

OFFICE OF FINANCE PROGRAMS  
THE ECONOMIC DEVELOPMENT  
OPPORTUNITIES PROGRAM  
(SUNNY DAY)

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STATE FINANCE & PROCUREMENT  
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Maryland Department of Business and Economic Development

As of June 30, 2009

THE ECONOMIC DEVELOPMENT OPPORTUNITIES PROGRAM  
(SUNNY DAY)

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## **ECONOMIC DEVELOPMENT OPPORTUNITIES PROGRAM FUND (SUNNY DAY)**

### **History and Program Description**

The Economic Development Opportunities Program Fund (“Sunny Day”) was created by statute in 1988 to enable Maryland to act on extraordinary economic development proposals that required financial assistance beyond the capabilities of other state and local financing programs. The Sunny Day Fund is a non-lapsing revolving fund administered by the Department of Business and Economic Development (the “Department”). Under the program, funds are loaned, granted or invested to assist in the retention and expansion of existing business, or the establishment and attraction of new business in Maryland.

Under the program, the Department is required to submit an analysis of each Sunny Day proposal as part of the approval request process to the Legislative Policy Committee of the Maryland General Assembly. The analysis must include, among other things, a description of the projected economic impact and the number and type of jobs to be created and/or retained as a result of the project. The Department focuses significant attention on the analysis of a request and the projected economic impact before approval. The Department must also conduct substantial monitoring actions after an incentive has been approved and funded. Agreements carry strict performance requirements, including; capital investments within specified time frames; job creation over a fixed period of time; maintenance of certain jobs levels for a specified time period, usually 3-5 years; and reporting of financial information, employment information and capital investment information on a periodic basis.

The Statute requires that each Sunny Day project be deemed an extraordinary economic development opportunity, as defined by the following criteria:

- The recipient must maintain a strong financial condition and a minimal risk profile
- The recipient is capable of accessing alternative sources of financing through financial institutions or capital markets
- Minimum of 5:1 capital investment by the recipient for each \$1 of Sunny Day funds
- The recipient’s project is consistent with the strategic plan of the State for economic development
- The recipient creates or retains substantial employment, particularly in areas of high unemployment

Additionally, the Department requires the local jurisdiction to participate by providing any one or a combination of the following: a loan, a conditional loan, a grant, an in-kind contribution, job training funds, tax credits, tax increment financing or below market contributions.

### **Actual Program Performance from Inception through June 30, 2009**

As of June 30, 2009, the Department had settled a total of one hundred-nineteen (119) Sunny Day transactions with a total aggregate original balance of \$166,614,571. Of that total, seventy-four (74) transactions totaling \$103,120,944 were structured as loans or conditional loans, forty-two (42) transactions totaling \$52,493,627 were structured as grants or conditional grants, and three (3) transactions totaling \$11,000,000 were structured as investments. The above assistance has contributed to the retention of 35,022 jobs, the creation of 24,474 new jobs, and capital investment of \$2.3 billion.

Based on the full or partial achievement of performance requirements related to the assistance provided under the program, forty-seven (47) conditional grants or loans with an aggregate original amount of \$62,484,000 have achieved either full or partial forgiveness, totaling \$55,704,867. In contrast, as a result of not fully achieving all performance criteria, twenty-three (23) conditional grants and loans with an aggregate original amount of \$21,479,000 have been subject to clawbacks of \$11,354,228.

## **DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT**

As of June 30, 2009, the total outstanding active portfolio consisted of twenty-one (21) loans, conditional loans, conditional grants, and investments with a total original approved balance of \$49,003,368 and an outstanding balance of \$38,519,028. The portfolio breaks down into nine (9) loans and conditional loans with a total original approved balance of \$17,602,283 and an outstanding balance of \$9,660,731, nine (9) grants and conditional grants having a total original approved balance of \$20,401,085 and an outstanding balance of \$19,031,770, and three (3) investments with a total original approved balance of \$11,000,000 and a total outstanding balance of \$9,826,527. The total outstanding active portfolio continues to be subject to review for compliance with performance requirements.

