

Ontario County Economic Development Corporation

Ontario County Loan Fund

Policy Guidelines and Operating Plan

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**Ontario County Economic Development Corporation
Ontario County Loan Fund
Policy Guidelines and Operating Plan**

**As Amended September 19, 2017
As Amended April 19, 2011
Adopted July 20, 2010**

Section 1. GENERAL

1.1 Policy Guidelines and Operating Plan. The Policy Guidelines and Operating Plan (the "Plan") is adopted by the Board of Directors of the Ontario County Economic Development Corporation ("OCEDC") and is intended to serve as the primary administrative document for all activities of the Ontario County Loan Fund (the "Program") that are funded in whole or in part with Community Development Block Grant ("CDBG") funds provided to the OCEDC by Ontario County. Any revisions or amendments to the Plan will require the approval of the OCEDC Board by an adopted resolution.

1.2 Objectives. The primary objectives of the Program are to facilitate the expansion and retention of business activity within Ontario County, create and retain employment opportunities, and maintain and expand the County's commercial and industrial tax base.

1.3 Form of Assistance. The Program will provide assistance only in the form of secured commercial loans.

Section 2. ELIGIBILITY REQUIREMENTS

2.1 Eligible Activities.

- (a) The principal business activity that will be primarily impacted by the Program financing must be located within Ontario County.
- (b) Program financing may be used to assist any form of business activity that the OCEDC Board determines to be consistent with the purposes of the Program, and that is not specifically ineligible pursuant to Section 2.2 of this Plan.
- (c) The business activity to be undertaken with assistance from the Program must directly result in the creation and/or retention of employment positions.
- (d) The business activity must be consistent with General Municipal Law and the Strategic Plan of the Ontario County Office of Economic Development.

2.2 Ineligible Activities. The following business activities, as further defined by the U. S. Small Business Administration, may not be assisted with Program financing:

- (a) Speculative activities, defined as a business that derives profits from fluctuations in prices;
- (b) Lending activities, including those conducted by banks, finance companies, factors, leasing companies, insurance companies (but not insurance agents or agencies), and similar firms;
- (c) Pyramid sales plans;
- (d) Gambling activities; and
- (e) Illegal activities.

2.3 Eligible Borrowers.

- (a) Eligible borrowers include sole proprietorships, partnerships, corporations, limited liability companies, limited liability partnerships, professional service corporations, cooperatives, and any other legally recognized form of business.
- (b) Loans may 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 lines of credit, and refinancing of existing debt where such refinancing is a required element of the project financing and is not indicative of imprudent management.

Where deemed appropriate by the OCEDC Board of Directors, funds may also be used as a forgivable loan (grant) for workforce development, training, small business programming, or other Board approved use.

Section 3. PROGRAM STANDARDS

3.1 Employment: 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
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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 financed activities.

3.2 Program Financing Amount: Program assistance must be no greater than the minimum amount necessary to affect 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 \$100,000. Exceptions to this Section 3.3 may be granted by the OCEDC Board on a case-by-case basis where such exception is determined to be in the best interests of the Program and where the reason for such exception is stated in a Board resolution.

3.4 Maximum Amount of Program Assistance: The Plan does not establish a maximum amount of Program assistance available to an applicant on either a one-time or aggregate basis. However, the OCEDC may, from time to time at its discretion, establish maximum amounts of assistance based on the total amount of Program funds available, the demand for such funds and such other factors as may be appropriate.

Section 4. LENDING POLICIES

4.1 Term of Loans: For fixed asset loans, the Program loan term will be generally consistent with the depreciable life of the assets being financed, with such periods being consistent with standard commercial lending policies and practices and in no instance shall any loan term exceed a period of ten (10) years. The amortization schedule for such loans shall be at the discretion of the OCEDC and shall be determined based upon such factors as the amortization schedule of other related or similar loans, the nature and expected life of the collateralized assets and the borrower's projected ability to repay the loan. In no case however shall a loan have a maturity term in excess of ten (10) years. Loans with amortization schedules in excess of ten (10) years shall be required to be paid in full with a lump sum payment at the end of ten (10) years.

