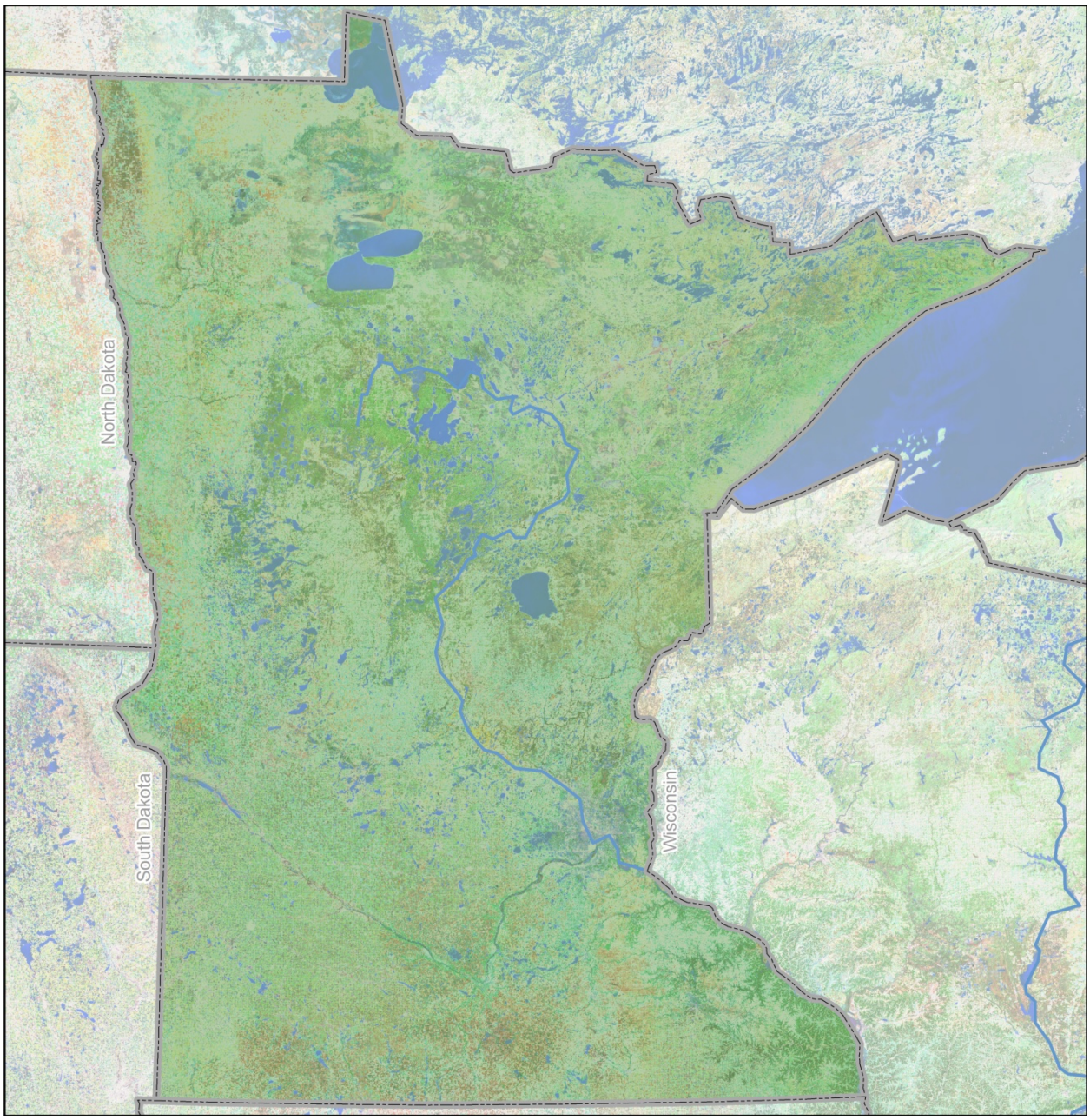
2018 Minnesota Annual Action Plan for Housing and Community Development Substantial Amendment Deed



FINAL - OCTOBER 2018

EMPLOYMENT AND ECONOMIC DEVELOPMENT

Public Hearing and Comment Period: For 2018 Action Plan and Consolidated Plan Substantial Amendment

ST.PAUL - The Minnesota Department of Employment and Economic Development (DEED) are accepting comments on the following documents from dates: **September 10, 2018 to October 9, 2018.**

The State of Minnesota 2018 Housing and Community Development Annual Action Plan directs how the state will meet needs and priorities in 2018 and has been approved by the Housing and Urban Development (HUD) to receive federal housing and community development funding.

Substantial Amendment to the 2018 Action plan of the 2017-2021 Consolidated Plan examines the housing and community development needs of the state and sets priorities for allocating HUD funds.

As of January 1, 2018, under AP-05 Executive Summary, Small Cities Development accepted the city of North Mankato as a non-entitlement Community Development Block Grant (CDBG) Program area. North Mankato brings a balance of $1,092,134.87. The State of Minnesota will work with North Mankato to develop and preserve decent affordable housing, providing services to vulnerable communities, and to create and retain jobs. Through expansive project activities utilizing CDBG funds, North Mankato, along with other small cities will improve the lives of low and moderate income residents and develop strategies that bring resources and partnerships together.

As part of this amendment, HUD requires states to include Revolving Loan Funds and Program Income as part of their plan. As of September 30, 2017, under AP-15: Expected Resources, the Minnesota Investment Fund (MIF) Revolving Loan Fund (RLF) has a balance of $10,219,950.65 and the Small Cities Development Program (SCDP), Program Income (PI) has a balance of $3,468,606.

How to Participate

Read the Plans: Visit our website: http://mn.gov/deed/government/financial-assistance/community-funding/. Click on the **Consolidated Plans** tab to read the draft plans and see full instructions for commenting.

Attend a Public Hearing: Tuesday, September 18, 2018 from 3:00-4:00 p.m. at the Department of Employment and Economic Development offices at the 1st National Bank Building, 332 Minnesota Street, Suite E200, Saint Paul, MN from 3-4 PM, James J. Hill room.