In fiscal year 2009, the program had no charge-off activity and no charge-off collections. The Sunny Day program has had a historical total gross charge-off of \$8,743,889 since inception of the program. It should be noted that the bulk of the historical charge off amount is confined to three transactions with entities that were affected by general economic conditions, combined in some cases with specific industry conditions several years ago. All three entities declared bankruptcy, with two of them still in bankruptcy at the end of fiscal year 2008. The total original approved amount of the three entities was \$8,725,000 which was comprised of one loan of \$3,000,000 (charged off in 2003) and three conditional loans aggregating \$5,725,000 (charged off in 2003 and 2005). The Department has collected \$593,924 of the total, and for the remaining two in bankruptcy, continues to support potential restructures that result in repayment and continued employment, which stays within the original scope of the projects.

In addition, at the end of fiscal year 2009 there was one other entity within the portfolio in bankruptcy which owes the Fund \$2,500,000 in the form of a conditional grant. To date, the Department has collected \$1,272,277 of the total.

### **Program Performance for Fiscal Year 2009**

In fiscal year 2009 one (1) project totaling \$4,000,000 settled (closed). It is structured as a conditional grant. There were no projects that were approved during the fiscal year. The continuing reduced level of activity under the program reflects the ongoing shift to usage of the MEDAAF program for deals that were historically done under this program, as well as the lack of budgeted funds for the program that would permit planning its use for future commitments.

### **Projected Program Performance for Fiscal Year 2010**

Due to ongoing budget restraints, the Department does not anticipate any new funding for the Program in fiscal year 2010. Any available funds would come from the ongoing repayment of existing projects in the portfolio. In general, the nature of a Sunny Day project is such that its lifespan generally straddles two and often three fiscal periods, from project introduction, through approval and final disbursement of the funds. Each year the Department handles new projects, which involves receiving inquiries, structuring deals, and processing approvals, while continuing to complete the documentation, funding, and monitoring process on projects that were presented to the Legislative Policy Committee for approval in prior fiscal years.

**DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT**

**Sunny Day Approval – 3 Year Activity**

<b><i>SUNNY DAY FUND PROJECTS APPROVED FY'09</i></b>						
<b>Company</b>	<b>Incentive (In Dollars)</b>	<b>County</b>	<b>Amount Disbursed (In Dollars)</b>	<b>FY Disbursed</b>	<b>Goal</b>	<b>Measure of Economic Development Attain By      Status</b>
The Sunny Day Program did not have any new approvals in fiscal year 2009						

<b><i>SUNNY DAY FUND PROJECTS APPROVED FY'08</i></b>						
<b>Company</b>	<b>Incentive (In Dollars)</b>	<b>County</b>	<b>Amount Disbursed (In Dollars)</b>	<b>FY Disbursed</b>	<b>Goal</b>	<b>Measure of Economic Development Attain By      Status</b>
Morgan Stanley	\$4,000,000	Baltimore City	\$1,000,000	2009		Project to begin in Fiscal Year 2009

<b><i>SUNNY DAY FUND PROJECTS APPROVED FY'07</i></b>						
<b>Company</b>	<b>Incentive (In Dollars)</b>	<b>County</b>	<b>Amount Disbursed (In Dollars)</b>	<b>FY Disbursed</b>	<b>Goal</b>	<b>Measure of Economic Development Attain By      Status</b>
The Sunny Day Program did not have any new approvals in fiscal year 2007						

**DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT**  
**Sunny Day Forgiven - 3 Year Activity**

<b><i>SCHEDULE OF SUNNY DAY FORGIVEN LOANS FY'09</i></b>					
<b>Company</b>	<b>Loan Amount</b>	<b>Date Forgiven</b>	<b>Amount Forgiven</b>	<b>Benchmarks</b>	<b>Achievements</b>
Mack Trucks, Inc	\$2,000,000	3/31/2009	\$2,000,000	Employ an average 1,000 Full-time Employees for three years and expend \$155,000,000 in CAPEX.	Met the requirements.
Morgan Stanley	\$1,000,000	11/30/2008	\$1,000,000	Employ an average of 150 Full-time Employees by 12/31/2005 and retain an average of 150 Full-time Employees for 3 consecutive years thereafter.	Met the requirements.

