

DECLARATION OF EMERGENCY

**Department of Economic Development
Office of the Secretary
Office of Business Development
Louisiana Economic Development Corporation**

Economic Development Award Program (EDAP)
and Economic Development Loan Program (EDLOP)
(LAC Title 13: Part III, Chapter 1)

The Louisiana Department of Economic Development, the Office of the Secretary, the Office of Business Development, and the Louisiana Economic Development Corporation, pursuant to the emergency provisions of the Administrative Procedure Act, La. R.S. 49:953(B), are amending, supplementing, expanding and readopting LAC Title 13: Part III, Chapter 1, the rules of the Economic Development Award Program (EDAP) and the Economic Development Loan Program (EDLOP), under the authority of La. R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341. These Rules, adopted in accordance with the Administrative Procedure Act, La. R.S. 49:950 et seq., shall become effective January 20, 2009, and shall remain in effect for the maximum period allowed under the Act, or until a final rule is promulgated in accordance with law, whichever occurs first.

The Department of Economic Development, the Office of the Secretary, the Office of Business Development, and the Louisiana Economic Development Corporation, have found an immediate need to amend, supplement and expand certain provisions of the rules and to readopt the rules for the regulation of the Economic Development Award Program (EDAP) and the Economic Development Loan Program (EDLOP). The amendments to these rules supplement, expand and update some of the definitions and provisions provided in the rules of these programs which promote economic development in this state by helping to successfully secure the creation and/or retention of jobs by business entities newly locating in Louisiana or which may already exist in Louisiana and are relocating and/or expanding their operations, but require state assistance for such development as an incentive to influence the company's decision to locate in Louisiana, maintain or expand its Louisiana operations, and/or increase its capital investment in Louisiana, all of which will promote economic development in Louisiana. Without this Emergency Rule the public welfare may be harmed as the result of the loss of business investment and economic development projects creating and/or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 13

ECONOMIC DEVELOPMENT

Part III. Financial Assistance Programs

Chapter 1. Subchapter A. Economic Development Award Program (EDAP) and Subchapter B. Economic Development Loan Program (EDLOP)

Subchapter A. Economic Development Award Program (EDAP)

101. Economic Development Award Program (EDAP); Preamble and Purpose

A. The Economic Development Award Program (EDAP) is vital to support the State's commitment

to Targeted Industry Based Economic Development, and the State's long term goals as set forth in *Louisiana: Vision 2020*, which is the Master Plan for Economic Development for the State of Louisiana.

B. The purpose of this EDAP program is to finance **publicly-owned** infrastructure for industrial or business development projects that promote targeted industry economic development and that require state assistance for basic infrastructure development. Additionally, the Louisiana Department of Economic Development, with the approval of the Board of Directors of Louisiana Economic Development Corporation, may take necessary steps to successfully secure projects in highly competitive bidding circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:236 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:860 (June 2003), LR 31:902 (April 2005), LR 35:

§ 103. Definitions

Applicants — the company or business enterprise and the public entity, collectively, requesting financial assistance from LED under this program.

Award — funding of financial assistance, appropriations, performance-based grants or loans approved under this program for eligible applicants.

Award Agreement — that agreement or contract hereinafter referred to between the company, the public entity, LED and LEDC through which, by cooperative endeavor agreement or otherwise, the parties set forth the amount of the award, the terms, conditions and performance objectives of the award provided pursuant to these rules.

Awardee — an applicant receiving an award under this program.

Basic Infrastructure Project — refers to those infrastructure projects funding for which is to be provided under this program.

Company — the business enterprise, being a legal entity duly authorized to do and doing business in the State of Louisiana, for which the project is being undertaken.

Default — the failure to perform a task, to fulfill an obligation, or to do what is required; the failure to create new jobs or the number of new jobs as agreed, to employ or to retain the employment of the number of employees as agreed, or to maintain the compensation or payroll levels as agreed; the failure to pay or to repay the loan or interest due thereon as agreed; or the failure to meet a financial obligation.

EDAP — the Economic Development Award Program.

Employee — a Louisiana resident hired by a company for permanent full-time employment.

Infrastructure — considered to be basic hard assets, permanent type assets, such as land, buildings, structures, substantial, installed or permanently attached machinery and/or equipment, streets, roads, highways, rights-of-way or servitudes, including paving or other hard surfacing, piping, drainage and/or sewage facilities, utility lines, poles and facilities, railroad spurs, tracks, cross ties, and all things similar or appurtenant thereto, and including costs related to the purchase, design, location, construction, and/or installation of such hard assets.

Infrastructure Project — refers to the undertaking for which an award is granted hereunder for the purchase, or new construction, improvement or expansion of land, roadways, parking facilities, equipment, bridges, railroad spurs, utilities, water works, drainage, sewage, buildings, ports and waterways.

Jobs Credits — refers to credits applied to repay the unpaid balance on a loan award in an amount

determined by the LEDC Board or by the LED or LEDC staff for each of the new permanent full-time jobs that are created and filled with a permanent full-time employee hired by the company within the agreed employment term.

LED — the Louisiana Department of Economic Development.

LEDC — the Louisiana Economic Development Corporation.

LEDC Board — the Board of Directors of the Louisiana Economic Development Corporation.

Loan or Loan Award — funding of financial assistance approved under this program for eligible applicants, which is to be repaid over a period of time by the awardee/borrower. Such financial assistance loans may be repaid either with or without interest, and may be repaid by applying “Jobs Credits” to the unpaid balance, and in the event “Jobs Credits” are utilized and earned, any interest due may also be waived, all to be determined by the LEDC Board or by the LED or LEDC staff.

Permanent Full-Time Jobs — refers to direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week. This term also includes the term “Permanent Full-Time Equivalent Jobs”.

Program — the Economic Development Award Program, including Basic Infrastructure Projects that are undertaken by LED, LEDC, the public entity and the company pursuant to these Rules and the ByLaws of LEDC.

Project — an expansion, improvement and/or provision of infrastructure for a public entity that promotes economic development, for which LED and LEDC assistance is requested under this program as an incentive to influence a company’s decision to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana.

Public Entity or Sponsoring Entity — the public or quasi-public entity responsible for engaging in the award agreement and pursuant thereto is responsible for the performance and oversight of the project and for supervising with LED the company’s compliance with the terms, conditions and performance objectives of the award agreement.

