

Program Purpose

New York State's Capital Access Program (CAP) is funded through the State Small Business Credit Initiative (SSBCI), a US Treasury program authorized by the US Small Business Jobs Act of 2010. CAP provides portfolio insurance to participating Lenders to increase small business lending in New York State. NYS small businesses can utilize CAP by contacting a participating Lender who will conduct their own loan application process and determine loan terms. In 2011, CAP was expanded and recapitalized by Governor Andrew M. Cuomo. Empire State Development (ESD) will accept loan enrollment until the end of 2016 or until all funding is disbursed.

Benefits of CAP Participation

- Entrepreneurs can obtain financing or additional financing where they previously couldn't.
- Small businesses can access financing to expand their business, or for facility and technology upgrades, and working capital.
- Lenders can use CAP to provide more small business financing, obtain CRA credit and provide larger loans, up to \$500,000.
- New York's CAP is an economic development tool that creates employment opportunities for all New York citizens.

Small Business Eligibility

A Borrower must be a New York State small business that otherwise finds it difficult to obtain regular or sufficient bank financing. A New York State small business is defined in section 131 of the Economic Development Law: *A small business shall be deemed to be one which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons.*

Eligible Loans

- An eligible loan is a term loan or line of credit used for expansion, facility or technology upgrading, start-up or working capital.
- A Program loan may be made with interest rate, fees, and other conditions as the Lender and Borrower may agree. Enrolled loans must reach maturity within seven (7) years.
- The maximum amount for a Program loan is \$500,000.
- An Eligible Small Business may have two Program loans at one time, with no more than \$1,000,000 total outstanding.
- CAP does not have a minimum loan amount.
- An enrolled Program loan must be for the entire loan amount and not a portion of a loan to be covered under the Program.

Lender Eligibility

Qualified Lenders include any bank, trust company, savings bank, savings and loan association or cooperative bank chartered by the State or any national banking association, federal savings and loan association or federal savings bank or any community based lending organization, provided, however, that such entity has an office for the transaction of business located in the State.

A community based lending organization includes community development financial institutions, small business lending consortia, certified development companies, United States Department of Agriculture business and

industrial guaranteed loan providers, United States Small Business Administration loan providers, and community development credit unions provided however, that such entity has an office for the transaction of business located in the State.

Individual Lenders can receive contributions totaling up to \$2 million for enrolled CAP loans. Lenders enroll for participation by completing the Portfolio Insurance Agreement, which is available on request by contacting:

Rachael Dubin
Empire State Development
(212) 803-3281
nyscap@esd.ny.gov

The Agreement needs to be fully executed before Lenders can begin enrolling loans in the Program.

Loan Enrollment

Lenders may submit the Loan Enrollment Form for Empire State Development pre-approval, prior to funding the loan. Upon receiving approval and ESD's Acknowledgement Form, the loan is approved for enrollment for 90 days. After 90 days, the loan will not be considered an Enrolled Loan. The Lender can contact ESD prior to the end of the 90 day period to request an extension.

If the Lender chooses to enroll the loan after closing, the enrollment must occur within 10 days. Upon receiving the Loan Enrollment Form, Borrower's Certification Form and proof of the Borrower/Lender deposit, ESD will then schedule the deposit for the next scheduled quarterly disbursement.

CAP Contributions and Reserve Accounts

- The Borrower and Lender combined contribute 3-7 percent of the principal amount of each loan, deposited into a separate loan loss reserve account dedicated to enrolled CAP loans.
- Empire State Development matches the Borrower/Lender contribution up to 7% of the principal amount of the enrolled loan.
- The Borrower's CAP contribution cannot be more than 50 percent of the total Borrower/Lender contribution.
- Lenders determine the total Borrower/Lender CAP contribution.
- Empire State Development will disburse contributions on a quarterly basis.
- The Lender can utilize the loan loss reserve to cover losses on enrolled loans. If the balance in the reserve account doesn't pay the entire claim amount, a subsequent withdrawal can be made after additional loan enrollments and deposits.
- Multiple claims against the same loan can be submitted, up to the total principal amount. If there are partial write offs, claims can be made for those amounts.
- Quarterly and annual account reconciliation will be conducted by ESD, reports will be provided to Lenders for review and Lenders will need to provide ESD with the amount of accrued interest in the account.
- On or after September 30, 2017, if the outstanding total enrolled loan principal is zero and no future loans will be enrolled, the Lender may withdraw the remaining balance of the funds from the Loan Loss Reserve Fund. If at that time the remaining balance of the funds from the Loan Loss Reserve Fund is in excess of the total enrolled loan principal balance, the Lender may withdraw any amount that exceeds the balance of the outstanding enrolled loans principal balance from the Loan Loss Reserve Fund if no future loans will be enrolled.

Other Public/Private Funds

SBA guaranteed loans are not eligible for CAP enrollment. To confirm whether or not specific programs or funding can be utilized for CAP loans or for other inquiries, please contact Empire State Development.

Lender Participation and Loan Enrollment Process Overview

Lender Participation:

- Lender reviews, signs and returns the Lender Agreement and Appendices E and F to Empire State Development. ESD will then sign and return a copy to the Lender for their records.
- Lender establishes the reserve account, and provides the account and wire transfer information to ESD, in preparation to receive quarterly disbursements.
- Lender completes and returns a W-9 form to Empire State Development.

Loan Enrollment:

- Lender provides the Borrower with a Certification Form for completion and a copy of the completed Loan Enrollment Form.
- Lender then submits the Loan Enrollment Form, Borrower Certification Form and proof of deposit to ESD to enroll the loan.
- Empire State Development sends the Lender the Loan Acknowledgement Form, which informs the Lender of the scheduled deposit date and CAP approval and loan enrollment.
- Empire State Development disburses contributions for all enrolled loans on a quarterly basis on the next scheduled disbursement date.

Claims Procedure:

- Lender files Claim Form to Empire State Development.
- ESD responds with a notification granting permission to the Lender to withdraw the amount stated on the Claim Form.
- Upon receipt of ESD permission, Lender can withdraw the amount allocated.

Capital Access Program Documents

Portfolio Insurance Agreement

Appendix A - Loan Enrollment Form

Appendix B - Borrower's Certification

Appendix C - Loan Acknowledgement Form

Appendix D - Line of Credit Renewal Certification

Appendix E - Security Agreement

Appendix F - Control Agreement

Appendix G - Claim Form

Appendix H - Recovery Analysis Form