



## LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room - 2<sup>nd</sup> Floor Norbert Hill Center

September 15, 2021

9:00 a.m.

This Legislative Operating Committee meeting will be closed to the public in accordance with Oneida Business Committee resolution BC-08-03-21-A, *Setting Public Gathering Guidelines During Public Health State of Emergency - COVID-19*.

### **I. Call to Order and Approval of the Agenda**

### **II. Minutes to be Approved**

1. September 1, 2021 LOC Meeting Minutes (pg. 2)

### **III. Current Business**

1. Oneida General Welfare Law Amendments (pg. 5)

### **IV. New Submissions**

1. Children's Code Amendments, Guardianship and Adoption Law (pg. 26)

### **V. Additions**

### **VI. Administrative Updates**

### **VII. Executive Session**

### **VIII. Recess/Adjourn**



**LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES**  
Oneida Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
September 1, 2021  
9:00 a.m.

**Present:** David P. Jordan, Marie Summers, Kirby Metoxen, Daniel Guzman King, Jennifer Webster

**Others Present:** Clorissa N. Santiago, Kristen Hooker, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen, Lawrence Barton, Brooke Doxtator, Justin Nishimoto (Microsoft Teams), Eric Boulanger (Microsoft Teams), Barbara Webster (Microsoft Teams), Tina Jorgenson (Microsoft Teams), Michelle Myers (Microsoft Teams), Amy Spears (Microsoft Teams), Mark Powless (Microsoft Teams), Michelle Braaten (Microsoft Teams), Patricia Garvey (Microsoft Teams), Krystal John (Microsoft Teams), Jacque Boyle (Microsoft Teams)

**I. Call to Order and Approval of the Agenda**

David P. Jordan called the September 1, 2021, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to adopt the agenda as is; seconded by Marie Summers. Motion carried unanimously.

**II. Minutes to be Approved**

**1. August 18, 2021 LOC Meeting Minutes**

Motion by Kirby Metoxen to approve the minutes of August 18, 2021 and forward to the Oneida Business Committee for consideration; seconded by Marie Summers. Jennifer Webster abstained. Motion carried.

**III. Current Business**

**1. Public Peace Law**

Motion by Jennifer Webster to approve the Public Peace law adoption packet, with updated materials, and forward to the Oneida Business Committee for consideration; seconded by Kirby Metoxen. Motion carried unanimously.

Motion by Kirby Metoxen to approve the Public Peace Law Citations Schedule Resolution and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

**2. Oneida General Welfare Law Amendments**

Motion by Jennifer Webster to approve the draft of the Oneida General Welfare law and direct that a legislative analysis be completed; seconded by Marie Summers. Motion carried unanimously.



#### IV. New Submissions

##### 1. Disability Fund Policy Amendments

Motion by Marie Summers to table this item; seconded by Jennifer Webster. Motion carried unanimously.

#### V. Additions

#### VI. Administrative Items

##### 1. Certification of Leasing Law Rule No. 5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT)

Motion by Jennifer Webster to certify the Leasing Law Rule No. 5 – Tribal Housing Reacquisition of Individual Fee and Trust Title finding good cause in accordance with section 106.7-1(a) of the Administrative Rulemaking Law, and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.

##### 2. Certification of Leasing Law Rule No. 6 - Homeownership by Independent Purchase Program (HIPP)

Motion by Jennifer Webster to certify the Leasing Law Rule No. 6 – Homeownership by Independent Purchase Program finding good cause in accordance with section 106.7-1(a) of the Administrative Rulemaking Law, and forward to the Oneida Business Committee for consideration; seconded by Kirby Metoxen. Marie Summers opposed. Motion carried.

*For the Record Marie Summers stated: I understand that the LOC's role is to review and make sure that the rulemaking guidelines have been in place and followed, and it looks like it has. But with this rule that I am reviewing from last, from the current rule that is published on the website, it says the purpose of the Home Ownership by Independent Purchase Program is to expand the services being offered to Tribal members by providing a program in which Tribal member buyer initiates a purchase in which the buyer purchases the improvements and the Tribe purchases the land. And then the policy goes on to say: the policy behind the HIP Program is to increase Tribal member homeownership and the land base available for the fee to trust process while simultaneously affording Tribal members greater independence in the purchase process by requiring the buyer to negotiate the purchase offer independent of the Tribe. Excellent program. The new changes that we have in front of us, removes the purpose, the original intent, and the scope of the program for Tribal members. And it now includes non-Tribal members, are able to apply for this program. This tells me that the program no longer serves the community at large solely. And now the Tribal member will now compete with any non-Tribal member for the HIP Program. My concerns are that if Land Management has funding to purchase land for the HIP Program, that funding should be reserved for Tribal members only. And if that funding is depleted because non-Tribal members are using this program, that will leave our community members with no opportunity because the money would be depleted. And this law, I don't believe it serves our community with the current housing inventory that we have. During the pandemic we discovered homelessness was severe. We currently have two hundred and seventy-eight (278) on the home waiting list to either get into an elder apartment, an income-based rental, a general rental, or rent a home. We have a severe shortage in housing here, and I don't feel comfortable opening up a program that includes non-Tribal members with these conditions and in this environment. That's all my comments for today. Thank you.*

#### VII. Executive Session

**VIII. Adjourn**

Motion by Marie Summers to adjourn at 9:39 a.m.; seconded by Daniel Guzman King.  
Motion carried unanimously.



Legislative Operating Committee  
September 15, 2021

# Oneida General Welfare Law Amendments

<b>Submission Date:</b> 12/18/18	<b>Public Meeting:</b> N/A
<b>LOC Sponsor:</b> Jennifer Webster	<b>Emergency Enacted:</b> 8/12/20, 2/10/21

**Summary:** *This item was carried over from last term. The Oneida Business Committee directed IGAC, Self-Governance and the Law Office to develop a plan of action to create rules for exempting income per the Tribal General Welfare Exclusion Act. At the December 18, 2018 Business Committee Work Meeting, the Oneida Business Committee requested that the General Welfare Exclusions Act – Income Exemptions item be sent over to the LOC for consideration to develop a law/code/ordinance that would define the income exemptions under the General Welfare Exclusion Act. As a result of the COVID-19 pandemic, emergency adoption of an Oneida General Welfare law was sought to create a law that provides a mechanism to address the economic needs of members of the Nation during the COVID-19 pandemic. The purpose of this Law is to provide assistance, on a non-taxable basis, to eligible Tribal members through approved programs that promote the general welfare of the Nation. The Law sets a framework and provides guidelines for the Nation to establish and operate approved programs which provide assistance to eligible Tribal members to promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment. The Oneida Business Committee adopted the Oneida General Welfare law on an emergency basis through the adoption of resolution BC-08-12-20-D. The emergency adoption of the Law will expire on February 12, 2021. The Oneida Business Committee then adopted emergency amendments to the Oneida General Welfare law on February 10, 2021, through resolution BC-02-10-21-B for the purpose of addressing the means in which the Oneida Business Committee may adopt an approved program – the emergency amendment would allow the Oneida Business Committee to adopt an approved program through resolution in addition to through the adoption of a law. The emergency adoption of the Law was set to expire on August 10, 2021. The Oneida Business Committee extended the emergency amendments to the Oneida General Welfare law on July 28, 2021, through the adoption of resolution BC-07-28-21-M. The emergency amendments to the Oneida General Welfare law will expire on February 10, 2022.*

**10/7/20 LOC:** Motion by Kirby Metoxen to add the Oneida General Welfare Law to the Active Files List with Jennifer Webster as the sponsor; seconded by Marie Summers. Motion carried unanimously.

