

**EXECUTIVE DEPARTMENT**  
**DELAWARE ECONOMIC DEVELOPMENT OFFICE**

The Delaware Economic Development Authority Council On Development Finance  
Statutory Authority: 29 Delaware Code Sections 5005(11) and 5053(k)  
(29 **Del.C.** §§5005(11) and 5053(k))

**FINAL**

**ORDER**

**1104 Administration and Operation of Council on Development Finance**

**Order Adopting and Promulgating Regulation**

AND NOW, this 26th day of November 2007, Judy Ann Cherry, as Director of the Delaware Economic Development Office and as Chairperson of The Delaware Economic Development Authority and the members of the Council on Development Finance who have executed this order below, which members constitute a quorum of the Council on Development Finance, in accordance with 29 **Delaware Code** §§5005(11) and 5053(k), for the reasons stated below enter this ORDER adopting and promulgating Regulation No. 6 – Administration and Operation of Council on Development Finance (the “Regulation”).

**Nature of Proceedings; Synopsis of the Subject and Substance of the Proposed Regulation**

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.** Ch. 101, the Director of the Delaware Economic Development Office, as Director of the Delaware Economic Development Office and as Chairperson of The Delaware Economic Development Authority, and the Council on Development Finance are adopting the final Regulation governing the administration and operation of the Council on Development Finance. These rules of practice and procedure are to memorialize practices that have evolved in the relationship between the Delaware Economic Development Office and The Delaware Economic Development Authority and the Council on Development Finance and as recommended by the Joint Sunset Committee in accordance with 29 **Del.C.** §10214.

**Findings of Fact and Conclusions**

1. In accordance with the recommendations of the Joint Sunset Committee, the Delaware Economic Development Office, The Delaware Economic Development Authority and the Council on Development Finance have developed procedures for the administration and operation of the Council on Development Finance.
2. The Regulation reflects these procedures.
3. The Director of the Delaware Economic Development Office, in her capacity as Director of the Delaware Economic Development Office and as Chairperson of The Delaware Economic Development Authority, has statutory authority to promulgate regulations pursuant to 29 **Del.C.** §§5005(11) and 5053(k), and the members of the Council on Development Finance are ratifying this action.

**Decision and Order Concerning the Regulation**

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Delaware Economic Development Office, in her capacity as Director of the Delaware Economic Development Office and as Chairperson of The Delaware Economic Development Authority, and the members of the Council on Development Finance who have subscribed this Order, which members constitute a quorum of the Council on Development Finance do hereby ORDER that the Regulation be, and that it hereby is, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Judy Ann Cherry, Director, Delaware Economic Development Office and Chairperson,  
The Delaware Economic Development Authority  
Andrew M. Lubin, Chairperson, Council on Development Finance  
Senator Nancy W. Cook, Member, Council on Development Finance  
Representative Greg Lavelle, Member, Council on Development Finance  
Steven L. Biener, Esquire, Member, Council on Development Finance  
Donald J. Lynch, Member, Council on Development Finance  
Thomas S. Gilligan, CPA, Member, Council on Development Finance  
Hon. James L. Hutchison, Member, Council on Development Finance  
Fred C. Sears, II, Member, Council on Development Finance  
Richelle A. Vible, Member, Council on Development Finance

## **1104 Administration and Operation of Council on Development Finance**

### **1.0 Definitions**

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

**"Chairperson"** means the Chairperson of the Council.

**"Competitiveness Fund"** shall have the meaning given pursuant to 75 *Del. Laws*, c. 308, §36(d) (July 1, 2004), 75 *Del. Laws*, c. 98, §39(d) (July 1, 2005), and 75 *Del. Laws*, c. 353, §40(d) (July 1, 2006).

**"Council"** means the Council on Development Finance.

**"DEDA"** means The Delaware Economic Development Authority.

**"DEDO"** means the Delaware Economic Development Office.

**"Director"** means the Director of DEDO in his or her capacity as Director, or as the Chairperson of DEDA.

**"Member or Members"** means the Members appointed to serve on the Council in accordance with 29 *Del.C.* §5007.

**"Project or Projects"** shall have the meaning given pursuant to 29 *Del.C.* §5052(12).

**"Strategic Fund"** shall have the meaning given pursuant to 29 *Del.C.* §§5021 – 5029.

**"Substantive Changes"** means i) a 10% or lower decrease in the interest rate for any fixed rate loan made by DEDO or DEDA; ii) any changes in the collateral of a loan which would cause a decrease in the security position of DEDO or DEDA; and iii) a 10% or greater increase in the amount of any loan or grant.