Secretary — the Secretary of the Department of Economic Development, who is also the President of LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:236 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:902 (April 2005), LR 35:

§105. General Principles

A. The following general principles will direct the administration of the Economic Development Award Program:

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana, and are subject to the discretion of the LEDC Board, after considering the recommendation of the Secretary and/or the staff of LED or LEDC.

2. An award must reasonably be expected to be a significant factor in a company’s location, investment and/or expansion decisions.

3. Awards must reasonably be demonstrated to result in the improvement of or enhancement to the economic development and well-being of the state and local community or communities wherein the project is or is to be located.

4. The retention and strengthening of existing businesses will be evaluated using the same procedures and with the same priority as the recruitment of new businesses to the state.

5. The anticipated economic benefits to the state and to the local community or communities wherein the project is or is to be located will be considered in making the award.

6. The favorable recommendation of the local governing authority wherein the project is or shall be located is expected and will be a factor in the consideration of the award.

7. Appropriate cost matching or funds matching by the Applicants, private investors, the local community and/or local governing authority, as well as among project beneficiaries will be a factor in the consideration of the award.

8. At the discretion of the LEDC Board, a two (2) year moratorium from the date of an LEDC Board approval or award of a grant may be required on additional EDAP awards to the same company at the same location; and a company shall not be eligible for or receive a another EDAP award so long as the same company is currently still obligated under an existing EDAP award involving the same location, or an existing EDLOP loan award involving the same location. (This provision shall not prohibit a combination EDAP award and EDLOP loan award made at the same time in connection with one project.)

9. Award funds shall be utilized for the approved project only.

10. Whether or not an award will be made is entirely in the discretion of the LEDC Board, after considering the recommendation of the Secretary and/or the staff of the LED or the LEDC; and shall depend on the facts and circumstances of each case, the funds available, funds already allocated, and other such factors as the LEDC Board may, in its discretion, deem to be pertinent.

11. The approval or rejection of any application for an award shall not establish any precedent and shall not bind the LEDC Board, the LED Secretary or the staff of LED or LEDC to any course of action with regard to any application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 23:36 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31: 903 (April 2005), LR 35:

§107. Eligibility

A. An eligible application for the award must meet the general principles set forth above and the criteria set forth below, and the infrastructure project must be or will be owned by, and the ownership benefits or rights resulting from the infrastructure project must inure to the benefit of one of the following:

1. A public or quasi-public entity; or
2. A political subdivision of the state.

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes, a bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has another contract with LED or LEDC in which the company is in default and/or is not in compliance. Should a company, after receiving an award, fail to maintain its eligibility during the term of the award agreement, the LEDC Board, in its discretion, may terminate the agreement and the award, and may seek a refund of any or all funds previously disbursed under the agreement.

C. 1. Businesses not eligible for awards under this Program are:

- a. Retail businesses, enterprises and/or operations;

- b. Real estate businesses, enterprises, operations and/or developments;
- c. Lodging or Hospitality businesses, enterprises and/or operations;
- d. Assisted Living businesses, enterprises or operations, Retirement Communities, or Nursing Homes; or
- e. Gaming or Gambling businesses, enterprises and/or operations.

2. This ineligibility provision shall not apply to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities are related to ineligible business enterprises, provided that retail sales, hospitality services, assisted living or nursing services, and gaming activities are not provided directly and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 23:37 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:903 (April 2005), LR 35:

§ 109. Criteria For Basic Infrastructure Projects

A. In addition to the General Principles set forth in § 105 and the Eligibility requirements in §107 above, Basic Infrastructure Projects must meet the criteria hereinafter set forth for an award under the Program:

1. Job creation and/or retention and capital investment:
 - a. Basic Infrastructure Projects must create or retain at least ten (10) permanent full-time jobs in Louisiana, at the project location.
 - b. Consideration will be given for projects having a significant new private capital investment.
 - c. The number of jobs to be retained and/or created and the compensation or payroll levels to be maintained as stated in the application for basic infrastructure projects will be strictly adhered to, and will be made an integral part of the award agreement.
2. Preference will be given to projects for industries identified by LED or LEDC as targeted industries, and to projects located in areas of the state with high unemployment levels.
3. Preference will be given to projects intended to expand, improve or provide basic infrastructure supporting mixed use by the company and the surrounding community.
4. Companies must be in full compliance with all state and federal laws.
5. No assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the US Census Bureau) within Louisiana, except when the company gives sufficient evidence that it is otherwise likely to relocate outside of Louisiana, or the company is significantly expanding and increasing its number of employees and its capital investment.
6. The minimum award request size shall be \$ 50,000.00.
7. Extra consideration will be given for companies paying wages substantially above the prevailing regional wage.
8. If a company does not start the project or begin construction of the project, or make substantial progress toward preparation of architectural and engineering plans and specifications and/or permit applications, within six (6) months after its application approval, the LEDC Board of Directors, at its discretion, may cancel funding for the project, or require reapplication. LED or LEDC may require written, signed documentation demonstrating that the contemplated project has

begun or has been started.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:37 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:862 (June 2003), LR 31:904 (April 2005), LR 35:

§111. Application Procedure For Basic Infrastructure Projects

A. The applicants must submit an application to LED or LEDC on a form provided by LED or LEDC which shall contain, but not be limited to, the following:

1. a business plan that contains an overview of the company, its history, and the business climate in which it operates, including business projections and, at the discretion of LED or LEDC, either audited financial statements, or an independent CPA certification of the company's net worth sufficient to demonstrate to LED or LEDC the financial ability of the company considering the circumstances relating to the award, as well as financial statements of any guarantors which may also be required by LED or LEDC at its discretion;

2. a detailed description of the project to be undertaken, along with the factors creating the need, including the purchase, construction, renovation or rebuilding, operation and maintenance plans, a timetable for the project's completion, and the economic scope of the investment involved in the project;

3. evidence of the number, types and compensation or payroll levels of jobs to be created or retained by the company in connection with the project, and the amount of capital investment for the project;

4. evidence of the support of the local community and the favorable recommendation of the local governing authority for the applicant's project described in the award application; and

5. any additional information that LED or LEDC may require.

B. The applicants and their applications must meet the general principles of §105, the eligibility requirements under §107, and meet the criteria set forth in §109 above, in order to qualify for an award under this Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003), LR 31:904 (April 2005), LR 35:

§113. Submission and Review Procedure For Basic Infrastructure Projects

A. Applicants must submit their completed application to LED or to LEDC. Submitted applications will be reviewed and evaluated by LED or LEDC staff. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;

2. validate the information presented; and/or

3. determine the overall feasibility of the company's plan.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities, will be prepared and utilized by LED or LEDC.