<b><i>SCHEDULE OF SUNNY DAY FORGIVEN LOANS FY'08</i></b>					
<b>Company</b>	<b>Loan Amount</b>	<b>Date Forgiven</b>	<b>Amount Forgiven</b>	<b>Benchmarks</b>	<b>Achievements</b>
Simon Pearce (MD) Inc.	\$500,000	12/31/07	\$156,701	Between 46 - 100 jobs	Modified terms required employment to be between 100 and 46 jobs by 12/13/06 and retain through 12/31/07 – if employment fell below 100 but was more than 46, a pro rata portion was required per job – if employment fell below 46, all principal and accrued interest was due. The company reported 47 employees as of 12/31/06 (see clawback chart for FY'07) – The company reported 48 employees as of 12/31/07 – Because the amount due for the 2007 employment numbers was a negative number the remaining principal and accrued interest was forgiven as of 12/31/07.

**DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT**

<b><i>SCHEDULE OF SUNNY DAY FORGIVEN LOANS FY'07</i></b>					
<b>Company</b>	<b>Loan Amount</b>	<b>Date Forgiven</b>	<b>Amount Forgiven</b>	<b>Benchmarks</b>	<b>Achievements</b>
General Motors/Allison	\$2,250,000	12/31/06	\$2,250,000	Employ & Retain 420 full time positions and expend \$200MM in CAPEX	Met requirements
Giant of Maryland, LLC	\$1,250,000	12/31/06	\$1,250,000	Retain 495 full time positions and expend \$45 MM in CAPEX	Met requirements
Marriott International	\$12,500,000	01/18/07	\$9,000,000	Employed 3,500+ and expended \$109 MM in CAPEX	The original approval of \$12.5 MM was modified to forgive the \$9 MM disbursed based on employment and CAPEX with the remaining \$3.5 MM terminated.
Sodexo, Inc.	\$500,000	12/31/06	\$485,000	Retain 400 full time positions and expend \$5MM in CAPEX	Met requirements – \$15,432 was clawed back in March 2002.

**DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT**

**Sunny Day Clawback - 3 Year Activity**

<b><i>SUNNY DAY CLAWBACK ACTIVITY FY'09</i></b>								
<b>Company</b>	<b>Jurisdiction</b>	<b>Financing</b>	<b>Original Amount</b>	<b>Amount Forgiven</b>	<b>Date of Forgiveness</b>	<b>Clawback</b>	<b>Date Repaid</b>	<b>Comments</b>
No clawback activity during fiscal year 2009.								

<b><i>SUNNY DAY CLAWBACK ACTIVITY FY'08</i></b>								
<b>Company</b>	<b>Jurisdiction</b>	<b>Financing</b>	<b>Original Amount</b>	<b>Amount Forgiven</b>	<b>Date of Forgiveness</b>	<b>Clawback</b>	<b>Date Repaid</b>	<b>Comments</b>
No clawback activity during fiscal year 2008.								

<b><i>SUNNY DAY CLAWBACK ACTIVITY FY'07</i></b>								
<b>Company</b>	<b>Jurisdiction</b>	<b>Financing</b>	<b>Original Amount</b>	<b>Amount Forgiven</b>	<b>Date of Forgiveness</b>	<b>Clawback</b>	<b>Date Repaid</b>	<b>Comments</b>
Simon Pearce	Garrett	Conditional Loan	\$500,000	-0-	N/A	\$219,089	08/31/07	Required to meet modified employment requirement of 100 full time employees by 12/31/06 and retain through 12/31/07. As of 12/31/06 reported 47 employees. The Company is required to repay a pro rata portion per employee of \$3,333 (\$3,333 x 53 employee shortfall = \$176,649) plus accrued interest (\$42,440). The Department agreed to defer payment until 8/31/07 due to working capital requirements and cash flow.

**DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT**

Exhibit

**Settled Report**

**7/1/2008 Through 6/30/2009**

<i>Client Name</i>	<i>Loan Amount</i>	<i>Guarantor Percentage</i>	<i>Loan Guarantee</i>	<i>County</i>	<i>Total</i>	<i>New Jobs</i>	<i>Retained Jobs</i>	
<i>Sunny Day Cond. Grant</i>								
12/24/2008 Morgan Stanley & Co. Incorporated 1060301	\$4,000,000.00	0.0%	\$0.00	Baltimore City	\$71,000,000.00	N/A	900	0
<b>Totals:</b>	<b>1 Loan</b>		<b>\$4,000,000.00</b>		<b>\$71,000,000.00</b>	<b>0</b>	<b>900</b>	<b>0</b>
<b>Grand Totals:</b>	<b>1 Loan</b>		<b>\$4,000,000.00</b>		<b>\$71,000,000.00</b>	<b>0</b>	<b>900</b>	<b>0</b>