**1/14/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Lawrence Barton, Rae Skenandore, Carl Artman, Susan House, Kristal Hill, James Petitjean. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss the Oneida General Welfare law, the Oneida Higher Education Pandemic Relief Fund law, the Pandemic Relief Assistance law, and the FY21 Budget Directive found in resolution BC-11-24-20-F and determine a plan for meeting these directives and addressing these items on a permanent basis.

**1/28/21:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the proposed emergency amendments to the Law and emergency adoption packet materials.

**2/3/21 LOC:** Motion by Jennifer Webster to approve the Oneida General Welfare law emergency adoption packet and forward to the Oneida Business Committee for consideration; seconded by Marie Summers. Motion carried unanimously.

**2/9/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Carl Artman, JoAnne House, Lawrence Barton, Ralinda Ninham-Lamberies, Rae Skenandore, Keith Doxtator, Susan House, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to touch base and discuss the progress that was being made in bringing forward emergency amendments to the Oneida General Welfare law and developing the approved programs – through adoption of a resolution – to meet the FY21 budget directive in resolution BC-11-24-20-F.

**2/10/21 OBC:** Motion by Lisa Liggins to adopt resolution 02-10-21-B Emergency Amendments to the Oneida General Welfare Law with two (2) changes [1) in line 16, correct date to March 13, 2021; and 2) in line 18, insert the appropriate resolution number], seconded by Jennifer Webster. Motion carried.

Motion by Lisa Liggins to request the Legislative Operating Committee and Legislative Reference Office to bring forward a BC SOP to an upcoming BC Work Session regarding how laws and resolutions are submitted to the Business Committee in accordance with this resolution, seconded by Jennifer Webster. Motion carried.

**4/14/21 OBC:** Motion by Lisa Liggins to defer this item [*Oneida Nation Assistance Fund Resolution*] until after executive session noting the resolution will be brought back with three (3) additional considerations, [1) the correction to line 45 [change from, "...between 18 to 61 years of...", change to, "...age 18 or older..."]; 2) noting the LOC's considerations for possible garnishments moving forward; 3) CFO's comments regarding Treasury guidance for the 65 and over payment.], seconded by Marie Summers. Motion carried.

Motion by Lisa Liggins to adopt the Oneida Business Committee standard operating procedure entitled Oneida General Welfare Law - Adoption of an Approved Program and direct the Secretary to finalize the SOP and publish, seconded by David P. Jordan. Motion carried.

**4/21/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Kristen Hooker, Kristal Hill, Rhiannon Metoxen. The purpose of this work meeting was to discuss a plan for how to address the Oneida Business Committee directive contained in resolution BC-04-14-21-D that the LOC consider how garnishments will be handled for general welfare exclusion payments moving forward.

**4/29/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Kristal Hill, Rhiannon Metoxen. The purpose of this work meeting was to review and discuss the public comment period notice for the question of "Should assistance provided by an approved program under the Oneida General Welfare law be subject to attachment or garnishment?"

- 5/5/21 LOC:** Motion by Jennifer Webster to approve the Oneida General Welfare law amendments public comment period notice for the question, “*Should assistance provided by an approved program under the Oneida General Welfare law be subject to attachment or garnishment?*” and forward this question to a public comment period to be held open until June 9, 2021; seconded by Marie Summers. Motion carried unanimously.
- 6/9/21:** *Public Comment Period Closed.* Six (6) individuals submitted written comments during this public comment period.
- 6/24/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Clorissa N. Santiago, Kristal Hill, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the public comments that were received regarding the question, “*Should assistance provided by an approved program under the Oneida General Welfare law be subject to attachment or garnishment?*”
- 7/7/21 LOC:** Motion by Marie Summers to accept public comments that were received for the Oneida General Welfare law amendments question, “Should assistance provided by an approved program under the Oneida General Welfare law be subject to attachment or garnishment?”; seconded by Daniel Guzman King. Motion carried unanimously.
- 7/21/21 LOC:** Motion by Marie Summers to approve the Oneida General Welfare law emergency amendments extension packet and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.
- 7/28/21 OBC:** Motion by David P. Jordan to adopt resolution 07-28-21-M Extension of the Emergency Amendments to the Oneida General Welfare Law, seconded by Jennifer Webster. Motion carried.
- 8/26/21:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the draft of amendments to the Oneida General Welfare law to move forward for permanent adoption.
- 9/1/21 LOC:** Motion by Jennifer Webster to approve the draft of the Oneida General Welfare law and direct that a legislative analysis be completed; seconded by Marie Summers. Motion carried unanimously.

#### **Next Steps:**

- Approve the legislative analysis for the Oneida General Welfare law.
- Approve the approve the Oneida General Welfare law public comment period notice and forward the Oneida General Welfare law to a public comment period to be held open until October 13, 2021.





## ONEIDA GENERAL WELFARE LAW LEGISLATIVE ANALYSIS

### SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
<b>Intent of the Proposed Law</b>	Provides a framework for the Nation to develop approved programs to provide assistance to members on a non-taxable basis in an effort to promote the general welfare while ensuring compliance with the General Welfare Exclusion, 26 U.S.C. §139E, and applicable Internal Revenue Service regulations or revenue procedures including I.R.S. Rev. Proc. 2014-35, and that all assistance provided under this law: <ul style="list-style-type: none"><li>▪ is available to any recipients who satisfy the program policies, subject to budgetary restraints;</li><li>▪ is made under an approved program that does not discriminate in favor of members of the Nation's governing body;</li><li>▪ is not provided as compensation for goods and/or services; and</li><li>▪ is not lavish or extravagant under the facts and circumstances, as determined by the Oneida Business Committee.</li></ul>
<b>Purpose</b>	The purpose of this law is to govern how the Nation provides assistance to eligible members on a non-taxable basis, pursuant to the principles of the General Welfare Exclusion. <i>[10 O.C. 1001.1-1]</i> .
<b>Affected Entities</b>	Oneida Business Committee, Entities developing approved programs
<b>Public Meeting</b>	A public meeting has not yet been held.
<b>Fiscal Impact</b>	A fiscal impact statement has not yet been requested.

### SECTION 2. LEGISLATIVE DEVELOPMENT

**A. Background.** On August 12, 2020, the Oneida General Welfare law (“the Law”) was adopted by the Oneida Business Committee on an emergency basis through resolution BC-08-12-20-D for the purpose of providing assistance, on a non-taxable basis, to members of the Nation through approved programs that promote the general welfare of the Nation. *[10 O.C. 1001.1-1, 1001.1-3]*. Emergency adoption of the Law was pursued to provide a mechanism to address the economic needs of members of the Nation during the COVID-19 pandemic. The Law set forth a framework and provided guidelines for the Nation to establish and operate approved programs which provide assistance to eligible members to promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment. *[10 O.C. 1001.9-2]*. The emergency adoption of the Law was set to expire on February 12, 2021. In February 2021, emergency amendments to the Law were then adopted by the Oneida Business Committee through resolution BC-02-10-21-B for the purpose of addressing how an approved program would be adopted by the Oneida Business Committee in an effort to allow for more flexibility and efficiency in addressing the needs of the Nation. The emergency amendment to the Law revises the definition of approved program to allow an approved program to be adopted by the Oneida Business Committee through resolution or law of the Nation. *[10 O.C. 1001.3-1(a)]*. Previously, an approved program could only be adopted by the Oneida Business Committee through a law of the Nation. These emergency amendments to the Law were set to expire on August



10, 2021. On July 28, 2021, the Oneida Business Committee extended the emergency amendments for an additional six (6) month period through the adoption of resolution BC-07-28-21-M. The emergency amendments to this Law will now expire on February 10, 2022.

