Empire State Development

FOR INFORMATION

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TO: The Directors

FROM: Kenneth Adams

SUBJECT: Annual Report on Jobs Created and Retained on ESD Grant and Loan Programs and Status Report on UDC Loan Portfolio

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The Annual Report on Jobs Created and Retained details the performance of the Empire State Development's ("ESD") economic development activities related to job growth and retention for the 2010 calendar year. Compliance with the employment requirements of the various loan and grant programs administered by ESD improved from 78% in 2009 to 87% in 2010.

For the calendar year ending December 31, 2010, 393 projects, funded in 2010 and prior years, were subject to employment stipulations; those projects had been funded with $269,251,378 from various NYS investment sources. 341 (87%) of these projects were in compliance with the employment requirements in their financial assistance packages, which generally requires, at a minimum, that the project be within 15% of its stated employment goals. 271 of these projects met or exceeded their employment goals, while the remaining 70 projects came within 15% of their employment goals. For the 52 non-compliant projects, ESD applied repayment penalties on 12 projects, extended grant agreement terms on 24 projects, waived penalties on five projects and written-off 8 projects. The two other projects prepaid their loans and one project had their penalty interest rate maintained on loan. For the 12 projects assessed penalties, ESD is seeking repayment of $2,268,807.

Since first receiving financial assistance, the companies receiving ESD program funding have created approximately 23,038 new jobs in New York State, with their employment increasing from approximately 66,684 jobs to 89,722. The average cost per job created or retained is $3,001.

Regions that experienced the most difficulty meeting employment goals are the North Country, Mohawk Valley and Western New York regions with respective non-compliance rates of 29%, 21% and 18%. The best performing region was Long Island, with a non-compliance rate of 4%.

The UDC loan portfolio has an outstanding balance of $131,289,532, with 112 active loans and a default rate of 9%. The outstanding balance of the portfolio increased 9% since the last report to the Board of Directors.

More detailed information on the performance of ESD's economic development activities related to job growth and retention and on the UDC loan portfolio is included in the attached report.

ANNUAL REPORT ON JOBS CREATED AND RETAINED ON ESD GRANT AND LOAN PROGRAMS

AND

STATUS REPORT ON ESD LOAN PORTFOLIO

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I. Annual Report on Jobs Created and Retained (State Funding)

This report details the performance of ESD's economic development activities related to job growth and retention for the 2010 calendar year.[1] Despite the difficult and uncertain economic climate of 2010, ESD assisted companies in New York State ("NYS") performed relatively well in terms of meeting their respective employment goals. Compliance with the employment requirements of the various loan and grant programs administered by ESD improved to 87% in 2010 from 78% in 2009. The record compliance rate, coming up from a low of just 60% in 2003, is attributable to three main factors. First, the economy stabilized from its dip into the worst recession since the Depression. Second, the enhanced grant disbursement policies continue to help reduce risk and exposure to defaults. Third, the application of the pro-rata recapture penalty generated less chronic defaults by the same grantee.

a) Key Findings

The following are the key findings for 2010 with respect to the 393 active projects in the UDC commercial portfolio:

- 341 (87%) of the projects were in compliance with the employment requirements in their financial assistance packages. 271 of these projects met or exceeded their employment goals, with the remaining 70 coming within 15% of their employment goals. 52 projects (13%) were not in compliance with the employment requirements in their financial assistance packages. (Attachment I)

- Since first receiving financial assistance, the companies receiving ESD program funds have created approximately 23,038 new jobs in New York State, with their employment increasing from approximately 66,684 jobs to 89,722. The average cost per job created or retained, net of three non-discretionary projects, is $3,001.[2]

- The worst performing sectors (with 10 or more projects), which include Transportation Manufacturing, Furniture Manufacturing, and Electronic Manufacturing, had non-compliance rates of 47%, 25% and 21%, respectively. The best performing sectors (again with 10 or more projects) were the Medical Manufacturing, Technologies, and Food Manufacturing industries, with

[1] All employment and grant recapture information for 2010 refers to information reported to ESD during Reporting Year 2011. Similarly, all employment and grant recapture information for 2009 refers to information reported to ESD during Reporting Year 2010.

