

Adopted: April 17, 2009

COUNTY OF ORLEANS INDUSTRIAL DEVELOPMENT AGENCY  
RECAPTURE OF BENEFITS POLICY

The County of Orleans Industrial Development Agency has been advised that a number of other industrial development agencies have adopted policies that provide for recapture of benefits if a project applicant does not fulfill the job creation estimates contained in their application. The difficulty of having these provisions is that the economic situation is always uncertain because of changes in overall economic activity as well as changes in markets. Some businesses are successful, others fail and some are successful for a time and then fail. Because of the reality of this uncertainty and volatility, the same agencies that have recapture provisions also have provisions that allow them to take into account exigent circumstances that in fact negate them recapturing benefits already provided to their applicant and in fact seldom if ever are the recapture provisions enforced.

The difficulty that these recapture provisions cause even if there are provisions that can be applied to negate them is that the very existence of the recapture provisions makes it very difficult for a lender to approve applicants for loans in connection with projects as the operating costs of a project applicant and the ability of the project applicant to pay for his financing costs could change dramatically if the applicant was required to repay benefits already received. When a project applicant is going through difficult economic times is the worst time to try to expect that applicant to repay benefits already received. If a business, due to economic hard times, changes in markets or adverse events with respect to that particular project applicant, were to be forced to repay past benefits received, this could easily force that business to close and declare bankruptcy and basically end all employment at the project.

The Agency therefore has determined that it will have a policy that does not provide for recapture of benefits already provided to project applicants if the project applicant does not reach and maintain its employment projections. The Agency does however expect that project applicants will undertake to do what they say they will do in their application. It is the policy of the Agency to require that the applicant undertake the activities set forth in the application and keep the project occupied as an active project. In the event that the project becomes vacant and remains vacant for a considerable period of time or the occupant changes the use of the project without Agency approval, the project occupant will be deemed to have defaulted in his obligations to the Agency and the future benefits to the applicant may be terminated. These provisions will be contained in the various documents executed and delivered between the Agency and the project applicant in connection with each closing.