B. The Legislative Operating Committee is now seeking the permanent adoption of this Law.

### SECTION 3. CONSULTATION AND OUTREACH

A. Representatives from the following departments or entities participated in the development of this Law and legislative analysis:

- Oneida Law Office;
- Finance Administration; and
- Governmental Services Division.

B. The following laws were reviewed in the drafting of this analysis:

- Legislative Procedures Act.

### SECTION 4. PROCESS

A. This Law has followed the process set forth in the Legislative Procedures Act (LPA).

- On August 12, 2020, the Law was adopted by the Oneida Business Committee on an emergency basis through resolution BC-08-12-20-D.
- On October 7, 2020, the Legislative Operating Committee added the Law to its Active Files List.
- On February 10, 2021, the Oneida Business Committee adopted emergency amendments to the Law through resolution BC-02-10-21-B.
- On April 14, 2021, the Oneida Business Committee adopted resolution BC-04-14-21-D titled, *Oneida Nation Assistance Fund*, which directed that the Legislative Operating Committee hold a community input session on the public policy of “funds paid to members pursuant general welfare programs are not subject to garnishment, attachment, seizure, or execution of levy of any kind, including the administrative enforcement actions listed in 7 O.C. Chapter 704 (Child Support), and any attempt to cause any payments to be so subjected shall not be recognized by the Nation” and whether such policy should be a general policy or be addressed specifically in regards to each general welfare program under Title 1000 and Chapter 1001.
- On May 5, 2021, the Legislative Operating Committee approved the Oneida General Welfare law amendments public comment period notice for the question, *Should assistance provided by an approved program under the Oneida General Welfare law be subject to attachment or garnishment?* and forward this question to a public comment period to be held open until June 9, 2021.
- On June 9, 2021, the public comment period closed for the question above closed. The Legislative Operating Committee received written submissions of comments from six (6) individuals.
- On July 7, 2021, the Legislative Operating Committee accepted the public comments that were received.
- On July 21, 2021, the Legislative Operating Committee approved the Oneida General Welfare law emergency amendments extension packet and forwarded the extension to the Oneida Business Committee for consideration.

- 62       ▪ On July 28, 2021, the Oneida Business Committee extended the emergency amendments to the  
63       Law through the adoption of resolution BC-07-28-21-M.
- 64       ▪ On September 1, 2021, the Legislative Operating Committee approved the draft of the Law and  
65       directed that a legislative analysis be completed.
- 66   B. At the time this legislative analysis was developed the following work meetings had been held  
67   regarding the development of this Law:
- 68       ▪ January 14, 2021: LOC work meeting with the Oneida Law Office, Finance Administration,  
69       Strategic Planner, and Susan House.
- 70       ▪ January 28, 2021: LOC work meeting.
- 71       ▪ February 9, 2021: LOC work meeting with the Oneida Law Office, Finance Administration,  
72       Trust Enrollments Director, Susan House.
- 73       ▪ April 21, 2021: LOC work meeting.
- 74       ▪ April 29, 2021: LOC work meeting.
- 75       ▪ June 24, 2021: LOC work meeting.
- 76       ▪ August 26, 2021: LOC work meeting.
- 77   C. ***COVID-19 Pandemic’s Effect on the Legislative Process.*** The world is currently facing a pandemic  
78   of COVID-19. The COVID-19 outbreak originated in Wuhan, China and has spread to many other  
79   countries throughout the world, including the United States. The COVID-19 pandemic has resulted in  
80   high rates of infection and mortality, as well as vast economic impacts including effects on the stock  
81   market and the closing of all non-essential businesses. A public meeting for this proposed Law will not  
82   be held due to the COVID-19 pandemic, but a public comment period for the submission of written  
83   comments will be held open.
- 84       ▪ *Declaration of a Public Health State of Emergency.*
- 85           ▪ On March 12, 2020, Chairman Tehassi Hill signed a “*Declaration of Public Health State*  
86           *of Emergency*” regarding the COVID-19 pandemic which declared a Public Health State  
87           of Emergency for the Nation until April 12, 2020, and set into place the necessary authority  
88           for action to be taken and allows the Nation to seek reimbursement of emergency  
89           management actions that may result in unexpected expenses.
- 90           ▪ The Public Health State of Emergency has since been extended until September 26, 2021,  
91           by the Oneida Business Committee through the adoption of resolutions BC-03-28-20-A,  
92           BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, BC-08-06-20-A, BC-09-09-20-A, BC-  
93           10-08-20-A, BC-11-10-20-A, BC-12-09-20-D, BC-01-07-21-A, BC-02-10-21-A, BC-03-  
94           10-21-D, BC-05-12-21-A, BC-06-23-21-B, and BC-07-28-21-N.
- 95       ▪ *COVID-19 Core Decision Making Team Declaration: Suspension of Public Meetings under the*  
96       *Legislative Procedures Act.*
- 97           ▪ On March 27, 2020, the Nation’s COVID-19 Core Decision Making Team issued a  
98           “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration which  
99           suspended the Legislative Procedures Act's requirement to hold a public meeting during  
100          the public comment period, but allows members of the community to still participate in the  
101          legislative process by submitting written comments, questions, data, or input on proposed  
102          legislation to the Legislative Operating Committee via e-mail during the public comment  
103          period.
- 104       ▪ *Oneida Business Committee Resolution BC-08-03-21-A, Setting Public Gathering Guidelines*  
105       *during Public Health State of Emergency—COVID-19.*

- On August 3, 2021, the Oneida Business Committee adopted resolution BC-08-03-21-A entitled, *Setting Public Gathering Guidelines during Public Health State of Emergency—COVID-19*, which provides that indoor and outdoor events shall be canceled when the infection rates within Brown or Outagamie Counties exceed “Low” as identified by the Wisconsin Department of Health Services. Both Brown and Outagamie Counties are experiencing “Very High” COVID-19 infection rates.
- *Conclusion.*
  - Although a public meeting will not be held on the proposed Law, a public comment period will still held open until October 13, 2021, in accordance with resolution BC-08-03-21-A and the Legislative Procedures Act as modified by the COVID-19 Core Decision Making Team’s “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration.