### **2.0 Enabling Legislation**

2.1 Pursuant to 29 *Del.C.* §5003, DEDO was established. Pursuant to 29 *Del.C.* §5007 the Council was established. Pursuant to 29 *Del.C.* §5053 DEDA was established. DEDO and DEDA have authority to make regulations pursuant to 29 *Del.C.* §§5005(11) and 5053(k).

### **3.0 Purpose**

3.1 The purpose of this Regulation is to enhance the coordination between the Council and DEDO and set forth certain procedures to be used in the administration and operation of the Council.

### **4.0 Procedures**

4.1 In the event of any Council vacancy, Members will encourage the Governor to fill such a vacancy promptly.

4.2 The Council will request staff to develop an economic matrix that includes certain information on companies recommended for funding, including but not limited to, information on employee benefits such as health care and the potential for any unintended consequence stemming from the company's operations.

4.3 The Council will, consistent with the provisions of 29 *Del.C.* §§10001 - 10005, make certain information contained in a company's application available to the public upon written request.

4.4 The Council will, when practicable, schedule and locate meetings of the Council in a way that achieves geographic balance and centrality.

4.5 Any Substantive Changes made to any agreement or contract excluding any agreement contract or associated document related to any bond issued by DEDA, after initial review by the Council shall be

resubmitted to the Council for additional review and recommendation.

4.6 DEDO will organize and provide orientation for all new Council Members and will organize and provide an annual retreat for all Council Members. The orientation will include: i) the responsibilities of Council Members and DEDO staff; ii) discussion of applicable state law/regulations; and iii) a briefing by the staff of the Delaware Public Integrity Commission on matters, including but not limited to, rules of conduct, conflict of interest, and public disclosure. The retreat will include reports on industry trends, emerging issues and emerging financing programs.

4.7 The Council requires staff to provide Members with periodic update reports on each recipient of all funding.

4.8 The Council will, consistent with 29 Del.C. §§5804, 5805 and 5806, encourage Members to identify prospective companies and to turn any information directly over to the Council staff for follow up.

4.9 The Council will, once a year, cooperate with the staff of DEDO in matters relating to DEDO's strategic marketing plan, including the annual review of the plan.

4.10 The Council will cooperate with the staff of DEDO in matters relating to the utilization of the DEDO website for news and information about Council meeting dates, times, locations, agendas, meeting minutes and Member contact information.

4.11 The Council requires that: i) DEDO make no announcement regarding the awarding of any funding prior to review by the Council and approval by the Director; or ii) that any announcement regarding the awarding of any funding, when the matter is under DEDO control, include that the funding is subject to review and recommendation of the Council.

4.12 Twice a year, DEDO staff will bring to the Council for review: employment levels, percents above sustainable wages, company investments and the repayment status for outstanding loans made by DEDO.

4.13 Projects with approvals that are more than two years old without an executed agreement will be brought to the Council's attention.

4.14 The Director will brief the Chairperson on Projects under consideration as soon as DEDO completes its internal review and before DEDO makes an offer.

4.15 DEDO staff will provide reports to the Council on return on investment, gross State product and personal income tax data related to each Project where such information is used to determine the value of the Project.

4.16 DEDO will continue to inform the Council biannually on the fiscal status of all Projects including the total funds available, amounts encumbered (and corresponding dates of encumbrances), funds committed to future Projects and available balances.

4.17 DEDO will make sure that original offer letters for each Project are presented to the Council when the original offer letter resulted in an application being submitted to the Council for review and recommendation.

4.18 DEDO will present the Council with recommendations regarding how the Strategic Fund and Competitiveness Fund balances should be used on an allocation basis to help various economic development sectors.

**11 DE Reg. 927 (01/01/08) (Final)**