



## Rural Business Growth Program Terms and Conditions January 15, 2019

### I. Definitions

- a. Except as otherwise provided, terms used in this document have the same meaning as Sections 122.15, 122.151, 122.152, 122.153, 122.154, and 122.155 of the Ohio Revised Code (ORC).
- b. For purposes of this program, “Employment Position” and “Employees” have the same meaning as “Full-Time Equivalent Employee” as defined in Section 122.15 (E).

### II. Fund Certification

- a. Once the application is determined to be eligible, ODSA will issue a written notice certifying the applicant as a Rural Business Growth Fund and establishing the Fund’s Eligible Investment Authority.
- b. Along with the notice in a. above, ODSA will send the applicant a Grant Agreement incorporating these Terms and Conditions. The Grant Agreement must be signed and returned to ODSA within 65 days of receipt of the Grant Agreement.
- c. Within 60 days of receipt of the certification, the Fund must:
  - i. Collect Credit-Eligible Capital Contributions in an amount matching the certification letter from investors identified in the application. If the Fund’s Eligible Investment Authority is proportionately reduced, the investor’s required contribution shall be reduced by the same proportion.
  - ii. Collect remaining cash investments to reach the Fund’s total Eligible Investment Authority identified in the certification letter. At least 10% of the Fund’s Eligible Investment Authority must be comprised of equity investments contributed by Affiliates of the Fund.
- d. Within 65 days of the certification notice, the Fund must send documentation to ODSA evidencing that the contributions described above have been collected. This documentation must include:
  - i. Evidence clearly showing a transfer of funds from a bank account owned or controlled by the investor to a bank account owned or controlled by the Rural Business Growth Fund. This includes both Credit-Eligible Capital Contributions and additional contributions to reach the total Eligible Investment Authority.
  - ii. Evidence sufficient to demonstrate that 60% of the investments received by the Fund qualify as Credit-Eligible Capital Contributions as defined by ORC 122.15(C).
  - iii. A Notice of Credit-Eligible Capital Contribution form for each credit-eligible investor,
  - iv. with information necessary to identify any Affiliate of a credit-eligible investor that will seek to claim the tax credit. Form to be prescribed by ODSA and made available on the program website.



required to provide a written certification from each business verifying that the employment information provided is accurate.

6. The Fund's calculation of new Full-Time Equivalent Employees related to each Growth Investment. The Fund is required to provide a written certification from each business verifying that the employment information provided is accurate.
  - a. New Full-Time Equivalent Employees shall be computed by subtracting the number of Full-Time Equivalent Employees that existed at each Rural Business Concern on the date the Growth Investment was made from the number of Full-Time Equivalent Employees as of the last day of the calendar year. Only employees with an hourly wage of at least 150% of the federal minimum wage can be included in this computation.
  - b. If the computation results in a number less than zero, the number of Full-Time Equivalent Employees created by the Fund's Growth Investment for the reporting period shall be zero.
  - c. The Fund may include the number of new Full-Time Equivalent Employees created at a Rural Business Concern that received a Growth Investment after the year in which the investment is repaid or redeemed.
7. The Fund shall continue to provide the annual report information above for all Growth Investments made to Rural Business Concerns, even if the investment is sold, repaid, or otherwise no longer maintained by the Fund during the reporting period.
8. Any other information required by ODSA.

**b. Investment Reporting**

- i. The Fund is required to submit Investment Reports as of the first and second anniversaries of the Closing Date that provide documentation sufficient to prove that the Fund has achieved the investment thresholds identified below and has not triggered the recapture provisions of ORC 122.153(B) ("Investment Report").
- ii. The first Investment Report must demonstrate that at least 50% of the Eligible Investment Authority certified by ODSA has been invested in Growth Investments. The Investment Report is due on or before the fifth business day after the first anniversary of the Closing Date of the Fund.
- iii. The second Investment Report must demonstrate that 100% of the Eligible Investment Authority certified by ODSA has been invested in Growth Investments. The Investment Report is due on or before the fifth business day after the second anniversary of the Closing Date of the Fund.
- iv. The amount of any investment by the Fund in a Rural Business Concern that exceeds 20% of the Fund's Eligible Investment Authority shall not be considered a Growth Investment. An investment in an Affiliate of a Rural Business Concern shall be included for purposes of evaluating the 20% threshold.

- v. If, based on the Investment Reports, the Fund does not reach these thresholds identified above, ODSA is not required to issue tax credit certificates to the Fund's investors of Credit-Eligible Capital Contributions.

#### **IV. Rural Business Concern Opinions**

- a. The Fund may request a written opinion from ODSA as to whether a business qualifies as a Rural Business Concern as defined by ORC 122.15(J). The Fund must submit its request using the Rural Business Concern Determination Form prescribed by ODSA and made available on the program website.
- b. ODSA has 30 business days after receipt of a determination request to issue a written response to the determination request. If the Fund obtains a written opinion on the business's status from ODSA, the opinion will act as evidence of the business' status as a Rural Business Concern. If the Fund does not receive a response within that timeframe, the business shall be considered a Rural Business Concern for purposes of the program.
- c. The request for written opinion shall include the following documentation:
  - i. Information proving that the business maintains its Principal Business Operations in a Rural Area.
  - ii. Information proving that the business has fewer than two hundred and fifty Full-Time Equivalent Employees.
  - iii. The number of employees can be verified by supporting documentation including a copy of an official report submitted by the business to the Ohio Department of Taxation, a copy of an official report submitted by the business to the Ohio Department of Job and Family Services, or other documentation deemed sufficient by ODSA.
  - iv. Information proving that the business has not more than \$15 million in net income for the preceding Taxable Year.
    - 1. Net income can be verified by including a copy of the business's most recent income tax return, audited financials, or other documentation deemed sufficient by ODSA. Net income means federal adjusted gross income less federal and state taxes imposed on or measured by income.
  - v. If the business derives or projects to derive 15% or more of its net income from the rental or sale of real property, information proving that the business is a special purpose entity and the principal user does not derive 15% or more of its net income from the rental or sale of real property.
  - vi. Information sufficient to identify any Affiliates of the business.
  - vii. Any other information required by ODSA.