## SECTION 5. CONTENTS OF THE LEGISLATION

- A. Purpose and Policy.** The purpose of this law is to govern how the Nation provides assistance to eligible members on a non-taxable basis, pursuant to the principles of the General Welfare Exclusion. [10 O.C. 1001.1-1]. The federal government through the Tribal General Welfare Exclusion Act of 2014, codified at 26 U.S.C §139E and the Internal Revenue Service, through its traditional application of the general welfare doctrine and subsequent guidance, has recognized the sovereign right of Indian tribal governments to provide financial assistance to its members under certain circumstances on a non-taxable basis. [10 O.C. 1001.1-1(a)]. It is the policy of the Nation to provide assistance to members through approved programs that promote the general welfare of the Nation which is available to any recipients who satisfies the program policies, subject to budgetary restraints; is made under an approved program that does not discriminate in favor of members of the Nation’s governing body; is not provided as compensation for goods or services; and is not lavish or extravagant under the facts and circumstances, as determined by the Oneida Business Committee. [10 O.C. 1001.1-2].
- **Effect.** The overall purpose of this Law is to codify the Nation’s sovereign right to provide assistance to its members on a non-taxable basis, and to provide a framework for the Nation to create approved programs to do so.
- B. General Welfare Assistance.** The Nation has an inherent sovereign right to provide assistance to its eligible members on a non-taxable basis pursuant to the principles of General Welfare Exclusion. [10 O.C. 1001.4-1]. General Welfare Exclusion provides that any assistance shall be treated as non-taxable under federal law so long as it: satisfies the requirements for exclusion under 26 U.S.C. §139E, is provided under a Safe Harbor Program listed and detailed in I.R.S. Rev. Proc. 2014-35 or subsequent Internal Revenue Service procedures or regulations, or meets the criteria of the General Test under the I.R.S. General Criteria of General Welfare exclusion listed in I.R.S. Rev. Proc. 2014-35, section 5.02(1). *Id.* The General Test provides criteria used to determine if any assistance provided through an approved program to a recipient shall be treated as a General Welfare Exclusion. [10 O.C. 1001.4-2]. The criteria of the General Test include the following: the assistance is paid on behalf of the Nation, the assistance was provided pursuant to an approved program, the assistance does not discriminate in favor of members of the governing body of the Nation, the assistance is available to any member who meets the guidelines of the approved program, the assistance is provided for the promotion of general welfare, the assistance is not lavish or extravagant, the assistance is not compensation for services, and the assistance is not a per capita payment. [10 O.C. 1001.4-2(a)-(h)]. Any assistance provided by the Nation under the General Welfare Exclusion shall occur through an approved program and qualify as

non-taxable under the principles of the General Welfare Exclusion to the fullest extent permitted at law. [10 O.C. 1001.4-3]. Approved programs shall be established and operated to promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment. [10 O.C. 1001.4-3(a)]. Furthermore, this Law shall not be construed as creating new general welfare assistance rights which are an inherent right of Nation. [10 O.C. 1001.4-4]. Rather, this law is intended to codify existing procedures used by the Nation to administer its general welfare assistance and any assistance provided prior to the enactment of this Law is hereby ratified and confirmed as general welfare assistance provided pursuant to the exercise by the Nation of its inherent tribal sovereignty. *Id.*

- **Effect.** The Law provides details on how assistance provided through approved programs will meet the principles of General Welfare Exclusion so that assistance may be non-taxable.

**C. Approved Program Guidelines.** This section of the Law sets forth the guidelines that approved programs of the Nation will be created under. The Law requires that an approved program be adopted by the Oneida Business Committee through either a resolution or law of the Nation. [10 O.C. 1001.5-1]. An approved program may be adopted through a resolution if the approved program will function for a limited term – a limited term means there is a defined start and end date, or the program utilizes third-party funding and is not intended to be permanent. [10 O.C. 1001.3-1(d), 1001.5-1(b)]. If the purpose of the approved program will function on a permanent basis, then the approved program is required to be adopted through a law of the Nation. [10 O.C. 1001.5-1(a)]. The Law provides what information an approved program is required to include in its adopting document, which includes: name of the approved program, purpose of the approved program, eligibility rules and limitations for the program, funding source, how the program qualifies for General Welfare Exclusion, and the start and end date of the approved program, if applicable. [10 O.C. 1001.5-1(c)]. Any assistance intended to qualify under the General Welfare Exclusion is limited to members of the Nation only. [10 O.C. 1001.5-2]. Regarding the funding of approved programs, any assistance provided is limited to funds appropriated, at the discretion of the Oneida Business Committee and no matter the source of the funds. [10 O.C. 1001.5-3]. All amounts budgeted by the Nation for assistance shall remain general assets of the Nation until payments are disbursed. *Id.* The Oneida Business Committee is responsible for designating approved programs for which funds shall be budgeted each fiscal year, consistent with the purposes of this law. *Id.* Approved programs may also be funded through third-party funding if available. *Id.* All assistance that is provided to a recipient is required to be used for the purpose stated in the approved program description. [10 O.C. 1001.5-4]. If a recipient uses assistance in a manner that is inconsistent with the purpose of the approved program, then the payment is considered forfeited, and the Nation may secure repayment from the recipient. *Id.* The Law then clarifies that any benefit a member of the Nation receives is not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the member. [10 O.C. 1001.5-5].

- **Effect.** This section of the Law provides details on the framework for how approved programs under the Law are developed and handled.

**D. Non-Recourse Designation.** The Nation does not guarantee any benefits to a recipient under this Law. [10 O.C. 1001.6-1]. The Law clarifies that benefits shall not be treated as a resource or asset of a recipient for any purpose; and that no recipient shall have an interest in or right to any funds budgeted for, or set aside for, approved programs until paid. *Id.* The Oneida Business Committee reserves the right to cancel, adjust, modify or revoke any benefit. [10 O.C. 1001.6-2]. The approved programs shall

be administered at all times to avoid triggering of the doctrines of “constructive receipt” and/or “economic benefit.” [10 O.C. 1001.6-3].

- **Effect.** This section clarifies that recipient is not guaranteed benefits under the Law, and that a recipient should not treat the potential benefit as a resource or an asset until that asset is actually paid out to the recipient.

**E. Governing Law; Sovereignty.** The Law confirms the Nation’s sovereign status by providing that the rights and liabilities associated with the enactment of this law, or any assistance made as a result, shall be construed and enforced according to the Nation’s laws and applicable federal law. [10 O.C. 1001.7-1]. The Law, or any related laws, policies, or procedures adopted for its implementation shall not be construed to make applicable to the Nation any laws or regulations which are otherwise inapplicable to the Nation, or from which the Nation is entitled to exemption because of its sovereign status. *Id.*

- **Effect.** The Nation is considered sovereign, meaning it has the authority to govern itself. This section of the Law confirms that the Nation maintains that sovereign status through the adoption of this Law, and the Nation is not subject to any laws or regulations which are otherwise inapplicable to the Nation.

**F. Federal Trust Obligations.** The Law provides that the Nation has the right to provide assistance in circumstances where federal funding is insufficient to operate federal programs designed to benefit applicants and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations. [10 O.C. 1001.8-1]. This does not mean that the Nation’s adoption of its approved programs is intended to relieve or diminish the federal government of its funding and trust responsibilities. *Id.*

- **Effect.** This section provides that although the Nation may provide assistance in circumstances where federal funding is insufficient to operate federal programs designed to benefit applicants, this does not negate the federal government’s trust responsibilities to fund this program. This also does not affect the Nation’s right to seek funding, or the right to engage in government-to-government consultations and coordination regarding these rights.

## SECTION 6. EXISTING LEGISLATION

**A. Related Legislation.** The following laws of the Nation are related to this Law:

- **Garnishment Law.** The Garnishment law allows the Nation to exercise its authority to provide an effective mechanism for creditors to access an employee’s income for reduction of personal debt. [2 O.C. 204.1-1]. Garnishment of an individual’s income to collect debt owed to an entity of the Nation is allowed under the Garnishment law. [2 O.C. 204.6].
  - Assistance provided to a member through an approved program is not subject to garnishment under the Garnishment law. [10 O.C. 1001.5-5].
- **Per Capita Law.** The Per Capita law specifies the procedure to be followed in the event that per capita payments are distributed by the Nation and states the responsibilities of the various Oneida entities in the distribution or maintenance of any such per capita payments. [1 O.C. 123.1-1]. The Per Capita law allows per capita payments to be subject to attachment prior to distribution for debt owed to an Oneida entity. [1 O.C. 123.4-9, 123.4-9(a)(2)].
  - Assistance provided through an approved program is not a per capita payment. Assistance provided to a member through an approved program is not subject to attachment under the Per Capita law. [10 O.C. 1001.5-5].

