

# **Essex County Industrial Development Agency**

## **Revolving Business Loan Program**

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Policy and Operating Guidelines  
August 31, 2016

**ESSEX COUNTY**



**in the park**

a healthy place to grow a business  
to grow a family  
a healthy place to be

**Essex County Industrial Development Agency**  
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**ARTICLE 1**  
**GENERAL POLICY & OBJECTIVES**

§1-1. Policy and Operating Guidelines. The purpose of this Policy and Operating Guidelines (the “Guidelines”) is to serve as the primary administrative document for the U.S. Department of Housing & Urban Development (HUD), Community Development Block Grant (CDBG) funded Revolving Business Loan Program (the “Program”) administered by the Essex County Industrial Development Agency (the “IDA”) through its Board of Directors (the “IDA Board”). Unless otherwise provided by the IDA, these Guidelines shall not apply to any other program administered by the IDA unless such other program involves the use or expenditure of funds furnished by HUD to the IDA.

§1-2. Objectives. The primary objectives of the Program are to facilitate the start up, expansion and retention of business activity within Essex County (the “County”), create employment opportunities, and expand the County’s industrial and commercial tax base.

§1-3. Form of Assistance. The Program will provide assistance in the form of secured loans.

**ARTICLE 2**  
**ELIGIBILITY REQUIREMENTS**

§2-1. Eligible Activities.

In order to be eligible for Program assistance, an applicant must meet the following requirements:

- (a) The principal business activity which will be primarily impacted by the Program financing must be located within Essex County.
- (b) The business activity to be undertaken with assistance from the Program must primarily involve one of the following:
  - (1) A manufacturing endeavor – defined as manufacturing, fabrication, assembly, processing, growing, packaging, or other enterprise which directly involves the production of an end product;
  - (2) A Retail endeavor – defined as an activity meets a retail need for County residents and/or tourists;
  - (3) Other endeavor – transportation, utilities, communications, construction trades, wholesale distribution, agriculture, forestry, accommodations, recreation, food and beverage, art/craft and professional services; or
  - (4) A service, not listed as specifically ineligible pursuant to §2-2 herein, which is provided to persons, commercial enterprises, or other entities, the majority of which reside or are located outside of Essex County.
- (c) The business activity to be undertaken with assistance from the Program

must directly result in the creation or retention of employment positions consistent with the Federal regulations 24 CFR part 570.208 governing the Community Development Block Grant (CDBG) program.

§2-2. Ineligible Activities. The Program will not provide financing for any business activity which does not meet Program eligibility requirements consistent with 24 CFR part 570.207.

§2-3. Eligible Borrowers. Eligible borrowers include sole proprietorships, limited liability partnerships, limited liability corporations and any other entity authorized to conduct business in the State of New York. Loans may also be provided to individuals acting as principals of an eligible entity and who will rent or lease assets to an otherwise eligible borrower.

§2-4. Eligible Uses of Program Funds. Program funds may be used for any justifiable business purpose including, but not limited to fixed assets, current assets including inventory and receivables, permanent working capital, and refinancing of existing debt where such refinancing is a required element of the project financing. The use of Program funds must also be eligible pursuant to the Federal regulations governing the CDBG program.

### ARTICLE 3 **PROGRAM STANDARDS**

§3-1. Employment/Cost Ratio. The maximum amount of Program financing may not exceed the ratio of \$35,000 for each employment opportunity to be created or retained. For the purposes of calculating employment opportunities, the following will apply:

(a) Only permanent jobs will be counted; temporary and construction jobs will not be counted.

(b) Jobs of 35 or more hours per week will be considered as one full-time job. Part-time permanent jobs of less than 35 hours per week will be converted to full-time equivalent jobs by dividing the number of part-time hours by 40.

(c) Seasonal jobs will be considered to be permanent jobs if the duration of the working period is long enough to classify the job as the employee's principal occupation.

(d) Projected employment must be reasonably expected to occur as a direct result of the expanded business activity, and such projection may in no instance extend beyond 36 months from the completion of the expansion.