[2] A separate listing detailing the three (3) non-discretionary projects for which employment is tracked is attached to this report. These three projects include the AMD/Global Foundries grant for $594 million (U223) and two IBM projects - a grant for $20 million (T408), and another project involving tax benefits, and a $240 million grant (V895) to the Research Foundation of SUNY, with International SEMATECH as the beneficiary. The T408 IBM project is in default but it carries no penalties under the Grant Disbursement Agreement.

compliance rates of approximately 100%, 100% and 96%, respectively. (Attachment II).

- The regions that experienced the most difficulty meeting employment goals are the North Country, Mohawk Valley and Western New York regions. The overall non-compliance rates for these regions were 29%, 21% and 18%, respectively. The best performing region was the Long Island Region with a compliance rate of 96% for 25 projects. (Attachment III)

- Of the 52 non-compliant projects, ESD applied monetary penalties on 12 projects, extended the terms of 24 grant agreements and waived penalties on 5 projects. 8 projects were written off. The remaining 3 projects either prepaid their loans or had their base interest rate raised.

b) The Reporting and Recommendation Process

By February 1st of each year, each company with job goals is obligated to submit an Employment Report stating its quarter by quarter employment level for the previous year. Those companies that fall short of their employment goals are sent a letter in mid-March notifying them of the default. This letter provides the company with an opportunity to detail any extenuating circumstances that may have prevented the company from meeting its employment goals.

Portfolio Management staff members ("Staff") are assigned defaulted projects by geographic region. As part of the review process, Staff is expected to: 1) request a letter explaining extenuating circumstances and financial statements, if not already submitted; 2) review financial statements; 3) contact and work with the ESDC Regional Office/Strategic Business Division ("ROSB") for the region in which the company is located; 4) discuss the employment and business climate with the company to gain perspective on the company's current situation and a better understanding going forward; and 5) make a recommendation to ESDC's Workout Committee (the "Committee") based on an analysis of the above information.

c) The Workout Committee

The Committee consists of the Chief Financial & Administrative Officer, General Counsel, Controller, Senior Vice President of Loans & Grants and Vice President, Capital Projects and Senior Counsel. For each project, the Committee evaluates the circumstances causing the default and seeks to apply one of several existing penalty options. These penalty options include:

> Maximum Penalty - The grantee is required to repay the maximum amount due according to the schedule in the grantee's GDA. Factors considered include job counts below starting levels, lack of clear defense, unwillingness to provide information, lack of cooperation, and profitability of company.

Negotiated Penalty - The grantee is required to repay an amount less than the amount stipulated in the GDA. Factors evaluated include company's ability to repay, feasibility of collection and operating status of company. A negotiated settlement is generally approved in conjunction with termination of the GDA.

Pro-Rata Penalty - The grantee is required to repay an amount less than the maximum allowable penalty under the GDA, which amount is calculated based on the amount of the employment shortfall relative to the required employment level. Once the penalty has been paid, the grantee's future employment target is lowered to reflect the number last reported or a higher figure. This penalty is most often applied in cases where circumstances causing the deficiency are beyond the owner's control (e.g., industry-wide economic deterioration, foreign competition, loss of major clients) and are unlikely to be cured in the foreseeable future.

Extend and Freeze - This penalty extends the terms of a grantee's GDA for one year and freezes the percentage of the grant ESDC can recapture at the current level during the one year extension period. Determinative factors include the company's ability to reach its goals, economic climate and past history.

Multi-Year Extension ("MYE") – This penalty option was established for the 2009 year due to the effects of the severe recession on New York businesses. The option allows extension of the term of the GDA, for up to 3 years, and a reduction in the grantee's target to the level reported or to the level at the time of the decision. The option was recommended at the discretion of staff, and grantees qualified for the option only if they met three of the four specific criteria which included whether a grantee was in a distressed industry, had experienced a significant drop in sales, was located in a depressed region, and/or had unattainable employment goals.