## SECTION 7. OTHER CONSIDERATIONS

- A. *Deadline for Permanent Adoption of Legislation.*** The emergency amendments to this Law will expire on February 10, 2022. The emergency amendments to this Law were already extended for an additional six (6) month period through the adoption of resolution of BC-07-28-21-M so there is no more opportunity to extend these emergency amendments.
- *Conclusion:* The Legislative Operating Committee will need to consider the development and adoption of this Law on a permanent basis prior to February 10, 2022.
- B. *Fiscal Impact.*** Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [*1 O.C. 109.6-1*]. Oneida Business Committee resolution BC-10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures Act,*” provides further clarification on who the Legislative Operating Committee may direct complete a fiscal impact statement at various stages of the legislative process, as well as timeframes for completing the fiscal impact statement.
- *Conclusion.* The Legislative Operating Committee will need to direct that a fiscal impact statement be completed for the proposed Law.

## Title 10. General Welfare Exclusion - Chapter 1001

### ONEIDA GENERAL WELFARE

1001.1. Purpose and Policy  
 1001.2. Adoption, Amendment, Repeal  
 1001.3. Definitions  
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 2014-53/Tribal General Welfare Exclusion of 2014  
 1001.6. Non-Recourse Designation  
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1001.1. Purpose and Policy  
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 1001.6. Non-Recourse Designation  
 1001.7. Governing Law; Sovereignty  
 1001.8. Federal Trust Obligations

#### 1001.1. Purpose and Policy

1001.1-1. *Purpose.* The purpose of this law is to ~~provide~~ govern how the Nation provides assistance to eligible Tribal members. ~~The Nation affirms hereby its sovereign right to do so~~ on a non-taxable basis, pursuant to the principles of the General Welfare Exclusion ~~to Indian Tribal governmental programs that provide benefits to Tribal members.~~

~~1001.1-2.~~ (a) The federal government through the Tribal General Welfare Exclusion Act of 2014, codified at 26 U.S.C §139E and the Internal Revenue Service, through its traditional application of the general welfare doctrine and subsequent guidance, has recognized the sovereign right of Indian tribal governments to provide financial assistance to its Tribal members under certain circumstances on a non-taxable basis.

1001.1-3. *Policy.* It is the policy of the Nation to provide assistance to Tribal members through approved programs that promote the general welfare of the Nation. This law provides a framework for approved programs to follow to ensure compliance with the General Welfare Exclusion, 26 U.S.C. §139E, and applicable Internal Revenue Service regulations or revenue procedures including I.R.S. Rev. Proc. 2014-35. Further, it is the intent of the Oneida Business Committee that all assistance provided under this law:

- (a) is available to any recipients who satisfy the program policies, subject to budgetary restraints;
- (b) is made under an approved program that does not discriminate in favor of members of the Nation's governing body;
- (c) is not provided as compensation for goods and/or services; and
- (d) is not lavish or extravagant under the facts and circumstances, as determined by the Oneida Business Committee.

#### 1001.2. Adoption, Amendment, Repeal

1001.2-1. This law was adopted by the Oneida Business Committee ~~on an emergency basis~~ by resolution BC-08-12-20-D, and emergency amended by resolution BC-02-10-21-B. - - - .

1001.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

1001.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

1001.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

1001.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.



### 1001.3. Definitions

1001.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Approved program" means any program(s) to provide general welfare assistance that is intended to qualify as non-taxable as a General Welfare Exclusion, administered under specific guidelines, and is adopted by the Oneida Business Committee through resolution or law of the Nation.

(b) "Assistance" means benefits or payments under an approved program, which are paid to or on behalf of a recipient pursuant to this law, ~~provided, that such assistance shall be owed back to the Nation from the Tribal member recipient in the event the Tribal member misappropriates the assistance.~~

~~(c) "Benefits" means any approved program assistance, including payments, which is provided pursuant to this law.~~

~~(d) "General Test" means the criteria used to determine if any assistance or benefits (c) provided through an approved program to a recipient shall be treated as a General Welfare Exclusion. The criteria of the General Test include the following:~~

- ~~(1) Paid on behalf of the Nation;~~
- ~~(2) Pursuant to an approved program;~~
- ~~(3) Does not discriminate in favor of members of the governing body of the Nation;~~
- ~~(4) Are available to any Tribal member who meets the guidelines of the approved program;~~
- ~~(5) Are for the promotion of general welfare;~~
- ~~(6) Are not lavish or extravagant;~~
- ~~(7) Are not compensation for services; and~~
- ~~(8) Are not per capita payments.~~

~~(e) "General Welfare Exclusion" means any benefits shall be treated as non-taxable under federal law so long as it satisfies the requirements for exclusion under 26 U.S.C. §139E, is provided under a Safe Harbor Program listed and detailed in I.R.S. Rev. Proc. 2014-35 or subsequent Internal Revenue Service procedures or regulations, or it meets the General Test.~~

~~(f) "General welfare need" means a need, in the sole discretion of the Oneida Business Committee, which shall be met to ensure the Nation's longevity as a self-governing Indian nation, and includes needs in the areas of health, education, self-sufficiency, self-determination, the maintenance of culture and tradition, entrepreneurship, and employment.~~

~~(g) "Lavish" or "Extravagant" shall have the meaning determined by the Oneida Business Committee in its discretion and based on the circumstances, taking into account needs unique to the Nation as well as the social purpose being served by the particular assistance at hand, except as otherwise may be required for compliance with final guidance issued under 26 U.S.C. §139E following consultation between the Nation and the federal government.~~

~~(h) (d) "Limited term" means a defined start and end date, or utilizes third-party funding and is not intended to be permanent.~~

(e) "Member" means an individual who is an enrolled member of the Nation.

(f) "Nation" means the Oneida Nation.

(g) "Recipient" means any Tribal member entitled to receive assistance in accordance

with approved program requirements.

~~(j) "Tribal member" means an individual who is an enrolled member of the Nation.~~

#### **1001.4. General Welfare Assistance**

1001.4-1. General. The Nation may provide general welfare assistance to eligible members on a non-taxable basis pursuant to the principles of General Welfare Exclusion. The federal government recognizes that benefits to recipients under an approved program for the promotion of the general welfare of the Nation is excludable from the gross income of those recipients. General Welfare Exclusion provides that any assistance shall be treated as non-taxable under federal law so long as it:

(a) satisfies the requirements for exclusion under 26 U.S.C. §139E;

(b) is provided under a Safe Harbor Program listed and detailed in I.R.S. Rev. Proc. 2014-35 or subsequent Internal Revenue Service procedures or regulations; or

(c) meets the criteria of the General Test under the I.R.S. General Criteria of General Welfare exclusion listed in I.R.S. Rev. Proc. 2014-35, section 5.02(1).

