



**Cheektowaga Economic  
Development Corporation**

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**Cheektowaga Economic Development Corporation  
Revolving Business Loan Program**

**Policy Guidelines and Operating Plan**

**Adopted by CEDC Board on May 28, 2003**

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Cheektowaga Economic Development Corporation  
Revolving Business Loan Program  
Policy Guidelines and Operating Plan

**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 Cheektowaga Economic Development Corporation (the "CEDC") and is intended to serve as the primary administrative document for the Revolving Business Loan Program (the "Program"). Any changes to the Plan must also be adopted by the Board of Directors.

1.2 Objectives. The primary objectives of the Program are to facilitate the expansion and retention of business activity within the Town of Cheektowaga (the "Town"), create employment opportunities, expand the Town's industrial tax base, increase property tax revenues, and increase sales tax revenues.

1.3 Form of Assistance. The Program will provide assistance only in the form of secured 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 the Town of Cheektowaga.
- (b) The business activity to be undertaken with assistance from the Program must primarily involve one of the following:
  - (i) A manufacturing endeavor - to be defined as manufacturing, fabrication, assembly, processing, growing, packaging, or other enterprise that directly involves the production of an end product;
  - (ii) Warehousing - where such activity is an integral part of a manufacturing endeavor;
  - (iii) Wholesale distribution; or

- iv) Retail or service trade - where it can be determined on a case-by-case basis that the establishment, expansion, or retention of the retail or service enterprise will not negatively impact other retail or service trade in the Town of Cheektowaga to the extent that it substantially offsets the public benefit of the proposed project.
  - (v) Any other form of business activity that the CEDC Board determines is consistent with the purposes of the Program.
- (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 governing the Community Development Block Grant (CDBG) program.

2.2 Eligible Borrowers. Eligible borrowers include sole proprietorships, partnerships, corporations, limited liability companies, limited liability partnerships, and any other legally recognized form of business. 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.

2.3 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.

### **Section 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 CEDC Board determines that the expanded business activity will result in 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 CEDC 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.

#### **Section 4. LENDING POLICIES**

4.1 Term of Loans. For fixed asset loans the Program loan term will generally be consistent with the life of the assets being financed, with such periods being consistent with standard commercial lending policies and in no instance exceeding fifteen (15) years. For term working capital loans, the loan term may not exceed seven (7) years. For all loans, the term will be determined by the CEDC 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.

4.2 Interest Rate. The interest rate charged for the use of Program funds will be determined by the CEDC based on such factors as the risk of default, the value of security, and the prevailing commercial lending rates. There is no stated policy regarding fixed or variable interest rates.

4.3 Repayment Terms. The CEDC 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, periods of accruing interest or interest only payments, extended amortization schedules with balloon payments of principal, and/or such other terms as may be determined by the CEDC to be appropriate. A late fee equal to two percent (.02) of the periodic payment amount will apply to all loans.

4.4 Security. The CEDC 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 CEDC 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 CEDC's option.
- (b) For loans to corporations or partnerships, the CEDC 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 CEDC.
- (c) For loans to closely-held corporations, the CEDC may require as additional security selected personal assets of one or more of the owners.
- (d) For loans to individuals, partnerships, or corporations that have affiliated interests and/or identities of ownership with other business entities, the CEDC may require additional guarantees.
- (e) For loans to businesses that have a dependence upon specific individuals for their continuing viability, the CEDC may require an assignment of insurance on the lives those persons.

#### 4.5 Subordination.

- (a) The CEDC will generally allow a subordination of Program collateral to private institutional lenders where necessary to facilitate the maximum financial participation by the private lenders.
- (b) The standing of the CEDCs financing relative to other public or quasi-public lenders will be negotiated on a case-by-case basis.
- (c) The CEDC 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 CEDC will generally require the execution of intercreditor agreements in instances where multiple lenders exist. The use and form of such agreements shall be the responsibility of the CEDC Attorney.

## **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 CEDC.

5.2 **Application Fee.** No fee will be charged for the submission of a CEDC 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 CEDC Board has established a Loan Review Committee to review loan applications and to make recommendations to the CEDC Board. No loan application may be presented to the CEDC Board for action without a review and recommendation(s) by the Loan Review Committee. The Loan Review Committee will also be responsible for reviewing and making recommendations to the CEDC Board as appropriate regarding loan portfolio management issues (see Section 7).

5.5 **Loan Approval.** The CEDC 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 the responsibility of the CEDC Attorney with input from the Loan Review Committee.

