

## **ESDC Small Business Revolving Loan Fund Program**

### **Request for Proposals**

**Responses must be received no later than September 30, 2010 at 3:00 p.m.**

#### **I. Program Summary**

The Small Business Revolving Loan Fund is a \$50 million fund designed to create economic activity by providing greater access to capital for main street everyday small businesses. The program is targeted to minorities, women and other New Yorkers who have difficulty accessing regular credit markets. Governor Paterson's Small Business Task Force identified this vital need and initially proposed the creation of this program. The 2010-11 State Budget provided \$25 million in State funds and will leverage at least additional \$25 million in non-State matching funds from the participating lending organizations.

Empire State Development Corporation ("ESDC" or the "Corporation") is issuing a Request for Proposals ("RFP") to community development financial institutions ("CDFIs"), as well as community based lending organizations, small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks (referred to collectively as Community Based Lending Organizations - "CBLOs"). ESDC will provide low-interest loan capital to the CBLOs to make loans to small businesses and minority/ women owned businesses ("MWBE") located within New York State that are having difficulty accessing traditional markets or cannot secure adequate terms for such credit. Loans to CBLOs will be made at 1% for seven years. Terms may be extended if performance standards are met. A credit enhancement is available for nonprofit CBLOs; up to 10% of the Program Loan principal will be forgivable to cover certain eligible net small business loan losses of ESDC invested funds.

CBLOs may apply for program funds to make loans under two tracks: Track A – micro and small business loans of \$25,000 or less, and Track B - small business loans over \$25,000. The lending levels mentioned above refer to total principal of loans, including up to 50% of ESD funds. See Section III D for more details on matching requirements. ESDC expects to award approximately \$5 million under Track A and \$20 million under Track B. CBLOs may apply for program funds under both tracks. In most cases, ESDC will not make awards to any CBLO lender of over \$2 million for Track A and \$5 million for Track B, although ESDC reserves the right to make higher awards for CBLOs with substantial capacity.

For details on investment terms, please see Exhibit I: Program Investment Term Sheet.

ESD will balance individual application scores with priorities for geographic distribution across NYS and the distribution goals between micro and small business loans of \$25,000 or less, and larger small business loans over \$25,000. Refer to Section VI of this RFP for detailed evaluation criteria.

Proposals submitted to ESDC must contain all the information requested in the Proposal Requirements Section IV of this RFP and adhere to the Rules and Regulations promulgated for this Program (Exhibit II).

## **II. Purpose**

The purpose of ESDC's Small Business Revolving Loan Fund Program (the "Program") is to make low-cost loans available to CBLOs to expand their lending capacity in order to increase access to capital for small businesses, including minority/ women owned businesses and businesses in underserved communities, to stimulate economic growth, job creation and job retention throughout New York State. For complete program definitions, see Exhibit II.

## **III. Guidelines**

### **A. Service Delivery Area**

Applicants must serve an area or areas that are located within the State of New York. Please identify your proposed service delivery area/s by *both* ESDC Economic Development Regions ("EDRs") and individual counties.

EDRs are defined as follows: Capital Region (Warren, Washington, Saratoga, Schenectady, Albany, Rensselaer, Greene and Columbia), Central NY Region (Oswego, Onondaga, Madison, Cortland, and Cayuga), Finger Lakes Region (Orleans, Genesee, Wyoming, Livingston, Monroe, Wayne, Ontario, Yates, and Seneca), Long Island Region (Suffolk and Nassau), Mid-Hudson Region (Sullivan, Ulster, Dutchess, Orange, Putnam, Rockland, and Westchester), Mohawk Valley Region (Oneida, Herkimer, Fulton, Montgomery, Schoharie, and Otsego), North County Region (Jefferson, Lewis, Hamilton, Essex, Franklin, Clinton and St. Lawrence), Southern Tier Region (Delaware, Broome, Chenango, Tioga, Tompkins, Schuyler, Chemung, and Steuben) Western NY Region (Niagara, Erie, Cattaraugus, Allegany, and Chautauqua), and New York City (Richmond, Kings, Queens, New York, and Bronx).

Applicants that serve areas of high economic distress will be reviewed favorably.

### **B. Eligible Applicants**

To be eligible to receive funds from ESDC, an applicant organization must be one of the following:

1. Community Development Financial Institution ("CDFI" shall mean a community based organization that provides financial services and products to

communities, businesses and people underserved by traditional financial institutions); or

2. Small business lending consortium; or
4. Certified development company; or
5. Provider of United States Department of Agriculture business and industrial guaranteed loans; or
6. United States Small Business Administration loan provider; or
7. Credit union; or
8. Community bank.

All eligible applicants must have staff with sufficient expertise to analyze small business loan applications, evaluate the creditworthiness of small businesses, and regularly monitor small business loans. CBLOs shall review every loan application in order to determine, among other things, the feasibility of the proposed use of the requested financing by the small business loan applicant, the likelihood of repayment, and the potential that the loan will generate economic development and jobs within New York State.

Also, applicants must be legally able to receive and use the proceeds as herein stated; meet any other requirements herein stated for the specific purpose of the Program; be in good standing with any other ESDC assistance, and be current with all ESDC reporting requirements.

CBLOs are encouraged to develop partnerships for loan sourcing, loan packaging, and technical assistance in order to reach more businesses, expand the service delivery area, or expand business eligibility.

### C. Award Amounts

As mentioned, CBLOs may apply for Program Loans to make Business Loans under two tracks: Track A – micro and small business loans of \$25,000 or less, and Track B - small business loans over \$25,000. ESDC expects to award approximately \$5 million under Track A and \$20 million under Track B. CBLOs may apply for Program Loans under both tracks.

