

Government of the District of Columbia
Office of the Chief Financial Officer



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Vincent C. Gray
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer 

DATE: October 25, 2010

SUBJECT: Fiscal Impact Statement – “Capital Access Program Act of 2010”

REFERENCE: Bill Number 18-1042 – As Introduced

Conclusion

Funds are sufficient in the FY 2011 through FY 2014 budget and financial plan to implement the proposed legislation. The proposed legislation would create a program, by using federal funds, to encourage banks through program-funded reserves to underwrite loans to local businesses and non-profit organizations at a higher risk threshold than conventional lending criteria allow, and would not have a negative impact on the District’s budget and financial plan.

Background

The proposed legislation would create a capital access program to allow the District to qualify, prior to the November 25, 2010 deadline, for up to \$13.5 million federal funds¹ that would be used to create a public private partnership with financial institutions to provide capital for local businesses and non-profit organizations. Through this partnership the District government would set up loan loss reserve accounts at participating financial institutions in exchange for that financial institutions’ commitment to make loans, the capital access loans, outside of conventional underwriting standards. The proposed legislation would also establish the Capital Access Fund as a non-lapsing fund separate from the general fund, and exempt it from the requirements of the Financial Institutions Deposit and Investment Act of 2006.

Specifically, the proposed legislation would:

¹ Through the Small Business Jobs Act of 2010 (H.R.5297, Public Law 111-240, signed on Sept 27, 2010), which guarantees each state, including the District of Columbia, at a minimum 0.9 percent of the \$1.5 billion that was set aside to operate approved capital access programs.

- Require the Mayor to establish a Capital Access Program ("Program") to assist a participating financial institution in making loans to businesses and nonprofit organizations that face barriers in accessing capital;²
- Establish a Capital Access Fund ("Fund") as a non-lapsing, revolving fund, to be administered by the Mayor as an agency fund³ to be used exclusively for the administration of the Program. Qualified federal funds received for the Program would be deposited in the Fund. The fund would be subject to audit by the District of Columbia auditor;⁴
- Exempt the Fund from the requirements imposed by the Financial Institutions Deposit and Investment Act of 2006;⁵
- Authorize the Mayor to:
 - use the money in the Fund, including for employment of personnel and counsel and for imposing and collecting fees and charges,
 - adopt rules relating to the use and administration of the Fund and implementation of the Program,
 - determine the eligibility of a financial institution to participate in the program and set a limit on the number of eligible financial institutions participating in the program,
 - make a deposit in a participating financial institution's reserve account⁶ in a specified amount to be a source of money that the institution may receive as reimbursement for losses attributable to loans in the program, and
 - submit to the Council an annual status report on the Program's activities;
- Set up minimum eligibility requirements for participating financial institutions, capital access loans, and lines of credit such that:
 - to participate in the Program, an eligible financial institution would be required to enter into a participation agreement with the Mayor, setting out the terms and conditions under which the bank will make contributions to the institution's reserve account and specifying the criteria for a loan to qualify as a capital access loan, and would submit an annual report⁷ to the Mayor,
 - to qualify as a capital access loan, a loan would need, at a minimum, (a) to be made to a small business,⁸ medium-sized business,⁹ or to a nonprofit organization to be used for any project, activity, or enterprise in this District to foster economic development, (b) not to exceed \$5,000,000, and (c) meet any other criteria provided by this Act,
 - to qualify for participation in the Program, a line of credit would need to 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

² A major component of the program would be reserve accounts to protect banks against risk of default on the loans.

³ As defined in D.C. Official Code § 47-373(2)(I)

⁴ As provided by D.C. Official Code § 1-204.55 (c)

⁵ D.C. Law 16-125, effective June 16, 2006; D.C. Official Code § 47-351 *et. seq.*

⁶ "Reserve account" is an account established in a participating financial institution to serve as a source of additional revenue to reimburse the financial institution for losses on loans enrolled in the program.

⁷ Providing information about outstanding capital access loans with details of type and size of businesses and nonprofit organizations using the loan, loan losses, and other relevant information, and a copy of the institution's most recent financial statement.