1001.4-2. General Test. The General Test provides criteria used to determine if any assistance provided through an approved program to a recipient shall be treated as a General Welfare Exclusion. The criteria of the General Test include the following:

(a) The assistance is paid on behalf of the Nation;

(b) The assistance was provided pursuant to an approved program;

(c) The assistance does not discriminate in favor of members of the governing body of the Nation;

(d) The assistance is available to any member who meets the guidelines of the approved program;

(e) The assistance is provided for the promotion of general welfare;

(f) The assistance is not lavish or extravagant;

(g) The assistance is not compensation for services; and

(h) The assistance is not a per capita payment.

1001.4-3. Approved Programs. Any assistance provided by the Nation under the General Welfare Exclusion shall occur through an approved program and qualify as non-taxable under the principles of the General Welfare Exclusion to the fullest extent permitted at law.

(a) An approved program shall be established and operated to promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment.

(b) Each approved program shall be limited to purposes consistent with treatment under the General Welfare Exclusion as to purpose, eligibility, and funding.

(d) An approved program shall meet all criteria of the General Test.

(d) Assistance provided through an approved program is not subject to information reporting by the Nation to the Internal Revenue Service.

#### **1001.4-4. Ratification of Prior Acts**

~~1001.4-1.~~ This law ~~is~~shall not ~~to~~ be construed as creating new general welfare assistance rights which are an inherent right of Nation. Rather, this law is intended to codify existing procedures used by the Nation to administer its general welfare assistance.

~~1001.4-2.~~ Assistance provided prior to the enactment of this law is hereby ratified and confirmed as general welfare assistance provided pursuant to the exercise by the Nation of its inherent tribal

sovereignty.

**1001.5. Approved Program Guidelines ~~General Welfare Doctrine and IRS Revenue Procedure 2014-53/ Tribal General Welfare Exclusion of 2014~~**

~~1001.5-1. The federal government recognizes that benefits to recipients under an approved program for the promotion of the general welfare of the Nation is excludable from the gross income of those recipients.~~

Creation of an Approved Program. An approved program shall be adopted by the Oneida Business Committee ~~1001.5-2. The Internal Revenue Service, through I.R.S. Revenue Procedure 2014-35, listed and detailed examples of Safe Harbors~~ a resolution or law of the Nation. Approved programs under which, if approved adopted by the Oneida Business Committee are considered in force and effect and in writing, need would be presumed, and benefits would be excluded from gross income. ~~1001.5-3. Benefits authorized by accordance with this law are intended to qualify non-taxable under~~

(a) Law. An approved program shall be adopted by the Oneida Business Committee through a law if the principles approved program will function on a permanent basis.

(1) Adoption of an approved program by the Oneida Business Committee through a law of the Nation shall comply with the process and procedures of the Legislative Procedures Act.

(b) Resolution. An approved program shall be adopted by the Oneida Business Committee through a resolution if the approved program will function for a limited term.

(1) An approved program to be considered for adoption through resolution by the Oneida Business Committee shall be accompanied by a statement of effect and submitted in accordance with the Oneida Business Committee's submission procedure and deadlines.

(c) Contents of Proposed Approved Programs. The law or resolution establishing an approved program shall contain the following information:

(1) Name of the approved program;

(2) Purpose of the approved program;

(3) Eligibility rules and limitations for approved program;

(4) Funding source for approved program;

(5) How the approved program qualifies for General Welfare Exclusion; and

(6) Start and end date of approved program, if applicable.

1001.5-2. Eligibility. Assistance provided by an approved program shall be limited to members of the Nation. Each approved program shall set forth any specific eligibility rules and limitations applied to ~~the fullest extent permitted at law that program.~~

~~1001.5-4.3. Funding of Approved Programs.~~ Assistance authorized by this law shall be limited to funds appropriated, at the discretion of the Oneida Business Committee and no matter the source of the funds. All amounts budgeted by the Nation for assistance shall remain general assets of the Nation until payments are disbursed. The Oneida Business Committee shall designate approved programs for which funds shall be budgeted each fiscal year, consistent with the purposes of this law. Approved programs may also be funded through third-party funding if available.

~~1001.5-5. Benefits are not subject to information reporting by the Nation to the Internal Revenue Service.~~

~~1001.5-6. Without limitation, the following benefits shall be treated as non-taxable hereunder:~~

~~(a) Benefits that satisfy the requirements for the exemption under 26 U.S.C. §139E;~~

(b) ~~Benefits that are provided under an IRS Safe Harbor Program listed and described in I.R.S. Rev. Proc. 2014-35; or~~

(c) ~~Benefits that qualify for exclusion~~ 1001.5-4. Use of Assistance. All assistance provided through an approved program shall be used for the purpose stated in the approved program description. If assistance is used or pledged for a purpose inconsistent with the purpose set forth in an approved program the payment shall be deemed forfeited. The Nation may secure repayment from any recipient who forfeited their assistance.

1001.5-5. Anti-Alienation. Assistance provided to a member through an approved program shall not be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the member.

~~under the I.R.S. General Criteria of General Welfare exclusion listed in I.R.S. Rev. Proc. 2014-35, section 5.02(1).~~

#### **1001.6. Non-Recourse Designation**

1001.6-1. The Nation does not guarantee ~~benefits~~assistance under this law. ~~Benefits~~Assistance shall not be treated as a resource or asset of a recipient for any purpose; and no recipient shall have an interest in or right to any funds budgeted for, or set aside for, approved programs until paid.

1001.6-2. The Oneida Business Committee reserves the right to cancel, adjust, modify or revoke any benefit. ~~The approved~~

1001.6-3. Approved programs shall be administered at all times to avoid triggering of the doctrines of “constructive receipt” ~~and~~ or “economic benefit.”

#### **1001.7. Governing Law; Sovereignty**

1001.7-1. All the rights and liabilities associated with the enactment of this law, or the assistance made hereunder, shall be construed and enforced according to the Nation’s laws and applicable federal law. Nothing in this law or the related laws, policies, or procedures adopted for its implementation, if any, shall be construed to make applicable to the Nation any laws or regulations which are otherwise inapplicable to the Nation, or from which the Nation is entitled to exemption because of its sovereign status.

#### **1001.8. Federal Trust Obligations**

1001.8-1. The Nation reserves the right to provide assistance in circumstances where federal funding is insufficient to operate federal programs designed to benefit applicants and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations. The Nation’s adoption of its approved programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Nation’s right to seek funding shortfalls or to enforce the trust rights of the Nation and its ~~citizens~~members. The Nation shall be entitled to government-to-government consultation and coordination with the federal government ~~in regard to~~regarding these obligations.

#### **~~1001.9. Approved Program Guidelines~~**

~~1001.9-1. Nation Approved Programs.~~ The Oneida Business Committee shall designate approved programs for which funds shall be budgeted each fiscal year, consistent with the purposes of this law. ~~Each approved program shall be consistent with the principles of the General Welfare Exclusion as to purpose, eligibility, and funding.~~

~~1001.9-2. Purpose of Approved Programs.~~ Each approved program shall be limited to purposes

consistent with treatment under the General Welfare Exclusion. An approved program shall be established and operated to promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, self sufficiency, self determination, and the maintenance of culture and tradition, entrepreneurship, and employment.

~~1001.9 3. Eligibility.~~ Assistance intended to qualify under the General Welfare Exclusion shall be limited to Tribal members. Each approved program shall set forth the specific eligibility rules and limitations applied to that program. Programs comprising descriptions, including eligibility rules and limitations, may be presented to the Oneida Business Committee for approval in accordance with this law. Programs shall be approved by the Oneida Business Committee to be considered in force and effect and in accordance with this law.