In most cases, ESDC will not make awards to any individual lender of over \$2 million for Track A and \$5 million for Track B, although ESDC reserves the right to make higher awards for CBLOs with substantial capacity.

For details on investment terms, please see Exhibit I.

The project period will generally be for seven years, unless an extension is granted. All loan funds should be deployed within 18-24 months upon the execution of the Program Loan Fund Agreement.

#### **D. Cost Sharing and Matching Requirements**

Eligible applicants must match ESDC Program funds at least 1:1 with non-State sources. Community Development Block Grant (CDBG) funds that are passed through State agencies are considered non-State funds for match purposes.

Program funds used by the CBLO to fund a Business Loan shall not be more than fifty percent (50%) of the principal amount of such loan. For Business Loans over twenty-five thousand dollars, Program Loan capital used for such loans cannot exceed one hundred and twenty-five thousand dollars.

#### **E. Eligible Business**

An eligible business is defined as:

1. a business enterprise that resides in New York State,
2. independently owned and operated,
3. not dominant in its field, and
4. employs one hundred or fewer persons.

#### **F. Eligible Types of Financial Assistance to Businesses**

All loans must be made for business purposes. With respect to its Business Loans, CBLOs may charge reasonable application, commitment and other fees pursuant to a schedule of fees adopted by the institution and approved by ESDC.

1. Loans to small businesses shall be used for:
  - a. working capital;
  - b. acquisition and/ or improvement of real property;
  - c. acquisition and/ or improvement of machinery and equipment; and
  - d. the refinancing of debt obligations, provided that
    - i. it does not refinance a loan already in the CBLO's lending portfolio;
    - ii. the refinanced loan will provide a tangible benefit to the business borrower as determined by the Corporation in writing; and
    - iii. the aggregate principal of all borrower refinancing loan amounts in the Community Based Lending Organization's Program loan portfolio is not greater than twenty-five percent of the principal amount of the Corporation's Program Loan to the Community Lending Organization.
2. Program funds shall not be used for:
  - a. projects that would result in the relocation of any business operation from one municipality within the state to another, except under one of the following conditions:

- i. when a business is relocating within a municipality with a population of at least one million where the governing body of such municipality approves such relocation; or
  - ii. the CBLO notifies each municipality from which such business operation will be relocated and each municipality agrees to such relocation;
- b. projects of newspapers, broadcasting or other news media;
  - c. medical facilities, libraries, community or civic centers;
  - d. public infrastructure improvements; or
  - e. providing funds, directly or indirectly, for payments, distribution or as a loan (except in the case of a loan for sole proprietors for business use), to owners, members, partners or shareholders of the applicant business, except as ordinary income for services rendered.

**G. Non-Discrimination and Affirmative Action:**

It is the policy of the State of New York, and ESDC, to comply with all federal, State and local laws, policies, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action in working with contracting parties to ensure that New York State Business Enterprises, Minority and Women-owned Business Enterprises (MWBEs), Minority Group Members and women share in the economic opportunities generated by ESDC's participation in projects or initiatives, and/or the use of ESDC funds. ESDC's non-discrimination and affirmative action policy will apply to this initiative. Selected grantees are encouraged to use good faith efforts to provide for the meaningful participation of MWBEs, minority group members and women in the execution of this contract. A copy of each respondent's equal employment opportunity policy statement shall be included as part of the response to the RFP, if available. (Attachment W)

**IV. Proposal Requirements**

In order for a proposal submitted in response to this RFP to be considered, the proposal must contain all of the information requested below. If certain requested information or attachments are not available or applicable, please note in the narrative, on the attachment checklist (Exhibit IV) or within a particular attachment as necessary. Proposals that are not complete may not be reviewed by ESDC. Use this section to review the completeness of your proposal prior to its submission to ESDC. Organize your proposal in the order presented in this Section and provide tabs for each subsection of the proposal, as well as the attachments.

Each section in the application will have page limits. Please read each section carefully and adhere to the page limitations for each section.

- A. Applicant Information Sheet (included with RFP- Exhibit III)
- B. Applicant Checklist (included with RFP – Exhibit IV)
- C. Executive Summary (3 page maximum)

Please provide a summary of the application that includes the items below. Please refer to attachments as necessary.

- 1. Amount of Program funds requested from Track A and/or Track B
- 2. Identification of whether Applicant is requesting the 10% credit enhancement (only nonprofits are eligible)
- 3. Applicant type and mission
- 4. Summary of organizational capacity, financial stability, and capital structure for loan fund
- 5. Identification of target market (EDRs and counties to be served)
- 6. Summary of market analysis
- 7. Products and services
- 8. Summary of total and NYS small business lending track record over last three years, including lending volume, delinquency and write-off rates
- 9. Summary of expected NYS small business lending volume over next two years if award is received
- 10. Summary of expected outcomes, including job creation and business launch or expansion outcomes

- D. Organizational Information and Capacity (15 page maximum for narrative portion)

- 1. Organizational information

Describe the organization's status as an eligible entity that is able to administer the Program set forth in Section III.B of this RFP. Please note whether Applicant is not-for profit or for profit entity. Include the year that the organization was established. Include the year certified, if a federally certified CDFI. State the organizational mission. (narrative)

- a. Certificate of incorporation (Attachment A)
- b. CDFI certification letter, if applicable (Attachment B)
- c. Bylaws (Attachment C)
- d. FDIC Bank Examination Reports, if applicable and available. (Attachment D)
- e. Most recent annual report (Attachment E)

- 2. Financial information

- a. Current year budget, including all projected sources of revenue and all items of expense, and showing year to date budget progress (Attachment F)
- b. Provide financial statements for past three years. If the most recent annual statements are more than six months old, the Applicant should submit an interim statement. (Attachment G)