⁸ "Small business" is defined as a corporation, partnership, sole proprietorship, or other legal entity, which is independently owned and operated, and domiciled in this District or has at least 51 percent of its employees located in this District, and employs fewer than 100 full-time employees.

⁹ "Medium-sized business" is defined as a corporation, partnership, sole proprietorship, or other legal entity, which is domiciled in the District or has at least 51 percent of its employees located in the District, and employs 100 or more but fewer than 500 full-time employees.

enterprises authorized by this Act and contain the same restrictions on a capital access loan;

- Provide provisions relating to capital access loans that:
 - except as otherwise provided by this Act, the Mayor would not be authorized to determine the recipient, amount, or interest rate of a capital access loan or the fees or other requirements related to the loan,
 - specify ineligible loans as those for construction or purchase of residential housing, simple real estate investments, and inside bank transactions,
 - would require the borrower of a capital access loan to apply the loan to working capital (including the cost of exporting, accounts receivable, payroll, inventory, and other financing needs of the business or organization) or to the purchase, construction, or lease of capital assets, including buildings and equipment,
 - would allow a capital access loan to be sold on the secondary market with no recourse to the District;
- Set up provisions relating to reserve accounts that:
 - after entering into a participation agreement with the District of Columbia and upon approval by the Mayor, a participating financial institution making a capital access loan would establish a reserve account to be used by the institution only to cover losses arising from a default of a capital access loan made by the institution. A participating financial institution would be required to obtain approval from the Mayor to withdraw funds from the reserve account,
 - all of the money in a reserve account established under this Act would be property of the District of Columbia. The District would be entitled to earn interest on the amount of contributions made by the District, borrower, and financial institution to a reserve account and would withdraw monthly or quarterly from a reserve account the interest earned by the District. The Mayor would deposit the amount withdrawn into the Fund,
 - when a participating financial institution makes a loan enrolled in the program, the institution would require the borrower to pay a fee in an amount not less than 2 percent but not more than 3.5 percent of the principal of the loan, to be deposited in the reserve account. The institution would also deposit in the reserve account an amount equal to the fee, which may be recovered from the borrower completely or partially,
 - for each capital access loan made by a financial institution, the institution would certify to the Mayor the relevant information,
 - upon receipt of a certification, the Mayor would deposit in the institution's reserve account for each capital access loan made by the institution a specified amount¹⁰ from the Fund;
- Specify conditions under which and the amounts the Mayor would be authorized to withdraw from the reserve accounts to deposit in the Fund, and list limitations¹¹ on District's contribution to reserve accounts; and

¹⁰ An amount ranging from 100 percent to 200 percent of the combined amount deposited by the borrower and the financial institution into the reserve account. If the financial institution has assets of more than \$1 billion or has made more than \$2 million in capital access loans, the institution is eligible for a 100 percent match. All other financial institutions are eligible for a 150 percent match, except the two categories of loans eligible for a 200 percent match if (a) the borrower is financing an enterprise project or is located in or financing a project, activity, or enterprise in an area designated as an enterprise zone under section 1400 of the Internal revenue Code of 1986, approved August 5, 1997 (111 Stat. 863; 26 U.S.C.S. § 1400), or (b) the participating financial institution is a community development financial institution, as defined by 12 U.S.C. Section 4702, as amended.

- Specify that District would not be liable to any participating financial institution for payment of the principal, the interest, or any late charges on a capital access loan made under this Act.

Financial Plan Impact

Funds are sufficient in the FY 2011 through FY 2014 budget and financial plan to implement the proposed legislation. The capital access program established by the proposed legislation would be funded by the expected \$13.5 million in federal funds and enrollment fees paid by the borrowers and the financial institutions participating in the program.¹² As such, the proposed legislation does not have a negative impact on the District's budget and financial plan.

¹¹ The amount deposited by the Mayor into a participating financial institution's reserve account for any single loan recipient may not exceed \$400,000 during a three-year period, and the maximum amount the Mayor may deposit into a reserve account for each capital access loan made is capped at \$35,000.

¹² DISB Commissioner Gennet Purcell testified before the Council on October 20, 2010 that DISB would need to hire additional staff to implement the Program, the cost of which would be covered from the \$13.5 million in federal funds.