(e) The limit of \$35,000 of Program financing per employment position may be exceeded in instances where the IDA determines that the expanded business activity will effect an extraordinary degree of other public benefit.

§3-2. Program Financing Amount. Consistent with the Federal regulations governing the CDBG program, Program assistance must be no greater than the minimum amount necessary to effect the business activity. Applicants must therefore demonstrate that all other private and public sources of debt and equity have either been maximized or are inappropriate, unaffordable, or otherwise unavailable.

§3-3. Minimum Amount of Program Assistance. Program assistance will not be considered where the amount of such required assistance is less than \$10,000.

§3-4. Maximum Amount of Program Assistance. The program does not establish a policy regarding the maximum amount of Program assistance available. However, the IDA will, from

time to time at its discretion, establish maximum amounts of assistance based on the total amount of Program funds available and the demand for such funds.

#### **ARTICLE 4** **LENDING POLICIES**

§4-1. Term of Loans. The term of any loan under the Program will be determined by the IDA, in its discretion, based upon such factors as the structure of other related loans, the nature of the collateralized assets, and the borrower's projected ability to repay the loan, as well as the following:

- (a) The term of a fixed asset loan will generally be consistent with the useful life of the assets being financed, such useful life periods being consistent with standard commercial lending policies but in no instance exceeding fifteen (15) years.
- (b) The term of furniture, fixtures and equipment loan may not exceed eight (8) years
- (c) The term of a working capital loan may not exceed five (5) years.

§4-2. Interest Rate. The interest rate charged for the use of Program funds will be determined by the IDA, in its discretion, based upon such factors as the risk of default, the value of security, and the prevailing commercial lending rates. The minimum fixed interest rate is 2.0%. There is no stated policy regarding variable interest rates.

§4-3. Repayment Terms. The IDA, in its discretion, will determine the schedule of loan repayments on a case-by-case basis taking into consideration as the IDA deems appropriate factors such as the applicant's projected ability to repay the loan, the projected value of the collateral and other security, and the overall risk assumed by the Program. Repayment terms may involve standard forms of loan amortization schedules with balloon payments of principal, and/or such other terms as may be determined by the IDA to be appropriate.

§4-4. Security. The IDA will determine the required security for each loan on a case-by-case basis taking into consideration as the IDA deems appropriate factors such as the risk of default, the nature and value of the security, and the position of the Program in relation to other lenders. In determining the appropriate security, the following will apply:

- (a) The IDA will generally require a security interest in all assets financed with Program funds. Other assets of the borrower may be required as additional security at the IDA's option.
- (b) For loans to corporations, partnerships or limited liability companies, the IDA will require the personal guarantee of all owners of at least 20% of the voting stock or partnership interest of the company. The personal guarantee of other shareholders, officers, principals, or partners may also be required at the discretion of the IDA.
- (c) For loans to closely-held corporations, the IDA may require as additional security selected personal assets of one or more of the owners, and/or security interests in assets of other business entities of one or more of such owners.
- (d) For loans to individuals, partnerships, or corporations, which have

(d) For loans to individuals, partnerships, or corporations, which have affiliated interests and/or identities of ownership with other business entities, the IDA may require additional guarantees, and/or security interests in assets of other business entities of one or more of such owners.

(e) For loans to businesses which have a dependence upon specific individuals for their continuing viability, the IDA may require an assignment of insurance on the lives those persons.

(f) In addition to any other security interest the IDA may require letters of credit to be held by the IDA as security for Program loans.

#### §4-5. Subordination

(a) The IDA may allow a subordination of Program debt and collateral to private institutional lenders where necessary to facilitate the maximum financial participation by the private lenders.

(b) The standing of the IDA's financing relative to other public or quasi-public lenders will be negotiated on a case-by-case basis.

(c) The IDA will generally require a subordination to Program financing of notes payable to any officer, owner, or similarly affiliated party to the borrower where such subordination is appropriate and feasible.