Submit Comments: By mail to Action Plan, Attn: SCDP, Department of Employment and Economic Development offices, 1st National Bank Building, 332 Minnesota, Suite E200, St. Paul, MN 55101. By email to michelle.vang@state.mn.us with "Action Plan" in the subject line. Comments will be accepted until close of business on October 9, 2018.

Questions? Contact Michelle Vang, (651) 259-7504

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The Substantial Amendment to the 2018 Action plan of the 2017-2021 Consolidated Plan examines the housing and community development needs of the state and sets priorities for allocating HUD funds.

The 2018 Action Plan Substantial Amendment include the following:

AP-05: Executive Summary
As of January 1, 2018, we accepted the city of North Mankato as a non-entitlement Community Development Block Grant (CDBG) Program area. North Mankato brings a balance of $1,092,134.87. The State of Minnesota will work with North Mankato to develop and preserve decent affordable housing, providing services to vulnerable communities, and to create and retain jobs. Through expansive project activities utilizing CDBG funds, North Mankato, along with other small cities will improve the lives of low and moderate income residents and develop strategies that bring resources and partnerships together.

AP-15: Expected Resources
The State of Minnesota DEED receives Community Development Block Grant (CDBG) funds annually from HUD with 85% of its annual allocation and award grants to local units of government for general community development projects such as housing and commercial rehabilitation and public facility activities. The remaining 15%, administered by the Office of Business Finance, is designated specifically for economic development projects known as the **Minnesota Investment Fund (MIF) Revolving Loan Fund (RLF)**.

Upon submittal of an application by an eligible applicant, DEED awards the MIF grant to a local unit of government in an amount up to $500,000 to assist with the start up or expansion of a qualified business. When repayment of the loan occurs, DEED allows the local government to retain the funds. All loan repayments are considered "Program Income" (PI) and since the local government is permitted to retain the PI, the loan payments must be placed in a separate Revolving Loan Fund (RLF) to fund the same activities that generated the PI. Therefore, the RLF must be used specifically for future economic development activities.

Whereas, the **Small Cities Development Program (SCDP), Program Income (PI)** is defined as income of $35,000 or more generated in a federal fiscal year (October 1 – September 30) by SCDP funds from past and open grants. These should be accounted for and reported separately. Reporting is due October 15th each year.

If a grantee receives less than $35,000 in a fiscal year, it is not considered Program Income but referred to as Local Income.

Program Income and Local Income funds generated could include:

- Loan repayments (with interest, if applicable).
- Proceeds from the sale of propertyin which SCDP funds were used.
- Interest earned on the Program Income itself.

Program Income from previous grants must be used before newly awarded grant funds can be disbursed. Program Income must be listed as leverage on applications and is expected to be drawn prior to drawing awarded funds.

Program Income and Local Income must be reused in a manner consistent with what was stated in the funding application, grant agreement, SCDP program requirements (federal objective, environmental, labor standards and etc.) and their respective Program Income Reuse Plan. After closeout, if grantees wish to use Program Income or Local income generated for something other than the activities that generated the income, SCDP staff should be consulted.

As of September 30, 2017, in the recent report, the Minnesota Investment Fund Revolving Loan Fund has a balance of **$10,219,950.65.**

Local Government	Balance 9/30/17	Phone
Albert Lea	$49,036.97	(507) 377-4300
Backus	$126,725.36	(218) 947-3221
Bagley	$20,163.15	(218) 694-2865
Baxter	$436,113.55	(218) 454-5100
Bemidji	$238,402.25	(218) 759-3560
Clara City	*No data	(320) 847-2142
Cold Spring	$695,518.72	(320) 685-3653
Deerwood	*No data	(218) 534-3152
Edgerton	*No data	(507) 442-4361
Elk River	$200,000.00	(763) 635-1000
Faribault	$587,511.58	(507) 334-2222
Fosston	$272,983.00	(218) 435-1959
Freeport	$43,869.00	(320) 836-2112
Granite Falls	*No data	(320) 564-3011
Hector	$349,615.00	(320) 848-2122
Heron Lake	$359,229.00	(507) 793-2826
Howard Lake	$150,646.00	(320) 543-3670
Hutchinson	$80,297.98	(320) 587-5151
Kasson	$95,953.00	(507) 634-7071
Lake Crystal	$215,018.67	(507) 726-2538
Lowry	$97,342.82	(320) 283-5411
Madison Lake	*No data	(320) 598-7373
Maple Lake	$293,653.00	(320) 963-3611

Marshall	*No data	(507) 537-6760
Maynard	*No data	(320) 367-2140
Meeker County	$862,418.36	(320) 693-5272
Morris/SCEIC-LDO	*No data	(320) 589-3141
Motley	$177,057.89	(218) 352-6200
Mountain Lake	$245,164.58	(507) 427-2999
Murray County	$70,544.00	(507) 836-6023
New Prague	$477,567.73	(952) 758-4401
New Ulm	$404,832.41	(507) 359-8233
Nobles County	*No data	(507) 295-5200
North Branch	*No data	(651) 674-8113
North Mankato	$1,092,134.87	(507) 625-4141
Olivia	*No data	(320) 523-2361
Owatonna	$346,834.00	(507) 444-4300
Park Rapids	*No data	(218) 732-3163
Perham/WCI	$452,087.00	(218) 346-4455
Pine Island	*No data	(507) 356-4591
Pine River	$115,807.82	(218) 587-2440
Pipestone	$18,919.54	(507) 825-3324
Plato	$40,369.97	(320) 238-2432
Preston	$1,500.00	(507) 765-2153
Prior Lake	$123,287.24	(952) 447-9800
Red Wing	$38,200.00	(651) 385-3600
Rockford	$276,770.00	(763) 477-6565
Sauk Rapids	$3,458.00	(320) 258-5300
Stevens County EIC	*No data	(320) 858-2609
Swift County	$312,774.00	(320) 842-4769
Wabasso	$184,213.00	(507) 342-5519
Wadena	*No data	(218) 631-7707
Waseca	*No data	(507) 835-9700
Wells	*No data	(507) 553-6371
Windom	*No data	(507) 831-6129
Winona	$335,168.00	(507) 457-8234
Worthington	$328,763.19	(507) 372-8000
Total:	**$10,219,950.65**	
***No Data - No Report Received**		

As of September 30, 2017, in the recent report, the Small Cities Development Program, Program Income has a balance of **$3,468,606.**
Please refer to the table below.

