LEGAL UPDATES AND NEWS

Community Banks Can Apply for Small Business Lending Fund Capital

Community banks may now apply to receive capital investments from the Treasury Department's Small Business Lending Fund ("SBLF"). Application forms and term sheets are now available on the Treasury's website located at http://www.treasury.gov/resource-center/sb-programs/Pages/Small-Business-Lending-Fund.aspx. Please note that Treasury has advised institutions to submit their applications for SBLF funding by March 31, 2011. A brief description of the SBLF program and the application process is set forth below. For more detailed information about the SBLF program, please see our prior client news alert, which is available at: http://www.luselaw.com/publications/2010/12-23-SBLF.pdf.

Application Process / Getting Started

In order to apply for SBLF funding, an institution must submit a one-page application form to Treasury. The form collects basic information about the applicant, including its asset size, requested SBLF investment amount, and the balance of any outstanding TARP investment. At the same time that an institution submits the application form to Treasury, it must also submit a "small business lending plan" of approximately two pages in length to its federal banking regulator (and, if state chartered, to its state banking regulator). The small business lending plan must: (1) describe how the institution will use SBLF funding to address the needs of small businesses in the communities it serves and explain why the projected increase in small business lending is reasonable; (2) specify the increase in small business lending that the institution expects to achieve; and (3) provide for community outreach, such as through advertising describing the availability and application process for receiving small business loans. Treasury has released a template small business lending plan, which is available at the link above, that institutions may use to satisfy these requirements. Importantly, an institution that applies for SBLF funding may withdraw its application at any time without penalty.

The application process is quite straightforward, and please feel free to contact any of the attorneys listed below if you would like our firm to assist you in the process and to know what the legal fees associated with obtaining an SBLF investment would be.

Eligibility

Eligibility for SBLF investments is limited to insured depository institutions and their holding companies with less than $10 billion in total consolidated assets. Institutions with less than $1 billion in assets may receive investments of up to 5% of risk-weighted assets. Institutions with between $1 billion and $10 billion in assets may receive investments of up to 3% of risk-weighted assets. Institutions that are on the FDIC's "problem bank list" (i.e., with a CAMELS rating of 4 or 5), or that have been off of the problem bank list for less than 90 days, are not eligible to participate.

Calculation of Dividend Rate

SBLF investments qualify as Tier 1 capital and carry a dividend rate that begins at 5% and adjusts downward (to as low as 1%) based on a participating institution's increase in small business lending. A "baseline" of each participant's small business lending will be established using Call Report data from the four quarters ended June 30, 2010. The institution must then pay dividends on its SBLF investment at a rate that *decreases* as its small business lending *increases* from the baseline. During the first nine quarters after receipt of SBLF funding, an institution may decrease the 5% base dividend rate by 1% for each 2.5% increase in its small business lending over the baseline, down to a minimum dividend rate of 1%. The reduced dividend rate is locked in from the tenth quarter after funding through the end of the 4½-year period after the closing date. However, if an institution's small business lending at the end of the two-year period after funding has remained the same or decreased relative to its baseline, its dividend rate will be 7% until the end of the 4½-year period after the closing date. Regardless of lending activity, at the end of the 4½-year period after funding, the dividend rate for each participating institution will increase to 9%. An SBLF investment may be repaid at any time (with regulatory approval) and *must be repaid* in full after 10 years.

TARP Refinancing

SBLF investments may be used by an institution to refinance securities issued in connection with the TARP Capital Purchase Program ("CPP"), provided that the institution's outstanding TARP securities are refinanced or repaid in full at the time of the refinancing. To be eligible for TARP refinancing, an institution must not have missed more than one dividend payment under the CPP and must pay, in immediately available funds, the amount of any unpaid dividends for the payment period prior to the SBLF closing date, plus accrued and unpaid dividends as of the date of refinancing for the payment period that includes the closing date. *Unlike TARP, there are no employee compensation restrictions associated with SBLF investments.*

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Luse Gorman is one of the leading firms nationally in advising financial institutions on capital-raising transactions, including U.S. Treasury programs such as the TARP Capital Purchase Program. For further details regarding this newsletter, please contact any of the attorneys listed below.

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