C. Upon determination that an application meets the general principles of §105, the eligibility requirements under §107, and meets the criteria set forth for this program under §109, the Secretary of LED and/or the LED or LEDC staff will then make a recommendation to the LEDC Board of Directors. The application will then be reviewed and approved or rejected by the LEDC Board in its discretion, after considering the recommendation of the Secretary of LED and/or the staff of LED or LEDC. The LED director or the targeted industry specialist in whose industrial area the applicant company participates may also make a recommendation to the LEDC Board as to the approval or disapproval of the award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003), LR 31:904 (April 2005), LR 35:

§115. General Award Provisions

A. Except where indicated, these provisions shall be applicable to Basic Infrastructure Awards. All agreements, including those resulting from any expedited procedures, shall demonstrate the intent of the company, the public entity, LED, and LEDC to enter into the following.

1. Award Agreement. A written contract, agreement or cooperative endeavor agreement will be executed between LEDC, acting through the LED, the public entity and the company(ies). The agreement will specify the amount of the award, the terms and conditions of any loan award, the performance objectives and requirements the company(ies) and the public entity will be required to meet, and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for investment, for performance, job retention and/or creation, and the compensation or payroll levels of such jobs. Under the agreement, the public entity will oversee the progress of the project. LED or LEDC will disburse funds to the public entity in a manner determined by LED or LEDC.

2. Funding.

a. Eligible project costs may include costs related to the design, location, construction and/or installation of basic infrastructure hard assets, including, but not limited to, the following:

- i. engineering and architectural expenses related to the project;
- ii. site (land) and/or building acquisition;
- iii. site preparation;
- iv. construction, renovation and/or rebuilding expenses; and/or
- v. building materials.

b. Project costs ineligible for award funds include, but are not limited to:

- i. recurrent expenses associated with the project (e.g., operation and maintenance costs);
- ii. company moving expenses;
- iii. expenses already approved for funding through the General Appropriations Bill, or for cash approved through the Capital Outlay Bill, or approved for funding through the

state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds;

iv. improvements to privately-owned property, unless provisions are included in the project for the transfer of ownership to a public or quasi-public entity;

v. refinancing of existing debt, public or private;

vi. furniture, fixtures, computers, consumables, transportation equipment, rolling stock or movable equipment.

B. Amount of Award. Following the appropriation of funds for each fiscal year, the Board of Directors of LEDC shall allocate the amount of such funds available for Basic Infrastructure Awards.

1. For Basic Infrastructure Awards, matching funds shall be a consideration; and:

a. The portion of the total project costs financed by the award may not exceed:

i. ninety (90%) percent for projects located in parishes with per capita personal income below the median for all parishes; or

ii. seventy-five (75%) percent for projects in parishes with unemployment rates above the statewide average; or

iii. fifty (50%) percent for all other projects.

b. **Other state funds cannot be used as the match for EDAP funds.**

c. All monitoring will be done by LED or LEDC. Expenditures for monitoring or fiscal agents may be deducted from awards.

d. The award amount shall not exceed twenty-five (25%) percent of the total funds allocated to the Basic Infrastructure Awards Program during a fiscal year, unless the project creates in excess of two hundred (200) jobs, or creates an annual payroll in excess of \$3.1 Million.

e. The LEDC Board of Directors, in its discretion, considering the recommendations of the Secretary and/or the staff of LED or LEDC, may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

C. Loan Award. In the event the award of financial assistance is to be in the form of a loan, which in the discretion of the LEDC Board, after considering the recommendation of the Secretary and/or the staff of the LED or the LEDC, either may or may not require the payment of interest at a rate to be determined by the LEDC Board (after considering the recommendation of the Secretary and/or the staff of the LED or the LEDC), or by the staff of the LED or the LEDC in the absence of a determination by the LEDC Board; and/or the loan may also be repaid by allowing "Jobs Credits" to be applied to the unpaid balance of the loan in an amount determined by the LEDC Board or by the LED or LEDC staff for each of the new permanent full-time jobs that are created and filled with a permanent full-time employee hired by the company within the agreed employment term, and in the event "Jobs Credits" are utilized and earned, any interest due may also be waived.

D. Conditions for Disbursement of Funds.

1. Award funds will be available to the public entity on a reimbursement basis in accordance with the award agreement following submission of required documentation to LED or LEDC from the public entity.

2. Program funding source.

a. If the program is funded through the state's general appropriations bill, only funds spent on the project after the approval of the LEDC Board of Directors will be considered eligible for reimbursement.

b. If the program is funded through a capital outlay bill, eligible expenses cannot be incurred until a cooperative endeavor agreement (contract) has been agreed upon, signed and executed.

3. Award funds will not be available for disbursement until:

a. LED or LEDC receives signed commitments by the project's other financing sources (public and private);

b. LED or LEDC receives signed confirmation that all technical studies or other analyses (e.g., environmental or engineering studies), and licenses or permits needed prior to the start of the project have been completed or obtained;

c. all other closing conditions specified in the award agreement have been satisfied.

4. Awardees will be eligible for the advancement of award funds on an as needed reimbursement basis, with requests for such funds supplemented with invoices or appropriate documentation showing the use of the funds, after all or substantially all of the conditions required by the award agreement have been met, performed or completed. After the awardee has met all such conditions, or performed or completed or substantially performed or substantially completed the conditions required by the award agreement, the award amount may be disbursed to the borrower as provided in the paragraphs below after the staff of LED or LEDC or its designee has determined, or, if deemed to be appropriate by the staff, inspects the project, circumstances or documentation to assure that all or substantially all of the conditions required by the award agreement have been met, performed or completed. Such conditions shall be considered substantially met, substantially performed or substantially completed when LED or LEDC has determined, in its discretion, that the benefits to the state or results anticipated or expected as a result of the conditions to be performed have been achieved, even though one hundred (100%) percent of all stated conditions of the award agreement may not have been fully met or achieved.

5. After the conditions required by the award agreement have been met or satisfactorily performed or completed as provided above, and in the event the award is intended to fund one or more purchases, all award funds (100%) needed to fund the purchase shall be available for disbursement or reimbursement following the completion of each of the respective purchases and appropriate inspections of the project by LED staff, or following the receipt and LED staff approval of appropriate invoices or sales describing the items or improvements purchased.