Local Government	PI balance on 9/30/17	Contact Information
Brainerd	$144,609	(218) 828-2307
Clay County	$49,000	(218) 299-5011
Dodge Center	$122,914	(507) 374-2575
Faribault	$440,027	(507) 334-2222
Foley	$88,420	(320) 9687260
Fosston	$15,380	(218-435-1961
Freeport	$43,869	(320) 836-2112
Hutchinson	$149,168	(320) 587-5151
Ivanhoe	$52,951	(320) 694-1738
Janesville	$49,756	(507) 348-3701
Lafayette	$60,989	(507) 228-8241
Mapleton	$42,383	(507) 433-5778
Maynard	$17,166	(320) 367-2140
Murray County	$310,046	(507) 836-6023
New Prague	$746,949	(952) 758-4401
Olivia	$439,521	(320) 523-2361
Pierz	$66,953	(320) 468-6471
Preston	$39,355	(507) 765-2153
Red Wing	($1,592)	(651) 385-3600
Sauk Centre	$70,713	(320)352-0121
Shakopee	$4,160	(952) 233-9300
Sherburn	$18,128	(507) 764-4491
Thief River Falls	$7,220	(218) 681-2943
Wabasha County	$35,425	(651) 565-4568
Wadena	$145,024	(218) 631-7707
Waseca	$66,230	(507) 835-9700
Waterville	$6,277	(507) 362-8300
Willmar	$179,163	(320) 235-4913
Winona	$58,401	(507) 457-8234
Worthington	$300,000	(507) 372-8000
Total:	**$3,468,606**	

How to Participate

Read the Plans: Visit our website: http://mn.gov/deed/government/financial-assistance/community-funding/. Click on the **Consolidated Plans** tab to read the draft plans and see full instructions for commenting.

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SCDP Program Income Plan

Small Cities Development Program, Program Income (PI) is defined as income of $35,000 or more generated in a federal fiscal year (October 1 – September 30) by SCDP funds from past and open grants. These should be accounted for and reported separately. Reporting is due October 15th each year.

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- loan repayments (with interest, if applicable).
- proceeds from the sale of propertyin which SCDP funds were used.
- interest earned on the Program Income itself.

Program Income from previous grants must be used before newly awarded grant funds can be disbursed. Program Income must be listed as leverage on applications and is expected to be drawn prior to drawing awarded funds.

Program Income must be reused in a manner consistent with what was stated in the funding application, grant agreement, SCDP program requirements (federal objective, environmental, labor standards and etc.) and their respective Program Income Reuse Plan.
After closeout, if grantees wish to use Program Income generated for something other than the activities that generated the income, SCDP staff should be consulted.

REPORTING PROGRAM INCOME (PI)

Reporting PI on Open SCDP Grants:
Program income received from past grants with an open grant must be reported on the "Program Income – Open Grant" section of the Annual Report. Do not compete the **Post-Closeout Program Income Reporting** that is on DEED's website.

Program income from past grants expended by grantees with an open grant must be reported in the "Expenditure" and "Program Income and Local Funds Reporting – Open Grant" sections of the Annual Report. Do not complete the **Post-Closeout Expenditure Report** that is on DEED's website.

Reporting on Closed SCDP Grants for Grantees that do not have any current open grants:
For funds received on closed grants, use the **Post-Closeout Program Income Reporting** online reporting form. Report funds received if $35,000 or more as Program Income. If $0-$34,999 is received, it is considered as SCDP Local Income and should be reported as $0.

On closed grants, if Program Income funds were expended on an eligible SCDP activity, complete the **Online Post Closeout Expenditure Report** and send electronically to your SCDP representative. This report includes demographics, income levels, leveraged funds, etc. Start early to ensure you have the data needed. Note: If you plan on expending funds, expend all funds and complete the project in the same reporting period (Oct. 1-Sept. 30).

Establishing & Managing - Reuse Funds:

A revolving fund (reuse funds) is a separate fund with an independent set of accounts used only to track Program Income and Local Income. Reuse of funds may be established for activities approved by SCDP.

- If an organization other than the grantee is administering income-producing activities, the reuse of such income shall be stated in the administrative contract between the grantee and the administrator.
- All repayments (Program Income and Local Income) must be repaid to the grantee and not the administrator.
- Grant Preliminary Proposal or Application preparation is not an eligible use of Program Income.

It is recommended that grantees maintain separate accounts for Program Income and Local Income.

DEED may request information and review grantee files for Program Income to ensure its reuse complies with the grantee's application, funding agreement, and Reuse Income Plan.

Minnesota Investment Fund Revolving Loan Fund Manual

Community Development Block Grant

Economic Development Program (CDBG-ED)

Introduction

The State of Minnesota, Department of Employment and Economic Development (DEED) receives Community Development Block Grant (CDBG) funds annually from the U.S. Department of Housing and Urban Development (HUD). HUD establishes the CDBG regulations and requirements for the program and has oversight responsibilities for the use of these funds. DEED's *Office of Community Assistance* receives 85% of the annual allocation and awards grants to local units of government for more general types of community development projects such as housing and commercial rehabilitation and public facility activities. The remaining 15%, administered by the *Office of Business Finance*, is designated specifically for economic development projects and is known as the Community Development Block Grant-Economic Development (CDBG-ED) program. It is also known as the Minnesota Investment Fund (MIF).

Upon submittal of an application by an eligible applicant, DEED awards the MIF grant to a local unit of government in an amount up to $500,000 to assist with the start up or expansion of a qualified business. When repayment of the loan occurs, DEED allows the local government to retain the funds. All loan repayments are considered "Program Income" (PI) and since the local government is permitted to retain the PI the loan payments must be placed in a separate Revolving Loan Fund (RLF) to fund the same activities that generated the PI. Therefore, the RLF must be used specifically for future economic development activities, all of which are discussed in this manual.