- c. Describe the type of financial statements included with the application - audited, reviewed, internally prepared; provide narrative for significant items of note on financial statements. (narrative)
  - d. Financial Data Input Chart (Attachment H1, H2 or H3 – templates included with RFP)
  - e. With regard to Financial Health and Viability Minimum Performance Ratios calculated on the corresponding Attachment H, applicants should provide any relevant information on each measure, including an explanation of why the applicant may not have met any Minimum Performance Standard (See Exhibit V – Minimum Performance Standards), and what measures are being taken to improve financial health and viability. Regulated applicants should also provide the narrative descriptions requested in Exhibit V. With regard to the Income and Expenses section in future years, all applicants should identify how much in projected grant and investment income is in-hand and how much is to be raised. (narrative)
  - f. Provide a projected 2-year budget and budget narrative for the organization’s small business lending activity, if such activity is a subset of the organization’s overall budget. (Attachment I)
  - g. Provide list of current funders, including type of funding, amounts, term, and purpose, etc. Clearly delineate and subtotal the funding and investment that is dedicated to lending. (Attachment J)
  - h. List all current and past awards from Empire State Development Corporation. Also state whether the applicant intends to apply to other ESDC program/s in 2010-2011, such as the ESDC CDFI Assistance Program. (Attachment K)
3. Target market for financial products in NYS  
Describe the organization’s existing target market and target population. Include information such as geography (EDRs and counties), target population and neighborhood characteristics. Include quantitative information about the area’s population. (e.g., unemployment rate, percentage of persons below the poverty line, percentage of persons on public assistance, business trends). Include information on current small business lending customers, including percentage that are minority and women business enterprises, percentage that are low income individuals, percentage that are in low income census tracts, and other pertinent information. (narrative)
4. Financial products
- a. Describe the financial products and services offered by the organization. For financial products and services available to small businesses, include specific information on loan product terms, including rates, fees, etc. (narrative)
  - b. Provide term sheets or additional product information, if available. (Attachment L)

5. Track record of providing financial products and services
  - a. Describe how financial products and services are marketed, including utilizing community partnerships for outreach, loan packaging, or other activities. (narrative)
  - b. Describe the organization's capital structure for lending activities, referring to Attachment J as necessary. Describe how the capital structure has changed over the past 3-5 years, what funds have been raised during that period, and how the capital structure is expected to change moving forward. Include a breakdown of the following:
    - i. total loan funds (including what amounts are from debt, grant funds, and earned income)
    - ii. funds committed or deployed
    - iii. funds available for lending  
(narrative)
  - c. Describe the loan loss reserve policy and describe the amount and source of funds currently available to cover loan losses, including the amount currently held in reserve. (narrative)
  - d. Lending Activities Chart. (Attachment M - template included with RFP)
  - e. Loan Portfolio Quality Chart (Attachment N - template included with RFP)
  - f. Provide an explanation of lending activity and volume, portfolio quality and portfolio management ratios, as contained in Attachments M and N. With regard to lending activities, applicants should provide additional information if available, such as:
    - i. the % of business loans to startups;
    - ii. a breakdown of lending by uses; and
    - iii. the historical % of business loans to minority and women owned businesses.

If Applicant expects changes to these breakdowns in future years, please explain. With regard to portfolio quality, please provide a description of the Applicant's portfolio management and collection procedures and explain the portfolio ratios in Table 4 of Attachment N. (narrative)
  - g. Economic Development Impacts Chart (Attachment O- template included with RFP)
  
6. Technical assistance
 

Describe existing technical assistance services, including information on types of technical assistance and training available, target population and geography, volume of services provided, demonstrated outcomes, and whether services are provided by the Applicant or through partnerships. Describe the connection between technical assistance and the financial products and services provided by the Applicant, including pre- and post-loan support. (narrative)
  
7. Management and operations
  - a. Describe the capacity, skills, size and experience of the Applicant's governing board. (narrative)

- b. Include a list of names and affiliations of its Board of Directors or other governing body. (Attachment P)
- c. Describe the capacity, skills, size and experience of the Applicant's management team and key staff, including members of the loan review committee. (narrative)
- d. Provide a list of key staff and describe the role each one will have in the Program's administration. Include each person's title(s) and position(s), background and expertise in finance and/or business development, or entrepreneurial training. Attach resumes for key staff and Loan Review Committee members. (Attachment Q)
- e. Describe the Applicant's underwriting, operating, and portfolio management policies and procedures, outlining specifically the credit evaluation, loan approval (including the roles of staff and Board), loan servicing, loan monitoring, collections processes, and its ability to generate reports. (narrative)
- f. Underwriting guidelines (Attachment R)
- g. Operating policies and procedures manual (Attachment S)
- h. Portfolio management and collections policies and procedures manual(s) (Attachment T)
- i. Describe the Applicant's financial management policies and procedures, (narrative)
- j. Financial management policies and procedures (Attachment U)
- k. Describe the applicant's MIS systems, including the accounting and portfolio management software utilized. (narrative)

E. Business Strategy (10 page maximum for narrative portion)

1. Market Analysis

- a. Describe the proposed target market if different than the existing target market described in Section IV.D.3 above, including detail on the target population and communities, and the extent of geographic reach. Applicants are encouraged to target underserved communities and to serve as wide a service delivery area as possible and appropriate. (narrative)
- b. Describe the trends in the need and demand for small business capital in the target service areas and among the target population, and provide data to support demand for applicant's services and an increase in lending output. (narrative)