(d) The IDA will generally require the execution of intercreditor agreements in instances where multiple lenders exist. The use and form of such agreements shall be the subject to the approval of the IDA's attorney or counsel.

### **ARTICLE 5** **APPLICATION PROCESSING**

§5-1. Loan Applications. Applications for Program financing must include all of the information required by the Program Application Form, and any additional information as may be reasonably requested by the IDA. The Program application shall be in a form substantially similar to Appendix A hereto.

§5-2. Application Fee. No fee will be charged for the submission of an IDA loan application.

§5-3. Application Processing. The processing of loan applications will generally consist of the following:

(a) Review applications for completeness and procure appropriate additional information.

(b) Review for Program eligibility criteria and eligibility pursuant to Federal CDBG regulations.

(c) Determine economic feasibility, perform credit analysis, and assess risk.

- (d) Determine amount and terms of Program financing, including appropriate security.
- (e) Perform appropriateness review in conformance with HUD guidelines.
- (f) Prepare written report to the Program Loan Review Committee summarizing the review process and providing recommendations as appropriate.

§5-4. Loan Review Committee. The IDA Board shall constitute the Loan Review Committee to review all loan applications, and to determine loan management issues as provided in Article 7; except that the IDA Board may be resolution establish a committee comprised of three (3) of its members to serve and act as the Loan applications and make recommendations to the IDA Board regarding such applications and/or loan management issues as provided in Article 7.

§5-5. IDA Board Loan Approval. The IDA Board shall have sole authority to approve Program loans. Such authority shall include the commitment to lend Program funds, the interest rate(s) to be charged, the repayment terms, and the requisite security for the loan. The application of other appropriate conditions of lending and covenants of the borrower shall be determined by the IDA Board, subject to input from the IDA's attorney and/or the Loan Review Committee.

§5-6. Loan Disapproval.

- (a) Loan applications may be disapproved by the Loan Review Committee and/or the IDA Board based on a lack of application completeness or a failure to meet the eligibility criteria pursuant to §5-3 (a) and (b) of these Guidelines, respectively. In such instances, the applicant will be notified in writing of the reason(s) for disapproval.
- (b) Loan applications may be disapproved by the IDA Board if the Board determines that Program financing is clearly inappropriate based on the reviews conducted in accordance with §5-3 (c) and (e) of these Guidelines. In such instances, the applicant will be notified in writing of the reason(s) for disapproval.
- (c) Loan applications may be disapproved by the IDA Board for any reason or reasons which represent a reasonable determination that the approval of the Program application would not meet the objectives of the Program and/or would not represent an appropriate or prudent use of Program funds. In such instances, the applicant will be notified in writing of the reason(s) for disapproval.

## ARTICLE 6 **POST-APPROVAL PROCESS**

§6-1. Commitment Letter. A commitment letter, similar to the sample contained in the Appendix B hereto, shall be sent to the applicant upon the approval of a Program loan which will include, at a minimum, the following information:

- (a) The amount of the loan approved, the applicable interest rate, the term of the loan, the terms of repayment, and the expiration date of the commitment.
- (b) The required use of the loan funds.



(c) The IDA's requirements for collateral and additional security – including guarantees, pledges of assets, assignment of life insurance, etc.

(d) Summary information regarding employment requirements.

(e) Any other conditions of lending.

(f) A listing and explanation of any fees to be charged (including the commitment fee as required by §6-2 herein) and other closing costs which will be the responsibility of the borrower.

(g) A listing of those conditions and requirements of the borrower which must be fulfilled precedent to a loan closing.

(h) Any other information which could reasonably be expected to influence the borrower's decision to accept the terms of the loan commitment.

§6-2. Commitment Fee. In consideration of the IDA's reservation of funds for approved loan applications, a commitment fee equal to one percent (1%) of the approved loan amount, will be charged to the loan applicant. Such fee shall be nonrefundable and shall become due and payable in whole or in part, at the discretion of the IDA, at the time of acceptance of the commitment by the applicant and/or at the loan closing.