4.2 Interest Rate: Program loans will bear interest at a fixed rate equal to the greater of (i) 75% of the lowest prime rate as published in the *Wall Street Journal* on the day of the loan closing, or (ii) three percent (3%). The maximum interest rate charged on a loan will be 9%. In the case of loans with a term greater than five years the interest rate of the loan shall be reviewed at the end of the fifth year. Exceptions to the interest rate policy may be applied by the Board on a case-by-case basis based on such factors as the risk of default, the value of security, and the prevailing commercial lending rates. The reason for the application of any such exception shall be stated in a Board resolution.

4.3 Repayment Terms: The OCEDC will determine the schedule of loan repayments on a case-by-case basis based on 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, and/or such other terms as may be determined by the OCEDC to be appropriate.

4.4 Security: The OCEDC will determine the required security for each loan on a case-by-case basis based on such factors 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 OCEDC 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 OCEDC's option.
- (b) The OCEDC may require the personal guarantee of persons having an ownership interest in the borrowing entity.
- (c) The OCEDC may, at its discretion, require additional security including, but not limited to additional collateral, guarantees, and the assignment of life insurance.

4.5 Subordination:

- (a) Program promissory notes shall not be subordinated to any other lending interest except where the Board determines that such subordination is a reasonable and non-negotiable requirement of the senior lender. Any such subordination shall be subject to terms and conditions acceptable to the Board.
- (b) The OCEDC will generally allow a subordination of Program collateral interests to private institutional lenders where necessary to facilitate the maximum financial participation by the private lenders.
- (c) The standing of the OCEDC's financing relative to other public or quasi-public lenders will be negotiated on a case-by-case basis.
- (d) The OCEDC will generally require the subordination to Program financing of all notes payable to any officer, owner, or similarly affiliated party to the borrower where such subordination is appropriate and feasible. The terms and conditions of any such subordination shall be established by the Board on a case-by-case basis.
- (e) The OCEDC's use of and/or participation in intercreditor agreements shall be at the discretion of the OCEDC Board.

4.6 Financial Statement Requirements. Borrower requirements to provide annual financial statements will be at the discretion of the OCEDC Board and will be communicated to the borrower in the Commitment Letter. The following chart establishes the general guidelines for use by the Board in establishing such requirements:

	High Risk Loan	<u>Medium Risk Loan</u>	<u>Low Risk Loan</u>
Audited Financial Statements required	Greater than \$2.5 million	Greater than \$4.5 million	Greater than \$7.0 million

Reviewed Financial Statements required	Above \$1.0 & including \$2.5 million	Above \$1.5 and including \$4.5 million	Above \$2.0 and including \$7.0 million
Compiled Financial Statements required	Above \$0.25 & including \$1.0 million	Above \$0.35 and including \$1.5 million	Above \$0.50 and including \$2.0 million
Internally prepared financial statements only required	Up to and including \$0.25 million	Up to and including \$0.35 million	Up to and including \$0.50 million

Risk is a function of the following:

- Track record of the business
- Nature of investment
- Nature of collateral
- Amount of subordinated debt
- Competency of company accounting systems/personnel

Loan amounts refer to all debt.

Section 5. APPLICATION PROCESSING

5.1 Loan Applications. Applications for Program financing must include all of the information required by the Program Application Form (attached hereto as Appendix A), and any additional information as may be reasonably requested by the OCEDC.

5.2 Application Fee. A fee of \$400.00 must accompany all Program loan applications. Such fee will be in consideration of loan processing costs incurred by the OCEDC, will become the property of the OCEDC, will not be considered as or accounted for as CDBG Program Income, and will be unrestricted in its use by the OCEDC.

5.3 Application Processing.

- (a) The processing of loan applications will generally consist of the following:
- (i) Review of applications for completeness and procurement of appropriate additional information.
 - (ii) Review for Program eligibility criteria.
 - (iii) Determination of economic feasibility, performance of credit analysis, and assessment of risk.
 - (iv) Determination of amount and terms of Program financing, including appropriate security.
 - (v) Preparation of a written report to the Finance Committee summarizing the review process and providing recommendations as appropriate.