2. Products and services

- a. Describe anticipated financial products and services if different than the Applicant's existing financial products and services as described in Section IV. D.4 above. Loan products for small businesses should have attractive terms; applicants should consider the low cost of Program Loan capital and the credit enhancement for nonprofit CBLOs under this Program when proposing Business Loan product terms. (narrative)

- b. Provide term sheets or additional product information for any proposed new products, if available. (Attachment L)
  - c. Describe anticipated technical assistance services if different than the applicant's existing technical assistance services as described in Section IV.D.6. above. (narrative)
- 3. Lending projections (assume full request is awarded)
 

Describe how requested award will result in loans to the small business community that would not be made otherwise, and not merely lower the cost of capital for the applicant. Refer to lending projections supplied on the Lending Activities Chart (Attachment M). Describe how Applicant will support an expansion of lending activity with current or projected operating funds and loan capital, referring to budget and financial information or other attachments as necessary. Describe the source and availability of funds for the 1:1 match requirement for each loan funded under the Program, referring to information supplied in section IV.D.5.b. and c. as necessary. Describe the expected delinquency, default, and write-off rates for small business loans and describe the source of loan loss reserve funds, referring to information supplied in Section IV. D.5. above or other attachments as necessary.
- 4. Marketing and outreach
  - a. Describe how the Applicant organization will market its Business Loan program and related services in the target market. The marketing plan should also contain strategies that will target the service delivery region as a whole or reach certain market subsets in specific communities, such as in underserved neighborhoods or to MWBEs. (narrative)
  - b. Describe how the Applicant organization will utilize community partnerships of joint ventures and coordinate its efforts with other lending organizations or technical assistance providers to increase volume, expand the service delivery area, or enhance services. (narrative)
- 5. Letters of support
 

The Applicant may attach letters of support from investors, funders, and community partners. (Attachment V)

## **V. Contracts and Loan Fund Setup**

Upon approval of the award by ESDC's Directors, the following process must occur:

- A. Contracts will be finalized with awardees; certain provisions may be negotiated. Report templates will be provided at that time. For complete details on investment terms, please see Exhibit I: Program Investment Term Sheet
- B. Each Community Based Lending Organization shall deposit Program funds awarded by ESDC, repayments and interest earned into a bank account in a State or Federal chartered banking institution.
- C. Drawdown requests will commence.

## **VI. Evaluation Criteria**

ESD will balance individual application scores with priorities for geographic distribution across NYS and the balance between microloans and larger small business loans. The evaluation criteria will include the following:

- A. Completeness of proposal
- B. Organizational capacity and stability
- C. Track record of small business lending in NYS, especially in underserved communities and to underserved populations having difficulty accessing traditional credit markets
- D. Business strategy for increased small business lending in NYS
  - 1. Overall strategy and feasibility
  - 2. Target market - demonstration of need, plan to target underserved communities and populations, and extent of geographic reach
  - 3. Appropriateness and attractiveness of small business lending products
  - 4. Level of projected small business lending activity, and level of projected increase over what volume would have been without ESDC investment
  - 5. Demonstration of Program Loan match
  - 6. Demonstration of sufficient operating funds and organizational capacity to support increased small business lending activity

## **VII. Additional Considerations**

- A. By submitting its Proposal, each applicant authorizes ESDC to contact any and all other persons identified in its Proposal or in any inquiry conducted by or on behalf of ESDC or the State, and to obtain the release of pertinent financial and other information, as well as to obtain verification of the information provided by each applicant.
- B. ESDC will not be held liable for any costs incurred by any applicant for work performed in the preparation and production of a Proposal, including any requests for additional information, interviews or negotiations; nor for any work performed prior to written authorization from ESDC to proceed. All Proposals submitted will become the property of ESDC.

ESDC reserves the right to:

- 1. Reject any or all Proposals received.
- 2. Select all, or fewer than all, lending organizations responding to the RFP as part of a partnership, consortia, etc.

3. Allocate funds in any amount, depending upon the number and quality of Proposals received.
4. Negotiate any element of a Proposal and require the submission of modifications or additions to Proposals as condition or further participation in the selection process.
5. In the event that a Community Based Lending Organization's participation in the Program is terminated, the Corporation, in its discretion, can reassign all or part of the award made to such Community Based Lending Organization to one or more other Community Based Lending Organizations that are already administering the Program, without an additional solicitation.
6. Amend this Request for Proposals.
7. Amend the Program guidelines and Rules and Regulations from time to time as necessary, during the life of the Program.

Questions associated with this RFP must be submitted in writing to Ms. Huey-Min Chuang, Senior Director of Business and Economic Development, at [hchuang@empire.state.ny.us](mailto:hchuang@empire.state.ny.us). No phone calls please.

**ESDC will be hosting a conference call and webinar to describe the Program and answer questions about the RFP on Tuesday, September 7 at 10:30 am.** Dial in information: 866-394-2346, conf. code: 7539176267, web: <http://connectpro74768991.na5.acrobat.com/sbrlf/>

#### **VIII. Additional Submission Requirements**

Three bound and one unbound copies of the Proposal must be received no later than September 30, 2010 3:00 p.m., sent to:

Ms. Marion Samuels  
Director, Community Development Lending  
Empire State Development  
Small Business Loan Fund RFP 2010  
633 Third Avenue  
NY, NY. 10017

