

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

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To establish the Capital Access Fund as a nonlapsing fund, to exempt the Capital Access Fund from certain depository requirements imposed by District law, to establish the Capital Access Program to encourage financial institutions to lend capital to small and medium-sized businesses and nonprofit organizations located in the District of Columbia by providing a source of reimbursement for losses on loans, to establish eligibility and contribution requirements for financial institutions, and to provide rulemaking authority.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Capital Access Program Act of 2010”.

Sec. 2. Definitions.

For the purposes of this act, the term:

- (1) “Capital access loan” means a loan that is entitled to be secured by the Fund.
- (2) “Enrolled loan” means a capital access loan issued in accordance with:
 - (A) The participation agreement; and
 - (B) The program’s objectives.
- (3) “Financial institution” includes a bank, trust company, banking association, savings and loan association, mortgage company, investment bank, credit union, or nontraditional financial institution.
- (4) “Fund” means the Capital Access Fund established by section 3.
- (5) “Loan” includes a line of credit.
- (6) “Medium-sized business” means a corporation, partnership, sole proprietorship, or other legal entity that:
 - (A) Is domiciled in the District of Columbia or has at least 51% of its employees located in the District of Columbia;
 - (B) Is formed to make a profit; and
 - (C) Employs at least 100, but fewer than 500, full-time employees.
- (7) “Nonprofit organization” means a corporation, association, or organization which is tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3)), that:

(A) Is domiciled in the District of Columbia; or

(B) Has at least 51% of its members located in the District of Columbia.

(8) "Participating financial institution" means a financial institution participating in the program.

(9) "Program" means the Capital Access Program.

(10) "Reserve account" means an account established in a participating financial institution on approval of the bank in which money is deposited to serve as a source of additional revenue to reimburse the financial institution for losses on loans enrolled in the program.

(11) "Small business" means a corporation, partnership, sole proprietorship, or other legal entity that:

(A) Is domiciled in the District of Columbia or has at least 51% of its employees located in the District of Columbia;

(B) Is formed to make a profit;

(C) Is independently owned and operated; and

(D) Employs fewer than 100 full-time employees.

Sec. 3. Establishment of the Capital Access Fund.

(a) There is established as a nonlapsing fund the Capital Access Fund, which shall be used solely for the uses and purposes set forth in subsections (d) and (e) of this section. The Fund shall be funded by appropriations and from other amounts received by the District for the administration of the program. All funds collected from these sources shall be deposited into the Capital Access Fund.

(b) All funds deposited into the Capital Access Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsections (d) and (e) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(c) All funds deposited in the Capital Access Fund shall be exempt from the requirements imposed by subchapter III-A of Chapter 3 of Title 47 of the District of Columbia Official Code. The Fund shall be administered as an agency fund under D.C. Official Code § 47-373(2)(I).

(d) The funds in the Fund shall be used solely to:

(1) Administer the Capital Access Program, including uses and expenditures authorized pursuant to subsection (e) of this section; and

(2) Make deposits in the reserve account of a participating financial institution as authorized by this act to be a source of money that the participating financial institution may receive as reimbursement for losses attributable to enrolled loans in the program.

(e) The Mayor shall administer the Fund and shall have the powers necessary to carry out the purposes of this act, including the power to:

- (1) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise of his or her powers;
- (2) Employ personnel and counsel;
- (3) Except as otherwise provided by this act, impose and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payment of fees or charges; and
- (4) Adopt rules relating to the use and administration of the Fund pursuant to this act.

(f) The District may accept gifts, grants, donations, and awards from any source, including the federal government, for the purposes of this act.

Sec. 4. Capital Access Program establishment.

(a) There is established the Capital Access Program, to be administered by the Mayor, to assist financial institutions in making loans to businesses and nonprofit organizations that face barriers in accessing capital.

(b) The Mayor shall determine the eligibility of a financial institution to participate in the program and, by rule, may set a limit on the number of financial institutions that may participate in the program.

Sec. 5. Minimum eligibility requirements for participating financial institutions, capital access loans, and lines of credit.

(a) To participate in the Capital Access Program, a financial institution shall, at a minimum, enter into a participation agreement with the Mayor that sets out the terms and conditions under which the financial institution will make contributions to the financial institution's reserve account and specifies the criteria for a loan to qualify as a capital access loan. A participation agreement executed by the Mayor pursuant to this act shall include provisions to implement the limitations set forth in section 8(a).