#### **V. Decertification**

- a. After the sixth anniversary of the Fund's Closing Date, the Fund may apply to ODSA to decertify as a Rural Business Growth Fund. ODSA shall respond to this request and send its notice of determination within 60 days after receiving the Fund's application. If decertification is not approved, ODSA will include the reason(s) for this determination in the response.

- b. In evaluating the application, the fact that no tax credit has been recaptured with respect to the Fund shall be sufficient evidence that the Fund is eligible for decertification.

**VI. State Reimbursement Amount**

- a. Within 15 days after the Fund's application for decertification is approved, the Fund shall determine the state reimbursement amount and notify ODSA of the calculation. In its notification, the Fund shall include information sufficient for ODSA to verify the state reimbursement amount calculated by the Fund.
- b. The state reimbursement amount shall be calculated as follows:

$$\text{Reimbursement amount} = (\text{Credit-Eligible Capital Contributions}) - (\$30,000 * \text{New FTEs})$$

- c. If the reimbursement amount calculation is negative, then no payment is required. If the calculation is positive, the Fund shall not be permitted to make further distributions from the Fund until the state reimbursement amount is paid to ODSA. If no payment is required, ODSA will notify the Fund that the reimbursement amount calculation is accepted. If a payment is due, ODSA will notify the applicant of the amount due, which shall be paid to ODSA within 60 days of notification. If a Fund seeks a waiver of all or a portion of the state reimbursement amount, the affidavit required under ORC 122.155(D) must be submitted to the Director of ODSA within 30 days of notification of the amount due.
- d. For purposes of calculating the state reimbursement amount, the number of new Full-Time Equivalent Employees equals the sum of all new Full-Time Equivalent Employees resulting from Growth Investments and reported by the Fund on its Annual Reports. The Fund shall provide the following information:
  - i. A list of Rural Business Concerns, including active, sold, repaid, or otherwise no longer maintained, that received a Growth Investment from the Fund.
  - ii. The number of Full-Time Equivalent Employees that existed at each Rural Business Concern as of the date the Growth Investment was made. The Fund is required to provide a written certification from each business verifying that the employment information provided is accurate.
  - iii. The Fund's calculation of new Full-Time Equivalent Employees related to each Growth Investment. The Fund is required to provide a written certification from each business verifying that the employment information provided is accurate.
    - 1. New Full-Time Equivalent Employees shall be computed by subtracting the number of Full-Time Equivalent Employees that existed at each Rural Business Concern on the date the Growth Investment was made from the number of Full-Time Equivalent Employees as of the last day of the calendar year. Only employees with an hourly wage of at least 150% of the federal minimum wage can be included in this computation.
    - 2. The Fund may include the number of new Full-Time Equivalent Employees created at a Rural Business Concern that received a Growth Investment after the year in which the investment is repaid or redeemed.

- e. ODSA reserves the right to review the Fund's calculation of the state reimbursement amount. If the Fund's calculation is denied, ODSA shall notify the Fund of the denial and provide a revised state reimbursement amount along with justification for the change.
- f. The Fund shall have 30 days to respond to the notification of denial and revised reimbursement amount. ODSA shall issue a final determination regarding the state reimbursement amount within 60 days of receipt of the Fund's response to the notice of rejection.

## **VII. Tax Credit Recapture**

- a. Previously claimed tax credits may be recaptured under the following conditions:
  - i. The Fund fails to maintain 100% investment of its Eligible Investment Authority from the second anniversary of the Closing Date through sixth anniversary of that date.
    - 1. For the purposes of the Fund, the investment is "maintained" even if a portion of the investment is sold or repaid as long as the Fund invests the same amount within one year of the sale or repayment.
  - ii. The Fund, after investing 100% of its Eligible Investment Authority, makes a distribution or payment prior to decertification that reduces the Eligible Investment Authority below 100%.
  - iii. The Fund makes a Growth Investment in a business that directly or indirectly through an Affiliate owns, has the right to acquire an ownership interest, makes a loan to or makes an investment in any of the following:
    - 1. The Fund;
    - 2. An Affiliate of the Fund; or
    - 3. An investor in the Fund.
- b. Before recapturing tax credits, ODSA will notify the Fund of the reasons for the pending recapture. If the Fund corrects the violations outlined in the notice within 30 days, ODSA will not proceed with the proposed recapture.
- c. If the violations outlined in the notice are not corrected within 30 days or no response is received, ODSA will notify the superintendent of insurance of the recapture amount for purposes of issuing an assessment.
- d. If ODSA proceeds with a recapture of tax credits issued, no future tax credit certificates will be issued to taxpayers that made Credit-Eligible Capital Contributions to the Fund.
- e. ODSA will not recapture a tax credit based upon actions that occur after the Fund is decertified. However, ODSA is not prohibited from recapturing a tax credit based on actions which occurred while the Fund was certified, even if those actions are discovered after decertification.

## **VIII. Fees**

- a. The Fund is required to pay an annual servicing fee of \$20,000 to ODSA. The initial annual servicing fee must be included with the report due within 65 days of the certification date showing that the Fund has collected investments totaling its certified Eligible Investment Authority. The subsequent annual fee is due on the last day of February following the first and each ensuing anniversary of the Closing Date, until the Fund is decertified.