#### **IX. Exhibits and Attachments**

Exhibit I: Program Investment Term Sheet

Exhibit II: Rules and Regulations

Exhibit III: Applicant Information Sheet

Exhibit IV: Attachment Checklist

Exhibit V: Minimum Performance Standards

## EXHIBIT I: PROPOSED TERM SHEET – DRAFT

<b><u>Parties:</u></b>	Empire State Development Corporation (ESDC) ("Lender") and XXX ("Borrower").
<b><u>Loan Amount:</u></b>	\$XXX.
<b><u>Approval Date:</u></b>	Not later than XX XX, 20XX.
<b><u>Use of Proceeds:</u></b>	Borrower shall apply the proceeds of the Program Loan to issue Business Loans within the State of New York to eligible small business enterprises and minority/ women owned enterprises (collectively, eligible enterprises). All such Business Loans shall be permitted under and authorized by the Borrower's charter, by-laws and any other applicable organizational documents of Borrower and otherwise permitted by applicable law and regulations.
<b><u>Term:</u></b>	7 years, interest only for the first five years with payment of interest and principal thereafter as described below in Repayment
<b><u>Disbursement:</u></b>	Borrower may execute draw requests during a 24-month drawdown period with a maximum of 3 advances. Each advance would be 33 1/3 % of the total loan amount, or \$XX,000. After the initial advance, subsequent advances will be available only if the Borrower is not in default of its obligations pursuant to the Program Loan Fund Agreement and after 70% of funds disbursed to date of the prior draw request(s) have been committed to the funding of eligible Business Loans. If Borrower's Business Loan commitments to eligible enterprises fall short of the Borrower's schedule of such commitments, as set forth in Schedule A attached hereto, Lender, at its sole discretion, may reduce the amount available to Borrower for advances subsequent to the initial advance.
<b><u>Interest Rate:</u></b>	Fixed at 1% annual rate.
<b><u>Repayment:</u></b>	Interest is payable semi-annually throughout the term of the Loan. Commencing on the 5 <sup>th</sup> anniversary of Program Loan closing and on each anniversary of such date through maturity, Borrower shall make an annual principal repayment equivalent to 33 1/3% of the outstanding principal balance outstanding on the date of the 5 <sup>th</sup> anniversary of Program Loan closing.
<b><u>Term Extension:</u></b>	Before the fourth anniversary of Program Loan closing, and provided that Borrower is not in default pursuant to the Program Funds Loan Agreement and certain requirements set forth in the Program Loan Fund Agreement are reached regarding, among other things, Business Loan commitments, Business Loan portfolio status, and the Borrower's financial stability, Lender and Borrower may agree to extend the term of the Program Loan up to four additional years, in which case the repayment schedule will be adjusted accordingly. If a term extension is proposed by Lender, further extensions and other features may be considered by Borrower and Lender in connection with such extension.
<b><u>Prepayment:</u></b>	The Program Loan shall be prepayable at any time, in whole or in part, without penalty.
<b><u>Credit Enhancement:</u></b> [Nonprofit borrowers only]	Lender will provide a credit enhancement whereby Lender would reduce the outstanding principal amount of the Program Loan by an amount equivalent

## EXHIBIT I: PROPOSED TERM SHEET – DRAFT

to the Program Loan proceeds funded portion of the principal amount of written-off Business Loans, provided, however, that the aggregate of such reductions shall not exceed 10% of the total Program Loan proceeds disbursed to Borrower, and, provided further, that Borrower and lender shall share *pro rata* in any payments or recoveries with respect to such written-off Business Loans. If Lender makes such reductions, then Program Loan principal would be adjusted down at the close of the 2<sup>nd</sup> and 4<sup>th</sup> calendar quarters of each calendar year, and interest payments for subsequent periods will be adjusted accordingly.

### Security:

The Program Loan will be unsecured. The Program Loan will be made with full recourse to the Borrower.

### Financial Covenants:

Financial covenants for Borrowers may include the following, as well as other items:

- 1) Capital Ratio - Unrestricted Net Assets/Total Assets: ratio of X% or greater.
- 2) Maintenance of Liquidity: (a) the sum of the Borrower's cash and liquid investments must equal or exceed X% of the Borrower's current liabilities; and (b) the ratio of the Borrower's current assets to current liabilities must equal or exceed X%.
- 3) Loss Reserve: as required by generally accepted accounting principles.
- 4) Leverage Ratio – Total Liabilities/Net Assets shall at all times be greater than or equal to X%.
- 5) Asset Quality: delinquencies of over 90 days less than X% of loans outstanding.

### Reporting Covenants:

Borrower reporting requirements will include the following

1. Annual audited financial statements within 180 days after the fiscal year end.
2. Interim (unaudited) financial statements within 60 days after the end of the 2<sup>nd</sup> and 4<sup>th</sup> quarters of each calendar year.
3. ESDC Semi-Annual Report within 60 days after the end of the 2<sup>nd</sup> and 4<sup>th</sup> quarters of each calendar year. Reports will include information on loan commitments and disbursements, portfolio status, the organization's financial health, and other items.

### Other Covenants:

Additional requirements will include the following:

- 1) Borrower's principal business activity will not change.
- 2) Limitation on acquisitions, mergers, disposal of assets.
- 3) Notification upon material change of key management.
- 4) Borrower will not issue secured debt, enter into guaranty obligations or incur liens other than minor or other mutually agreed upon exceptions.
- 5) Borrower will not change Business Loan product terms without written approval from ESDC.

