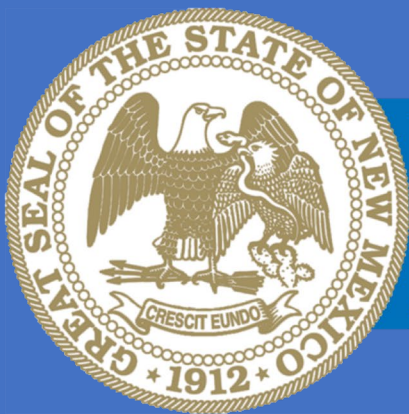


NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT
COLLATERAL ASSISTANCE
PROGRAM 2.0 (CAP 2.0):
PARTICIPATION GUIDEBOOK



EDD

ECONOMIC
DEVELOPMENT
DEPARTMENT

Table of Contents

Summary

- a) Targeted Borrowers and Criteria
- b) CAP 2.0 Qualifying Guidelines

Section I: Eligibility Requirements

- a) Eligible Lenders
- b) Eligible Small Business Borrowers
- c) Eligible Uses of Loan Proceeds
- d) Ineligible Uses of Loan Proceeds

Section II: Operation and Processes

Section III: Program Parameters

Section IV: Program Forms

SUMMARY

New Mexico Economic Development Department (EDD) Collateral Assistance Program 2.0 (CAP 2.0) Overview

As part of the American Rescue Plan Act (ARPA) signed into law by President Biden in 2021, Congress allocated \$10 billion to increase small businesses' access to equity and debt capital through the State Small Business Credit Initiative (SSBCI 2.0) program. Administered by the U.S. Department of Treasury, the funds are distributed to each state, territory, and tribal jurisdiction. The New Mexico Economic Development Department (EDD) is administering New Mexico's SSBCI 2.0 allocation.

New Mexico has allocated a portion of its SSBCI 2.0 funds to the CAP 2.0.

1. The CAP 2.0 supports small business lending by using program funds to fill a collateral gap for otherwise strong projects when they are seeking financing for their start-up or expansion projects.
2. Using funds from the CAP 2.0, EDD deposits funds into a depository account at an approved financial institution to cover a portion of the collateral gap for the loan. The certificate of deposit may provide collateral assistance up to 50% of the loan amount, contingent upon meeting qualifying criteria.
3. The lending institution and borrower enroll the loan into the CAP 2.0. The EDD's review team processes the applications (with accompanying underwriting material) and vote to approve or deny.
4. Upon approval, the EDD deposits funds for agreed upon term.

Targeted Borrowers and Criteria

The mission of the CAP 2.0 is to support business growth in New Mexico and to create/retain jobs by providing capital to Socially and Economically Disadvantaged (SEDI) – owned businesses.

SEDI-owned businesses are defined as follows:

1. business enterprises that certify that they are owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:
 - membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;
 - gender;
 - veteran status;
 - limited English proficiency;
 - disability;
 - long-term residence in an environment isolated from the mainstream of American

society;

- membership of a federally or state-recognized Indian Tribe;
- long-term residence in a rural community;
- residence in a U.S. territory;
- residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or
- membership of an underserved community (see Executive Order 13985, under which “underserved communities” are populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the definition of “equity,” and “equity” is consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality);

As well, the program will target the Governor’s industries including the following:

- Aerospace
- Biosciences
- Cybersecurity
- Film & Television
- Global Trade
- Intelligent Manufacturing
- Outdoor Recreation
- Sustainable & Green Energy
- Sustainable & Value-Added Agriculture

CAP 2.0 Qualifying Guidelines

Loan applicants may obtain collateral assistance *up to* 50% of the loan amount. SEDI – owned businesses are encouraged to apply. Ultimately, the percentage that a business qualifies will be decided by the CAP 2.0 review team in consultation with the lender:

| Loan Type | Max Participation Amount | Max Support Rate | Max Term of Support |
|--|---------------------------------|--|----------------------------|
| Eligible business loans except non-owner occupied construction/development | \$350,000 | 50% of loan amount | 3 years |
| Non-owner occupied construction/development | \$250,000 | 50% of loan amount/\$500,000 max loan amount | 1 year |

Target loan supported \$5 million or less.

Maximum loan supported \$20 million or less.

Minimum borrower equity requirement: 10%

Minimum historical or projected Debt Service Coverage ratio $\geq 1.2:1$

Exceptions may be granted in cases of exceptional job creation and SEDI impact.