6. After the conditions required by the loan award agreement have been met or satisfactorily performed or completed as provided above, Awardees will be eligible for disbursement or reimbursement of other award funds for the performance of tasks, work or construction projects at ninety (90%) percent of the amount requested until all or substantially all of the tasks or work required by the award agreement have been performed or completed. After the awardee has performed or completed or substantially performed or substantially completed the tasks or work required by the award agreement, the final ten (10%) percent of the award amount will be paid after LED or LEDC staff or its designee inspects the project to assure that all or substantially all of the tasks or work required by the award agreement have been performed or completed. Such tasks or work shall be considered substantially performed or substantially completed when LED or LEDC has determined that the benefits to the state anticipated or expected as a result of the project, tasks or work performed have been achieved, even though one hundred (100%) percent of all stated objectives of the award agreement may not have been fully achieved.

E. Compliance Requirements.

1. Companies and public entities shall be required to submit progress reports, describing the progress towards the performance objectives specified in the award agreement. Progress reports by

public entity shall include a review and certification of company's hiring records and the extent of company's compliance with contract employment commitments, including number of jobs created and/or retained, and the compensation or payroll levels achieved and maintained. Copies of the company's Louisiana Department of Labor (LDOL) ES-4 Forms ("Quarterly Report of Wages Paid") filed by the company may be required to be submitted with periodic progress reports or as otherwise requested by LED or LEDC to support the company's reported progress toward the achievement of performance objectives, employment and compensation or payroll level requirements. Further, public entity shall oversee the timely submission of reporting requirements of the company to LED.

2. Award Agreements will contain "clawback" or refund provisions to protect the State in the event of a default. In the event a company or public entity fails to timely start or to proceed with and/or complete its project, or fails to timely meet its performance objectives and/or any employment requirements, including but not limited to the retention or creation of the number of jobs or the reaching or maintaining of compensation or payroll levels within the time and for the term agreed, as specified in its agreement with LED and LEDC, any such acts, omissions or failures shall constitute a *default* under the Award Agreement, and LED and LEDC shall retain all rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or public entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state. Reclamation shall not begin unless LED or LEDC has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project.

3. In the event a company or public entity knowingly files a false statement in its application or in a progress report or other filing, the company or public entity and/or their representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in La. R.S. 14:133. In the event an applicant, company, public entity, or party to an award agreement is reasonably believed to have filed a false statement in its application, a progress report or any other filing, LED and/or LEDC is authorized to notify the District Attorney of East Baton Rouge Parish, Louisiana, and may also notify any other appropriate law enforcement personnel, so that an appropriate investigation may be undertaken with respect to the false statement and the application of state funds to the project.

4. LED and LEDC shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the public entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1640 (December 1997), LR 25:239 (February 1999), LR 26:238 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:864 (June 2003), LR 31:905 (April 2005), LR 35:

§117. Reserved

§119. Reserved.

§121. Reserved.

§123. Reserved.

§125. Reserved.

§127. Reserved.

§129. Reserved.

Subchapter B. Economic Development Loan Program (EDLOP)

§ 131. Economic Development Loan Program (EDLOP); Preamble and Purpose

A. The Economic Development Loan Program (EDLOP) is vital to support, promote and enhance the State's commitment to Economic Development, and the State's long term goals as set forth in *Louisiana: Vision 2020*, which is the long-term Master Plan for Economic Development for the State of Louisiana. This program is a supplement to and an expansion or extension of the already existing Economic Development Award Program (EDAP).

B. The purpose of this program is to assist in the financing or loan funding of **privately-owned** property and improvements, including the purchase or leasing of a building site, the purchase or construction, renovation, rebuilding and improvement of buildings, their surrounding property, for machinery and equipment purchases and rebuilding, and for additional costs related to and incurred in connection with the location or relocation of the business enterprise, including appropriate professional and/or real estate fees and commissions, all for business enterprises newly locating in Louisiana or for businesses already existing in this State which are expanding their operations and that require state assistance for such development, location and/or relocation, rebuilding or other such improvement, and for which LED and LEDC assistance is requested under this program, all of which will promote economic development and provide an incentive to influence a company's decision to locate or relocate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:906 (April 2005), LR 35:

§ 133. Definitions

Applicant — the company or business enterprise requesting or seeking financial assistance, specifically a loan, from LED and LEDC under this program. The applicant may be, but is not required to be, joined in the application by any other person, public or private entity, as a co-applicant or as a guarantor.

Award — funding of financial assistance, specifically a performance-based loan, approved under this program for eligible applicants, which is to be repaid over a period of time by the awardee/borrower.

Award Agreement — that agreement or contract hereinafter referred to between the company, LED and LEDC through which, by cooperative endeavor agreement or otherwise, the parties set forth the terms, conditions and performance objectives of the award provided pursuant to these rules.

Awardee — an applicant, company or business enterprise receiving a loan award under this program.

Borrower — the company or business enterprise receiving and accepting a loan award under this program.

Company — the business enterprise, being a legal entity duly authorized to do and doing business in the State of Louisiana, in need of loan funding for a project pursuant to these rules, which is undertaking the project or for which the project is being undertaken, and which is seeking or receiving a loan award under this program.

Default — the failure to perform a task, to fulfill an obligation, or to do what is required; the failure to create new jobs or the number of new jobs as agreed, to employ or to retain the employment of the number of employees as agreed, or to maintain the compensation or payroll levels as agreed; the failure to pay or to repay the loan or interest due thereon as agreed; or the failure to meet a financial obligation.

EDLOP — the Economic Development Loan Program.

Employee — a Louisiana resident hired by a company for permanent full-time employment.

Financed Lease — a lease entered into that satisfies the criteria of a lease intended as a security device for the payment or repayment of a debt, a loan or an obligation; in which case the creditor or lender shall be the lessor, the debtor or borrower shall be the lessee, and the installment payments of the loan shall be the lease or rental payments.

Guaranty — an agreement, promise or undertaking by a second party to make the payment of a debt or loan or to perform an obligation in the event the party liable in the first instance fails to make payment or to perform an obligation.

Jobs Credits — refers to credits applied to repay the unpaid balance on a loan award in an amount determined by the LEDC Board or by the LED or LEDC staff for each of the new permanent full-time jobs that are created and filled with a permanent full-time employee hired by the company within the agreed employment term.

LED — the Louisiana Department of Economic Development.

LEDC — the Louisiana Economic Development Corporation.

LEDC Board — the Board of Directors of the Louisiana Economic Development Corporation.

