

WARREN COUNTY LOCAL DEVELOPMENT CORPORATION

ECONOMIC DEVELOPMENT LOAN FUND

POLICY GUIDELINES & OPERATING PLAN

Revision: Adopted 17 February 2012

**Warren County Local Development Corporation
Economic Development Loan Fund
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 Warren County Local Development Corporation (the "Board") and is intended to serve as the primary administrative document for the Economic Development Loan Fund (the "EDLF"). Any changes to the Plan must also be adopted by the Board of Directors of the Warren County Local Development Corporation. References to the "WCLDC" or the "LDC" throughout this document imply the Warren County Local Development Corporation. References to the LDC 'staff' in this document are meant to distinguish roles and responsibilities between the LDC Board of Directors, the those persons whom the LDC may contract with for marketing of the loan fund, for underwriting and packaging of loans to present to the LDC Board, or those who may be under contract to service loans made by this body.

1.2 Objectives

The primary objectives of the EDLF are to assist in the establishment and expansion of business activity within Warren County, create and or stabilize employment opportunities in the County, and preserve and expand the County's tax base.

1.3 Form of Assistance

The EDLF will provide assistance in the form of loans.

Section 2. ELIGIBILITY REQUIREMENTS

2.1 Eligible Activities

- (a) The principal business activity which will be primarily impacted by the EDLF financing must be located within Warren County. Exceptions to this requirement will be granted only where the Board determines that the

expanded business activity will have a direct and significant positive impact on the EDLF's stated objectives.

- (b) EDLF assistance may be provided for any legal commercial business activity that is consistent with the EDLF program objectives.
- (c) The business activity to be undertaken with assistance from the EDLF must directly result in the creation or retention of employment. Where no employment creation or retention is projected, the business owners must be providing a good or service for the Community that has been deemed 'significant' by the Town Board, at the time of the loan closing. Town 'significance' will require a letter signed by the Town Supervisor; at the time of closing.

2.2 Ineligible Activities

Activities which primarily consist of investing, speculation, or realty ownership held primarily for sale or investment; or any activity which is illegal; and any activity which does not further the objectives of the EDLF will be ineligible for EDLF financing.

2.3 Eligible Borrowers

Eligible borrowers include sole proprietors; partnerships and corporations. 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.

A borrower is eligible for EDLF financing when credit is not otherwise available on terms and conditions that would permit completion of the borrower's project. A borrower eligibility determination must be supported by either:

1. A loan commitment letter from the commercial lender participating in the project.
2. A commercial lender letter declining participation.

2.4 Eligible Uses of EDLF Funds

EDLF funds may be used for any justifiable business purpose including, but not limited to fixed assets, current assets including inventory and receivables, and permanent working capital, and re-financing of existing debt. .

Section 3. EDLF STANDARDS

3.1 General

The maximum amount of EDLF financing may not exceed a ratio of \$15,000 per each employment opportunity to be created or retained. For 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 \$15,000 of financing per employment opportunity may be exceeded in instances where the LDC determines that the expanded business activity will affect an extraordinary degree of other public benefits.

3.3 EDLF Financing Amount

EDLF assistance must be no greater than the *minimum amount necessary* to affect the business activity; and cannot exceed 80% of proposed total project costs. Applicants must demonstrate that all other private and public sources of debt and equity have either been maximized or are inappropriate, unaffordable, or otherwise unavailable.

3.4 Minimum Amount of EDLF Assistance

Program assistance will not be considered where the amount of requested assistance is less than three thousand dollars (\$3,000).

3.5 Maximum Amount of EDLF Assistance

Total EDLF assistance provided to a business or to any owner of an eligible business may not exceed 80% of total project costs and must be consistent with the lending ratio defined in 3.1. No maximum of program assistance has been

established however the LDC will, from time to time at its discretion, establish maximum amounts of assistance based upon the total amount of program funds available and the demand for said funds. .

Section 4. LENDING POLICIES

4.1 General

EDLF loans *may* have an initial deferral of principal and interest payments for six (6) months. No interest will be charged or accrued during this period. Prior to the expiration of the six month period, the WCLDC will evaluate the borrower's financial condition and business development status and take one of the following actions:

- (a) Inform the borrower that the loan repayment will commence according to the terms established pursuant to Sections 4.2, 4.3, and 4.4 of this Plan; or;
- (b) Extend the deferral for an additional period not to exceed a second six months. No interest will be charged or accrued during this period, and the lending agreement will be amended to reflect a revised principle payment schedule. The granting of an additional deferral will be contingent upon the borrower's agreement to accept or procure any technical assistance required by the WCLDC as a condition of the deferral. At the expiration of this second deferral period, the WCLDC will inform the borrower that the loan repayment will commence according to the terms established pursuant to Sections 4.2, 4.3, and 4.4 of this Plan.