5.4 Finance Committee: The OCEDC Board has established a Finance Committee of three

members to review loan applications and to make recommendations to the OCEDC Board. These members will be appointed to terms not to exceed three years. Loan applications may not be presented to the OCEDC Board for action without a review and recommendation(s) by the Finance Committee. The Finance Committee will also be responsible for reviewing and making recommendations to the OCEDC Board as appropriate regarding forgivable loans and loan portfolio management issues (see Section 7).

5.5 Loan Approvals: The OCEDC 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, the requisite security for the loan, and other appropriate conditions of lending and covenants of the borrower.

5.6 Loan Declinations:

- (a) Loan applications may be declined by the Finance Committee, the OCEDC CEO, or such other person as may be designated by the OCEDC Board to oversee the daily operations of the Program, based on a lack of application completeness or a failure to meet the eligibility criteria pursuant to Section 2 of this Plan. In such instances, the applicant will be notified in writing of the reason(s) for disapproval.
- (b) The Finance Committee may recommend to decline an application for reasons relating to credit issues and financial feasibility. The occurrence of any such disapproval shall be conveyed to the OCEDC Board for consideration.
- (c) Loan applications may be declined by the OCEDC Board for any reason or reasons that 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.
- (d) Loan applications may be declined in the event that sufficient program funding does not exist.

Section 6. POST-APPROVAL PROCESS

6.1 Commitment Letter: Within 10 calendar days from the date of the OCEDC Board's approval of a Program loan, a commitment letter shall be sent to the applicant that includes, at a minimum, the following information:

- (a) The amount of the approved loan, 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 OCEDC'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 and other closing costs that
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will be the responsibility of the borrower.

- (g) A listing of those conditions and requirements of the borrower that must be fulfilled precedent to a loan closing.
- (h) Any other information that could reasonably be expected to influence the borrower's decision to accept the terms of the loan commitment.

6.2 Commitment Fee.

- (a) In consideration of the reservation of funds for approved loan applications, the loan applicant will be charged a commitment fee equal to one percent (1%) of the approved loan amount. The commitment fee will be nonrefundable and will become due and payable concurrent with the applicant's executed acceptance of the loan commitment.
- (b) The commitment fee will be credited to the loan applicant at the time of the loan closing to offset any costs and/or fees associated with the loan closing. Any balance of the commitment fee remaining after all closing costs are paid will become the property of the OCEDC, will not become part of the Program funds, and will be unrestricted in its use.
- (c) Commitment fees for loans that do not close through no fault of or action by the OCEDC will become the property of the OCEDC, will not become part of the Program funds, and will be unrestricted in their use.
- (d) Commitment fees for loans that do not close as the result of actions or circumstances solely within the control of the OCEDC will be returned in whole to the loan applicant.

6.3 Loan Closing Fees and Costs:

- (a) Borrowers will be required to pay the OCEDC's legal fees associated with a loan closing in accordance with the schedule attached hereto as Appendix B.
- (b) Borrowers will pay all of the OCEDC's third-party costs for documents, instruments, and services associated with the loan closing including, but not limited to surveys, title and lien searches, filing and recording fees, and appraisals.

6.4 Loan Closings: The OCEDC's attorney will have the responsibility to prepare and/or require the preparation of all appropriate closing documents. The OCEDC attorney will determine the appropriate closing documents to be executed based upon the terms and conditions of the loan approval and standard commercial lending policies. Such documents will generally include the following:

- (a) A loan agreement that includes a description of the loan terms and security, appropriate representations and warranties, the conditions of lending, affirmative and negative covenants (including compliance with applicable federal laws and regulations), requirements regarding employment creation and reporting, default
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provisions, and any other provisions that 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 OCEDC attorney.

6.5 Security: The OCEDC's attorney will be responsible for perfecting all of the OCEDC'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 OCEDC's security interests. Intercreditor agreements may be executed where appropriate to further protect the OCEDC's interests and to facilitate the processing of defaults and foreclosures.

