

**Hamburg Industrial Development Agency (HIDA)**  
**Policy for Recapture and/or Termination and/or Modification of Financial Assistance**  
**Adopted: June 14, 2016**

**Purpose:**

To establish and provide a fair procedure compliant with Sections 874 and 875 of the New York State General Municipal Law and Hamburg IDA (HIDA) policies establishing a policy for recapture and/or termination and/or modification of all or a portion of Agency Financial Assistance.

**Annual Review:**

The HIDA staff will review annual reports it receives from companies to determine compliance with the Material Factors or other Significant Factors set forth in the Inducement Resolution. If HIDA staff determines that a company appears to be in violation of a Material or Significant Factor, the project will be considered non-compliant and enter full review by the Executive Committee.

**Non-Compliance Process:**

1. The HIDA shall notify the company in writing that in the Agency's determination they are or have violated a Material or Significant Factor. The notification will include the Factor(s) violated and seek an explanation from the company that may include economic or natural factors that led to the default. These factors should be discussed and predetermined to the extent possible by the Board and may include items such as, natural disaster, industry dynamics, unfair competition or economic events that were outside the control of the company.
2. The company shall be given an opportunity to remedy the violation and will have thirty (30) days to provide a written response or seek an extension of such response.
3. Upon receipt of the company's response, HIDA staff will review with the Executive Committee. The company shall be provided the opportunity to present before the Executive Committee, any information in the written response outlined above regarding why the Factor was not achieved. The Executive Committee will have the option of entering into Executive Session should material evidence be deemed proprietary.
4. Upon hearing the company's position, the Executive Committee will make a recommendation for proposed action and forward the matter to the full HIDA Board of Directors. A written record will occur clearly stating the reason to, or not to, recapture and/or modify and/or reduce financial assistance.
5. Notwithstanding the foregoing, the HIDA Board of Directors, acting through its staff, retains the right to terminate Agency benefits for other significant factors. Cause for such termination of Agency benefits include, but are not limited to, failure to make PILOT payments, failure to make reports to the HIDA as detailed in transaction documents, failure to maintain insurance requirements, or other uncured breaches of HIDA transaction documents.

**Compliance Period:**

Unless otherwise noted in the Project's Inducement Resolution, Private Sector Investment and Local Labor during construction must be met by the Project Completion Date. Job creation and/or job retention targets must be met within 2 years of Project Completion Date and such job creation and/or job retention numbers must be maintained for one calendar year following the calendar year that the applicant met the job creation and/or job retention numbers.

Projects that do not involve a PILOT would be subject to maintaining its material terms one calendar year after a certificate of occupancy is issued or the expiration of a sales tax exemption.

**Distribution of Recaptured Financial Assistance:**

Any and all such returned/recaptured amounts of Agency Financial Assistance shall be redistributed to the appropriate tax jurisdiction unless agreed to otherwise by a local taxing jurisdiction.