## EXHIBIT I: PROPOSED TERM SHEET – DRAFT

### Description of Business Loans

<b><u>Size Range:</u></b>	Business Loan amounts shall range in size from a minimum of \$X to a maximum of \$Y.
<b><u>Loan Terms:</u></b>	Business Loan terms shall range from 1 to X years, with a targeted average term of Y to Z years.
<b><u>Participation:</u></b>	Program Loan funds shall be used for no more than 50% of each Business Loan, up to a maximum of \$125,000 in aggregate for Business Loans made to a particular eligible enterprise.
<b><u>Security:</u></b>	Borrower's portfolio of Business Loans may be comprised of both secured and unsecured loans.
<b><u>Interest Rates:</u></b>	Interest rates should be reasonable and reflect the low cost of capital for Program Loans. Interest rates and other product terms will be approved by the Corporation prior to execution of the Program Loan Fund Agreement. Business Loan pricing will be set on a project-by-project basis in accordance with Borrower's standard underwriting guidelines.
<b><u>Fees:</u></b>	Borrower may charge reasonable fees with respect to Business Loans. Fee levels and other product terms will be approved by the Corporation prior to execution of the Program Loan Fund Agreement.
<b><u>Pre-Established Loan Criteria:</u></b>	Debt Service Coverage Ratio: Xx minimum. Loan to Value Ratio: X% maximum (for asset-based loans).
<b><u>Equal Opportunity:</u></b>	It is the policy of the State of New York and ESDC, to comply with all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action to ensure that Minority and Women-owned Business Enterprises, Minority Group Members and women share in the economic opportunities generated by ESDC's participation in projects or initiatives, and/or the use of ESDC funds. The recipient of State funds represents that its equal employment opportunity policy statement incorporates, at a minimum, the following policy. Borrower shall not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status.

This letter is not a commitment by Lender to make Program Loan to, or otherwise enter into any agreement with Borrower. This letter is provided in order to set forth matters for discussion and consideration by the Borrower and the Lender. Until and unless both Borrower and Lender execute and deliver definitive documentation regarding a Program Loan or other agreements, neither Borrower nor Lender have an commitment or obligation to each other regarding the matters set forth herein.

**Exhibit II: Rules and Regulations**

**SMALL BUSINESS REVOLVING LOAN FUND  
RULES AND REGULATIONS**

**SMALL BUSINESS REVOLVING LOAN FUND**

21 NYCRR Chapter L Part 4250

**Statutory Authority**

**Section 16-T of the New York State Urban Development Corporation Act,  
Chapter 174 of the Laws of 1968, as amended**

**Historical Note**

**Part 4250 (Sections 4250.1 – 4250.14) filed Aug. \_\_, 2010 eff. Aug. \_\_ 2010**

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## **Section 4250.1 Purpose.**

The purpose of these regulations is to set forth and codify administration by the New York State Urban Development Corporation (the "Corporation") of the Small Business Revolving Loan Fund (the "Program") authorized by Section 16-t of the New York State Urban Development Corporation Act (the "Act"). The Corporation is authorized, within available appropriations, to provide low interest loans to community development financial institutions, in order to provide funding for those lending organizations' loans to small businesses, located within New York State, that generate economic growth and job creation within New York State but that are unable to obtain adequate credit or adequate terms for such credit. If the use of a community development financial institution is not practicable based upon an assessment of geographic and administrative capacity and other factors as determined by the Corporation, then the Corporation is authorized, within available appropriations, to provide low interest loans to the following other local community based lending organizations: small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks.

## **Section 4250.2 Definitions.**

- a) “Administrative Costs” shall mean expenses incurred by a Community Based Lending Organization in its administration of a Program Loan from the Corporation.
- b) “Administrative Income” shall mean income from (i) fees charged by a Community Based Lending Organization, including application fees, commitment fees and loan guarantee fees related to the Business Loans made to borrowers by the Community Based Lending Organization and (ii) interest income earned on the portion of the Program funds held by the Community Based Lending Organization (whether such funds are undisbursed Program funds or are repayment proceeds of Business Loans made by the Community Based Lending Organization).
- c) “Business Loan” shall mean a loan made by a Community Based Lending Organization to an Eligible Business for an Eligible Project that is either a Micro-Loan or a Regular Loan.
- d) “Community Based Lending Organizations” shall mean community development financial institutions, small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks.
- e) “Community Development Financial Institution” or “CDFI” shall mean a community based organization that provides financial services and products to communities, businesses and people underserved by traditional financial institutions.
- f) “Corporation” shall mean the New York State Urban Development Corporation d/b/a Empire State Development Corporation, a corporate governmental

agency constituting a body corporate and politic and a public benefit corporation of the State of New York created by Chapter one hundred seventy-four of the Laws of nineteen hundred sixty-eight, as amended.

- g) "Eligible Businesses" shall have the meaning given in Section 4250.3 below.
- h) "Eligible Project" shall have the meaning given in Section 4250.3 below.
- i) "Eligible Uses" shall have the meaning given in Section 4250.4 below.
- j) "Ineligible Businesses" shall mean newspapers, broadcasting, or other news media; medical facilities, libraries, community or civic centers. It also means any business relocating from one municipality with the State to another, except when the business is relocating within a municipality with a population of at least one million and the governing body of the municipality approves or each municipality from which such business operation will be relocated agrees to such relocation.
- k) "Ineligible Projects" shall mean any project that is not an Eligible Project, including, without limiting the foregoing, public infrastructure improvements and funding for providing payment or distribution as a loan to owners, members and partners or shareholders of the applicant business or their family members.
- l) "Loan Fund" shall mean the Small Business Revolving Loan Fund created by the Small Business Revolving Loan Fund Legislation.
- m) "Loan Fund Account" shall mean each and every account established by the Community Based Lending Organization for the purpose of depositing Program funds.
- n) "Loan Fund Legislation" shall mean Section 16-t of the Act.

o) "Loan Fund Proceeds" shall mean any and all monies made available to the Corporation for deposit to the Loan Fund, including monies appropriated by the State and any income earned by, or incremental to, the amount due to the investment of the same, or any repayment of monies advanced from the Loan Fund.

p) "Micro-Loan" shall mean a Small Business loan that has a principal amount that is less than or equal to twenty-five thousand dollars.

