small business lending increases by between 5% and 7.5%, then the applicable dividend rate will decrease to 3%. If qualified small business lending has not increased at the end of the eighth quarter after funding, the rate will increase to 7%. For all applicants, the rate also increases to 9% after four and a half years if funding has not yet been repaid by then. The amount of an institution's increase in small business lending will be measured each quarter against the average amount of qualified loans outstanding for the four quarters ending June 30, 2010.

APPLICATION PROCESS

To apply, eligible institutions should submit an application to Treasury by March 31, 2011 and provide a small business lending plan of approximately two pages in length to the institution's regulator(s). Note that S-corporations, mutuals and community development loan funds will be subject to a modified application process, the terms of which have not yet been announced. Since the funds available under the program are limited (\$30 billion), interested institutions are encouraged to apply early.

Our Corporate Practice Group has experience assisting institutions applying for similar programs (including TARP) and will be happy to answer any questions or assist your institution in applying for the SBLF program. Please contact Mark E. Aldrich, Esq. or Michael N. Delune, Esq. of Aldrich Bonnefin & Moore, PLC at (949) 474-1944.

AGENCIES ISSUE UNDERWRITING STANDARDS FOR SMALL BUSINESS LENDING FUND PROGRAM

In addition to establishing the SBLF program, the Small Business Jobs Act of 2010 directed the federal banking agencies to adopt underwriting standards for small business loans made by financial institutions participating in the SBLF program. In December 2010 the agencies issued their guidance which applies to small business loans that are originated, renewed or purchased under the SBLF program as well as loan participations made under the program.

As with all extensions of credit, participating institutions are expected to extend credit in a safe and sound manner with prudent risk selection and credit risk management processes. The banking agencies also expect the boards of directors of participating institutions to ensure that small business lending policies are consistent with the guidance and safe and sound lending practices. Small business lending under the SBLF program should be carried out by management, lending and credit administration staff that have sufficient small business lending experience. In addition, the institution should provide sufficient resources to successfully conduct such lending. The guidance generally reflects the minimum guidelines for credit underwriting and loan administration set out in the Interagency Guidelines Establishing Standards for Safety and Soundness as well as the Interagency Guidelines for Real Estate Lending Policies and the Interagency Statement on Meeting the Needs of Creditworthy Small Business Borrowers.

The agencies' guidelines have been provided for formulating underwriting standards for SBLF loans. According to the agencies, the guidelines are broad in nature and allow participating institutions to tailor lending policies and products to the needs of small businesses in their communities. Prudently underwritten small business loans should reflect all relevant credit factors, including: capacity of the income from the business to adequately service the debt; value and quality of the collateral; overall creditworthiness of the borrower; level of equity invested in the business; any secondary sources of repayment; and any additional collateral or credit enhancements (such as guaranties).

A copy of the guidance can be obtained at the FDIC's website at www.fdic.gov/news/news/financial/2010/fil10090a.html.