

## **NOTICE REGARDING THE BUSINESS EMPLOYMENT INCENTIVE PROGRAM**

At its meeting of October 10, 2006, the NJ Economic Development Authority Board of Directors considered amendments to the Business Employment Incentive Program (BEIP). Those policy decisions and rule amendments approved by the Board at the meeting will be promulgated for comment and adoption through the NJ Register, anticipated publication date of November 20, 2006.

With regards to the recommendation below, regarding a default policy for existing BEIP grantees whose employment falls to less than half of the projected employment commitment, the Board directed staff to solicit input from the business community through posting on the Authority website. Comments regarding this proposal may be submitted via email or regular mail by **November 10, 2006** to:

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### **DEFAULT BASED ON NEW EMPLOYMENT COMMITMENT (NEC)**

Although many of the BEIP agreements allow broad discretion in declaring a default based on lowered employment, generally a default is declared only if the employment number falls below the minimum eligibility threshold, which was reduced in 2004 through legislation to 25 for non-designated industries and 10 for designated industries. The Board is asked to consider a change to this approach for existing BEIP grants, so that the new employment commitment (NEC) number, as opposed to the minimum eligibility threshold, would become the trigger for a default.

The BEIP grant usually is disbursed over a period of ten years and has the requirement that the company remain in New Jersey for five years after its final grant payment. The premise of the program is that any payment made in, for instance, year 3 constitutes consideration for the company remaining in the State for the next 12 years. If the program is thus looked at as a whole, it seems fair that a company that has received large payments based on large employment numbers in, for instance, years 6 and 7 of the BEIP, should continue to maintain a significant presence in the State for the life of the BEIP, until year 15. It is therefore proposed that if a company's employment falls below 50% of its new employment commitment, the Authority would declare a default. The company would be required to repay an amount based on two factors: the number of years the company employed more than 50% of the new employment commitment and the percentage of new employees it will retain for the remainder of the BEIP. The company's new employment commitment would also be reset to the lower number of new employees now retained. The default would only be imposed on companies that exceed 100 employees.

As an example, if a company's NEC was 4500 and it maintain its NEC for seven years, receiving \$15 million in benefit, but in year 8, moved 3000 employees out of the State, the default calculation would be as follows:

$7/15 \times \$15,000,000 = 7,000,000$  (7 represents the number of years they had employees greater than 50% of the NEC)

$\$15,000,000 - \$7,000,000 = \$8,000,000$

$1,500/4,500 \times \$8,000,000 = \$ 2,666,666$  (1,500 represent new NEC and the number of employees that will remain at the site for the life of the BEIP)

$\$8,000,000 - \$2,666,666 = \$5,333,334$

The company would repay \$5,333,334 and the new NEC would be 1,500.

#### Who does this apply to?

There are two groups of BEIP recipients to which this applies. Recipients who executed grant agreements between 1996 and 2004 will note that their grant agreements provide that not meeting and maintaining the NEC constitutes a default. The remedies in those agreements are extremely broad. By adopting this policy, the EDA is putting those recipients on notice how at present EDA intends to exercise its legal rights under the agreement.

The second group to whom this applies are prospective recipients. To the extent the EDA decides to adopt this policy, it will be applied prospectively and prospective grant agreements will incorporate this change.

This change is not intended in any way to modify retroactively existing contractual rights of either the EDA or the recipients.