~~1001.9 4. Limited Use of Assistance Payments.~~ All assistance shall be used for the purpose stated in the approved program description. ~~If assistance is used or pledged for a purpose inconsistent with the purpose set forth in an approved program the payment shall be deemed forfeited.~~ The Nation may secure repayment from the recipient. The Nation may seek to garnish remuneration from other payments made to recipient to secure repayment of assistance under this law.

~~1001.9 5. Anti-Alienation.~~ A Tribal member's benefit is not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the Tribal member.

End.

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Emergency Adopted ~~BC-08-12-20-D~~  
 Emergency Amended – BC-02-10-21-B  
 Emergency ~~Extension~~Extended – BC-07-28-21-M  
 Adopted – BC- - - -

**Title 10. General Welfare Exclusion - Chapter 1001**  
**ONEIDA GENERAL WELFARE**

1001.1. Purpose and Policy  
1001.2. Adoption, Amendment, Repeal  
1001.3. Definitions  
1001.4. General Welfare Assistance  
1001.5. Approved Program Guidelines

1001.6. Non-Recourse Designation  
1001.7. Governing Law; Sovereignty  
1001.8. Federal Trust Obligations

**1001.1. Purpose and Policy**

1001.1-1. *Purpose.* The purpose of this law is to govern how the Nation provides assistance to eligible members on a non-taxable basis, pursuant to the principles of the General Welfare Exclusion.

(a) The federal government through the Tribal General Welfare Exclusion Act of 2014, codified at 26 U.S.C §139E and the Internal Revenue Service, through its traditional application of the general welfare doctrine and subsequent guidance, has recognized the sovereign right of Indian tribal governments to provide financial assistance to its members under certain circumstances on a non-taxable basis.

1001.1-2. *Policy.* It is the policy of the Nation to provide assistance to members through approved programs that promote the general welfare of the Nation. This law provides a framework for approved programs to follow to ensure compliance with the General Welfare Exclusion, 26 U.S.C. §139E, and applicable Internal Revenue Service regulations or revenue procedures including I.R.S. Rev. Proc. 2014-35. Further, it is the intent of the Oneida Business Committee that all assistance provided under this law:

- (a) is available to any recipients who satisfy the program policies, subject to budgetary restraints;
- (b) is made under an approved program that does not discriminate in favor of members of the Nation's governing body;
- (c) is not provided as compensation for goods or services; and
- (d) is not lavish or extravagant under the facts and circumstances, as determined by the Oneida Business Committee.

**1001.2. Adoption, Amendment, Repeal**

1001.2-1. This law was adopted by the Oneida Business Committee by resolution BC-\_\_-\_\_-\_\_-\_\_.

1001.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

1001.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

1001.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

1001.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**1001.3. Definitions**

1001.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Approved program" means any program(s) to provide general welfare assistance that is intended to qualify as non-taxable as a General Welfare Exclusion, administered under specific guidelines, and is adopted by the Oneida Business Committee through resolution

or law of the Nation.

(b) "Assistance" means benefits or payments under an approved program, which are paid to or on behalf of a recipient pursuant to this law.

(c) "Lavish" or "Extravagant" shall have the meaning determined by the Oneida Business Committee in its discretion and based on the circumstances, taking into account needs unique to the Nation as well as the social purpose being served by the particular assistance at hand, except as otherwise may be required for compliance with final guidance issued under 26 U.S.C. §139E following consultation between the Nation and the federal government.

(d) "Limited term" means a defined start and end date, or utilizes third-party funding and is not intended to be permanent.

(e) "Member" means an individual who is an enrolled member of the Nation.

(f) "Nation" means the Oneida Nation.

(g) "Recipient" means any member entitled to receive assistance in accordance with approved program requirements.

#### **1001.4. General Welfare Assistance**

1001.4-1. *General.* The Nation may provide general welfare assistance to eligible members on a non-taxable basis pursuant to the principles of General Welfare Exclusion. The federal government recognizes that benefits to recipients under an approved program for the promotion of the general welfare of the Nation is excludable from the gross income of those recipients. General Welfare Exclusion provides that any assistance shall be treated as non-taxable under federal law so long as it:

(a) satisfies the requirements for exclusion under 26 U.S.C. §139E;

(b) is provided under a Safe Harbor Program listed and detailed in I.R.S. Rev. Proc. 2014-35 or subsequent Internal Revenue Service procedures or regulations; or

(c) meets the criteria of the General Test under the I.R.S. General Criteria of General Welfare exclusion listed in I.R.S. Rev. Proc. 2014-35, section 5.02(1).

1001.4-2. *General Test.* The General Test provides criteria used to determine if any assistance provided through an approved program to a recipient shall be treated as a General Welfare Exclusion. The criteria of the General Test include the following:

(a) The assistance is paid on behalf of the Nation;

(b) The assistance was provided pursuant to an approved program;

(c) The assistance does not discriminate in favor of members of the governing body of the Nation;

(d) The assistance is available to any member who meets the guidelines of the approved program;

(e) The assistance is provided for the promotion of general welfare;

(f) The assistance is not lavish or extravagant;

(g) The assistance is not compensation for services; and

(h) The assistance is not a per capita payment.

1001.4-3. *Approved Programs.* Any assistance provided by the Nation under the General Welfare Exclusion shall occur through an approved program and qualify as non-taxable under the principles of the General Welfare Exclusion to the fullest extent permitted at law.

(a) An approved program shall be established and operated to promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education,



self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment.

(b) Each approved program shall be limited to purposes consistent with treatment under the General Welfare Exclusion as to purpose, eligibility, and funding.

(d) An approved program shall meet all criteria of the General Test.

(d) Assistance provided through an approved program is not subject to information reporting by the Nation to the Internal Revenue Service.

1001.4-4. *Ratification of Prior Acts.* This law shall not be construed as creating new general welfare assistance rights which are an inherent right of Nation. Rather, this law is intended to codify existing procedures used by the Nation to administer its general welfare assistance. Assistance provided prior to the enactment of this law is hereby ratified and confirmed as general welfare assistance provided pursuant to the exercise by the Nation of its inherent tribal sovereignty.

### **1001.5. Approved Program Guidelines**

1001.5-1. *Creation of an Approved Program.* An approved program shall be adopted by the Oneida Business Committee through a resolution or law of the Nation. Approved programs adopted by the Oneida Business Committee are considered in force and effect and in accordance with this law

(a) *Law.* An approved program shall be adopted by the Oneida Business Committee through a law if the approved program will function on a permanent basis.

(1) Adoption of an approved program by the Oneida Business Committee through a law of the Nation shall comply with the process and procedures of the Legislative Procedures Act.

(b) *Resolution.* An approved program shall be adopted by the Oneida Business Committee through a resolution if the approved program will function for a limited term.

(1) An approved program to be considered for adoption through resolution by the Oneida Business Committee shall be accompanied by a statement of effect and submitted in accordance with the Oneida Business Committee's submission procedure and deadlines.

(c) *Contents of Proposed Approved Programs.* The law or resolution establishing an approved program shall contain the following information:

(1) Name of the approved program;

(2) Purpose of the approved program;

(3) Eligibility rules and limitations for approved program;

(4) Funding source for approved program;

(5) How the approved program qualifies for General Welfare Exclusion; and

(6) Start and end date of approved program, if applicable.

1001.5-2. *Eligibility.* Assistance provided by an approved program shall be limited to members of the Nation. Each approved program shall set forth any specific eligibility rules and limitations applied to that program.

