

FOR CONSIDERATION

October 20, 2011

TO: The Directors

FROM: Kenneth Adams

SUBJECT: (Statewide) – State Small Business Credit Initiative - Capital Access Program, New York State Urban Development Corporation Act (“UDC Act”) Section 16-k and Innovate NY Fund, UDC Act Section 16-u

REQUEST FOR: Authorization to Promulgate and Adopt Rules, Regulations and Guidelines; Authorization to Take Related Actions

Background

The Directors are requested to authorize the promulgation of regulations for the Capital Access Program and the Innovate NY Fund, two small businesses assistance programs established pursuant to the New York State Urban Development Corporation Act (“UDC Act”), to be operated by New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) and funded with \$55.4 million through the State Small Business Credit Initiative (“SSBCI”), a United States Department of Treasury program authorized by the U.S. Small Business Jobs Act of 2010.

Capital Access Program

The Capital Access Program (“CAP”), UDC Act Section 16-k, will provide to financial institutions match funding for loan loss reserves for loans to small businesses that otherwise find it difficult to obtain regular or sufficient bank financing.

Governor Andrew Cuomo recently signed legislation amending the program. The legislation expands the range of New York-based financial institutions that can participate and directs approximately \$19 million in SSBCI funding for this program.

Under the revitalized program, staff projects that over the next five years approximately 6,000 loans will be made, with an average loan size of \$75,000, leveraging approximately \$92 million in new private lending capital over five years and creating approximately 7,000 jobs statewide.

ELIGIBLE BORROWERS:

- Small businesses whose primary place of business is in New York State with 100 or fewer employees.

LENDING CRITERIA:

- CAP loans must be for the purposes of expansion, facility/technology upgrading, start-up and working capital.
- Loans must not exceed an amount greater than \$500,000.
- Lender determines the loan terms.

RESERVE ACCOUNT:

- Each CAP borrower and lender must pay into the lender's loan loss reserve fund an amount equivalent to 3 percent to 7 percent of the principal amount of the loan to be covered by the loan loss reserve fund receiving CAP funds. The CAP borrower contribution must not exceed 50% of this contribution.
- ESD will use CAP funds to match the combined borrower and lender funds at a ratio of 1:1, making the total contribution into the loan loss reserve fund a total of 6 percent to 14 percent of the principal amount of the loan.

Innovate New York Fund

The Innovate NY Fund is a new seed stage equity fund to support innovation, job creation, and high growth entrepreneurship throughout the state. Approximately \$26 million in SSBCI funds have been designated for this program.

Four to six competitively selected investment funds will receive approximately \$4 to \$6 million to invest in technology companies and other high growth firms. Selected funds are projected to receive fees and returns at an industry standard rate.

All contracted investment funds must secure at least a 2:1 match from private sources on its aggregate portfolio at the time of investment. Generally, SSBCI funding may not exceed \$500,000 per investment or \$750,000 in the case of any individual biotechnology related company.

Eligible companies will be New York State small businesses in the seed stage of development. Eligible applicants to the fund will include regionally focused investment funds, regional and local economic development organizations, technology development organizations, and research universities that provide seed-stage investment to New York State companies. All contracted regional funds must secure at least a 2:1 match from private sources on its aggregate portfolio.

Staff projects that the program will leverage approximately \$200 million in private investments and invest in almost 100 early-stage ventures, creating approximately 2,000 jobs in five years.

UDC ACT Sections 16-k and 16-u respectively authorize ESD to promulgate a rule for each program in accordance with the State Administrative Procedure Act (“SAPA”). Staff has prepared the proposed rules, copies of which are annexed to these materials, that set forth the regulations for implementation of the above described programs. Staff recommends that Corporation adopt the regulations substantially in the form of annexed drafts. With the urgent need in the State for this assistance, staff will seek to proceed under the emergency rulemaking process under SAPA.

Statutory Basis

The programs and the promulgation of the regulations are authorized under Sections 16-k and 16-u of the UDC Act.

Requested Actions

The Directors are requested to authorize the promulgation of the rule and regulations for the Capital Access Program and the Innovate NY Fund substantially in the form annexed to these materials with such modifications and additions as the Corporation’s General Counsel shall deem necessary or appropriate for the implementation of the program and the fund and compliance with Executive Order 17 (2009) and SAPA and other applicable laws and regulations and to authorize the taking of all related actions necessary or appropriate to effectuate the foregoing.

Recommendation

Based on the foregoing, I recommend that the requested actions be approved.

Attachments

Draft Rules
Resolutions

October 20, 2011

(Statewide) - State Small Business Credit Initiative - Capital Access Program, New York State Urban Development Corporation Act (“UDC Act”) Section 16-k and Innovate NY Fund, UDC Act Section 16-u - Authorization to Promulgate and Adopt Rules, Regulations and Guidelines; Authorization to Take Related Actions

RESOLVED, that the Corporation hereby authorizes the promulgation and adoption of the rule and regulations (the “Rules” and individually, the “Rule”) respectively for the Capital Access Program (the “CAP”) created pursuant to Section 16-k of the New York State Urban Development Corporation Act (the “Act”) and the Innovate NY Fund (the “Fund”) created pursuant to Section 16-u of the Act substantially in the form described and included in the materials presented in this meeting, a copy of which is ordered filed with the records of the Corporation, to provide for the implementation of CAP and the Fund, respectively, in accordance with Section 16-k and 16-n of the Act; and be it further

RESOLVED, that the General Counsel of the Corporation, or her designee, is authorized to proceed with and make modifications and additions to each Rule as necessary in order to implement the CAP and the Fund and comply with the State Administrative Procedure Act (“SAPA”), including Executive Order 17 (2009) and the emergency process under SAPA, and applicable laws and regulations; and be it further

RESOLVED, that the General Counsel of the Corporation, or her designee(s), be and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all action as he or she may in his or her sole discretion consider to be necessary or appropriate to effectuate the foregoing resolutions.

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