The local government may broaden the use of the RLF by using the funds for any CDBG eligible activities or they can opt to "defederalize" the funds by sub-granting all or a portion of their RLF to a qualified non-profit organization known as a Local Development Organization (LDO). Please contact your DEED loan officer to learn more about these options.

Local Government Responsibilities

The local government accepted certain responsibilities for the administration of a CDBG-ED Revolving Loan Fund when it accepted the CDBG-ED grant for the project that provided the funds for the RLF. These responsibilities include the following:

- To maintain an accounting and financial management system that complies with generally accepted accounting principles;
- To comply with annual reporting to DEED and inclusion of the RLF in its annual audit;
- To operate the RLF in accordance with DEED approved policies, procedures, federal, state and local law, regulation, contracts, guidance manuals and memoranda;
- To maintain an application review and selection process to determine if the funding request can demonstrate a reasonable expectation of repayment, with the expectation having been supported by meaningful and prudent due diligence on the part of the local government;
- To maintain a loan packaging and structuring system that meets appropriate underwriting standards for security and documentation;
- To maintain a loan servicing and monitoring system ensuring that loan payments are collected, that loan covenants are enforced and that loan security is maintained;

- To maintain a system for tracking job creation and retention.

The purpose of this manual is to provide general guidance in the administration of the RLF and to assist the local government meet the myriad of federal requirements. It is intended as a guide and reference, not as a substitute for a thorough knowledge of federal laws, regulations and guidance referenced in the manual. It is important that the administrators of the RLF be familiar with these requirements.

Chapter 1
REVOLVING LOAN FUNDS (RLF)

A Revolving Loan Fund under the CDBG-ED program is the administrative umbrella for the re-use of *Program Income* in the making of business loans.

Program Income includes:

- Payments of principal and interest on loans made using CDBG-ED funds;
- Proceeds from the sale of loans or obligations secured by loans made with CDBG-ED funds;
- Interest earned on an RLF pending its disposition;
- Funds collected through special assessments on properties not owned and occupied by LMI households in order to recover the CDBG portion of a public improvement;
- Local Government or subgrantee income from an ownership interest in a for-profit entity that was assisted with CDBG.

Program income does not include:

- Amounts generated and kept by a nonprofit local development organization (LDO).

Program income retained by the Local Government is:

- Subject to all CDBG –ED requirements; and
- Must maximize to the fullest extent possible its existing RLF towards a new project before requesting additional funds from either the Small Cities Development Program or the Minnesota Investment Fund.

When administering a CDBG-ED RLF, the Local Government must establish a separate fund with a separate set of accounts for the deposit of repayments (principal and interest) for loans made with the CDBG-ED RLF. If the local government is receiving payments from a loan that was funded through the State funded Minnesota Investment Fund program, the repayments of the loan must be accounted for separately from the CDBG-ED fund. The same applies to a RLF for commercial or housing rehabilitation where funding was provided through the Small Cities Development program.

The RLF must comply with CDBG regulations as well as all other federal requirements applicable to the CDBG-ED program (i.e., meet a national objective, meet the public benefit standards, Environmental Review, Davis-Bacon, etc.). These requirements are outlined in this manual; however, it is recommended that the local government review the laws, regulations, and statutes that apply to each of these criteria.

The Local Government must keep the following three objectives in mind when administering the CDBG-ED RLF:

THE CDBG-ED FUNDED RLF NEVER LOSES ITS FEDERAL IDENTITY.
THE LOCAL GOVERNMENT MUST CONTINUE TO COMPLY WITH ALL FEDERAL REQUIREMENTS IN ANY SUBSEQUENT REUSE OF THE FUNDS.

and

THE LOCAL GOVERNMENT SHALL SUBSTANTIALLY DISBURSE FUNDS FROM THE CDBG-ED RLF BEFORE REQUESTING ADDITIONAL ECONOMIC DEVELOPMENT AND/OR SMALL CITIES DEVELOPMENT PROGRAM FUNDS FROM DEED.

and

THE LOCAL GOVERNMENT MUST REPORT TO DEED ON THE USE OF THE RLF ANNUALLY. THIS REPORTING IS SEPARATE FROM THE "PROGRAM INCOME" REPORTING FOR THE COMPETITIVE SCDP PROGRAM.

A Revolving Loan Fund is managed according to a written set of guidelines developed by the Local Government to carry out CDBG eligible economic development projects. In the case of most economic development projects, the primary goal of each project will be private sector job creation or retention of which at least 51% of the jobs will be "taken by" or "made" available to persons from low and moderate income families.

RLF policies and procedures should have been forwarded to and approved by DEED with the application for CDBG-ED assistance for the business project that ultimately provided the loan repayments to the local government.

Any revisions made to the RLF policies and procedures must be approved by DEED.

This chapter will discuss the requirements for the CDBG-ED RLF as well as good practices for the establishment of a fund.

DESIGN AND ADMINISTRATION OF A REVOLVING LOAN FUND POLICY

When a RLF is capitalized with repaid CDBG-ED loan repayments, the local government takes on a major responsibility—functioning as a lender. The lending responsibilities are similar to those of commercial lenders, including loan marketing, application processing, credit analysis, lending decisions, loan closing and documentation, and loan servicing, provision of technical assistance before and during the loan term; in addition to complying with the myriad of CDBG-ED requirements. Business financing is very risky and often quite labor intensive resulting in the need for a high level of administrative capacity. However, with clear development goals, a well-designed RLF and competent staffing, the local government can mitigate the risks and spur the startup and expansion of businesses, as well as the creation of new jobs.

RLF's are generally used to fill a "financing gap" in a business development project. They are typically combined with other public and private funds and are used to initiate, facilitate, and promote the local government's economic development needs, while complementing, not replacing other financial assistance. The fund is designed to alleviate the high cost and short supply of capital for businesses by providing flexible loan terms. Typically, RLF's lower the interest rate, lengthen the loan term, or reduce the risk of a loan.

The following section of this manual provides the local government with some thought provoking information for the planning, design and administration of its revolving loan fund.