5.6 **Loan Disapproval.**

- (a) Loan applications may be disapproved by the Loan Committee, the CEDC President, or the CEDC President's designate based on a lack of application completeness or a failure to meet the eligibility criteria pursuant to Sections 5.3(a) and 5.3(b) of this Plan 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 Loan Review Committee if the Committee determines that Program financing is clearly inappropriate based on the reviews conducted in accordance with Sections 5.3(c) and 5.3(e) of this Plan. In such instances, the applicant will be notified in writing of the reason(s) for disapproval.
- (c) Loan applications may be disapproved by the CEDC 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.

## **Section 6. POST APPROVAL PROCESS**

6.1 Commitment Letter. Within 14 calendar days from the date of the CEDC Board's approval of a Program loan, a commitment letter shall be sent to the applicant that includes, at a minimum, the following information (see sample at Appendix B):

- (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 CEDC's requirements for collateral and additional security - including guarantees, pledges of assets, assignment of life insurance, etc. (d) Summary information regarding employment requirements.
- (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 Section 6.2 herein) and other closing costs that which 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. In consideration of the CEDCs 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, such fee to be not less than \$250.00 or more than \$2,500.00. The fee shall be nonrefundable and shall become due and payable concurrent with the applicant's executed acceptance of the loan commitment. The CEDC Board shall have the right to establish an alternative commitment fee in instances where the CEDC is participating its loan with a lead lender. In such instances, the establishment of the commitment fee shall be in consideration of the expenses incurred by the CEDC in processing the loan application.

6.3 Loan Closings. The CEDC Attorney shall have the responsibility to prepare and/or require the preparation of all appropriate closing documents. The borrower shall be required to pay all closing costs incurred by the CEDC. The CEDC Attorney shall 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 shall generally include 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 compliance with applicable federal laws and regulations, requirements regarding employment creation and reporting, default provisions, and any other provisions which may be appropriate (see sample at Appendix C).
- (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 CEDC Attorney.

6.4 Security. The CEDC Attorney will be responsible for perfecting all of the CEDCs 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 CEDC's security interests. Intercreditor agreements will be executed where appropriate to further protect the CEDCs interests and to facilitate the processing of defaults and foreclosures.

6.5 Loan Disbursements. The following guidelines shall generally apply to the disbursement of CEDC 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 described in this Section 6.5, the CEDC may disburse loan proceeds upon the borrower's presentation of vouchers and other such evidence satisfactory to the CEDC which represent paid or accrued expenses of the borrower and which are eligible costs as determined by the CEDC.
- (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 CEDC, be firmly committed for such use. Evidence of the commitment(s) must be submitted by the borrower.
- (c) Where other debt or equity financing is to be used in conjunction with the Program financing, the CEDC will, at its discretion, determine an appropriate draw schedule for Program funding based on such factors as the magnitude of risk assumed by the CEDC, the nature of the activities being financed, the draw schedule for the other financing, and applicable federal

regulations for the use of CDBG funds. The manner and terms of the disbursement of the Program financing should normally be included in the approval of the financing by the CEDC Board. However, in instances where the CEDC Board has not prescribed a draw schedule, the Loan Review Committee may approve a draw schedule.

## **Section 7. LOAN MANAGEMENT**

7.1 **Delinquencies.** The CEDC will contact the borrower within 30 days of any delinquency of payment to inform the borrower of the delinquency and to determine if there is a need to procure additional information or to provide technical assistance. Delinquencies that continue for 60 days will be referred to the Executive Committee and CEDC Attorney for further action.

7.2 **Annual Financial Review.** The CEDC 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 CEDC. 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 Loan Review Committee for review and recommendations and presented to the CEDC Board for action. Any such adjustments will require approval of the CEDC Board.
- (b) Requests to accrue interest, defer principal payments, or otherwise temporarily modify the repayment schedule may be approved by the Loan Review Committee for a period not to exceed 90 days. Extensions for any longer period will require the approval of the CEDC Board.
- (c) Requests for changes respecting any covenants or conditions of a financial nature must be approved by the Executive Committee as to content and the CEDC 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 may be approved by the Town's Director of Community Development or referred to either the Executive Committee or the Loan Review Committee at the Community Development Director's Discretion

7.4 **Periodic Interest Rate Review.** In instances where the CEDC may establish a revised interest rate pursuant to its rights as a lender, the Loan Committee shall be responsible for reviewing appropriate information regarding the status of the credit and providing a recommendation to the 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.

## **SECTION 8. Exceptions**

8.1 **Exceptions - Eligibility/Program Standards.** In operating the Program, the CEDC may deviate from the Eligibility and Program Standards sections of this Plan only where such deviation is determined by the CEDC Board to result in an extraordinary public benefit to the Town of Cheektowaga. The nature of the deviation and the nature and extent of public benefit to result must be stated in an approved Board Resolution.

8.2 **Exceptions - Other.** Any deviation to the Plan other than as stated in Section 8.1 must be approved by a Resolution of the Board or of the Board Executive Committee that states the nature of the deviation and the reason(s) for its approval.