

Guidelines For  
Financial Assistance

**Lake Ontario  
Small Business Recovery  
Fund**



**State of New York**  
Andrew M. Cuomo, Governor

**Empire State Development**

### Program

The Lake Ontario Small Business Recovery Fund (the "Program") is a program administered by the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") to provide up to \$50,000 in financial assistance to eligible small businesses, not for profit organizations, farms, and homeowners associations and up to \$20,000 in financial assistance to eligible owners of multiple dwellings ("Eligible Entities") that sustained direct physical flood-related damage and other flood-related costs or losses resulting from the raised level of Lake Ontario, the St. Lawrence River, Seneca Lake, the Seneca River, the Oswego River, the Oneida River, Oneida Lake and Cross Lake ("Covered Waterway"). Small businesses that experience direct, physical flood-related damage may also receive up to \$50,000 in assistance for revenue loss; however in no instance shall assistance exceed \$50,000.

### Program Assistance

Section 1 of the chapters of the Laws of 2017 allocates \$15 million to provide grants for flood-related repairs and restoration to structures, equipment and for other flood-related costs or losses which either have not or will not be compensated by any other federal, state or local recovery program or any third-party payors. Flood-related costs and losses must have occurred between January 1, 2017 and August 31, 2017 with respect to damage caused by a Covered Waterway. ESD shall give preference to applicants that demonstrate the greatest need, based on available flood damage data provided by applicable state and/or federal agencies.

Assistance shall be in an amount of up to \$20,000 for owners of multiple dwellings and up to \$50,000 for small businesses, farms, homeowners associations and not-for-profit corporations. Assistance will be calculated at fifty percent (50%) of the net eligible loss for direct physical flood-related damage. Small businesses who demonstrate a revenue loss of at least fifteen percent (15%) due to direct physical flood-related damage may also receive up to \$50,000 in assistance which will be calculated at fifty percent (50%) of the net eligible loss above 15%. While a small business must demonstrate direct physical flood-related damage resulting from the raised level of a Covered Waterway to be considered for assistance for revenue loss, it need not also apply for assistance for such physical costs. In order to be eligible for funding the Eligible Entity must have owned the impacted property at the time of the flooding.

### Eligible Area

To be eligible for assistance under this program an Eligible Entity must have experienced direct physical flood-related damage as a result of flooding caused by the raised level of a covered waterway including Lake Ontario, the St. Lawrence River, Seneca Lake, the Seneca River, the Oswego River, the Oneida River, Oneida Lake and Cross Lake.

### Eligible Entities

An "Eligible Entity" shall mean an Eligible Business, Eligible Not-for-Profit Organization, Eligible Farm, Eligible Multiple Dwelling, or Eligible Homeowners Association as described below.

- **Eligible Businesses and Eligible Not-For-Profit Organizations:** A business or a not-for-profit organization shall be eligible for Program funding if it meets the following criteria:

- (i) it is a for profit business entity or a not-for-profit organization established under Sections 501(c), 501(e), 501(f), 501(k), 501(n) or 521(a) of the Federal Tax Code that is not involved in religious or political activities;
- (ii) its operation is located within New York State, as of the Recovery Period;
- (iii) it is resident in New York State, independently owned and operated, not dominant in its field and employs one hundred or less persons;
- (iv) it is current on its tax obligations;
- (v) it sustained direct physical flood-related damage between January 1, 2017 and August 31, 2017 resulting from the raised level of a Covered Waterway; and,
- (vi) it is not a casino or other gambling establishment or an adult entertainment facility.

A businesses operated from a residence may be an Eligible Business however only direct physical flood-related damage to equipment, furniture, fixtures, supplies, inventory and chattel property located in the portion of the residence occupied and used exclusively for business purposes will be considered. Such business may also be eligible for assistance for revenue loss due to direct physical flood-related damage.

Such an eligible business and such an eligible not-for-profit organization is referred to in these guidelines, respectively as an "Eligible Business" or "Eligible Not-for-Profit Organization."

- Eligible Farm

A farm shall be eligible for Program Assistance if it is or is part of, the land and on-farm buildings, equipment, manure processing and handling facilities, and practices, which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a "commercial horse boarding operation," a timber operation, "compost, mulch or other biomass crops" and "commercial equine operation," as such terms are defined in Section 301(11) of the New York Agriculture and Markets Law. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other, and it meets the following criteria:

- (i) it is used for raising, cultivating, propagating, fattening, grazing, or any other farming or livestock operations (collectively "Farming Operations") and the land, improvements, structures, and buildings (excluding buildings used for residential purposes that are not Eligible Multiple Dwellings) are used or occupied to carry out such operations, including land set aside or retired under a federal supply management or soil conservation program;
- (ii) it is located within New York State;
- (iii) it is current on its tax obligations; and,
- (iv) it sustained direct physical flood-related damage between January 1, 2017 and August 31, 2017 resulting from the raised level of a Covered Waterway

Such an eligible farm is referred to in these guidelines as an "Eligible Farm."