Revolving Loan Fund Design

Designing the RLF is one of the most critical aspects of the program process. It is at this time that key elements of the program will be determined and outlined. The design process should be thorough and clearly defined to address the economic development needs of the community and the goals and objectives of the RLF while also clearly outlining the expectations of the borrowers. To begin this process, it is suggested that the local government research existing RLF's and compile samples of application forms, program guidelines, and other materials. In addition, lenders and potential borrowers should be invited to participate in this process.

The local government must consider the following prior to developing the RLF policies and procedures:

- Are adequate and appropriate administrative resources (legal, financial) available?
- Are there sufficient funds to carry out the program and to invest the level of effort necessary for its implementation?

Key steps in establishing a RLF:

1. The local government must determine who will administer and implement the CDBG-ED funded RLF. Since the LG is ultimately responsible for ensuring that the funds are used in accordance with the requirements, the person (people) administering the RLF must be knowledgeable of the CDBG-ED requirements as well as lending practices, etc. Options are:

   a. Local Unit of Government staff –
      - Does the required staffing currently exist?
      - Does the staff have time to take on new or expanded work?
      - Does the staff have the necessary CDBG-ED and lending experience?
      - Does the local government have adequate and appropriate administrative resources, i.e., legal, financial?

      If the answers to the above questions are no, the local government should strongly consider contracting with an organization that has the expertise.

   b. Contracted Administrators – A contractor can be either a for-profit or a non-profit entity that is paid for their services by the local unit of government. The following apply:
      - A contractor must be procured competitively according to the OMB rules; and
      - Most of the uniform administrative requirements *do not* apply (once the procurement process is complete);

   c. Subgrantee – is a public or private nonprofit agency or organization, i.e. EDA, Port Authority, HRA;

   A written agreement must be executed between the two parties detailing the work to be completed and the requirements to be followed.

The local government is ultimately responsible for ensuring that the funds are used in accordance with all requirements. The use of contractors or subgrantees do not relieve the local government of this responsibility.

2. Identify the local economic development needs and the goals of the RLF:
   a. Analyze local lending institutions and businesses to determine unmet financing needs of local businesses.
   b. What are the technical and credit needs?
   c. What other sources of financing, both private and public is available locally, regionally and statewide?
   d. What are the most common reasons for a business to have difficulty obtaining credit?
   e. What type of lending tools would best serve the business community?
   f. Identify the capital barriers to business growth where economic development incentives can have the greatest impact.
   g. What types of industries/businesses are needed to improve the community?
3. Identify the organizational structure of the RLF:
   a. RLF Administration – who will administer?
   b. Management roles – who does what?
      - Financial management
      - Credit analysis
      - Marketing
      - Servicing
      - Loan Closing
      - Loan restructuring and work outs
   c. Legal counsel for the preparation and/or review of the loan closing documents.
   d. RLF Committee—the establishment of a RLF committee is a best practice and it is very beneficial to have a committee with diverse backgrounds to serve as a support structure. This provides well-rounded review and assistance in areas where staff may have limited expertise. Most committees include accountants, lawyers and bankers, educators, and local business owners, but it is a good idea to include members of the low income community.
4. Determine the financing mechanisms to be used -- debt, equity, credit enhancement **(Chapter 2 "Financing Economic Development").**
   a. Quantify the level of financial risk to be taken;
   b. Design the RLF that fills the identified financing gaps:
   c. Direct loans, loan participations, guarantees;
   d. Public/private partnerships;
   e. Debt vs. quasi-equity vs. equity
5. Develop and adopt written RLF administrative guidelines and operating procedures that help guide program decisions and ensure accuracy and consistency. Key elements include:
   a. Organizational mission;
   b. Goals and objectives of the RLF;
   c. Minimum and maximum loan amounts;

d. Types of available financing;
e. Private leverage and equity requirements;
f. Determine the length of the loan term, which may vary based on the use of the loan;
g. Determine if the interest rate will be variable or fixed and whether the rate will vary based on the project;
h. Will the RLF provide for deferral or forgiveness?
i. Establish an application fee, origination fee, and policies regarding closing costs;
j. Application review criteria:
   - Sources/uses statement, including commitment of other lenders;
   - Is the project ready to proceed?
   - Commitment to job retention/creation.
   - Commitment to meeting a National Objective.
k. Underwriting criteria:
   - What types of borrower will be eligible?
   - What activities will be eligible?
   - How will ability to repay be analyzed (cash flow ratios)?
   - What kind of collateral will be required? Personal guarantees?
   - How will credit history be assessed?
   - Does the business plan outline the financial and planning objectives of the business and fiscal soundness?
   - What is the commitment of the owner to his/her business venture and repayment of the loan (personal guarantee)?
   - What are the skills of the owner?
   - Financial analysis;
   - CDBG-ED Underwriting criteria. **(Chapter 7, Underwriting)**
l. Job creation/retention and wage criteria;
m. National Objective;
n. Selection process such as: decision-making bodies; application timing and content; and restrictions such as conflict of interest or overlaying other Federal requirements such as Davis-Bacon or environmental;
o. Application procedures and approval process;
p. Application forms;
q. Loan commitments;
r. Loan closings and standardized documents;
s. Credit and legal files;
t. Servicing policies and procedures;
u. Define default and delinquency terms;
v. Managing loan default or workout issues;
w. Collections policy.

6. Market the RLF to borrowers and bankers.

Marketing the RLF is a critical component of operating a successful program. Enlist the support of local lending institutions, business and industry groups, as well as regional economic development agencies. Inquire about upcoming networking events or speaking engagements.

These opportunities can highlight the RLF program to a variety of businesses and help spread the word about the available funding options. Use social media, such as city's website, twitter, etc.

7. Make the loans.

Loan Servicing

Administration of the loan is far from complete after the loan is made. Ongoing monitoring and servicing of the loan is critical and can be easily overlooked. Routine management of each loan-and the overall fund portfolio- often means the difference between a marginally performing fund and a successful one.

Payment monitoring should be routine and followed on a weekly basis. Identifying a troubled loan before it becomes past due will increase the opportunity to begin remediation, whether in the form of additional assistance or increased monitoring.

