

FOR CONSIDERATION

August 16, 2010

TO: The Directors

FROM: Denis Mullen

SUBJECT: (Statewide) - Small Business Revolving Loan Trust Fund, New York State Urban Development Corporation Act (“UDC Act”) Section 16-t

REQUEST FOR: Authorization to Promulgate and Adopt Rules and Regulations for the Implementation of the Small Business Revolving Loan Trust Fund; Authorization to Take Related Actions

Background

The legislature has amended the UDC Act to add a new Section 16-t creating the Small Business Revolving Loan Trust Fund, a \$50 million fund (the “Program”) 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 private matching funds from the participating lending organizations.

Empire State Development Corporation (“ESDC”) is issuing a Request for Proposals (“RFP”), adhering to the rules and regulations of the Program, 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 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 located within New York State that are having difficulty accessing traditional markets or cannot secure adequate terms for such credit. The Program will expand the lending capacity of CBLOs and at the same time stimulate economic growth, job creation and job retention throughout New York State.

Loans to CBLOs will be made at low interest rates and a credit enhancement will be available to cover a percentage of net small business loan losses of ESDC’s invested Program funds.

CBLOs may apply for program funds to make loans of \$25,000 or less, and loans over \$25,000. Private funds will match ESD funds at least 1:1 and maximum ESD match is \$125,000 for any business loan. Loans to businesses can be used for working capital, acquisition and/ or improvement of real property, acquisition and/ or improvement of machinery and equipment; and the refinancing of debt obligations under certain circumstances.

Participating CBLOs will be selected competitively through the RFP, although ESDC reserves the right to make reallocation and assignment of funds after the initial awards if selected CBLOs do not meet the performance matrix set for the Program.

Financing Uses	Amount	Financing Sources	Amount	Percent
Loans to Small Businesses	\$50,000,000	ESD loan to LOs	\$25,000,000	50%
		Non-State Match	25,000,000	50%
Total Project Costs	\$50,000,000	Total Project Financing	\$50,000,000	100%

Pursuant to UDC Act Section 9-c, the Corporation, with the assistance of the Commissioner for Economic Development, is required to promulgate rules in accordance with the State Administrative Procedure Act (“SAPA”). Staff has prepared the proposed rule, a copy of which is annexed to these materials, that sets forth the regulations for implementation of the Program. Staff recommends that Corporation adopt regulations for the Program substantially in the form of annexed draft. With the delay in passing the State’s budget and the urgent need in the State’s municipalities for this assistance, staff seeks to proceed under the emergency rulemaking process under SAPA.

Statutory Basis

The Program is authorized under Section 16-t of the UDC Act. The promulgation of the rule and regulations for the Program is required under UDC Act Section 9-c.

Requested Actions

The Directors are requested to authorize the promulgation of the rule and regulations for the Small Business Revolving Loan Trust 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 compliance with SAPA and applicable laws and regulations and to authorize the taking 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
Resolution

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.

August 16, 2010

(Statewide) – Small Business Revolving Loan Trust Fund, New York State Urban Development Corporation Act (“UDC Act”) Section 16-t - Authorization to Promulgate Rules and Regulations for the Implementation of the Small Business Revolving Loan Trust Fund; Authorization to Take Related Actions

RESOLVED, that the Corporation hereby authorizes the promulgation and adoption of the rule and regulations (the “Rule”) for the Small Business Revolving Loan Trust Fund (the “Program”) created pursuant to Section 16-t of the New York State Urban Development Corporation Act (the “Act”) as described in the materials presented in this meeting, a copy of which has been presented to this meeting and is ordered filed with the records of the Corporation, to provide for implementation of the Program in accordance with Section 16-t 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 the Rule as necessary in order to implement the Program and comply with the State Administrative Procedure Act (“SAPA”), including 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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