- Eligible Owners of Multiple Dwellings

For purposes of this Program a "Multiple Dwelling" shall mean a dwelling that is not owner occupied or a second home, is operated as a business and is either rented, leased, let, or hired out for occupancy. A Multiple Dwelling shall also refer to an owner-occupied residence in which five or more families live independently of each other. A Multiple Dwelling shall not include a hospital, convent, monastery, asylum or public institution, or a fireproof building used wholly for commercial purposes except for not more than one janitor's apartment and not more than one penthouse occupied by not more than two families.

An Owner of Multiple Dwellings shall be eligible for funding under the Program if:

- (i) is the Multiple Dwelling is located in New York State;
- (ii) the Multiple Dwelling is current on its tax obligations; and,
- (iii) the Multiple Dwelling sustained direct physical flood-related damage between January 1, 2017 and August 31, 2017 resulting from the raised level of a Covered Waterway.

Such a Multiple Dwelling is referred to in these guidelines as an "Eligible Multiple Dwelling."

ESD may require owners of Multiple Dwellings to certify that no families are to be displaced by the repair or restoration of an Eligible Loss to a Multiple Dwelling or that there is a feasible method for the relocation of families and individuals displaced from the Multiple Dwelling into decent, safe and sanitary dwellings, which are or will be provided in the same area or in other areas not generally less desirable in regard to public utilities and public commercial facilities, at rents or prices within the financial means of such families or individuals, and reasonably accessible to their places or employment.

- Eligible Homeowners Association

For purposes of this Program a "Homeowners Association" shall mean an organization created for the purposes of developing and managing a group of homes, town homes and/or condominium units with the authority to enforce the covenants, conditions and restrictions as well as manage the common elements of the development. A homeowner association may be eligible for funding if:

- (i) it is located in New York State;
- (ii) it sustained direct physical flood-related damage between January 1, 2017 and August 31, 2017 resulting from the raised level of a Covered Waterway;
- (iii) is current on its tax obligations; and,
- (iii) it commonly owns and is responsible for the maintenance of surrounding property and amenities such as lawns, green belt areas, recreational facilities and private roads.

Such a Homeowners Association is referred to in these guidelines as an "Eligible Homeowners Association."

## Eligible Loss

An Eligible Loss shall mean:

- **Losses Due to Physical Damage**  
Eligible Loss shall mean losses due to direct physical flood-related damage as a result of flooding caused by the raised level of any Covered Waterway that occurred between January 1, 2017 and August 31, 2017. Eligible losses include, but are not limited to physical damage to real property and other tangible assets. Assistance may be used for flood-related repairs or replacement to structures, equipment, furniture, fixtures, supplies, inventory, chattel property, feed, and orchard and vineyard root stock, but not the crops grown thereon. Eligible Losses include property and items used or created in the normal and customary course of operations.
- **Losses Due to Decline in Revenue**  
For Eligible Businesses, Eligible Loss shall also mean revenue loss due to direct physical flood-related damage resulting in closure or reduced business. Eligible Businesses must demonstrate a revenue loss of at least fifteen percent (15%) as compared to the same period in the prior year. Eligible Businesses do not have to seek reimbursement for losses due to physical damage to be eligible for assistance for decline in revenue; however, Eligible Businesses must have incurred direct physical flood-related damage from a Covered Waterway to qualify. Evidence of flooding and any associated revenue loss is required. ESD officials may verify revenue loss with tax records from the New York State Department of Tax and Finance. Payment of employee wages, benefits and tax arrearages shall not constitute items of loss under this program.

## Reimbursed Loss

Reimbursed Loss shall mean a loss that has been or will be reimbursed by grants or other assistance received from the local, state or federal governments, and/or third-party payors received by the Eligible Entity or for its benefit. A loan that an Eligible Entity obtained and used to pay the cost of replacement or repair of a loss is not considered a Reimbursed Loss.

## Application

All applications must include:

- (i) an original completed and signed application form;
- (ii) a copy of state and federal tax return filed for 2016;;
- (iii) photocopy of the lease or deed for the premises where the entity is located
- (iv) Certificate/letter of incorporation and, if a Homeowner Association, a copy of the by-laws;
- (v) documentation from insurance company that physical damage or economic loss to the Eligible Entity is not covered by existing policy or policies, if applicable. (Note: Eligible Entities that have coverage that is not sufficient to address all damages to the property may still be eligible for assistance.);

- (vi) documentation of compensation received or expected to be received from any other grant or other assistance from local, state, or federal governments, third party private assistance, or insurance carrier;
- (vii) evidence of direct physical flood-related damage including, but not limited to, photographs of damaged real property and other tangible assets;
- (viii) completed and signed Wire Transfer Information form; and,
- (ix) an original completed Internal Revenue Service (IRS) Form W-9 (<http://www.irs.gov/pub/irs-pdf/fw9.pdf>)

In addition to (i) through (ix) above, applications for physical flood-related damage must also include the following:

- (x) documentation verifying physical loss to real property and/or tangible assets from an insurance carrier, the Small Business Administration, a New York State licensed insurance adjuster or photos documenting damage with three associated quotes for repair;
- (xi) copies of all federal, state and/or local permits for the repair/replacement to physical structures, if applicable; and,
- (xii) documentation of repairs and/or replacement of structures and tangible assets including, but not limited to, copies of invoices and proof of payment including associated cancelled checks, bank statements and/or credit card receipts. Payments marked cash that cannot be verified will not be reimbursed  
 \*\*Grants may be conditionally approved based on the information above but funds will not be disbursed until the information in (iv) is received by ESD.