Loan or Loan Award — funding of financial assistance approved under this program for eligible applicants, which is to be repaid over a period of time by the awardee/borrower. Such financial assistance loans may be repaid either with or without interest, and may be repaid by applying “Jobs Credits” to the unpaid balance, and in the event “Jobs Credits” are utilized and earned, any interest due may also be waived, all to be determined by the LEDC Board or by the LED or LEDC staff.

Loan Agreement, Award Agreement or Loan Award Agreement — that agreement or contract hereinafter referred to between the company, LED and LEDC through which, by cooperative endeavor agreement or otherwise, the parties set forth the terms and conditions of the loan to be provided pursuant to these rules, and the performance objectives and requirements of the company as consideration for the award of the loan provided pursuant to the company’s application and these rules.

Loan Participation — the sharing by one lender of a part or portion of a loan with another lender or other lenders, whereby the participant or participants may provide a portion of the loan funds, or may purchase a portion of the loan, and which participant or participants would be entitled to share in the proceeds of the loan repayments and interest income.

Permanent Full-Time Jobs — refers to direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week. This term also includes the term “Permanent Full-Time Equivalent Jobs”.

Program — the Economic Development Loan Program (EDLOP), involving such projects that are undertaken by LED, LEDC and the company pursuant to these Rules and the ByLaws of LEDC.

Project or Infrastructure Project — refers to the undertaking for which a loan award is sought and/or is granted hereunder for the purchase or lease of a to be privately-owned or leased building site, or

for the purchase, construction, improvement, expansion, renovation, rebuilding or expansion of privately-owned or leased buildings and their surrounding property, including parking facilities, private roads, railroad spurs and utility needs, including electrical, gas, telephone, water and sewerage lines, as well as certain qualified machinery and equipment, and for additional costs related to and incurred in connection with the location or relocation of the business enterprise, including appropriate professional and/or real estate fees and commissions, for a private entity which will promote economic development, for which LED and LEDC assistance is requested under this EDLOP program as an incentive to influence the company's decision to locate or relocate in Louisiana, maintain or expand its Louisiana operations, and/or increase its capital investment in Louisiana.

Promissory Note — a written promise to pay or repay a specified amount of money, either with or without interest, on a stated date, or within a stated time, in installments, or on demand.

Secretary — the Secretary of the Department of Economic Development, who is also the President of LEDC.

Security Interest — a lien, incumbrance or mortgage affecting movable or immovable property given by a debtor or borrower in favor of a creditor or lender to assure the debtor's or borrower's payment or repayment of a debt or promise to pay an amount of money, or for the fulfillment or performance of an obligation. A security interest may also be reserved in favor of the creditor or lender in the form of a lease, commonly called a "Financed Lease"; in which case the creditor or lender shall be the lessor, the debtor or borrower shall be the lessee, and the lease or rental payments shall be the installment payments of the loan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:907 (April 2005), LR 35:

§135. General Principles

A. The following general principles will direct the administration of the Economic Development Loan Program:

1. Loan awards are not to be construed as an entitlement for companies locating or located in Louisiana, and are subject to the discretion of the LEDC Board, after considering the recommendation of the Secretary and/or the staff of LED or LEDC.

2. A loan award must reasonably be expected to be a significant factor in a company's location, investment and/or expansion decisions.

3. Loan awards must reasonably be demonstrated to result in an improvement of or enhancement to economic development of the state and the local community wherein the business is or is to be located.

4. The retention and strengthening of existing businesses will be evaluated using the same procedures and criteria, and with the same priority as the recruitment of new businesses to the state.

5. The anticipated economic benefits to the state and the local community will be considered in approving the loan award.

6. The favorable recommendation of the local governing authority wherein the project is or shall be located is expected and will be a factor in the consideration of the loan award.

7. Appropriate cost matching or funds matching by the loan beneficiary, as well as private investors, the local community, local Public Entities, and/or local governing authority, will be a factor in the consideration of the loan award.

8. Loan funds shall be utilized for the approved project only.

9. A company shall not be eligible for more than one EDLOP loan award within a two (2) year

period; and a company shall not be eligible for or receive a another loan award of EDLOP funds so long as the same company is currently paying or is still obligated under an existing EDLOP loan award involving the same location, or an existing EDAP award involving the same location. (This provision shall not prohibit a combination EDAP award and EDLOP loan award made at the same time in connection with one project.)

10. Whether or not a loan award will be made is entirely in the discretion of the LEDC Board, after considering the recommendation of the Secretary and/or the staff of the LED or the LEDC; and shall depend on the facts and circumstances of each case, the funds available, funds already allocated, and other such factors as the LEDC Board may, in its discretion, deem to be pertinent.

11. The approval or rejection of any application for a loan award shall not establish any precedent and shall not bind the LEDC Board, the LED Secretary or the staff of LED or LEDC to any course of action with regard to any application.

12. A Loan Award may also take the form of a Loan Participation, wherein LED or LEDC may act as the originator of the loan, and may share or participate a portion of the loan with another lender or other lenders; or LED or LEDC may act as a participant in a loan, and accept a portion or a share of a loan originated by another lender or other lenders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:907 (April 2005), LR 35:

§137. Eligibility

A. An eligible application for the loan award must be consistent with the general principles set forth in §135 above and the criteria set forth in § 139 below, must demonstrate a need for the funding of the project consistent with these rules, and the project must be or will be owned by, and the ownership benefits or rights resulting from the project must inure to the benefit of the applicant company or business enterprise, which will also be the borrower.

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes, a bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has another contract with LED or LEDC in which the company is in default and/or is not in compliance. Should a company, after receiving a loan award, fail to maintain its eligibility during the term of the award agreement, the LEDC Board, in its discretion, may terminate the agreement and the award, and may seek a refund of any or all funds previously disbursed under the agreement.

C. 1. Businesses not eligible for loans under this program shall include:

- a. Retail businesses, enterprises and/or operations;
- b. Real estate businesses, enterprises, operations and/or developments;
- c. Lodging or Hospitality businesses, enterprises and/or operations;
- d. Assisted Living businesses, enterprises or operations, Retirement Communities, or Nursing Homes; or
- e. Gaming or Gambling businesses, enterprises and/or operations.

2. This ineligibility provision shall not apply to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities are related to ineligible business enterprises, provided that retail sales, hospitality services, assisted living or nursing services, and gaming activities are not provided directly

and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:908 (April 2005), LR 35:

§ 139. Criteria for Projects

A. In addition to the General Principles set forth in § 135 and the Eligibility requirements in §137 above, projects must meet the criteria hereinafter set forth for a loan award under this program:

1. Job creation and/or retention and capital investment:

a. Projects must create or retain at least ten (10) jobs considered to be permanent full-time jobs in Louisiana, at the project location.

b. Consideration will be given for projects having a significant new private capital investment.

c. The number of jobs to be retained and/or created and the compensation or payroll levels to be maintained as stated in the application for projects will be strictly adhered to, and will be made an integral part of the loan award agreement.