q) "Minority Business Enterprise" shall mean a business enterprise which is at least fifty-one percent owned, or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned, by one or more minority persons and such ownership must have and exercise the authority to independently control the day to day business decisions of the entity. Minority persons shall mean persons who are:

1. Black;
2. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent or either Indian or Hispanic origin, regardless of race;
3. Asian and Pacific Islander persons having origins in the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or
4. American Indian or Alaskan Native persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

r) "Program Loan Fund Agreement" shall mean the agreement between the Corporation and the Community Based Lending Organization pursuant to which the

Program funds will be disbursed to and used by the Community Based Lending Organization.

s) "Program Loan" shall mean a loan made by the Corporation to a Community Based Lending Organization.

t) "Regular Loan" shall mean a Small Business loan that has a principal amount greater than twenty-five thousand dollars.

u) "Service Delivery Area" shall mean one or more contiguous counties or municipalities to be served by the Community Based Lending Organization and described in the Program Loan Fund Agreement between the Corporation, as lender, and the Community Based Lending Organization, as borrower.

v) "Small Business" shall mean a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis.

w) "State" shall mean the State of New York.

x) "Women Business Enterprise" shall mean a business enterprise that is at least fifty one percent owned, or in the case of a publicly-owned business at least fifty one percent of the common stock or other voting interests of which is owned, by United States citizens or permanent resident aliens, one or more who are women, regardless of race or ethnicity, and such ownership interest is real, substantial and continuing and such woman or women have and exercise the authority to independently control the day to day business decisions of the enterprise.

y) "Working Capital Loans" shall mean short and medium term loans for working capital, revolving lines of credit and seasonal inventory loans made by Community Based Lending Organizations to Eligible Businesses for Eligible Projects.

### **Section 4250.3 Eligible Business, Eligible Projects and Ineligible Projects.**

Business Loans shall be offered by Community Based Lending Organizations on the terms and conditions that are in accordance with and subject to the Act and the provisions of this Part. Business Loans shall be provided by the Community Based Lending Organization only to Eligible Businesses for Eligible Projects and shall not be used for Ineligible Projects. The terms "Eligible Business", "Eligible Projects" and "Ineligible Projects" are defined as follows.

An "Eligible Business" is a:

1. business enterprise that is resident in and authorized to do business in New York State,
2. independently owned and operated,
3. not dominant in its field, and
4. employs one hundred or fewer persons.

An "Eligible Project" is a Business Loan from a Community Based Lending Organization to an Eligible Business in the Service Delivery Area for an Eligible Use, whereby the Community Based Lending Organization has reviewed every Business Loan application to determine the feasibility of the proposed Eligible Use(s) of the financing requested by the small business applicant, the likelihood of repayment, and the potential that the loan will generate

economic development and jobs within the State. An “Eligible Project” cannot be an “Ineligible Project” as defined below.

An “Ineligible Project” shall mean: (i) a project or use that would result in the relocation of any business operation from one municipality within the state to another, except under one of the following conditions, (A) When a business is relocating within a municipality with a population of at least one million where the governing body of such municipality approves such relocation, or (B) each municipality from which such business operation will be relocated has consented to such relocation; (ii) projects with respect to newspapers, broadcasting or other news media, medical facilities, libraries, community or civic centers, and public infrastructure improvements; (iii) providing funds, directly or indirectly, for payments, distribution or as a loan (except in the case of a loan to a sole proprietor for business use), to owners, members, partners or shareholders of the applicant business, except as ordinary income for services rendered; (iv) any project that results in a Business Loan to a person who is a member of the board or other governing body, officer, employee, or member of a loan committee, or a family member of the Community Based Lending Organization or who shall participate in any decision on the use of Program funds if such person is a party to or has a financial or personal interest in such loan.

#### **Section 4250.4 Eligible Uses.**

Eligible Uses of Program funds by a Small Business borrower of the Community Based Lending Organization are:

1. working capital;
2. acquisition and/ or improvement of real property;

3. acquisition of machinery and equipment; and
4. refinancing of debt obligations provided that:
  - a. it does not refinance a loan already in the portfolio of the Community Based Lending Organization;
  - b. the refinanced loan will provide a tangible benefit to the business borrower as determined by the Corporation in writing; and
  - c. the aggregate of the principal of all borrower refinancing loan amounts in the Community Based Lending Organization's Program loan portfolio is not greater than twenty-five percent (25%) of the principal amount of the Corporation's Program loan to the Community Based Lending Organization.

#### **Section 4250.5 Fees.**

A Community Based Lending Organization may charge application, commitment and loan guarantee fees pursuant to a schedule of fees adopted by the institution and approved in writing by the Corporation.

#### **Section 4250.6 Niagara, St. Lawrence, Erie, and Jefferson Counties.**

Notwithstanding anything to the contrary in this rule, the Corporation shall provide at least five hundred thousand dollars in Program funds to Community Based Lending

Organizations for the purpose of making loans to small businesses located in each of the following counties: Niagara, St. Lawrence, Erie and Jefferson.

### **Section 4250.7 Business Loan Types and Limits.**

- a) There shall be two categories of Business Loans to Eligible Businesses:
  - 1. a microloan that shall have a principal amount that is less than or equal to twenty-five thousand dollars; and
  - 2. a regular loan that shall have a principal amount greater than twenty-five thousand dollars.
- b) The Program funds amount used by the Community Based Lending Organization to fund a Business Loan shall not be more than fifty percent of the principal amount of such loan and shall not be greater than one hundred and twenty-five thousand dollars.
- c) No less than ten percent (10%) of the aggregate Program funds shall be allocated by the Corporation for Microloans.