§6-3. Loan Closings. The IDA's attorney shall have the responsibility to prepare and/or require the preparation of all appropriate and necessary closing documents. The borrower shall be required to pay all closing costs incurred by the IDA, including the fees and expenses of the IDA's attorney. The IDA's attorney shall determine the appropriate closing documents to be executed based upon the terms and conditions of the loan approval, standard commercial lending policies, and HUD requirements. Such documents shall generally include, but are not limited to, the following:

(a) A loan agreement which includes a description of the loan terms and security, appropriate representations and warranties, the conditions of lending, affirmative and negative covenants, including but no limited to compliance with applicable federal laws and regulations, requirements regarding employment creation and reporting, default provisions, and any other provisions which may be appropriate.

(b) A note or notes to evidence the indebtedness and the terms of repayment.

(c) The appropriate documents to evidence and record mortgages, liens, guarantees, and such other security as may be required by the terms of the loan.

(d) Other appropriate documents as determined by the IDA's attorney.

§6-4. Security. The IDA's attorney will be responsible for perfecting all of the IDA's security interests including, where appropriate, the execution of security agreements, the filing of financing statements, the execution and filing of mortgage documents, the execution of guarantees, and any other appropriate actions to adequately protect the IDA's security interests. All fees and expenses incurred in connection with the perfecting of the IDA's security interests

shall be paid by the borrower. Intercreditor agreements will be executed where appropriate to further protect the IDA's interests and to facilitate the processing of defaults and foreclosures.

§6-5. Loan Disbursements. The following guidelines shall generally apply to the disbursement of IDA loan proceeds from Program funds:

(a) Subject to the borrower's compliance with the terms and conditions of the loan agreement, all documents evidencing and securing the loan, and other guidelines for disbursement as described in this §6-5, the IDA may disburse loan proceeds upon the borrower's presentation of vouchers and other such evidence satisfactory to the IDA which represent paid or accrued expenses of the borrower and which are eligible costs as determined by the IDA.

(b) Where other debt or equity financing is to be used in conjunction with the Program financing, such debt or equity must, in the opinion of the IDA, be unconditionally committed for such use. Evidence of the commitment(s) and of the satisfaction or waiver of all contingencies thereof must be submitted by the borrower to the IDA prior to closing.

(c) Where other debt or equity financing is to be used in conjunction with the Program financing, the IDA will, at its discretion, determine an appropriate draw schedule for Program funding taking into consideration such factors as the magnitude of risk assumed by the IDA, the nature of the activities being financed, the draw schedule for the other financing, and applicable federal regulations for the use of the CDBG funds. The manner and terms of the disbursement of the Program financing will normally be included in the approval of the financing by the IDA Board.

## ARTICLE 7 LOAN MANAGEMENT

- A. §7-1. Delinquencies. The IDA will allow a (10) day grace period calculated from the payment due date before determining that a monthly loan payment is delinquent. A late fee of 5% of the delinquent payment amount will be charged to all delinquent monthly payments. Failure to make a delinquent monthly payment for more than thirty (30) days after the due date shall constitute a default and entitle the IDA to pursue any and all enforcement remedies. The IDA's acceptance of any payments, other than payment in full of the delinquent amount plus the late fee within thirty (30) days or less of the due date thereof, shall not constitute a waiver of any of the IDA's rights nor a cure of the default. Loan recipients who are 2 months in arrears to attend the next scheduled IDA Board meeting and that monthly late payments notices should also be sent to the guaranty on the loan, at that time the loan client with renegotiate loan payments and will be required to sign a confession of judgment.

# AFFIDAVIT OF CONFESSION OF JUDGEMENT

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ESSEX

-----X  
ESSEX COUNTY INDUSTRIAL DEVELOPMENT  
AGENCY,

Index No. \_\_\_\_\_

Plaintiff,

-against-

Defendant(s).

-----X

State of New York, County of \_\_\_\_\_ SS:

\_\_\_\_\_ being duly sworn, deposes and says; that deponent is the  
\_\_\_\_\_ of \_\_\_\_\_, a New York corporation, LLC, LLP or  
partnership and is authorized to make this affidavit on its behalf as defendant herein.