2. Preference will be given to projects for industries identified by LED or LEDC as targeted industries, and to projects located in areas of the state with high unemployment levels.

3. Preference will be given to projects intended to provide, expand or improve basic structural infrastructure and its use by the company, and secondary consideration will be given to projects involving machinery and equipment purchases or rebuilding.

4. Companies must be in full compliance with all state and federal laws.

5. No assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the U.S. Census Bureau) within Louisiana, except when the company gives sufficient evidence that it is otherwise likely to relocate outside of Louisiana, or the company is significantly expanding and increasing its number of employees and its capital investment.

6. The minimum loan award request size shall be \$ 50,000.00.

7. Extra consideration will be given for companies paying wages substantially above the prevailing regional wage.

8. If a company does not start the project or begin the purchase or the construction of the project, or make substantial progress toward preparation of architectural and engineering plans and specifications and/or permit applications, or execute purchase orders for machinery and equipment or orders for the rebuilding of machinery and equipment within 120 days after its application approval, the LEDC Board of Directors, at its discretion, may cancel funding for the project, or require reapplication. Copies of written, signed documentation may be required by LED or LEDC demonstrating that the contemplated project has begun or has been started.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:908 (April 2005), LR 35:

§141. Application Procedure for Projects

A. The applicant must submit an application to LED or LEDC by letter or on a form provided by LED or LEDC which shall contain, but not be limited to, the following:

1. a business plan that contains an overview of the company, its history, and the business climate in which it operates, including business projections and audited financial statements

showing the financial ability of the company, as well as financial statements of any guarantors which may also be required by LED or LEDC at its discretion;

2. a detailed description of the project to be undertaken, along with the factors creating the need, including the purchase, construction, renovation or rebuilding, operation and maintenance plans, a timetable for the project's completion, and the economic scope of the investment involved in the project;

3. a cash flow analysis of the project, providing detailed support for the use of the funding to be provided, and a proposed repayment schedule for the loan which is consistent with the revenues to be generated by the project;

4. evidence of the number, types and compensation or payroll levels of jobs to be created or retained by the company in connection with the project, the period of time for which the company will commit to maintain the new and/or retained jobs, and the amount of capital investment for the project;

5. a statement or disclosure as to whether or not the company has sought or applied for any other type of financing (public or private) for this project, and the results or disposition of that search and/or application, including documentation from any commercial banks specifying the reasons why the banks would not extend a loan to the applicant;

6. evidence of the support of the local community and the favorable recommendation of the local governing authority for the applicant's project to be financed by the requested loan award; and

7. any additional information that LED or LEDC may require.

B. The applicant and its application must meet the general principles of §135, the eligibility requirements in §137, and meet the criteria set forth in §139 above, in order to qualify for a loan award under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005), LR 35:

§143. Submission and Review Procedure for Projects

A. An applicant must submit its completed application to LED or to LEDC. Submitted applications will be reviewed and evaluated by the staff of LED or LEDC. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;

2. validate the information presented; and/or

3. determine the overall feasibility of the company's plan.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities, will be prepared and utilized by LED or LEDC.

C. Upon determination that an application meets the general principles of §135, the eligibility requirements under §137, and meets the criteria set forth for this program under §139, the Secretary of LED and/or the staff of LED or LEDC staff will then make a recommendation to the LEDC Board of Directors. The application will then be reviewed and approved or rejected by the LEDC Board in its discretion, after considering the recommendation of the Secretary of LED and/or the staff of LED or

LEDC. The LED director or targeted industry specialist in whose industrial area the applicant company participates may also make a recommendation to the LEDC Board as to the approval or disapproval of the loan award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005), LR 35:

§145. General Loan Award Provisions

A. These provisions shall be applicable to loan awards. Loan award agreements resulting from the procedures for loan awards shall demonstrate the intent of the company, the LED, and LEDC to enter into the following:

1. Loan Agreement, Award Agreement or Loan Award Agreement. After a loan award has been approved, a written contract, agreement or cooperative endeavor agreement will be executed between LEDC, acting through the LED, and the company or business enterprise receiving the loan award. The agreement will specify the amount, the terms and conditions of the loan; the performance objectives and requirements the company will be required to meet; and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for investment, for performance, job retention and/or creation, as well as the compensation or payroll levels of such jobs. Under the agreement, the staff of the LED or LEDC or their area representatives will oversee or monitor the progress of the project. LED or LEDC will disburse funds to the company, the borrower, in a manner determined by LED or LEDC.

2. Loan Term. The loan repayment term shall not exceed seven (7) years. If necessary and appropriate, a repayment term may be structured with a balloon payment at the end of the last year of the loan. Refinancing of the balloon payment will not be permitted.

3. Promissory Note. When appropriate, the borrower shall execute an appropriate promissory note containing a promise to pay or repay the loan funds which in the discretion of the LEDC Board, after considering the recommendation of the Secretary and/or the staff of the LED or the LEDC, either may or may not require the payment of interest at a rate to be determined by the LEDC Board (after considering the recommendation of the Secretary and/or the staff of the LED or the LEDC), or by the staff of the LED or the LEDC in the absence of a determination by the LEDC Board; and/or the loan may also be repaid by allowing "Jobs Credits" to be applied to the unpaid balance of the loan in an amount determined by the LEDC Board or by the LED or LEDC staff for each of the new permanent full-time jobs that are created and filled with a permanent full-time employee hired by the company within the agreed employment term, and in the event "Jobs Credits" are utilized and earned, any interest due may also be waived. The rate of interest shall not be less than the then current U.S. Government Treasury Security Rate that coincides with the term or time period of the Loan at the time of the loan award approval, nor more than 2.5% above such Treasury Security Rate; and such promissory note may provide for the repayment of such funds on a stated date, or within a stated time, in installments or on demand, as determined by the LEDC Board in its discretion, considering the recommendation of the Secretary and/or the staff of LED or LEDC as to such repayment terms, or by the staff of the LED or the LEDC in the absence of a determination by the LEDC Board.