4.2 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 plus the deferral period(s). For all loans, the term will be determined by the WCLDC 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.

4.3 Interest Rate

The interest rate charged for the use of funds will be determined by the LDC based upon recommendations from the BRC and will have a floor of 5% and a ceiling of 9%. The Business Review Committee (BRC) may from time to time review and re-evaluate the interest rate charged, based upon market conditions

and other factors deemed relevant by the BRC. In establishing such subsequent interest rate(s), the BRC can change the index, the floor, or the formula for determining the interest rate. Under no circumstance will a variable interest rate be used.

4.4 Repayment Terms

The WCLDC acting upon the recommendations of the BRC, 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 EDLF. No loan term will exceed 10 years. Repayment terms may involve standard forms of loan authorization, periods of accruing interest or interest on payments, extended amortization schedules with balloon payments of principal, and/or such other terms as may be determined by the WCLDC to be appropriate.

4.5 Security

The WCLDC acting upon the recommendations of the BRD, 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 EDLF in relation to other lenders. In determining the appropriate security, the following will apply:

- (a) The WCLDC will generally require a security interest in all assets financed with EDLF funds. Additional collateralization of assets of the borrower may be required at the WCLDC's option.
- (b) For loans to corporations, the WCLDC may require the personal guarantee of all owners of at least 20% of the voting stock of the company.
- (c) For loans to closely-held corporations, the WCLDC may require collateralization of selected personal assets of one or more of the owners.
- (d) For loans to individuals, partnerships, or corporations which have affiliated interests and/or identities of ownership with other business entities, the WCLDC may require additional guarantees.
- (e) For loans to businesses that have a dependence upon specific individuals for their continuing viability, the LDC may require an assignment of insurance on the lives of those persons.

4.6 Subordination

(a) The WCLDC will generally allow a subordination of EDLF debt and collateral to private institutional lenders where necessary to facilitate the maximum financial participation by the private lenders.

- (b) The standing of the EDLF's financing relative to other public or quasi-public lenders will be negotiated on a case-by-case basis.
- (c) The WCLDC will generally require subordination to EDLF financing of notes payable to any officer, owner, or similarly affiliated party to the borrower where appropriate and feasible. Such subordination may include subordinate security interests and/or repayment restrictions.
- (d) The LDC will generally require the execution of an intercreditor agreement in instances where multiple lenders exist. The use and form of such agreements shall be the responsibility of the LDC Attorney.

Section 5. APPLICATION PROCESSING

5.1 Loan Applications

Applications for EDLF financing must include all of the information required by the EDLF Application Form and any additional information as may be reasonably requested by the WCLDC. A credit report will be done run by the LDC and the fee of \$20.00 will be paid by the applicant.

5.2 Application Fee

An application fee of \$300 plus the credit report fee of \$20.00 is due at the time of submission of the application for EDLF financing. If the loan is approved, \$150 will be refunded to the applicant.

5.3 Application Processing

The processing of loan applications will be the responsibility of the WCLDC and the Business Review Committee, and will generally consist of the following:

- (a) Review of applications for completeness and procurement of appropriate additional information.
- (b) Review for EDLF program eligibility criteria and eligibility.
- (c) Determine economic feasibility, perform credit analysis, and assess risk.
- (d) Determine amount and terms of EDLF financing, including appropriate security.
- (e) Prepare written report for LDC Board summarizing the review process and providing recommendations for lending, as appropriate.

5.4 Loan Review Committee

The WCLDC Board has established a Business Review Committee to review loan applications and make recommendations for funding. No loan request will be presented to the LDC Board without review and recommendations from the Business Review Committee (BRC).

5.5 Loan Approval

The LDC Board has the sole authority to approve use of EDLF program funds. The Business Review Committee has the authority to make recommendations to the LDC Board to approve requests for EDLF loans, or to disapprove requests for EDLF loans. BRC authority shall include recommendations to the commitment to lend EDLF 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 WCLDC Attorney with input from the WCLDC staff and the Business Review Committee.

5.6 Loan Disapproval

- (a) The Chief Executive Officer of the WCLDC may recommend disapproval of a loan application, based upon a lack of application completeness or a failure to meet the eligibility criteria of the program. In such instances, the applicant will be notified in writing of the reason(s) for disapproval, and may be allowed to re-submit a loan application at a later date, if all reasons for disapproval have been resolved.
- (b) The BRC may recommend disapproval of a loan application for any reason or reasons which represent a reasonable determination that the approval of the EDLF application would not meet the objectives of the EDLF program and/or would not represent an appropriate or prudent use of EDLF funds. In such instances, the applicant will be notified in writing of the reason(s) for disapproval.
- (c) The LDC Board may disapprove a loan application for any reason or reasons that represent a reasonable determination that the approval of the 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 ten calendar days from the date of the LDC Board 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 loan approved; the applicable interest rate, the term of the loan, the terms of repayment and the expiration date of the commitment letter.
- b) The required use of the loan funds.
- c) The LDC'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 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, including conditions of default.