(b) To qualify as a capital access loan, a loan shall, at a minimum:

- (1) Be made to a small business, a medium-sized business, or a nonprofit organization;
- (2) Be used by the business or nonprofit organization for any project, activity, or enterprise in this District of Columbia that fosters economic development;
- (3) Not exceed \$5 million; and
- (4) Meet any other criteria provided by this act.

(c) To qualify for participation in the Capital Access Program, a line of credit shall:

- (1) Be an account at a financial institution under which the financial institution agrees to lend money to a person from time to time to finance one or more projects, activities, or enterprises that are authorized by this act; and
- (2) Contain the same restrictions, to the extent possible, that are placed on a capital access loan that is not a line of credit.

Sec. 6. Provisions relating to capital access loans.

(a) Except as otherwise provided by this act, the Mayor shall not determine the recipient, amount, or interest rate of a capital access loan or the fees or other requirements related to the loan.

(b) A loan shall not be eligible to be enrolled under this act if the loan is for:

- (1) Construction of residential housing;
- (2) Purchase of residential housing;
- (3) Simple real estate investments, excluding the development or improvement of commercial real estate occupied by the borrower's business or organization; or
- (4) Internal bank transactions.

(c) The borrower under an enrolled loan shall apply the loan to working capital or to the purchase, construction, or lease of capital assets, including buildings and equipment, used by the borrower. Working capital uses shall include the cost of exporting, accounts receivable, payroll, inventory, and other financing needs of the business or organization.

(d) An enrolled loan may be sold on the secondary market with no recourse to the District of Columbia. Recourse to the reserve account correspondent to the loan may be permitted for loans sold on the secondary market under conditions as may be established, by rule, by the Mayor.

(e) When enrolling a capital access loan in the program, a financial institution may specify an amount to be covered under the program that is less than the total amount of the loan.

Sec. 7. Reserve accounts.

(a) After entering into a participation agreement with the District of Columbia and upon approval by the Mayor, a financial institution making a capital access loan shall establish a reserve account. The reserve account shall be used by the financial institution only to cover any losses arising from a default of an enrolled loan made by the financial institution under this act or as otherwise provided by this act.

(b) When a financial institution makes a loan enrolled in the program, the financial institution shall require the borrower to pay to the financial institution a fee in an amount that is not less than 2%, but not more than 3.5%, of the principal amount of the loan, which fee the financial institution shall deposit in the reserve account. The financial institution shall also deposit in the reserve account an amount equal to the amount of the fee received by the institution from the borrower under this subsection; provided, that the financial institution may recover from the borrower all or part of the amount the financial institution is required to pay under this subsection in any manner agreed to by the financial institution and the borrower.

(c) For each capital access loan made by a financial institution, the financial institution shall certify to the Mayor, within the period prescribed by the Mayor, that:

- (1) The financial institution has made a capital access loan;
- (2) The amount that the financial institution has deposited in the reserve account,

including the amount of fees received from the borrower; and

(3) If applicable, that the borrower is financing an enterprise project or is located in, or financing a project, activity, or enterprise in, a District of Columbia Enterprise Zone under section 1400 of the Internal Revenue Code of 1986, approved August 5, 1997 (111 Stat. 863; 26 U.S.C. § 1400).

(d) Upon receipt of a certification made under subsection (c) of this section, the Mayor shall deposit in the reserve account for each capital access loan made by the financial institution:

(1) An amount equal to the amount deposited under subsection (b) of this section for each loan if the financial institution:

(A) Has assets of more than \$1 billion; or

(B) Has previously enrolled loans in the program that in the aggregate are more than \$2 million;

(2) An amount equal to 150% of the total amount deposited under subsection (b) of this section for each loan if the financial institution is not described in paragraph (1) of this subsection; or

(3) Notwithstanding paragraphs (1) and (2) of this subsection, and subject to the limitations set forth in section 8(a), an amount equal to 200% of the total amount deposited under subsection (b) of this section for each loan if:

(A) The borrower is financing an enterprise project or is located in, or financing a project, activity, or enterprise located in, an area in the District of Columbia Enterprise Zone under section 1400 of the Internal Revenue Code of 1986, approved August 5, 1997 (111 Stat. 863; 26 U.S.C. § 1400); or

(B) The financial institution is a community development financial institution, as defined in section 103(5) of the Riegle Community Development and Regulatory Improvement Act of 1994, approved September 23, 1994 (108 Stat. 2163; 12 U.S.C. § 4702(5)).