Lender must have equal or greater exposure to the loan.

SECTION I: ELIGIBILITY REQUIREMENTS

a.) Eligible Lenders

Any federal or state-chartered bank, savings association, federally certified Community Development Financial Institution (CDFI) or federally-insured credit union is eligible to participate in the CAP 2.0. A lender must certify that it is in good standing with its regulatory body (Federal Reserve, Federal Deposit Insurance Corporation (FDIC), Comptroller of Currency, National Credit Union Administration (NCUA) or state banking authority).

To become a participating lender in the CAP 2.0, lenders must submit a Lender Enrollment Application to EDD. The lender will be notified upon their acceptance into the program. Qualifying lenders that were approved under CAP 1.0 will be grandfathered and need not re-apply to participate in CAP 2.0.

b.) Eligible Small Business Borrowers

In order to qualify for the program, certain eligibility must be met including the following criteria:

- Business must be located in New Mexico and all jobs of the business created and retained must be located in New Mexico
- Be current with all government debt obligations, State and Federal

- Must create at least one new permanent job
- Must exhibit a shortfall in collateral

While the focus of the CAP 2.0 is on assisting small businesses with 500 employees or less, businesses which have up to 750 employees will be considered. Program is subject to funding availability.

c.) Eligible Uses of Loan Proceeds

Each financial institution lender must obtain an assurance from the borrower affirming that the loan proceeds will be used for a business purpose. A business purpose includes, but is not limited to:

- Start-up costs
- Working capital
- Franchise fees
- Acquisition of:
 - Equipment
 - Inventory
- Services used in the production, manufacturing, or delivery of a business's goods or services, or in the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes (51% minimum immediate owner occupancy on existing building/60% minimum owner occupancy on new construction).
- Loan proceeds may be used to purchase tangible assets at NMEDDs discretion.
- Lenders may enroll bridge loans needed prior to the borrower obtaining permanent financing or support, including but not limited to SBA 504 loans. Bridge loans are loans needed prior to obtaining permanent financing or support where the lender is at increased risk pending future take-out financing or guarantee.
- Refinancing and down payment assistance may be considered under special circumstances.

Passive company leasing to operating company

A passive company such as a holding company that acquires real property using an SSBICI-supported loan may have an eligible business purpose where 100 percent of the rentable property is leased to the passive company's affiliated operating companies that are actively involved in conducting business operations. To meet this exception, the following criteria must also be met:

- The passive company must be an eligible small business using the affiliate and employee definitions described above;
- The operating company must be subject to the same sublease restrictions as the owner affiliate;

- The operating company must be a guarantor or co-borrower on the SSBCI-supported loan to the eligible passive company;
- Both the passive company and the operating company must execute SSBCI borrower use-of-proceeds certifications and sex-offender certifications covering all principals;
- Each natural person holding an ownership interest constituting at least 20 percent of either the passive company or the operating company must provide a personal guarantee for the SSBCI-supported loan; and
- The passive company and the operating company have a written lease with a term at least equal to the term of the SSBCI-supported loan (which may include options to renew exercisable solely by the operating company).

Eligible non-owner occupied industrial, commercial, residential, land development, or farm construction and land development loans

CAP does not generally support loans for passive real estate investment. CAP may however support on-site construction of non-owner occupied industrial, commercial, residential, land development, or farm loans with an original principal amount of \$500,000 or less. These will be considered to be an eligible business purposed if:

- the building will not serve as a residence for the owner, their relatives, or affiliates;
- the building will be put into service or marketed for resale immediately;
- the loan is underwritten and made for the purpose of constructing or refurbishing a structure; and
- the building has not been and will not be financed by another SSBCI-supported loan.

Loans that automatically convert into permanent financing are excluded from the definition of “eligible business purpose,” unless the converted loans would no longer rely on CAP or other SSBCI support. The term “construction loan” means a loan secured by real estate made to finance (1) land development (e.g., the process of improving land, such as laying sewers or water pipes) preparatory to erecting new structures or (2) the on-site construction of industrial, commercial, residential, or farm buildings. For purposes of this paragraph, “construction” includes not only construction of new structures, but also additions or alterations to existing structures and the demolition of existing structures to make way for new structures.