1001.5-3. *Funding of Approved Programs.* Assistance authorized by this law shall be limited to funds appropriated, at the discretion of the Oneida Business Committee and no matter the source of the funds. All amounts budgeted by the Nation for assistance shall remain general assets of the Nation until payments are disbursed. The Oneida Business Committee shall designate approved programs for which funds shall be budgeted each fiscal year, consistent with the purposes of this law. Approved programs may also be funded through third-party funding if available.

1001.5-4. *Use of Assistance.* All assistance provided through an approved program shall be used for the purpose stated in the approved program description. If assistance is used or pledged for a purpose inconsistent with the purpose set forth in an approved program the payment shall be deemed forfeited. The Nation may secure repayment from any recipient who forfeited their assistance.

1001.5-5. *Anti-Alienation.* Assistance provided to a member through an approved program shall not be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the member.

#### **1001.6. Non-Recourse Designation**

1001.6-1. The Nation does not guarantee assistance under this law. Assistance shall not be treated as a resource or asset of a recipient for any purpose; and no recipient shall have an interest in or right to any funds budgeted for, or set aside for, approved programs until paid.

1001.6-2. The Oneida Business Committee reserves the right to cancel, adjust, modify or revoke any benefit.

1001.6-3. Approved programs shall be administered at all times to avoid triggering of the doctrines of “constructive receipt” or “economic benefit.”

#### **1001.7. Governing Law; Sovereignty**

1001.7-1. All the rights and liabilities associated with the enactment of this law, or the assistance made hereunder, shall be construed and enforced according to the Nation’s laws and applicable federal law. Nothing in this law or the related laws, policies, or procedures adopted for its implementation, if any, shall be construed to make applicable to the Nation any laws or regulations which are otherwise inapplicable to the Nation, or from which the Nation is entitled to exemption because of its sovereign status.

#### **1001.8. Federal Trust Obligations**

1001.8-1. The Nation reserves the right to provide assistance in circumstances where federal funding is insufficient to operate federal programs designed to benefit applicants and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations. The Nation’s adoption of its approved programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Nation’s right to seek funding shortfalls or to enforce the trust rights of the Nation and its members. The Nation shall be entitled to government-to-government consultation and coordination with the federal government regarding these obligations.

*End.*

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Emergency Adopted – BC-08-12-20-D  
 Emergency Amended – BC-02-10-21-B  
 Emergency Extended – BC-07-28-21-M  
 Adopted – BC-\_\_-\_\_-\_\_-\_\_

## ONEIDA NATION PUBLIC COMMENT PERIOD NOTICE

**Due to the COVID-19 Public Health Emergency  
Only Written Comments Will Be Accepted Until:  
WEDNESDAY, OCTOBER 13, 2021**



**Send Public Comments to**

LOC@oneidanation.org

**Ask Questions here**

LOC@oneidanation.org

## ONEIDA GENERAL WELFARE LAW

The Oneida General Welfare law was adopted by the Oneida Business Committee on an emergency basis through resolution BC-08-12-20-D. Emergency amendments were then made to the Law by the Oneida Business Committee through the adoption of resolution BC-02-10-21-B, and subsequently extended through resolution BC-07-28-21-M. The emergency amendments to this Law will expire on February 10, 2022. The Legislative Operating Committee has now prepared the Oneida General Welfare law for permanent adoption,

The purpose of the Oneida General Welfare law is to set forth a framework and provide guidelines for the Nation to establish and operate approved programs to provide assistance on a non-taxable basis to eligible members of the Nation in accordance with the principles of General Welfare Exclusion. Approved programs promote the general welfare of the Nation, and includes programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment.

Approved programs must be adopted by the Oneida Business Committee through either law or resolution of the Nation, and provide the specific eligibility rules and limitations applied to that program. Examples of approved programs adopted by the Nation include the Pandemic Relief Assistance Program, Oneida Higher Education Pandemic Relief Fund, and the Oneida Nation Assistance Fund. Any assistance received from an approved program under the Oneida General Welfare law is required to be used only for the purpose stated in the approved program description. Currently, the Oneida General Welfare law provides that assistance received by a person from an approved program is not subject to attachment or garnishment by creditors. Assistance received by a person from an approved program is not a per capita payment or income.

For more information on the permanent adoption of the Oneida General Welfare law please review the public comment packet at [oneida-nsn.gov/government/register/public meetings](http://oneida-nsn.gov/government/register/public%20meetings).

## PUBLIC COMMENT PERIOD CLOSURES WEDNESDAY, OCTOBER 13, 2021

\*In accordance with Oneida Business Committee resolution BC-08-03-21-A, *Setting Public Gathering Guidelines during Public Health State of Emergency—COVID-19*, indoor and outdoor gatherings are prohibited when the COVID-19 infection rates within Brown or Outagamie Counties exceed “Low” as identified by the Wisconsin Department of Health Services. Although an in-person public meeting will not be held for this item, a public comment period will still remain open in accordance with the Nation’s COVID-19 Team’s March 27, 2020, declaration titled “*Suspension of Public Meetings under the Legislative Procedures Act*” which provides that the Legislative Procedures Act’s requirement to hold a public meeting during the public comment period is suspended due to the COVID-19 public health emergency, but individuals can still participate in the legislative process by submitting written comments, questions, or other input via e-mail to [LOC@oneidanation.org](mailto:LOC@oneidanation.org).



**Oneida Nation**  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54155-0365  
 Oneida-nsn.gov



## AGENDA REQUEST FORM

- 1) Request Date: \_\_\_\_\_
- 2) Contact Person(s): Cora Bell  
 Dept: \_\_\_\_\_  
 Phone Number: 920-378-6506 Email: bearwolfclan67@gmail.com
- 3) Agenda Title: Child Code / Guardianship / adoption Law
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
Legislation and Law Concerning adoption Law.  
Concerns that it needs to be amended to better  
serve future generations

List any supporting materials included and submitted with the Agenda Request Form

- 1) Letters stating Lack of Jurisdiction
- 2) TPR papers
- 3) Custodianship Papers
- 4) \_\_\_\_\_
- 5) Please list any laws, policies or resolutions that might be affected:  
Child Code, adoption Law
- 6) Please list all other departments or person(s) you have brought your concern to:  
Oneida Family Court / Judiciary / Kristin Hooker
- 7) Do you consider this request urgent? ☒ Yes ☐ No

If yes, please indicate why:

to serve the best interests of the children

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester: \_\_\_\_\_

*Cora Bell*

Please send this form and all supporting materials to:

LOC@oneidanation.org

or

Legislative Operating Committee (LOC)

P.O. Box 365

Oneida, WI 54155

Phone 920-869-4376

# September 2021

September 2021

Su	Mo	Tu	We	Th	Fr	Sa
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5	6	7	8	9	10	11
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October 2021

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31						

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Aug 29	30	31	Sep 1 8:30am LOC Prep (BC_Conf_Room) - Clorissa 9:00am LOC Meeting (BC_Conf_Room) 9:50am LOC Work Session	2	3	4
5	6	7	8	9:00am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago	10	11
12	10:30am Oneida Personnel Policies and Procedures Emergency Amendments Work Meeting (Microsoft	14	15 8:30am LOC Prep (BC_Conf_Room) - Clorissa N. Santiago 9:00am LOC Meeting (BC_Conf_Room) - Clorissa	16	17	18
19	20	21	22	23 9:00am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago	24	25
26	27	28	29 9:30am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago	30	Oct 1	2