4. Collateral. For the purposes of establishing an acceptable Loan to Value (LtV) ratio for loan collateral, the applicant must present to LED or LEDC staff a current appraisal of the item being funded, or its documented purchase price. Once the total loan request has been determined and the value of the item to be funded has been substantiated, LED or LEDC staff will determine the eligible

LtV based on the criteria established by LED or LEDC staff and these rules. LED or LEDC staff shall have the discretion and ability to reduce the LtV based on the applicant's financial ability to repay the loan. If LED or LEDC staff determines the applicant is financially unable to meet a predetermined Debt Service Coverage ratio of 1.25 to 1 (1.25:1), the loan amount shall be reduced in order that the LtV may be reduced accordingly to meet the required Debt Service Coverage ratio.

5. Security Interest. When appropriate, and if required by the LEDC Board in its discretion, considering the recommendation of the Secretary and/or the staff of LED or LEDC as to such security interest, or by the staff of the LED or the LEDC in the absence of a determination by the LEDC Board, the borrower shall execute an appropriate security instrument or document providing the LEDC and/or LED a security interest in such movable and/or immovable property or any other assets of the borrower as the LEDC Board shall deem appropriate in the circumstances considering the project and the specific interests and properties relating thereto; such security instrument or document to contain all appropriate, usual, customary, and generally accepted Louisiana security provisions.

6. Financed Lease. When appropriate, and if required by the LEDC Board in its discretion, considering the recommendation of the Secretary and/or the staff of LED or LEDC as to such security interest, the borrower shall execute an appropriate lease for the purpose of financing and providing security for the loan as the LEDC Board shall deem appropriate in the circumstances considering the project and the specific interests and properties relating thereto; such Financed Lease to contain all appropriate, usual, customary, and generally accepted Louisiana lease and security provisions.

7. Examination/Audit of Books, Records and Accounts. LEDC, LED and the State shall retain and shall have the right to examine/audit all books, records and accounts of the borrower and its project at any time and from time to time, as well as all books, records and assets of any and all guarantors.

8. Guaranties. Should the circumstances warrant, and if required by the LEDC Board in its discretion, considering the recommendation of the Secretary and/or the staff of LED or LEDC as to the need for any such guaranty, a guaranty or guaranties of the borrower's obligation to pay or repay the loan proceeds or any part thereof, or a guaranty or guaranties of the company's obligations to perform any or all of its performance requirements or obligations under the loan award agreement, shall be required from any person or persons, company, companies, business enterprise, or any Public Entity or governmental authority.

9. Execution of Documents. If a borrower does not execute the appropriate documentation which has been prepared by the staff of LED or LEDC for the loan award transaction within sixty (60) days after the completed documentation has been forwarded to the borrower, the borrower shall be required to appear before the LEDC Board to explain the delay, and the LEDC Board shall have the right to reconsider the loan award, and may either withdraw the loan award or grant an extension of time to the borrower. In the event the borrower does not execute the documentation within the additional time extended to it, the LEDC Board, in its discretion, may withdraw the loan award.

10. Funding.

- a. Eligible project costs may include, but not be limited to, the following:
 - i. site (land) and/or building acquisition;
 - ii. real estate fees and/or commissions paid in connection with the acquisition or leasing of land, buildings and/or office space for the location of the business operation;
 - iii. engineering and architectural expenses related to the project;
 - iv. site preparation;

v. construction, renovation and/or rebuilding expenses;

vi. building materials;

vii. purchases or rebuilding of capital machinery and/or equipment having an Internal Revenue Service (IRS) depreciable life of at least seven (7) years. If any such eligible machinery and/or equipment to be financed by the loan award is not to be located on property owned by the borrower, the owners, lessors and lessees of such private or public property shall each execute an appropriate written lien waiver or release allowing representatives of LED or LEDC to enter upon such private or public property and remove therefrom any or all of such machinery and/or equipment at any time either the LED or the LEDC shall determine such to be in its security interest to do so.

b. Project costs ineligible for award funds include, but are not limited to:

i. recurrent expenses associated with the project (e.g., operation and maintenance costs);

ii. company moving expenses;

iii. expenses already approved for funding through the General Appropriations Bill, or for cash approved through the Capital Outlay Bill, or approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds;

iv. refinancing of existing debt; and/or

v. costs related to furniture, fixtures, computers, consumables, transportation equipment, rolling stock, or any machinery and/or equipment having an IRS depreciable life of less than seven (7) years.

11. Loan Participation. If and when appropriate, LED or LEDC, as the originator, may share a part or portion of a loan, with another lender or other lenders, whereby the participant or participants may provide a portion of the loan funds or may purchase a portion of the loan; or LED or LEDC, as a participant, may share in a part or portion of a loan originated by another lender or other lenders, by providing a portion of the loan funds or by purchasing a portion of the loan; in either of which cases the participant or participants shall share in the proceeds of the loan repayments and interest income, and an appropriate Loan Participation Agreement shall be executed between the lenders designating the shares of the parties, outlining the various rights and responsibilities of the parties, providing for the servicing/collecting of the indebtedness, providing for the payment of any fees and reimbursement of any expenses of the servicing party, and containing the usual and customary provisions of such Agreements.

B. Allocation of Amount for Loan Awards. Following the appropriation of funds for each fiscal year, the Board of Directors of LEDC shall allocate, and may revise from time to time, the amount of such funds available for Economic Development Loan Awards.

1. Regarding the amount of such loan awards, matching funds shall be a consideration; and:

a. The portion of the total project costs financed by the loan award may not exceed:

i. ninety (90%) percent for projects located in parishes with per capita personal income below the median for all parishes; or

ii. seventy-five (75%) percent for projects in parishes with unemployment rates above the statewide average; or

iii. fifty (50%) percent for all other projects.

b. **Other state funds cannot be used as the match for EDLOP funds.**

c. All monitoring will be done by the staff of LED or LEDC and/or their regional representatives. Expenditures for monitoring or fiscal agents may be deducted from such loan

awards, at the discretion of the LEDC Board, considering the recommendation of the Secretary and/or the staff of the LED or the LEDC as to such deductions.

d. The loan award amount shall not exceed twenty-five (25%) percent of the total funds allocated to the loan awards program during a fiscal year, unless the project creates in excess of two hundred (200) jobs, or creates an annual payroll in excess of \$3.1 Million.

e. The LEDC Board of Directors, in its discretion, considering the recommendation of the Secretary and/or the staff of the LED or the LEDC as to the limitation of the amount of such loan awards, may limit the amount of loan awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

2. Resources shall be allocated by the Board of Directors of LEDC, in its discretion, considering the recommendations of the Secretary and/or the staff of LED or LEDC, in order to effect the best allocation of resources, based upon the number of projects anticipated to require similar funding and the availability of program funds.

C. Conditions for Disbursement of Funds.

1. Loan award funds will be available and funded to the borrower pursuant to the loan award agreement following submission of all signed required documentation to LED or LEDC from the company or business enterprise.

2. Program Funding Source.

a. If the program is funded through the state's general appropriations bill, only funds spent on the project after the approval of the LEDC Board of Directors will be considered eligible for such loan awards.

b. If the program is funded through a capital outlay bill, eligible expenses cannot be incurred until a cooperative endeavor agreement or loan award agreement (contract) has been agreed upon, signed and executed.

3. Loan award funds will not be available for disbursement until:

a. LED or LEDC receives signed commitments by the project's other financing sources (public and private);

b. LED or LEDC receives signed confirmation that all required technical studies or other analyses (e.g., environmental or engineering studies), and licenses or permits needed prior to the start of the project have been completed, issued and/or obtained, in the event that such are required in connection with the project; and

c. all other closing conditions specified in the loan award agreement have been satisfied.

4. Awardees will be eligible for the advancement of loan funds on an as needed basis, with requests for such funds supplemented with invoices or appropriate documentation showing the use of the funds, after all or substantially all of the conditions required by the loan award agreement have been met, performed or completed. After the awardee has met all such conditions, or performed or completed or substantially performed or substantially completed the conditions required by the loan award agreement, the loan amount may be disbursed to the borrower as provided in the paragraphs below after the staff of LED or LEDC or its designee has determined, or, if deemed to be appropriate by the staff, inspects the project, circumstances or documentation to assure that all or substantially all of the conditions required by the loan award agreement have been met, performed or completed. Such conditions shall be considered substantially met, substantially performed or substantially completed when LED or LEDC has determined, in its discretion, that the benefits to the state or results anticipated or expected as a result of the conditions to be performed have been achieved, even though one hundred (100%) percent of all stated conditions of the loan award agreement may not have been fully met or achieved.

5. After the conditions required by the loan award agreement have been met or satisfactorily performed or completed as provided above, and in the event the award is intended to fund one or more purchases, all award funds (100%) needed to fund the purchase shall be available for disbursement or reimbursement following the completion of each of the respective purchases and appropriate inspections of the project by LED staff, or following the receipt and LED staff approval of appropriate invoices or sales describing the items or improvements purchased.

6. After the conditions required by the loan award agreement have been met or satisfactorily performed or completed as provided above, Awardees will be eligible for disbursement or reimbursement of other award funds for the performance of tasks, work or construction projects at ninety (90%) percent of the amount requested until all or substantially all of the tasks or work required by the award agreement have been performed or completed. After the awardee has performed or completed or substantially performed or substantially completed the tasks or work required by the award agreement, the final ten (10%) percent of the award amount will be paid after LED or LEDC staff or its designee inspects the project to assure that all or substantially all of the tasks or work required by the award agreement have been performed or completed. Such tasks or work shall be considered substantially performed or substantially completed when LED or LEDC has determined that the benefits to the state anticipated or expected as a result of the project, tasks or work performed have been achieved, even though one hundred (100%) percent of all stated objectives of the award agreement may not have been fully achieved.

D. **Withdrawal of Loan Award Funds.** The borrower must make the first draw of funds on the loan award within six (6) months from the effective date of the loan award agreement (the effective date being the date the loan award was approved by the LEDC Board); otherwise the borrower shall be required to appear before the LEDC Board to explain the delay in the project; and should no funds be drawn within an additional three (3) months from the effective date of the loan award agreement, the borrower shall again be required to appear before the LEDC Board to explain the delay in the project, and the LEDC Board shall have the option and right to reconsider this loan award, and may either withdraw the loan award or grant an extension of time to the borrower. In the event the borrower does not draw any of the loan award funds within the additional time extended to it, the LEDC Board, in its discretion, may withdraw the loan award.

E. **Compliance Requirements.**

1. Companies shall be required to submit to LED or to LEDC periodic progress reports, describing the progress toward the achievement of performance objectives and requirements specified in the loan award agreement. Progress reports shall include a review and certification by the company of its timely promissory note payments, and a review and certification of the company's hiring records and the extent of the company's compliance with contract employment commitments, including number of jobs created and/or retained, and the compensation or payroll levels achieved and maintained. Copies of the company's Louisiana Department of Labor (LDOL) ES-4 Forms ("Quarterly Report of Wages Paid") filed by the company may be required to be submitted with periodic progress reports or as otherwise requested by LED or LEDC to support the company's reported progress toward the achievement of performance objectives, employment and compensation or payroll level requirements. Further, LED or LEDC staff shall oversee the timely submission of reporting requirements by the company.

2. Loan Award Agreements will contain "clawback" or refund provisions to protect the State in the event of a default. In the event a company fails to timely start or to proceed with and/or complete its project, or fails to timely meet its note or installment payment obligations, its

performance objectives and/or any employment requirements, including but not limited to the retention or creation of the number of jobs or the reaching or maintaining of compensation or payroll levels within the time and for the term agreed, as specified in its agreement with LED and LEDC, any such acts, omissions or failures shall constitute a *default* under the Award Agreement, Promissory Note, Security Instrument or Agreement, Lease or other document or agreement entered into in connection with the loan award, and LED and LEDC shall retain all rights to withhold loan award funds, modify the terms and conditions of the loan award, to reclaim the unpaid balance of all disbursed loan funds from the company and/or foreclose on its security interest, or in its discretion to reclaim only a portion of the disbursed loan funds in an amount commensurate with the scope of the unmet performance objectives and/or requirements and the foregone benefits to the state. In the last instance, reclamation shall not begin unless LED or LEDC has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives and/or requirements, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project.

3. In the event an applicant or company knowingly files a false statement in its application or in a progress report or other filing, the company and/or its representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in La. R.S. 14:133. In the event an applicant, company or party to an Award Agreement is reasonably believed to have filed a false statement in its application, a progress report or any other filing, LED and/or LEDC shall notify the District Attorney of East Baton Rouge Parish, Louisiana, and may also notify any other appropriate law enforcement personnel, so that an appropriate investigation may be undertaken with respect to the false statement and the application of state funds to the project.

4. LED and LEDC shall retain the right to require and/or conduct, at any time and from time to time, full financial and performance audits of a company and its project, including all relevant accounts, records and documents of the company and/or the guarantor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005), LR 35:

Stephen M. Moret, Secretary,
Department of Economic Development