d.) Ineligible Uses of Loan Proceeds

Ineligible uses of loan proceeds include financing non-business endeavors, passive real estate investments, residential real estate (except certain residential construction loans discussed in Section c. above), reimbursing funds owed to owner, repayment of delinquent taxes or taxes held in trust or escrow, repay taxes held in trust or escrow (e.g., payroll or sales taxes); reimburse funds owed to any owner, including any equity investment or investment of capital for the business’s continuance; or purchase any portion of the ownership interest of any owner

of the business, and business acquisitions where funds are used for goodwill. In addition, the following are ineligible uses of loan proceeds as well:

- Goodwill and other intangible assets
- Pyramid schemes
- Gambling
- Lobbying
- Bars and liquor stores
- Financial businesses primarily engaged in the business of lending or leasing
- Life insurance companies
- Businesses engaged in illegal activity or prohibited by federal law e.g. direct or indirect cannabis businesses
- Private clubs which limit the number of memberships for reasons other than capacity
- Government-owned entities
- Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting
- Consumer and marketing cooperatives
- Speculative businesses (such as oil exploration)
- Sale of firearms
- Sale or use of tobacco and tobacco products
- The purchase of securities
- Loans that cannot demonstrate a collateral value shortfall or loans that have no collateral (i.e. the CAP cannot be the only collateral with value for the loan)
- Guaranteeing any portion of an SBA or other federally guaranteed loan.

SECTION II: OPERATIONAL STEPS AND PROCESSES

1. Borrowers must request collateral assistance through their lender—they cannot apply for support directly from EDD.
2. The lending institution must be enrolled and registered as a participating lender with the State of New Mexico. Lenders wishing to participate in the program must fill out the Lender Participation Application and a State of New Mexico W9 form and submit to EDD. Upon meeting qualifying criteria, the lender will have notified of their acceptance into the program.
3. The participating lender will submit a Loan Enrollment Form including all supplemental information to EDD to provide initial representation that the loan will meet program criteria as outlined in this CAP 2.0 Guidebook.
4. Eligible Lenders may submit a borrower's Loan Enrollment Form prior to submitting a Lender Participation Application. If EDD receives a borrower's Loan Enrollment Form and Eligibility Questionnaire, it will be reviewed for eligibility. If approved, the lender will have 30 calendar days to execute a Lender Enrollment Application. The executed

Lender Enrollment Application must be received by EDD *at least* 30 calendar days prior to the closing of the loan.

5. Upon determining approval of a borrower's Loan Enrollment, EDD reserves funding to provide collateral assistance for the intended loan. The lender is typically notified within three business days via email in addition to issuance of a formal letter. The reservation of funds for the intended loan will be valid for 90 calendar days.
6. The participating lender underwrites the loan consistent with their normal underwriting criteria, assuming full responsibility for credit and ongoing servicing of the loan. Upon approval/denial of loan, the lender notifies EDD and provides the SSBCI-required lender, borrower and SEDI (if applicable) certifications and executed Collateral Deposit Agreement.
7. Prior to closing the loan or after the time of the loan closing, EDD will open a pledged collateral deposit account with the lender or other financial institution that is eligible to hold NM public funds. EDD will then fund the account with the approved collateral support deposit.
8. In the event of loan default and subsequent loss of the loan, the collateral support deposit is available to the participating lender after other collateral is liquidated and reduces the loan balance.
9. Upon repayment of the loan and/or upon reaching CD maturity, the loan collateral support deposit is released and the pledged collateral deposit account is closed. In order to maintain the established ratio of collateral support deposit funding to loan principal, EDD may request incremental return of the collateral support deposit funding commensurate with loan principal balance reduction over time.
10. Participating Lenders are required to provide information to EDD as per reporting requirements during the term of the CD. As well, borrower may be required to submit an Economic Impact Report annually to EDD on the loan anniversary date during the life of the CD.

Section III: PROGRAM PARAMETERS

Ideal Loan Term

Although the Lender may have a longer maturity term and amortization period, the maximum period the EDD will pledge a CD toward the project is (3) years from the date of the loan and the maximum line of credit participation is (2) years from the time of the loan. Lenders may extend lines of credit under the program as long as the maximum term of the lines enrolled under the program does not exceed (3) years and the lines of credit are subject to annual credit review and renewal process.

- Time frame less than or equal to 3 years

Projects have the option to renew up to 2 times but must fill out a new application to be considered.

Lender Sets Terms

Lenders set all the terms and conditions of the loans. Loans can be short- or long-term, have fixed or variable rates, and bear any type of amortization schedule. The term of the support requested will be at the lender's discretion, not to exceed the original term of the loan or 3 years, whichever is less. Lenders are free to determine the amount of collateral support they wish to request within the terms described and may also choose to reduce the collateral coverage at any time for any reason.