6.2 Closing Costs

To partially defray the cost of loan application processing, the borrower shall be required to pay a closing fee calculated as follows: loans of \$3,000-10,000: \$300. Loans of \$10,001- \$20,000: \$350; Loans of \$20,001 - \$30,000: \$400; Loans of \$30,001 - \$40,000 - \$450; loans of 40,001-50,000: \$500; loans of \$50,001-\$75,000: \$600; loans of \$75,001 - \$200,000: 1% of loan amount approved. Loans approved of \$200,001 + will pay a closing fee of .5% of loan amount approved. Any legal costs above and beyond the closing fees will be the applicant's responsibility. Any and all filing fees will be the responsibility of the borrower.

6.3 Loan Closings

The LDC Attorney shall have the responsibility to prepare and/or require the preparation of all appropriate closing documents. The LDC 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 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 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 LDC Attorney.

6.4 Security

The LDC Attorney will be responsible for perfecting all of the LDC'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 LDC's security interests. Inter-creditor agreements should be executed where appropriate to further protect the LDC's interests and to facilitate the processing of defaults and foreclosures.

6.5 Loan Disbursement

The disbursement of loan proceeds shall be the responsibility of the LDC staff. For such disbursement, the following guidelines shall generally apply:

- (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 LDC staff may disburse loan proceeds upon the borrower's presentation of vouchers and other such evidence satisfactory to the LDC that represent paid or accrued expenses of the borrower and which are eligible costs as determined by the LDC.
- (b) Where other debts or equity financing is to be used in conjunction with the Program financing, such debt or equity must, in the opinion of the LDC Business Review Committee (BRC), 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 LDC will, at its discretion, determine an appropriate draw schedule for Program funding based on such factors as the magnitude of risk assumed by the LDC, the nature of the activities being financed, the draw schedule for the other financing and any other applicable regulations for the use of Program funds. The manner and terms of the disbursement of the Program financing shall be prescribed by LDC BRC.

Section 7. LOAN MANAGEMENT

7.1 Delinquencies

The LDC will contact the borrower within 14 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 90 days will be referred to the LDC Attorney for further action.

7.2 Annual Financial Review

An annual financial review and site visit are mandatory for use of the EDLF. The fee for the annual review is \$100, due at the time of the site visit. Borrowers will be contacted to set date/time for on-site visit and review of the annual financial statements submitted by the borrower. Additional information may be procured as appropriate. Review reports will be presented to the BRC for further 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 by the LDC staff to determine whether the adjustment is in the best interests of the LDC. 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 reviewed by the LDC staff, and presented to the BRC for review and recommended action. Any such adjustments will require approval of the LDC Board.
- (b) Requests to accrue interest or to pay interest only may be approved for a period not to exceed 60 days; pending Business Review Committee review and recommendation to approve, and LDC Board approval. The LDC Board has the final authority to extend the period at its discretion.
- (c) Requests for changes respecting any covenants or conditions of a financial nature must be recommended for approval by the BRC as to content and the LDC 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 will be screened and reviewed by LDC Staff; then referred to the BRC for recommended action with final approval authority at the LDC Board.
- (e) All requests approved by the LDC Board will require written notification to the borrower indicating all approved changes to the original and/or subsequent loan terms and conditions. The notification at a minimum will include any effects on the loan term.

7.4 Compliance Monitoring.

The LDC Staff will be responsible for monitoring the borrower's compliance with all of the conditions and covenants of the Loan Agreement. Such responsibility shall include taking appropriate actions in the event of non-compliance; informing the Business Review Committee, the LDC Board and the LDC Attorney of any incidence of default under the terms and conditions of the loan agreement, and providing file documentation as appropriate.

7.5 Default – Conditions of Financial Hardship.

In asserting its remedies upon a default of the borrower, the LDC Board may elect not to pursue and/or liquidate personal assets of the borrower if such action would result in an extraordinary financial hardship to the borrower, the borrower's family, or any loan guarantor. Such circumstances will be reviewed by the LDC Staff; and the Business Review Committee prior to submitting recommendations for action to the LDC Board. Extraordinary financial hardship is generally defined as the creation of a condition of bankruptcy or the loss of personal assets necessary to enjoy a minimum level of living comfort.

All Conditions of Default are addressed in the loan documents.