

# Tompkins County Area Development Loan Program Policies

Approved by TCAD Board on 7/16/2020

The TCAD Loan Program consists of a number of individual revolving loan funds. The Loan Program Policies was developed to provide general guidance for the entire loan program. However, because they were originally capitalized by different State and Federal sources, the individual loan funds may have additional rules and regulations specific to that fund, which are listed in the last section of this document.

## 1. Objectives

The primary objective of the TCAD Loan Program is to stimulate the creation, expansion, and attraction of businesses that retain and/or create jobs and strengthen the tax base in Tompkins County. The Program is targeted to businesses that sell a product or service to customers outside of Tompkins County. However, the Program will consider businesses primarily selling products or services locally if the business can demonstrate it is providing a product or service to a specific geographic market where that product or service is not available and/or the business can demonstrate that it will create or retain permanent full-time jobs, (such as, for example, specialty medical services).

## 2. Eligibility

2.1 Borrowers. Eligible borrowers are legally recognized forms of business, headquartered in Tompkins County, including sole proprietorships, partnerships, corporations, limited liability companies, limited liability partnerships, professional service corporations, not-for-profit corporations, and cooperatives.

2.2 Uses of Program Funds. Program funds may be used for any justifiable business purpose including, but not limited to, real estate acquisition, construction, renovation, fixed assets, current assets including inventory and receivables, permanent working capital, and refinancing of existing debt where such refinancing is a required element of the project financing and is not indicative of imprudent management.

## 3. Program Standards

3.1 Form of Assistance. The Program will provide assistance, primarily in the form of secured commercial loans. Security in the form of an equity position may be considered. Convertible debt (or similar structures) may be offered to early stage, technology-based, high growth companies that have the potential for substantial job creation.

3.2 Program Financing Amount. Program assistance must be no greater than the minimum amount necessary to effect the business activity. Applicants must therefore demonstrate that other private and public sources of debt and equity have either been maximized or are inappropriate, unaffordable, or otherwise unavailable.

3.3 Maximum Amount of Program Assistance. The program does not establish a policy regarding the maximum amount of Program assistance available. However, TCAD may, from time to time at its discretion, establish maximum amounts of assistance based on the total amount of Program funds available and the demand for such funds.

## 4. Lending Policy

4.1 Structure of Loans. The TCAD Loan Program does not replace conventional financing. Its goal is to participate in situations where the necessary conventional financing and equity is not available or where the cost of the available funds is such that debt service cannot be covered by available cash flow. TCAD's funds can be used in conjunction with other government programs.

4.2 Term of Loans. For fixed asset loans, the Program loan term will generally be consistent with the life of the assets being financed, with such periods being consistent with standard commercial lending policies. Consistent with TCAD's goal of utilizing loan repayments to assist other companies, real estate loans will not exceed a term of ten years unless a balloon payment is due after the first ten years. Typically, working capital loans are for two (2) to three (3) years and equipment loans are for three (3) to seven (7) years. For all loans, the term will be determined by TCAD based upon such factors as the structure of other related loans, the nature of the collateralized assets, and the borrower's projected ability to repay the loan.

4.3 Interest Rate. The interest rate charged for the use of Program funds can range from seventy five percent (75%) to one hundred and twenty five percent (125%) of the lowest published (Wall Street Journal) prime rate, fixed at day of closing. Rates will be established based on the loan type, purpose, and level of risk.

4.4 Repayment Terms. TCAD will determine the schedule of loan repayments on a case-by-case basis based on the applicant's projected ability to repay the loan, the projected value of the collateral and other security, and the overall risk assumed by the Program. Repayment terms may involve standard forms of loan amortization, periods of accruing interest or interest only payments, extended amortization schedules with balloon payments of principal, and/or such other terms as may be determined by TCAD to be appropriate.

4.5 Security. TCAD will determine the required security for each loan on a case-by-case basis based on such factors as the risk of default, the nature and value of the security, and the position of the Program in relation to other lenders. In determining the appropriate security, the following will apply:

- (a) TCAD will generally require a security interest in all assets financed with Program funds. Other assets of the borrower may be required as additional security at TCAD's option.
- (b) TCAD will typically require the personal guarantee of all persons having at least a 20% ownership interest in the borrowing entity.
- (c) TCAD may, at its discretion, require additional security including, but not limited to additional collateral, guarantees, and the assignment of life insurance. In situations where the borrower has institutional backing personal guarantees are not generally included in the transaction terms.

### 4.5 Subordination.

- (a) TCAD will generally allow our Program collateral interests to be subordinate to other private institutional lenders where necessary to facilitate the maximum financial participation by the private lenders.

- (b) The standing of TCAD's financing relative to other public or quasi-public lenders will be negotiated on a case-by-case basis.
- (c) TCAD will generally not subordinate our Program financing to any officer, owner, or similarly affiliated party to the borrower.
- (d) TCAD's use and/or participation in intercreditor agreements shall be at the discretion of the TCAD Revolving Loan Fund Committee.

## 5. Application Review and Approval Process

5.1 Preliminary Meeting. TCAD staff will meet with interested applicants and describe the goals of the program and the approval process. Businesses or entrepreneurs are encouraged to submit an application if funds are available and if the proposed business and project meet the guidelines of the program. Applicants are informed that eligible projects are reviewed on a first-come, first-serve basis. Businesses deemed ineligible are referred to other economic development programs when possible.

5.2 Loan Applications. Applications for Program financing must include all of the information required by the Program Application Form, and any additional information as may be reasonably requested by TCAD. If an applicant needs assistance completing the application form, they will be referred to an appropriate assistance provider in the region. TCAD staff does not provide comprehensive business planning assistance. TCAD does recommend that applicants seek the advice of a local attorney and accountant.

5.3 Application Fee. A nonrefundable fee determined by TCAD must accompany all Program loan applications. The TCAD Revolving Loan Fund Committee may, from time to time, adjust the fee amount or waive the amount due on a case-by-case basis.

5.4 Application Processing. The processing of loan applications will generally consist of the following:

- (a) Review of applications for completeness and procurement of appropriate additional information.
- (b) Review for Program eligibility criteria.
- (c) Determination of economic feasibility, performance of credit analysis, and assessment of risk.
- (d) Determination of amount and terms of Program financing, including appropriate security.
- (e) Loan underwriting.
- (f) Preparation of a written report to the TCAD Revolving Loan Fund Committee summarizing the review process and providing recommendations as appropriate. The Revolving Loan Fund Committee will have at least one week to review staff recommendations and the application. The Committee can request additional information from the applicant.
- (g) Setting up a Revolving Loan Fund Committee meeting to take actions on the recommendations from staff. All applicants will be invited to the Committee meeting to discuss the application and answer any questions the Committee may have. The Committee can request additional information from the applicant.

5.5 Revolving Loan Fund Committee. Members are appointed by the TCAD Board of Directors. At least four directors of the TCAD Board serve on the committee. Non-TCAD board members may be appointed. The Board Chair shall nominate the Committee Chair.

. The Revolving Loan Fund Committee will review and make loan recommendations, subject to final approval by the Executive Committee of the Board. The Committee shall periodically review and make recommendations to the loan fund policies.

5.6 Loan Application Review. TCAD may deny a loan application based on a lack of application completeness or a failure to meet the eligibility criteria. Loan applications may be denied by the Revolving Loan Fund Committee for reasons relating to credit issues and financial feasibility or reasons which represent a reasonable determination that the approval of the Program application would not meet the objectives of the Program and/or would not represent an appropriate or prudent use of Program funds. The occurrence of any such denial shall be conveyed to the TCAD Board for informational purposes, and the applicant will be notified in writing of the reason(s) for disapproval.

5.7 Loan Approval. The TCAD Executive Committee, after consideration of the RLF Committee's recommendation, shall have sole authority to approve Program loans. Such authority shall include the commitment to lend Program funds, the interest rate(s) to be charged, the repayment terms, and the requisite security for the loan. The application of other appropriate conditions of lending and covenants of the borrower shall be the responsibility of the TCAD attorney with input from the Revolving Loan Fund Committee.

## **6. Post-Approval Process**

6.1 Commitment Letter. When the Executive Committee approves a loan, a commitment letter shall be sent to the applicant that includes, at a minimum, the following information:

- (a) The amount of the approved loan, the applicable interest rate, the term of the loan, the terms of repayment, and the expiration date of the commitment.
- (b) The required use of the loan funds.
- (c) TCAD's requirements for collateral and additional security - including guarantees, pledges of assets, assignment of life insurance, etc.
- (d) Summary information regarding employment requirements, if any.
- (e) Any other conditions of lending.
- (f) A listing and explanation of any fees to be charged and other closing costs that will be the responsibility of the borrower.
- (g) A listing of those conditions and requirements of the borrower that must be fulfilled prior to a loan closing.
- (h) Any other information that could reasonably be expected to influence the borrower's decision to accept the terms of the loan commitment.
- (i) A request for signature and return to TCAD, accepting the terms outlined in the commitment letter and intent to receive funds.

6.2 Loan Closings. The TCAD attorney will have the responsibility to prepare and/or require the preparation of all appropriate closing documents. The borrower shall be required to pay all closing costs incurred by TCAD. The TCAD attorney will determine the appropriate closing documents to be executed based upon the terms and conditions of the loan approval and standard commercial lending policies. Such documents will generally include the following:

- (a) A loan agreement that includes a description of the loan terms and security, appropriate representations and warranties, the conditions of lending,

affirmative and negative covenants (including compliance with applicable federal laws and regulations), requirements regarding employment creation and reporting, default provisions, and any other provisions which may be appropriate.

- (b) A note or notes to evidence the indebtedness and the terms of repayment.
- (c) The appropriate documents to evidence and record mortgages, liens, guarantees, and such other security as may be required by the terms of the loan.
- (d) Other appropriate documents as determined by the TCAD attorney.

**6.3 Security.** The TCAD attorney will be responsible for perfecting all of TCAD's security interests including, where appropriate, the execution of security agreements, the filing of financing statements, the execution and filing of mortgage documents, the execution of guarantees, and any other appropriate actions to adequately protect TCAD's security interests. Intercreditor agreements may be executed where appropriate to further protect TCAD's interests and to facilitate the processing of defaults and foreclosures.

**6.4 Loan Disbursements.** The following guidelines shall generally apply to the disbursement of TCAD loan proceeds:

- (a) Subject to the borrower's compliance with the terms and conditions of the loan agreement, all documents evidencing and securing the loan, and other guidelines for disbursement as described in this Section 6.4, TCAD may disburse loan proceeds upon the borrower's presentation of vouchers and other such evidence satisfactory to TCAD which represent paid or accrued expenses of the borrower and which are eligible costs as determined by TCAD.
- (b) Where other debt, equity, or grant funding is to be used in conjunction with the Program financing, such funding must, in the opinion of TCAD, be firmly committed for such use. Evidence of the commitment(s) must be submitted by the borrower.
- (c) Where other debt, equity, or grant funding is to be used in conjunction with the Program financing, TCAD will, at its discretion, determine an appropriate draw schedule for Program funding based on such factors as the magnitude of risk assumed by TCAD, the nature of the activities being financed, the draw schedule for the other financing, and any other applicable regulations. The manner and terms of the disbursement of the Program financing should normally be included in the approval of the financing by the TCAD Revolving Loan Fund Committee.

## **7. Loan Management**

**7.1 General.** TCAD will establish and use appropriate systems for the accounting and collection of Program debt and shall procure and maintain appropriate documents and records associated with Program assistance.

**7.2 Delinquencies.** The following guidelines shall generally apply to delinquent loans:

- (a) For loan repayments that are 30 days past due, TCAD will send a letter informing the borrower of the delinquency and encouraging prompt payment. TCAD will follow up with a phone call requesting payment.
- (b) For loan repayments that are 60 days past due, TCAD will send a letter to the

borrower citing the delinquency and detailing any remedies and actions that may be taken by TCAD. TCAD will schedule a meeting with the borrower to urge the borrower to bring the loan current and to discuss overall business performance.

- (c) If a loan remains 60 days past due for more than three consecutive months, TCAD shall request another meeting with the borrower, request current financials, and written documentation of efforts taken by the borrower to address cash shortfalls.
- (d) If loan repayments are 90 days past due, TCAD shall request another meeting with the borrower, request current financials, and written documentation of efforts taken by the borrower to address cash shortfalls. TCAD shall consider finding technical assistance as appropriate to provide guidance for the business.
- (e) If loan payments are 120 days past due, they will be referred to the Revolving Loan Fund Committee for appropriate action.
- (f) If a loan is past due 30 days or more, and the borrower does not reply to phone messages or letters requesting payment within a reasonable period of time, TCAD may request the attorney to send a letter indicating the loan will be called in seven days if the borrower fails to contact TCAD and discuss the matter.
- (g) The TCAD President, or such other person charged with the responsibility of monitoring the activity of borrowers, shall immediately notify the TCAD Board of any bankruptcy or other serious event that would negatively affect the financial status of a Program borrower.
- (h) All written and telephone correspondence shall be appropriately documented in the loan files.

7.3 Default. All defaulted loans shall be handled on a case-by-case basis in such a way as to maximize return of funds to the Program while taking into consideration the financial situation of the borrower and the ability of the borrower to repay the debt.

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

- (a) Requests to adjust the interest rate, term of the loan, security or repayment terms must be approved by the Revolving Loan Fund Committee.
- (b) Requests for changes respecting any covenants or conditions of a financial nature must be approved by the TCAD Revolving Loan Fund Committee as to content and the TCAD attorney as to form.
- (c) Requests for any other changes to the covenants or conditions of the loan including, but not limited to such areas as reporting requirements, cost documentation, and maintenance of records may be approved by the TCAD President or such other person as may be designated to oversee the daily operations of the Program, or referred to the Revolving Loan Fund Committee at the discretion of the President or such other person.

7.5 Periodic Financial Review. At least annually, TCAD will conduct a periodic financial review of all borrowers with outstanding Program loans based primarily on quarterly or annual financial statements submitted by the borrower. The loan agreement shall detail the type of financial statement to be submitted. Additional information may



be procured as appropriate. The reviews will be presented to the Revolving Loan Fund Committee for further action or recommendations as appropriate.

**7.6 Reporting.** TCAD will generate an annual report each year that includes payment status of existing loans as well as a detail of all new loans made during the reporting period that includes the loan recipients, the loan amount, a narrative description of the activities financed with the funds, and employment impacts. All loans executed by TCAD will be required to submit annual employment reports until such time that the borrower has (1) documented employment creation and/or retention requirements and (2) TCAD has released the borrower from its employment and reporting requirements.

## **8. Exceptions**

The Revolving Loan Fund Committee may approve recommendations from TCAD staff to deviate from the Loan Program Policies if it is determined to be in the best interests of TCAD or if the project will result in an extraordinary public benefit to the County.

## **9. Fund-Specific Regulations**

### **TCAD Loan Fund** *(Capitalized by State member item)*

- No fund specific regulations.

### **Countywide Revolving Loan Fund** *(Capitalized by State Community Development Block Grant)*

- Recipient must create or retain jobs for low to moderate income persons.
- The business activity to be undertaken with assistance from the Program must be consistent with the principles and policies of the Tompkins County Comprehensive Plan.

### **Town of Dryden Loan Fund** *(Capitalized by State Community Development Block Grant)*

- Recipient must be located in the Town of Dryden, Village of Dryden, or Village of Freeville.
- Recipient must create or retain jobs for low to moderate income persons.

### **Park Sustainable Fund** *(Funds on loan from The Park Foundation)*

- Borrower must be a sustainable business enterprise.

**Opportunity Fund** *(Capitalized by contributions from the TCAD Fund and the Countywide Fund, provides TCAD with a vehicle to support the growth of early stage technology-based companies. The Fund offers convertible debt rather than loans.) See Opportunity Fund specific policies and guidelines.*

*End Document*

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## **Company Information**

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