

## ***Small Business Lending Fund Terms and Conditions***

### ***Initial Participation Eligibility***

Banks, thrifts and parent holding companies that, as of the end of the fourth quarter of calendar year 2009, had less than \$10 billion in consolidated assets are eligible to participate in the Small Business Lending Fund (SBLF). A “problem bank” that has a composite “4” or “5” CAMELS rating (or a bank holding company which has a “problem bank” so rated) will not be considered.

### ***Eligibility Open to TARP CPP/CDIC Recipients***

To participate in the SBLF, all outstanding Capital Purchase Program (CPP) or Community Development Capital Incentive (CDIC) securities will be required to be repaid or refinanced. Applicants are required to be current with CPP/CDIC dividend payments to the U.S. Department of the Treasury (the Treasury) and must not previously have defaulted on more than one payment.

### ***SBLF Funds—Available Amounts***

Eligible community bank or bank holding companies with consolidated assets of less than \$1 billion may apply for SBLF capital funds in an amount up to 5 percent of risk-weighted assets. Community banks and bank holding companies with \$1 billion or more in consolidated assets are limited to SBLF capital funds of no more than 3 percent of risk-weighted assets.

### ***SBLF—Tier I Capital***

The Treasury will purchase senior perpetual noncumulative preferred stock (or an equivalent).

### ***Dividend Rates***

The dividend rate during the first nine calendar quarters will fluctuate between 5 percent and 1 percent. For each 2.5 percent quarterly increase in qualified small business lending, the quarterly dividend rate will decrease by 1 percent. Any decrease below 5 percent will only apply to the actual dollar amount of increased small business loans above the June 2009 baseline small business loan amount. From the 10th calendar quarter and for the next two years, the dividend rate will remain as a fixed rate based upon the ninth quarter rate. If there has been no increase in small business lending against the baseline amount or if there has been a decrease below the baseline, the fixed dividend rate will be 7 percent. The dividend rate will automatically increase to 9 percent beginning in the 18th quarter after SBLF funding.

### ***Qualified Small Business Lending***

Loans that fall within the Call Report categories of (i) commercial and industrial loans; (ii) loans secured by owner-occupied nonfarm, nonresidential real estate; (iii) agricultural production financing or other loans to farmers; and (iv) loans secured by farm land, may qualify as small business lending. Qualified small business loans may not be greater than \$10 million in principal commitment or made to businesses that have no more than \$50 million in annual revenues.

### ***SBLF Application Process***

All applications should be filed no later than March 31, 2011. Submitting an application to the Treasury does not obligate the applicant to actually complete the process or require them to accept the SBLF capital funds, if they are approved. In addition to the application form, applicants are also required to

complete and submit to their primary federal/state regulatory agency a brief small business lending plan (Plan). The Plan requires the applicant to identify a projected increase in small business lending that will be achieved or obtained during the first two years following receipt of funds. The Plan must be filed contemporaneously with the applicant's primary federal regulatory agency. The Treasury may condition approval for participation in the SBLF capital funding program upon the requirement that an applicant raise matching capital from private nongovernmental sources.

### ***Downstreaming of SBLF Funding***

Bank holding companies are required to downstream no less than 90 percent of the SBLF capital funds to subsidiary community banks. No single bank subsidiary may receive SBLF capital in an amount that is more than the applicable 3 percent or 5 percent risk-weighted asset thresholds discussed above.

### ***Post-SBLF Funding Conditions***

#### **a. Dividend or Securities Redemption**

Dividends may be paid on other securities and securities may be redeemed, provided that any dividend or redemption must not result in more than a 10 percent decrease in the bank's Tier I capital. In the third year and continuing through the 10th year, an additional 10 percent decrease in Tier I capital will be allowed for each 1 percent increase in small business lending.

#### **b. Ten-Year Rule**

For banks or bank holding companies that are not publicly traded, during the period beginning on the 10th anniversary of SBLF funding and ending on the date of the preferred stock redemption, a bank or bank holding company will not be allowed to declare dividends on or redeem other preferred stock that is either ranked *pari passu* or junior in ranking to the stock purchased by the Treasury.

#### **c. Treasury Dividend Defaults**

Any default that continues for five quarters will provide the Treasury with a right to appoint an observer to the bank or bank holding company's board of directors. If the default continues for six quarters, and the total SBLF funds outstanding equal or exceed \$25 million, the Treasury has the right to elect two directors to the bank or bank holding company board of directors.

In case of a Treasury dividend default, redeeming or paying dividends on other securities that either rank *pari passu* or are junior to stock held by the Treasury is prohibited. The prohibition will be effective during the default quarter and for the next three quarters. However, for any such quarter in which the Treasury dividend is paid, the bank or bank holding company will be allowed to pay dividends on other *pari passu* shares, but only to the extent that such dividend is required to prevent a material covenant breach.

#### **d. SBLF Funding Reporting Requirements**

Both quarterly dividend rate calculations and an annual lending survey must be submitted to the Treasury. Supplemental reports must be signed by the chief executive officer, chief financial officer and by each of the directors that would otherwise sign the Call Report.

For the first three years of SBLF participation, banks and bank holding companies must submit an annual certification from their auditors that the processes and controls used to generate the initial and quarterly supplemental reports are accurate.

In addition, participating banks and bank holding companies must annually certify that the principals of the businesses that receive qualified small business loans have neither been convicted nor pled *nolo contendere* to a sex offense against a minor. Participating banks and bank holding companies are required to maintain these annual certifications in accordance with standard recordkeeping requirements.

Lastly, participating banks and bank holding companies must annually certify that they are in compliance with federal anti-money-laundering requirements, in particular the customer identification program requirements.

### ***Redemption of Treasury Securities***

SBLF capital funds may be repaid at any time, subject to prior approval by the bank's or bank holding company's primary federal regulator. Partial redemptions equal to at least 25 percent of the original SBLF funding are also allowed. Any redemption must include all accrued and unpaid dividends for the current dividend period.

### ***Bank and Bank Holding Company Authority to Issue Preferred Stock***

Banks and bank holding companies planning to apply for funding should review their charters to make certain that they have preferred stock available to sell to the Treasury. If not, they will be required to amend their charters to authorize the preferred stock. Normally, any such charter amendment will require the prior approval of shareholders.

For further information, please contact Michael D. Morehead, Timothy M. Sullivan or your regular Hinshaw attorney.

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