In addition to (i) through (ix) above, applications for revenue loss must also include the following:

- (xiii) a copy of signed ST-100 (New York State Quarterly Sales and Use Tax Return) as filed with the NYS Department of Tax and Finance for Quarters 1 and 2 (March 1 – August 31) for the 2016 tax year; and,
- (xiv) a copy of signed ST-100 (New York State Quarterly Sales and Use Tax Return) as filed with the NYS Department of Tax and Finance for Quarters 1 and 2 (March 1 – August 31) for the 2017 tax year; \*\*  
 \*\*Grants may be conditionally approved based on the information above but funds will not be disbursed until the information in (i) and (ii) is received by ESD.

Additional documentation may be requested as ESD deems necessary. Entities that do not file ST-100 tax documents should contact ESD for alternative verification of revenue loss. Businesses that cannot document revenue loss will not be eligible for assistance.

#### Application Submissions

Applications will be accepted continuously through December 31, 2017. A complete application package must be mailed to:

Empire State Development  
Attn: Lake Ontario Small Business Recovery Fund  
625 Broadway  
Albany, NY 12245

All applications must be postmarked by December 31, 2017. Applications postmarked after such date may be rejected by ESD. Based on interest in the program and the availability of program funds, the deadline for submission of applications may be extended by ESD at its discretion.

#### Application Review

Applications will be reviewed on a first come, first served basis until funding is exhausted. Applications will be accepted until December 31, 2017. ESD may give preference to Eligible Entities that demonstrate the greatest need, based on available flood damage data provided by applicable agencies. All payments will be made by electronic transfer. In accordance with IRS regulations all Program Assistance disbursed will be reported by ESD to the IRS and ESD shall mail a Form 1099 to the Program Assistance recipient, at the address provided in the application.

#### Method of Disbursement

Disbursement of funding for flood-related repairs or revenue loss will be in one payment after sufficient documentation is received and verified by ESD.

#### Program Assistance Recapture

ESD may require the Eligible Entity to repay any Program Assistance received under this program in the following events:

- (i) if its application, including any information provided therewith or thereafter, contains any material misrepresentations or is incomplete;
- (ii) if the Program Assistance was awarded or disbursed in error and the Eligible Entity is not entitled to assistance under these Guidelines; or
- (iii) if supporting documentation for actual Eligible Loss incurred and Reimbursed Loss is not true and/or complete.

In the event the Eligible Entity receives insurance payments and/or additional grants or assistance for an item of Eligible Loss that has been reimbursed with Program Assistance, the Eligible Entity shall immediately repay to ESD the Program Assistance proceeds corresponding to such item.

In the event of any fraudulent misrepresentations by the Eligible Entity, in addition to the recapture of Program Assistance, ESD may pursue other legal remedies and refer the matter to the appropriate governmental authorities for investigation and prosecution.

#### Audit and Control

ESD may conduct site visits and audit applications on a random or specified basis for a period extending to three years after the final disbursement of the Program Assistance to the Eligible Entity. ESD reserves the right to contact insurance companies and other federal, state and local

governmental agencies to confirm information included, or that should have been included, in the applications.

#### Disclosure of Information

Each Eligible Entity must agree to allow:

- (i) the Department of Taxation and Finance to share its tax information with ESD. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law;
- (ii) the Department of Labor to share its tax, employer or other information with ESD relevant to flood recovery funding. However, any tax information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law;
- (iii) any federal, state, local governmental agency or authority that has or is providing flood recovery funding to share relevant information with ESD. Any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law; and
- (iv) ESD and its agents access to any and all books and records ESD may require to monitor compliance.

Except as required by applicable law or regulations, ESD will endeavor to maintain the confidentiality of tax and rent information submitted as part of the application. Notwithstanding the foregoing, such information may be made available to ESD staff and designated individuals that are processing the application and to federal, state or local officials and to auditors evaluating the Program and others as ESD may deem to be required in accordance with applicable law and regulations, including judicial orders and subpoenas.

#### Availability of Funds

The disbursement of any program assistance is explicitly subject to the approval of ESD and the receipt by ESD of a sufficient amount of Program funds from the State of New York acting by and through the New York State Division of the Budget.

#### Amendments to Guidelines

ESD may amend these guidelines from time to time.

#### Additional Information

Eligible Entity can access the application form and instructions, these Guidelines, any amendments to these Guidelines and additional information about the Program at the ESD web site at [www.esd.ny.gov](http://www.esd.ny.gov). Information can also be obtained by calling 518/292-5100.