Loan Collections

Unfortunately, not all loans will be successful for a myriad of reasons. Therefore, the local government is expected to follow sound lending practices in dealing with delinquent and/or defaulted loans. The Loan Agreement should contain a clause that defines acts, omissions and circumstances which qualify a loan to be declared in default and provides the timing for resolution. Following is criteria that the local government may want to consider when developing their policy:

1. Delinquent Loans

   Generally, a loan becomes delinquent as soon as the payment is late. The LG may wish to extend to the borrower a 15-day grace period. On the 16th day following a missed payment, the LG should contact the business in writing requesting payment. If the loan is not brought current as a result of the written notification, the LG should visit or call the business to discuss the situation. Thereafter, the business should be contacted at least once a month during the delinquent period. Written records should be kept in the loan files of all collection contacts and activities. The LG need not notify DEED during the process of dealing with delinquencies, except for regular reporting of loan status via the RLF Annual Report.

2. Loan Defaults

   A loan is in "default" when the business acts or fails to act, which constitutes a default as described in the loan agreement. It is also in default if the job goals and LMI requirements are not met. See **Chapter 10, "Recordkeeping"** for more information.

With proper follow-up the loan assets may be recovered. If possible, the LG should attempt to "work out" the default situation (i.e., buy-out by another business, percentage of principal paid back, etc.) If a "work out" cannot be accomplished, the LG must be prepared to take action against all collateral positions or guarantors of the loan.

Recommended Recordkeeping for loan documentation can be found in Chapter 10, Recordkeeping.

Chapter 2
FINANCING ECONOMIC DEVELOPMENT PROJECTS

There are a wide variety of ways that local governments can use their Revolving Loan Funds to finance economic development projects. For the most part, the local government has much flexibility in designing the tools that are useful and needed by their locality. This chapter discusses various methods that might want to be considered for use in the RLF.

When most people think of financing tools or techniques, they think of below-market-rate interest

bearing loans. While these loans are certainly an important part of the overall mix of financing tools, they are not the only type.

Project financing mechanisms typically include:

- Debt;
- Equity;
- Credit Enhancement

The choice of financing tools depends on the needs of the local government, as well as the needs of local businesses and is perhaps one of the most important in the effective design of a RLF. The chosen mechanism must match the market and/or financing needs of the project.
For example, a very small business may only need a few thousand dollars to get its new product started. Most private lenders will not make loans of this size because it is not cost effective for them to do so.

It is important that the local government understand the other types of economic development financing that is available at the local, regional and statewide level, as well as have some basic understanding of the program requirements of those types of financing.

FINANCING TOOLS

1. Debt

- Debt financing usually involves the provision of a loan to a business and a specified timeframe (term) and/or conditions for repayment.
- Each of the key debt instrument types is described below.

1. **Amortizing Direct Loans**: Under this standard option, the local government provides a loan to the business that is paid back over time. Amortizing direct loans may be interest bearing or principal only. Typically business loans have an interest rate, regardless of how small. The term of the amortizing loan may be shorter for loans on items such as equipment or inventory and longer on real estate. Direct loans are usually secured by the project, by additional/alternate collateral, and/or a personal guarantee from the owner(s).

   - Pluses:
     - ~ Repayment helps to ensure that the business is fully committed to the project.
     - ~ Provides repayment that can be lent out again.
     - ~ The interest income can help increase and multiply the overall level of funding available for future projects.
   - Minuses:
     - ~ Requires risk taking and the means to process and service the loans;
     - ~ If the loan defaults, the local government must have procedures and the skills for loan foreclosure and collection;
     - ~ For some businesses, an amortizing loan will not be financially feasible, regardless of the interest rate. This is most likely to be true for very small startup companies.

2. **Deferred Payment/Forgivable Loans**: Under this option, the local government makes a direct loan but its repayment is not amortized over time. Rather, its repayment is deferred and contingent upon an event (such as the sale of the company, the business reaching a particular level of profitability, or a particular number of years that have elapsed.) This type of loan my require repayment of only the principal, or, at the time of repayment, may require some amount of accrued interest to be paid.

   - Local governments may also mix the contingent-payment loan with an amortizing loan in order to require part to be paid periodically and part paid at a set point in time:

     Examples:

     ~ A forgivable deferred-payment loan is provided to a business and requires no repayment unless the business leaves the area before a certain timeframe (e. g., five years);

     ~ A deferred-payment loan is provided to a business to assist with the purchase of equipment as part of a start-up or expansion. For example, interest only payments may be provided for the first year to help with cash flow.

   - A loan to a business may be forgiven after the business has met certain criteria determined by the local government, i.e., after the jobs are created and maintained for a period of time.

   - Pluses:

     ~ Permits the loan to function like a grant in the short term and yet allows for the option of eventual repayment; and

     ~ May be relatively easy to administer since no monthly loan servicing is required.

   - Minuses:

     ~ Loan repayment may not occur if the contingent event does not happen. For example, if the business never reaches its intended level of profitability, the loan is not repaid. The local government should anticipate non-payment;

     ~ The local government must be prepared to implement "clawback" procedures if the business does not meet its goals;

     ~ The lack of a required monthly payment may inhibit some of the incentive for the owner to be fully dedicated to the project's success; and

     ~ The local government's loan-servicing procedures would need a method for indicating when the scheduled time for loan payment has arrived.

3. **Co-Lending**: Co-lending occurs when the local government is only one of the lenders on a given project, which is the typical situation.