Waiver - Due to extenuating circumstances, the Committee decides to waive all penalties for the current reporting year only. Factors include cure of short-term default, shy of its target by a small percentage of jobs, and past history.

Interest Rate Adjustments for Loans - If a borrower fails to achieve its employment target within a specified period, the interest rate on the loan may be increased up to a maximum rate of Prime+2. If the borrower subsequently achieves its employment projections, the interest rate is reduced to its original level.

d) Employment Results for 2010

For 2010, 271 (69%) projects met or exceeded their employment goals, 70 (18%) came within 15% of their Target employment goals and 52 (13%) were not in compliance. Staff reviewed the 52 projects in default and made penalty recommendations to the Committee which resulted in the various penalties listed below.

PENALTIES	20010PROJECTS	PERCENTAGE
Maximum	3	6%
Pro-Rata	9	17%
Extend	24	46%
Waive	5	10%
Write-Off	8	15%
Other	3	6%
Total	52	100%

e) Grant Recapture for 2010

After reviewing Staff's recommendations and supporting documentation, the Committee decided to demand maximum recapture on 3 projects and assessed pro-rata penalties on 9 projects.

The maximum recapture penalty amounts ranged from $37,500 to $1,320,000. The pro-rata amounts ranged from $3,722 to $175,200. The total requested from grantees assessed a pro-rata penalty was $456,307, or 21% of the maximum allowable amount of $2,136,146.

In total, ESD is seeking repayment of $2,268,807 from companies in default of their GDAs for 2010. Since 2001, ESD has recaptured over $32 million in grant monies.

f) Comparison of 2009 and 2010 Employment Results

Based on the employment data submitted for 2010, most ESD assisted projects continue to meet or exceed their stated employment goals. The non-compliance rate improved to 13% from 22% for the previous year. The factors contributing to increased compliance from the previous year is the stabilization of the economy, the Loans and Grants Department's multiple disbursement policy for grants, tying release of funds to investments and job creation, the application in previous years of the pro-rata penalty and the MYE of last year. The total net jobs created and retained amongst all of the companies which reported for both 2009 and 2010 is 79,208 and 79,609, respectively.

The following highlights the year over year comparison for 2009 and 2010:

- For 2010, the Committee assessed monetary penalties on 12 (23%) projects in default, which is on par, in percentage terms, with the 20 projects (22%) penalized the previous year. Extensions were granted for 24 (46%) projects for 2010, which is also on par with the prior year, including MYE (45 projects, or 50%).

- For 2010, the Committee waived penalties for 5 (10%) projects, as compared with 2009, when 11 (12%) projects received penalty waivers.

- There were a record amount of projects written-off for 2010. However, six of those projects were business closings/bankruptcies from 2009, which after months of exhausting ESD's remedy options ESD decided to write-off.

PENALTIES	2010 PROJECTS	PERCENTAGE	2009 PROJECTS	PERCENTAGE
Maximum	3	6%	6	7%
Negotiated	0	0%	3	3%
Pro-Rata	9	17%	11	12%
Extend	24	46%	32	36%
MYE	0	0%	13	14%
Waive	5	10%	11	12%
Write-Off	8	15%	3	3%
Revise GDA	0	0%	0	0%
Bankruptcy	0	0%	4	4%
Other	3	6%	7	8%
Total	52	100%	90	100%

g) Recapture Results for 2009

For 2009, the Committee approved recapture of $1,104,438 of grant monies, with $956,581 collected and $122,857 accounted for either by promissory notes or other repayment agreements. The shortfall between the penalties assessed, the amounts repaid and the amounts evidenced by notes and other agreements ($25,000) is attributable to one project, Premier Internet Communications, which went out of business (ESD has a judgment against the company for $26,653).

In total, Staff has obtained repayment of 87% of the approved recapture amounts for 2009, with another 11% to be paid to ESD pursuant to promissory notes or other repayment agreements. This represents 98% success rate for recapture of penalties assessed.

II. World Trade Center Job Creation and Retention Grants Program (Federal Funding)

Through the World Trade Center Job Creation & Retention Grants Program ("JCRP" or the "Program"), ESD offers grants to firms committing to maintain, create or attract at least 200 jobs in lower Manhattan. Many of these businesses experienced a disruption of operations as a result of 9/11. The US Department of Housing and Urban Development ("HUD") provided $320,000,000 in funding for the Program, which is administered by ESD.

Each JCRP grant recipient is required to sign a GDA which requires it to retain and/or create a specific number of jobs for a specified number of years – a minimum of 7 years and up to 15 years in certain cases. The monitoring and workout process is identical to that followed for ESD grant defaults discussed above.

Since their initial receipt of financial assistance, these 53 companies have created a total of 5,561 net new jobs, and total employment increased from 55,823 to 61,384 jobs. With total investment by HUD of $234,989,470, the average cost per job created or retained is $3,828. (Attachment IV)

For 2010, 4 of the 53 (8%) active JCRP projects were not in compliance compared with 9 projects (14%) for the previous year. The 4 projects not in compliance include Computer Generated Solutions (R853), Goldman Sachs Group, Inc. (T177), The New York Mercantile Exchange, Inc. (P755), and the Standard Chartered Bank (P622). Computer Generated Solutions was applied a pro-rata penalty amount of $190,410 and had its job goals reduced to 158 (from 247), Goldman Sachs cured its noncompliance pursuant to the agreement, the New York Mercantile Exchange was offered an one-year extension and the Standard Chartered Bank was given a waiver.

PENALTIES	2009 PROJECTS	PERCENTAGE
Maximum	0	0%
Pro-rata	1	25%
Extend	1	25%
Waive	1	25%
Other	1	25%
Total	4	100%

III. <u>Status of the New York State Urban Development Corporation Loan Portfolio</u>

a) Overview

Staff is responsible for monitoring employment requirements, as well as loan modifications and workouts, on UDC's Loan Portfolio.

The current outstanding balance of the UDC portfolio is $131,289,532, which includes 112 loans funded from 17 different funding sources. The funding source with the highest volume of active loans, the ESD Small Business Revolving Loan Fund, has 19 active loans, with an outstanding balance of $11,891,129, or 9% of the total portfolio. The 7 active loans funded from the Non-Residential investment source have the highest outstanding principal balance of investment sources at $28,262,307, or 22% of the total loan portfolio.

In addition to the 112 active loans, Staff services and tracks repayments for companies that defaulted on their GDAs or under World Trade Center Disaster Recovery Program ("WTC") grant agreements, and were assessed a repayment penalty by the Committee, and are repaying portions of their grants pursuant to promissory notes. Staff is currently servicing 17 UDC grantees, with $768,667 in principal outstanding, and 4 WTC grantees, with $178,510 in principal outstanding.

14 projects in the UDC portfolio are delinquent. A loan is considered delinquent when it is more than 60 days in arrears. These delinquent loans have a current outstanding balance of $12,066,817, or a delinquency rate of 9%.

Two project, Luther Forest Technology Campus ("LFTC") with 4 loans ($4,831,084) and the Nostrand Industrial Systems, Inc. ("NISI") loan ($3,335,822), accounts for $8,166,907, or 68% of the $12,066,817 in outstanding principal considered delinquent. ESD is currently negotiating with LFTC for a repayment plan and has the NISI commercial property on the market for $3,350,000.

The percentage of delinquent loans increased since the last report to the Board of Directors, when 6% of the UDC loan portfolio was considered delinquent. This is due in large part to the LFTC loans that have matured.

b) Recent Activity

Since Portfolio Management last reported to the Board of Directors on the status of the UDC loan portfolio in November 2010, ESD has closed 33 new loans with total disbursements of $29,460,457 and 14 loans have paid off total balance of $1,357,293 remaining out on their loan. Most of the new loans are funded through the two new loan programs, Upstate Regional Blueprint Fund (11) and ESD Small Business Revolving Loan Fund (19).