(e) A financial institution shall obtain approval from the Mayor to withdraw funds from the reserve account.

Sec. 8. Limitations on District's contribution to reserve account.

(a) The Mayor shall not deposit more than 10% of the total funds deposited in the Capital Access Fund into reserve accounts for capital access loans requiring a 200% match under section 7(d)(3). The 10% limitation under this subsection may be waived at the discretion of the Mayor upon a finding that the total amount of funds deposited in the Capital Access Fund by the District shall result in at least \$10 of enrolled loans by financial institutions for each dollar deposited by the District.

(b) The amount deposited by the Mayor into a reserve account for any single loan recipient shall not exceed \$400,000 during a 3-year period.

(c) The maximum amount that the Mayor may deposit into a reserve account for each enrolled loan made under this act shall be the greater of \$35,000 or an amount equal to:

(1) Fourteen percent of the enrolled loan amount if:

(A) The borrower is financing an enterprise project or is located in, or financing a project, activity, or enterprise in, an area in the District of Columbia Enterprise Zone under section 1400 of the Internal Revenue Code of 1986, approved August 5, 1997 (111 Stat. 863; 26 U.S.C. § 1400); or

(B) The financial institution is a community development financial institution, as defined in section 103(5) of the Riegle Community Development and Regulatory Improvement Act of 1994, approved September 23, 1994 (108 Stat. 2163; 12 U.S.C. § 4702(5)); or

(2) Seven percent of the loan amount for any other borrower.

Sec. 9. District's rights with respect to reserve accounts.

(a) All funds deposited in a reserve account shall be the property of the District of Columbia.

(b) The District shall earn interest on the amount of contributions made by the District, the borrower, and the financial institution to a reserve account. The District shall withdraw monthly or quarterly from a reserve account the amount of the interest earned by the District and shall deposit the amount withdrawn into the Fund.

(c) If the amount in a reserve account exceeds 33% of the balance of the financial institution's outstanding enrolled loans, the Mayor may withdraw the excess amount and deposit the amount in the Fund. A withdrawal of money under this subsection shall not reduce an active reserve account to an amount that is less than \$200,000.

(d) The District shall withdraw from a reserve account the total amount in the account, including any interest earned on the account, and deposit the amount in the Fund when:

(1) A financial institution is no longer eligible to participate in the program or a participation agreement entered into under this act expires without renewal by the financial institution;

(2) The financial institution has no outstanding enrolled loans;

(3) The financial institution has not made a capital access loan within the preceding 24 months; or

(4) The financial institution fails to submit a report or other document requested by the District within the time or in the manner prescribed.

Sec. 10. Quarterly and annual reports.

During each fiscal year of participation, financial institutions shall submit quarterly reports and a comprehensive annual report to the Mayor for the year. The reports shall:

(1) Provide information regarding outstanding capital access loans, capital access loan losses, and any other information on capital access loans that the Mayor considers appropriate;

(2) State the total amount of loans for which the financial institution has made a contribution from the fund under this act;

(3) Include a copy of the financial institution's most recent financial statement;
and

(4) Include information regarding the type and size of businesses and nonprofit organizations with enrolled loans.

Sec. 11. Reports and audits.

(a) The Mayor shall submit to the Council an annual status report on the program's activities.

(b) The financial transactions of the Fund shall be subject to audit by the District of Columbia Auditor as provided by section 455 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.55).

Sec. 12. District liability prohibited.

The District of Columbia shall not be liable to a participating financial institution for payment of the principal, interest, or any late charges on a capital access loan made under this act.

Sec. 13. Rules.

The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this act. The rules may:

(1) Provide for criteria under which a line of credit issued by a financial institution to a small business, a medium-sized business, or a nonprofit organization qualifies to participate in the program; and

(2) Authorize a consortium of financial institutions to participate in the program subject to common underwriting guidelines.

Sec. 14. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

ENROLLED ORIGINAL

Sec. 15. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by this Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia