

Recapture of Financial Assistance

The Agency, in its own sole discretion and on a case-by-case basis, may determine (but shall not be required to do so) to recapture all or part of the Financial Assistance provided to a project upon the occurrence of a Recapture Event, as such term is defined and described in the Project Documents. Such recapture events may include, but shall not be limited to the following:

- (1) sale or closure of the Facility (as such term is defined in the Project Documents);
- (2) a material violation of the terms and conditions of the Project Agreements;
- (3) a material misrepresentation contained in the application for Financial Assistance, any Project Agreements or any other materials delivered pursuant to the Project Agreements;
- (4) the Applicant or Obligor under the Project Documents shall have liquidated its operation and/or assets at the Facility;
- (5) the Applicant or Obligor under the Project Documents shall have ceased all or substantially all of its operations at the Facility (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the Town) through no forced majeure event;
- (6) the Applicant or Obligor under the Project Documents shall have transferred all or substantially all of its employees within the Town to a location outside of the Town through no force majeure event;
- (7) the Applicant or Obligor under the Project Documents shall have subleased all or any portion of the Facility in violation of the limitations imposed by the Project Documents, without the prior written consent of the Agency;
- (8) the Applicant or Obligor under the Project Documents shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Facility without the prior written consent of the Agency; and
- (9) the Applicant, affiliates of the Applicant or Obligors under the Project documents shall have failed to maintain levels of employment at or above specific thresholds as described in the Project Documents absent a showing of hardship.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Facility, or (ii) the inability at law of the Applicant or Obligor to rebuild, repair, restore or replace the Facility after the occurrence of a loss event to substantially its condition prior to such loss event, which inability shall have arisen in good faith through no fault on the part of the Applicant or Obligor.

The timing of the recapture of the Financial Assistance shall be determined by the Agency, in its sole discretion, on a case-by-case basis, and is subject to the notice and cure periods provided for the Project Documents. The percentage of such Financial Assistance to be recaptured shall be determined by the provisions of the Project Documents.

All recaptured amounts of Financial Assistance shall be redistributed to the appropriate affected taxing jurisdiction, unless agreed to otherwise by any local taxing jurisdiction.

For the avoidance of doubt, the Agency may determine (but shall not be required) to terminate, suspend and/or recapture Financial Assistance in its sole discretion. Such actions may be exercised simultaneously or separately and are not mutually exclusive of one another.