### **Section 4250.8 General Evaluation Criteria.**

- a) In addition to such criteria as may be set forth by the Corporation from time to time in solicitations for applications from Community Based Lending Organizations, the Corporation shall evaluate the Program assistance application of a Community Based Lending Organization in conformance

with the Act and in accordance with the criteria set forth in this Part, including as applicable:

1. The ability of the Community Based Lending Organization to analyze small business applications for Business Loans, to evaluate the credit worthiness of small businesses, and to monitor and service Business Loans.
2. The ability of the Community Based Lending Organization to review every Business Loan application in order to determine, among other things, the feasibility of the proposed Eligible Use(s) of the financing requested by the small business applicant, the likelihood of repayment, and the potential that the loan will generate economic development and jobs within the State.
3. The ability of the Community Based Lending Organization to target and market to Minority and Women-Owned Enterprises and other small businesses that are having difficulty accessing traditional credit markets.

### **Section 4250.9 General Requirements.**

- a) Program funds shall be disbursed to a Community Based Lending Organization by the Corporation in the form of a Program Loan.

1. The term of the Program Loan shall commence upon closing of the Program Loan Fund Agreement between the Corporation and the Community Based Lending Organization.
  2. The Program Loan shall carry a low interest rate determined by the Corporation based on then prevailing interest rates and the circumstances of the Community Based Lending Organization.
- b) Notwithstanding the performance of the Business Loans made by the Community Based Lending Organization using Program funds, the Community Based Lending Organization shall remain liable to the Corporation with respect to any unpaid amounts due from the Community Based Lending Organization pursuant to the terms of the Corporation's Program Loan to the Community Based Lending Organization.
  - c) At the discretion of the Corporation, a portion of Program loan funds may be disbursed to the Community Based Lending Organization in the form of a grant or forgivable loan provided that those funds are used by the Community Based Lending Organization for administrative expenses associated with Business Loans to Eligible Borrowers for Eligible Projects, loan-loss reserves, or other eligible expenses as may be approved in writing by the Corporation.
  - d) Notwithstanding any provision of law to the contrary, the Corporation may establish a Program fund for Program use and pay into such fund any funds available to the Corporation from any source that are eligible for Program use, including moneys appropriated by the State.

- e) Interest received by the Corporation from Program Loans to Community Based Lending Organizations may be used at the discretion of the Corporation for Program Loans and the management, marketing, and administration of the Program.

### **Section 4250.10 Loan Fund Accounts.**

Each Community Based Lending Organization shall deposit Program funds awarded by the Corporation, repayments, and interest earned into a bank account in a State or Federal chartered banking institution.

### **Section 4250.11 Application and Approval Process.**

The Corporation shall identify eligible Community Based Lending Organizations through one or more competitive statewide or local solicitations.

### **Section 4250.12 Auditing, Compliance and Reporting.**

- a) The Community Based Lending Organization shall submit to the Corporation annual reports and additional reports as requested at the discretion of the Corporation stating:
  - 1. The number of Business Loans made;
  - 2. The amount of each Business Loan;
  - 3. The amount of Program Loan proceeds used to fund each Business Loan;
  - 4. The use of Business Loan proceeds by the borrower;

5. The number of jobs created or retained;
  6. A description of the economic development generated;
  7. The status of each outstanding Business Loan; and
  8. Such other information as the Corporation may require.
- b) The Corporation may conduct audits of the Community Based Lending Organization in order to ensure compliance with the provisions of this section, any regulations promulgated with respect thereto and agreements between the Community Based Lending Organization and the Corporation of all aspects of the use of Program funds and Business Loan transactions.
- c) In the event that the Corporation finds substantive noncompliance, the Corporation may terminate the Community Base Lending Organization's participation in the Program.
- d) Upon termination of a Community Based Lending Organization's participation in the Program, the Community Based Lending Organization shall return to the Corporation, promptly after its demand thereof, all Program fund proceeds held by the Community Based Lending Organization; and provide to the Corporation, promptly after its demand thereof, an accounting of all Program funds received by the Community Based Lending Organization, including all currently outstanding Business Loans that were made using Program funds. Notwithstanding such termination, the Community Based Lending Organization shall remain liable to the Corporation with respect to any unpaid amounts due from the Community Based Lending Organization pursuant to the terms of the Corporation's loans to the Community Based Lending Organization.

- e) In the event that a Community Based Lending Organization's participation in the Program is terminated, the Corporation, in its discretion, can reassign all or part of the award made to such Community Based Lending Organization to one or more Community Based Lending Organizations that are already administering the Program and that serve the same Service Area or portions thereof without an additional solicitation.

### **Section 4250.13 Confidentiality.**

- a) To the extent permitted by law, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, customer lists, or other trade secrets and proprietary information of a person or entity requesting assistance from the Loan Fund administered through the selected Community Based Lending Organizations by the Corporation, shall be confidential and exempt from public disclosures.
- b) To the extent permitted by law, no full time employee of the State of New York or any agency, department, authority or public benefit corporation thereof shall be eligible to receive assistance under this Program.

### **Section 4250.14 Non-Discrimination and Affirmative Action.**

The Corporation's affirmative action and non-discrimination policies and programs are grounded in both public policy and applicable law, including but not limited to, Section 2879 of

the Public Authorities Law, Article 15-A of the Executive Law and Section 6254 (11) of the Unconsolidated Laws. These laws mandate the Corporation to take affirmative action in implementing programs. The Corporation has charged the affirmative action department with overall responsibility to ensure that the spirit of these mandates is incorporated into the Corporation's policies and projects. Where applicable, the affirmative action department will work with applicants in developing an appropriate Affirmative Action Program for business and employment opportunities generated by the Corporation's participation of the Program.