- The public co-lending loan may be made in two ways:
  - ~ Subordinate financing: Under this option, the loan and the private loan share the same collateral from the business but the right of repayment on the loan or shared first position is placed behind the loan made by the private lender. Thus, if the project fails, the private lender is repaid first and the local governments loan is repaid with whatever proceeds remain; and
  - ~ Tandem loan: Under this option, the private lender's loan is secured by different collateral than the local government's loan. For example, the private lender might lend funds for the construction of a facility and that loan might be collateralized by the building. Simultaneously, the local government might make a loan for a new piece of equipment and it would be collateralized by that equipment (and maybe some additional collateral from the business owner).
- Generally, the interest rate on the loan from the public entity is lower than the interest rate on the loan from the private lender(s). Thus, it is less expensive for the business to have multiple loans, rather than one larger loan from the private lender.
- Pluses:
  - ~ Co-lending allows flexibility by mixing and matching financing types;
  - ~ In addition, co-lending helps ensure that there is repayment of the CDBG-ED funds to be made available for future activities; and
  - ~ Subordinated loans may entice private lenders to participate in the project by reducing their risk and level of financing.
- Minuses:
  - ~ Subordinated loans cause greater risk for the local government since they are last in line when a default occurs and collateral is sought for repayment;
  - ~ Establishing the proper interest rate on a public loan can be complex; and
  - ~ Underwriting using co-lending loans can be complicated and requires a thorough understanding of collateral, security, and private lender expectations, as well as the potential for the business to succeed in achieving the desired public benefit.

■ General Guidelines for loans:

○ **Loan Terms:** The terms of the loan should be consistent with the use of funds and the useful life of the asset financed.

- Machinery and equipment—between 5 and 10 years.
- Buildings and real estate—between 15 and 20 years.
- Working capital—as short as possible, but no longer than 7 years.

If a deferral of payments is approved, the term of the loan should include the deferred period. For example, a loan with a 10 year term with a 1 year deferral period has a

total term of 10 years, not 11.

- **Loan Security:** All loans should be secured with fixed assets, inventory, receivables, etc., personal guarantees, and or any other reasonable source of available collateral. In most situations the RLF loan will be placed in a subordinated security position to other lenders involved in the project. The business should provide the local government with documentation for the value of the collateral offered for security and a description of all security positions held by lenders and any liens that may apply to the collateral (tax liens, mechanics liens, etc.). The local government should negotiate with the business for the most secure position that is reasonably available, regardless of the use of the RLF funds (for example, fixed assets may be used to secure working capital loans).

2. Equity (with or without ownership)

Equity is the investment of funds in a venture that is not subject to repayment as a loan, but is treated as an ownership investment that may receive dividends or returns through the profits of the venture. Local governments may take an "equity position" or an ownership position in the venture.

The range of tools used to provide equity in a project varies widely. For some of these equity tools, the local government may elect to take an ownership position in the project. For other projects, the local government merely provides cash infusion into the project.

For example, assume that the local government is funding the development of a hotel. The local government could use a grant to the developer as an equity investment in the project and share in the gains and losses of the project. The community would thus be a partial owner of the hotel. Under this scenario, the community might then get a portion of the proceeds from the hotel.

1. **Equity investment**: Funds are invested with an expectation of return on the investment out of the profits of the venture.
   - Pluses:
     - ~ The business is not saddled with debt or repayment in the near term; and
     - ~ The local government may recover the investment over time if the venture is successful.
   - Minuses:
     - ~ Higher risk that funds might not be able to be repaid;
     - ~ Lower security than debt; and
     - ~ Delay in recovery of the RLF investment.
2. **In-Kind Contributions**: In-kind contributions are the donation of goods or services to a project in order to reduce costs that must be incurred by the business owner.
   - Examples of in-kind contributions include donated or reduced costs for professional services such as accountants or lawyers, equipment or

inventory, commercial space, or supplies.

- It is important to address legal liability issues with donated professional services.
- In-kind contributions are not a common method of CDBG-ED project financing. However, they may accompany the CDBG-ED financing.

For example, the CDBG-ED RLF may provide a business owner a low-cost loan and the business owner might team this with donated professional services from his/her local Chamber of Commerce.

- Pluses:
  - ~ Good way of getting low- or no-cost investment into a business;
  - ~ Typically gets community organizations involved in the business development process.
- Minuses:
  - ~ Donated materials may not be what the business needs (i.e., last year's computer equipment or 1,000 erasers when what the business really wants is 20 staplers); and
  - ~ May be insufficient to help the project get started.

3. **Purchase and Low-Cost Sale or Lease**: Under this option, the local government purchases land or property and then sells or leases it to the project at a substantially reduced cost.
   - Keep in mind that acquisition through eminent domain is limited.
   - Pluses:
     - ~ Can be a way for local governments to easily invest existing resources (i.e., land already owned by the local government);
     - ~ Can also enable the local government to help direct the location of the economic development activity by selecting the parcel or property to be sold or leased; and
     - ~ When applicable, enables the local government to use any necessary and available public means to obtain and/or clear the site.
   - Minuses:
     - ~ May have limited applicability depending upon available land and structures and the cost of those structures in a given community (i.e., it may simply be cost prohibitive for a local government to purchase such properties); and
     - ~ Requires that the local government be skilled in land and/or property acquisition and/or leasing.

3. *Credit Enhancement*

Credit enhancement makes it easier for a business to borrow funds from a private lender by making that loan more attractive to make from the lender's perspective.

This is generally done in one of two ways:

- Interest subsidies; or
- Loan guarantees.

1. **Interest Subsidies**: Under this option, the local government makes a payment to a lender which is used to buy down the interest rate to a rate which is more affordable to the business or project.

   For example, if the market interest rate is 8 percent, but the borrower can only afford the principal with interest at 5 percent, an interest subsidy payment can be made to cover the 3-percent gap (usually by making a principal reduction grant that reduces the payment to the equivalent of the larger loan at the lower interest rate).

   - Pluses:
     - ~ Makes private financing more feasible for borrowers; and
     - ~ Negates the need for the local government to do loan servicing (the lender does this).
   - Minuses:
     - ~ Functions like a grant in that there is typically no requirement for the borrower to repay the interest subsidy.

2. **Loan Guarantees**: Loan guarantees induce private lending by pledging that the lender's loan will be repaid (percentage negotiated) with the RLF funds, should the borrower default.