The defendant hereby confesses judgment herein and authorizes the entry thereof against  
defendant in the sum of \$ \_\_\_\_\_.

Defendant resides at \_\_\_\_\_, in the County of  
\_\_\_\_\_ State of \_\_\_\_\_. Defendant authorizes entry of judgment in  
Essex County, New York, if said residence address is not in New York State.

This confession of judgment is for a debt justly due or to become due to plaintiff arising  
from the following facts:

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_ 2006 \_\_\_\_\_

## AFFIDAVIT OF CONFESSION OF JUDGEMENT

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ESSEX

-----X  
ESSEX COUNTY INDUSTRIAL DEVELOPMENT  
AGENCY,

Index No. \_\_\_\_\_

Plaintiff,

-against-

Defendant(s).

-----X

State of New York, County of \_\_\_\_\_ SS:

\_\_\_\_\_ being duly sworn, deposes and says; that deponent  
is the defendant herein.

The defendant hereby confesses judgment herein and authorizes the entry  
thereof against defendant in the sum of \$ \_\_\_\_\_.

Defendant resides at \_\_\_\_\_, in the County of  
\_\_\_\_\_ State of \_\_\_\_\_. Defendant authorizes entry of  
judgment in Essex County, New York, if said residence address is not in New York  
State.

This confession of judgment is for a debt justly due or to become due to plaintiff  
arising from the following facts:

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_ 2006 \_\_\_\_\_

§7-2. Annual Financial Review. The IDA will conduct an annual financial review for all borrowers based primarily on the annual financial statements submitted by the borrower. Additional information may be procured as appropriate. The reviews will be presented to the Loan Review Committee for further action or recommendations as appropriate.

§7-3. Adjustment of Terms and Conditions. Requests by the borrower for adjustment of any of the terms and conditions of the loan will be reviewed to determine whether the adjustment is in the best interests of the IDA. Requests will be processed in accordance with the following:

(a) Requests to adjust the interest rate or term of a loan that will not lower the total interest and principal payments made by the borrower to the IDA must be presented to the Loan Review Committee for review and recommendations presented to the IDA Board for action.

(b) Requests to adjust the interest rate, term of the loan, or security for the loan that will decrease the total interest and principal payments made by the borrower to the IDA will be presented to the Loan Review Committee for review and recommendation to the IDA Board for action.

(c) Requests to accrue interest, defer principal payments, or otherwise temporarily modify the repayment schedule will be presented to the Loan Review Committee for review and recommendations to the IDA Board for action.

(d) Requests for changes respecting any covenants or conditions of a financial nature must be approved by the IDA Board as to content and the IDA's attorney as to form.

(e) Requests for any other changes to the covenants or conditions of the loan including, but not limited to such areas as reporting requirements, cost documentation, and maintenance of records may be approved by the IDA Board.

§7-4. Periodic Interest Rate Review. In instances where the IDA may establish a revised interest rate pursuant to its rights as a lender, the Loan Review Committee shall be responsible for reviewing appropriate information regarding the status of the credit and providing a recommendation to the IDA Board based upon such factors as the analysis of risk, the Borrower's history of compliance with the loan terms, conditions, and covenants, and prevailing commercial lending rates. The Board shall be responsible for establishing the revised rate.

## **ARTICLE 8** **EXCEPTIONS**

§8-1. Exceptions – Eligibility/Program Standards. In operating the program, the IDA may deviate from the Eligibility and Program Standards sections of these Guidelines only where such deviation is determined by the IDA Board to result in an extraordinary public benefit to Essex County. The nature of the deviation and the nature and extent of public benefit to result must be stated in a resolution duly adopted by the IDA Board.

§8-2 Exceptions – Other. Any deviation to the Guidelines other than as stated in §8-1 must be approved by a resolution duly adopted by the IDA Board stating the nature of the deviation and the reason(s) for its approval.

