



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2009 Wisconsin Act 268**  
[2009 Assembly Bill 532]

**Capital Access Program**

2009 Wisconsin Act 268 (the Act) appropriates \$350,000 general purpose revenue (GPR) to the Department of Commerce (Commerce) and directs Commerce to award grants from the appropriation to the Wisconsin Business Development Finance Corporation (WBDFC) for the purpose of funding a capital access (CAP) program.

### Overview

Under a CAP program, grant funding and matching funds are used to establish reserve pools to reduce the risk to lenders for loans to small- and medium-sized businesses and local nonprofit agencies. These reserve pools enable lenders to make loans to borrowers for which financing might not otherwise be available due to the borrowers' lack of adequate collateral, net worth, or credit history.

### Administration

The Act directs Commerce to enter into an agreement with the WBDFC that specifies the uses of the grant proceeds, and to establish reporting and auditing requirements. The WBDFC may enter into a contract with a third party to administer all or any part of the CAP program. The third party must be a 501 (c) 3 tax-exempt organization and must have as its primary purpose and mission the promotion of community development. The administrator (either the WBDFC or the third party) must do all of the following:

- Enter into written agreements with banks desiring to participate in the program that specify the rights and obligations of the administrator and the bank under the program.
- Develop a standard agreement form for use with banks participating in the program and any other standard forms necessary for use in the program.
- Review and approve enrollment of loans in the program.

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

- Contribute premiums to reserve pool accounts.
- Review and approve requests to withdraw funds from reserve pool accounts.
- Oversee all other aspects of the program.

### **Loans and Reserve Pool Accounts**

A participating bank may enroll a loan in the program only if the CAP administrator approves the enrollment of the loan after reviewing an application submitted by the bank.

If a loan is approved for enrollment in the program, the borrower, the participating bank and the CAP program each contribute a specified amount, referred to as a “premium,” to the reserve pool account held by the bank.

The amount of the premium contributed by the borrower and the bank is determined by the bank, but may not be less than 1.5% or more than 3.5% of the principal amount of the loan to be covered under the program. The CAP administrator must contribute a premium in an amount not less than 100% nor more than 150% of the total combined premium paid by the borrower and the bank.

Each participating bank must establish an account that contains all of the premiums, and interest accrued on those premiums, from all loans made under the CAP program by that participating bank. A reserve pool account may also contain premiums, and interest accrued, under the CAP program administered by the Milwaukee Economic Development Corporation, if the bank also participates in that program. Funds contributed to the account under the CAP program may only be withdrawn for use by the bank to cover a loss on a loan that is enrolled in the CAP program. All withdrawals must be approved by the administrator.

A bank must reimburse the administrator for any funds, less out-of-pocket expenses, paid to the bank from its reserve funds that are later recovered by the bank.

Each bank must file a report with the administrator, at times requested by the administrator, listing the outstanding balance for each loan enrolled by the bank in the program.

Upon notice to a bank, the administrator may inspect the records and files of the bank relating to any enrolled or charged-off loan.

WBDFC may withdraw up to 50% of the interest component of reserve funds and may use the moneys withdrawn to promote the program and to contract with a third party to administer the program.

### **Eligible Lenders**

Either of the following types of lenders may participate in the program:

1. A financial institution regulated by this state or by the United States that is in good standing with regulatory authorities.
2. An entity that has an existing portfolio of revolving loans to small businesses and that has as its primary purpose and mission the promotion of community development primarily in a limited geographic area of this state that is experiencing economic distress.

**Eligible Borrowers**

Any organization or enterprise, operated for-profit or not-for-profit, which fulfills all of the following conditions, may apply to be a borrower under the program:

1. It is authorized to do business in this state.
2. It does not sell alcohol beverages, as defined in s. 125.02 (1), Stats.
3. It is not an executive officer, director, or principal shareholder of a participating bank, a member of the immediate family of an executive officer, director, or principal shareholder of a participating bank, or an organization or enterprise controlled by any of those individuals.

**Eligible Projects**

An “eligible project” is any business purpose in this state other than construction or purchase of residential housing or passive real estate investment.

**Interim Reports**

The administrator must provide an interim report on the effects of the program to the Governor and to the presiding officer of each house of the Legislature by December 31, 2011.

**Comprehensive Evaluation**

The administrator must provide a comprehensive evaluation of the program to the Governor and the presiding officer of each house of the Legislature by June 30, 2013.

***Effective date:*** May 25, 2010.

***Prepared by:*** Mary Matthias, Senior Staff Attorney

May 19, 2010

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