6.6 Loan Disbursements: The following guidelines shall generally apply to the disbursement of the OCEDC loan proceeds:

- (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 detailed in this Section 6.6, the OCEDC may disburse loan proceeds upon the borrower's presentation of vouchers and other such evidence satisfactory to the OCEDC that represent paid or accrued expenses of the borrower and which are eligible costs as determined by the OCEDC.
- (b) Where OCEDC loan funds will be used by the borrower as working capital, the OCEDC Board will establish an appropriate disbursement schedule and the OCEDC CFO will be responsible for ensuring that appropriate documentation of the use of the loan funds is procured.
- (c) Where other debt, equity, or grant funding is to be used in conjunction with the Program financing, such funding must, in the opinion of the OCEDC, be firmly committed for such use. Evidence of the commitment(s) must be submitted by the borrower.
- (d) Where other debt, equity, or grant funding is to be used in conjunction with the Program financing, the OCEDC will, at its discretion, determine an appropriate draw schedule for Program funding based on such factors as the nature and magnitude of risk assumed by the OCEDC, the nature of the activities being financed, and the draw schedule for the other financing. The manner and terms of the disbursement of the Program financing should normally be included as part of the written report from the Finance Committee and should be included in the approval of the financing by the OCEDC Board. However, in instances where the OCEDC Board has not prescribed a draw schedule, the OCEDC CFO may establish a draw schedule.

Section 7. LOAN MANAGEMENT

7.1 General: The OCEDC will establish and use appropriate systems for the accounting and

collection of Program loan repayments and shall procure and maintain appropriate documents and records associated with Program assistance in a manner consistent with the rules and requirements of standard commercial lending policies.

7.2 Delinquencies: For loan repayments that are 15 days past due, the OCEDC will notify the borrower of the delinquency and encourage prompt payment. Delinquencies that continue for 60 days will be referred to the Finance Committee for appropriate action. Notwithstanding the above, the OCEDC CEO, or such other person charged with the responsibility of monitoring the activity of borrowers, shall immediately notify the OCEDC Board of any bankruptcy or other serious event that would negatively affect the financial status of a Program borrower.

7.3 Late Fees: If any payment is not received within ten days of the due date a late fee equal to the greater of one hundred fifty dollars (\$150.00) or one half of one percent (0.5%) per calendar month or fraction thereof shall be assessed on the past due amount.

7.4 Defaults. Loan defaults occur due to noncompliance with loan covenants included in the Loan Agreement. OCEDC will notify the borrower of the event of default and encourage cure of default although failure of the OCEDC to notify the borrower does not relieve the borrower of their obligations under the Loan Agreement. Further action will be taken as necessary and as outlined under the Loan Agreement. Notwithstanding the above, the OCEDC CEO, or such other person charged with the responsibility of monitoring compliance with the terms of the Loan Agreement shall immediately notify the OCEDC Board of any event of default when identified.

7.5 Adjustment of Terms and Conditions: Requests by the borrower for adjustment of any of the terms and conditions of a closed Program loan will be reviewed to determine whether the adjustment is in the best interests of the OCEDC. Requests will be processed in accordance with the following:

- (a) Requests to adjust the interest rate, term of the loan, or security for the loan will be presented to the Finance Committee for review and recommendations and presented to the OCEDC Board for action. Any such adjustments will require approval of the OCEDC Board.
- (b) Requests to temporarily modify the repayment schedule must be approved by the OCEDC Board. No temporary modifications will be granted without OCEDC Board approval.
- (c) Requests for changes respecting any covenants or conditions of a financial nature must be approved by the OCEDC Board as to content and the OCEDC attorney as to form.
- (d) 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 must be approved by the OCEDC Board.
- (e) Any and all legal fees and disbursements that the OCEDC incurs in connection with Requests are payable by the Borrower.

7.6 Annual Financial Review: The OCEDC may conduct a financial review for borrowers with outstanding Program loans, based on the financial statements or other information submitted by

the borrower. Additional information may be required from the borrower to complete the review. The review will be submitted to the OCEDC board.

SECTION 8. Exceptions

8.1 Exceptions.

- (a) The OCEDC may deviate from the Eligibility Requirements (Section 2), Program Standards (Section 3), Lending Policies (Section 4) and Commitment Fee (Section 6.2) sections of the Plan only where such deviation is determined by the OCEDC Board to result in an extraordinary public benefit to Ontario County. The nature of the deviation and the nature and extent of public benefit to result must be stated in an approved OCEDC Board Resolution. In no instance shall such deviation be inconsistent with the laws, regulations, rules, or policies of the CDBG program.
 - (b) Any other deviations from the Plan will require the authorization of the OCEDC Board.
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