The interest rate for each individual loan, at the time of obligation and throughout the term of the loan, may not exceed the federal and state interest rate ceiling for loans.

The loan cannot be subject to any prepayment penalties.

Upfront fees or charges paid by the small business, excluding fees to the program (if any), shall not exceed 2 percent for loans greater than \$25,000 or \$500 for loans under \$25,000.

Closing Fees

EDD does not charge a fee for the program but may choose to implement up to 3% of the principal in closing fees to help cover the operational cost of the program. If a fee is charged, the borrower may qualify to have the fees reimbursed back to them at the end of the loan term based on meeting certain criteria.

Default and Charge-Off

Lender must submit a Collateral Support Default Notification upon loan default within 30 days of default. Within 30 calendar days of collateral liquidation, the lender will submit a Collateral Support Claim Application, history of the account payments, a short narrative of the loan collection history, and information about the sale of proceeds or justification for failed attempts to liquidate.

EDD's collateral shall not be used in lieu of pledged collateral. All collateral must be liquidated consistent with the participating financial institution's usual method for loans that do not have EDD's support. Lenders may be reimbursed for: the amount of loan principal charge-off; reasonable out-of-pocket expenses incurred in pursuing its collection efforts, including the preservation of collateral, and other related costs; and accrued and unpaid interest. Proper documentation of any claimed expenses shall be presented at the time of the claim. The amount paid on a claim will never exceed the available amount in the CD account.

If subsequent to the payment of the claim the lender recovers from the borrower by any source, the lender may fully cover their loss and return any excess to EDD (not to exceed the total amount paid on the claim by EDD).

Payback

A portion of the support may be returned to the administrator according to amount of principal satisfied. The portion to be returned will be based on the original term of the support. However, bridge loans will experience the recapture once the balance of the loan is paid off or

the related guarantee goes into effect. Any additional reductions requested by the lender will also be taken at this time.

Reporting and Records Retention

The Lender is required to report to EDD at periodically:

- Outstanding principal balance of the loan
- Current status of the loan (current, delinquent, in default, paid-to/due date)

Annual reporting to EDD to be accommodated by electronic transmission (email) or fax.

Refinancing

New Lenders. A lender is not prohibited from enrolling or refinancing loans previously made by another, non-affiliated financial institution. Accordingly, a lender may refinance a borrower's existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender so long as the proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

When CAP funds are used to support the purchase of a loan from another, non-affiliated financial institution, the transaction must be beneficial to the small business borrower. For purposes of the eligible business purpose and certification requirements, the eligible business purpose of the new loan is generally determined by the purpose of the underlying funding being refinanced.

New Extensions of Credit by Existing Lenders. Financial institution lenders are generally prohibited from refinancing an existing outstanding balance or previously made loan, line of credit, extension of credit, or other debt owed by a small business borrower already on the books of the same financial institution (or an affiliate) into the program. However, a financial institution lender may use funds to support a new extension of credit that repays the amount due on a matured loan or other debt that was previously used for an eligible business purpose when all the following conditions are met:

- The amount of the new loan or other debt is at least 150 percent of the outstanding amount of the matured loan or other debt;
- The new credit supported with SSBCI funding is based on a new underwriting of the small business's ability to repay the loan and a new approval by the lender;
- The prior loan or other debt has been paid as agreed and the borrower was not in default of any financial covenants under the loan or debt for at least the previous 36 months (or since origination, if shorter); and
- Proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

A matured loan or line of credit only includes such that have matured according to their terms and does not include a loan or line of credit that has been accelerated to maturity. Transferring

an accelerated loan into the program does not promote the purpose of expanding small business access to capital and would primarily benefit lenders rather than small businesses.

If a participating jurisdiction enrolls a loan that is used to repay principal under a loan previously made by the same financial institution or its affiliate, the participating jurisdiction or the financial institution lender must maintain records showing that these criteria were met. The limitation on refinancing does not prohibit a financial institution lender from originating a new loan under the program and subsequently refinancing the same loan under any approved program.

Section IV: PROGRAM FORMS

1. Lender Participation Application (signed by lender)
2. Online Loan Enrollment Application Form (signed by lender)
3. Collateral Deposit Agreement (signed by lender, State Treasurer's Office and EDD)
4. NM State W9 Form
5. Lender Certification Form
6. Borrower Certification Form
7. Privacy Form
8. SEDI-Owned Business Certification Form