   - The purpose of the loan guarantee is to reduce risk to the lender and thus make them more willing to make the business loan;
   - Loan guarantees may be structured to cover 100 percent of the outstanding indebtedness on the loan or for a portion of this debt;
   - In return for the guarantee, the grantee requires the lender to relax some of their normal underwriting standards in order to address the credit needs of smaller or more "risky" businesses;

   - Pluses:
     - ~ Induces lenders to make loans to a wider variety of borrowers; and
     - ~ Does not require significant expenditure of RLF funds unless the business defaults.
   - Minuses:
     - ~ Can be very difficult to structure. It is imperative that the local government have clear guidelines on what the guarantee covers and when/how it will be paid out if a collateral default occurs;

~ If the criteria for when and how guarantees will be made are at all vague or unmonitored, it is possible that shoddy underwriting will result, particularly if a 100 percent guarantee is offered (remember that under these types of guarantees, the lender has very little risk). Consider providing a guarantee of the top 20-30 percent of a loan to discourage this, so that the lender retains some risk.

Chapter 3
NATIONAL OBJECTIVES

The CDBG program requires that each project funded, except for administration activities, must meet one of three National Objectives:

- **Benefit to Low and Moderate Income (LMI) persons;**
- **Aid in the prevention or elimination of slums or blight; OR**
- **Meet a need having a particular urgency (referred to as urgent need).**

A project that does not meet a National Objective is not in compliance with CDBG requirements and will be subject to remedial actions, including the repayment of funds.

Each of the three objectives, and the subcategories of criteria for how that objective may be met, is described in this chapter. It will explore the strategic decisions local governments can make when qualifying an eligible activity under a National Objective.

It is highly recommended that the local government download and print HUD's
"Guide to National Objectives and Eligible Activities for State CDBG Programs"

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_16362.pdf

This "Guide" will provide additional detail to assist you in determining project eligibility and compliance with the National Objective criteria.

I. Benefit to Low- and Moderate-Income Persons

The LMI National Objective is often referred to as the "primary" National Objective because the regulations require that Grantees, ***both*** State and the Local Government expend 70% of their CDBG funds to meet this Objective. This Objective is used for the large majority of economic development projects. This section covers the 3 categories that can be used to meet the LMI Objective, as well as the definition of Low- and Moderate- Income.

UNDERSTANDING WHAT "LOW- AND MODERATE- INCOME" (LMI) MEANS

- **Low-and Moderate-Income** is defined in regulation (24 CFR 5.609) as the greater of either:
  - 80% of the median family income for the county in which a CDBG project is located; or
  - 80% of the median family income for the non-metropolitan area of the State.
- **Low-Income Household/Family:** A household/family having an income equal to or less than the Section 8 very Low Income limits (50% of the area median income).
- **Moderate-Income Household/Family:** A household/family having an income equal to or less than the Section 8 Low Income limit (80% of area median income), but greater than the Section 8 Very Low Income limit (50% of area median income).

HUD regulations require that *moderate* income persons are not benefited to the exclusion of *low* income persons. This does not mean that each CDBG-ED assisted activity must involve both low- and moderate-income beneficiaries. However, it does mean that the local government's CDBG-ED program, as a whole, must primarily benefit low-income persons, and that moderate-income persons do not benefit to the exclusion of low-income persons.

These income limits change on an annual basis typically by the first of the calendar year. The income limits for Minnesota and your county can be found at the following web site:

http://www.huduser.org/portal/datasets/il.html

A. Low Mod Job Creation or Retention (LMJ-Low-Moderate Income Jobs)

Most economic development projects will fall under the LMJ National Objective.

The LMJ Objective addresses economic development projects that create or retain permanent jobs, at least 51 % of which (computed on a full-time equivalent basis) will be either **"held by"** or **"made available to"** LMI persons.

What jobs count for an economic development project?

- Only permanent jobs count; temporary jobs may not be included.
- Permanent part-time jobs are eligible but the jobs must be added together in order to calculate the full time equivalent (FTE) of the total jobs.

For example: A full time equivalent job is one that is employed 2080 hours per year. Therefore, if 2 part- time employees work 520 hours per year each and one part-time employee works 1,040 hours per year, the total full time equivalent job is one.

- Seasonal jobs are considered to be permanent only if the season is long enough for the job to be considered as the employee's principal occupation;
- Jobs indirectly created or retained (i.e., "spin off" jobs) may not be counted.
- The business to be assisted must commit to the creation of jobs and to the LMI requirement.

1. Jobs **"held by"** LMI persons:
   - Created or retained jobs are only considered to be "held by" LMI persons when the job is actually held by an LMI person.
   - A job is considered to be held by a LMI person if the person is, at the time their employment commences, a member of a family whose income falls at or below the applicable Section 8 program income limits. The *family's entire* income must be counted. This is particularly important when dealing with part-time jobs or jobs taken by students.

   The annual salary or hourly wage of the job that the person fills is irrelevant.

2. Jobs **"available to"** LMI persons:
   - Jobs that are not **"held by"** LMI persons may be claimed to be "**available to**" LMI persons only when both of the following are met:
     - The jobs do not require special skills that can only be acquired with substantial (i.e., one year or more) training or work experience, and education beyond high school is not a prerequisite to fill such jobs, unless the business agrees to hire unqualified persons and train them, and
     - The assisted business agrees to take actions to ensure that LMI persons receive "1st consideration" for filling such jobs.

     Principles involved in providing "1st consideration":

     - The business must use a hiring practice that under usual circumstances would result in over 51% of LMI persons interviewed for applicable jobs being hired;
     - The business must seriously consider a sufficient number of LMI job applicants to give reasonable opportunity to fill the position with such a person.

DEED strongly recommends that local governments use the "held by" criteria for documenting the LMI requirement. This approach is more easily documented and defensible. However, the local government can consider using the "available to" method

if they develop a <u>process</u> using agencies that pre-qualify people as LMI and the business agrees to interview these individuals.

Retained Jobs:

The assisted business must provide clear and objective evidence that permanent jobs would be lost without the assistance and that at least 51% of the jobs are LMI. For these purposes, "clear and objective" evidence includes:

- Evidence that the business has issued a notice to affected employees or made a public announcement to that effect, or
- Analysis of relevant financial records which clearly and convincingly shows that The business is likely to have to cut back employment in the near future without the planned intervention, and
- The job is held by a LMI person; or
- The job can reasonably be expected to turn over within the following 2 years and steps will be taken to ensure that the job will be filled by, or made available to LMI persons.

Verification required to document job retention:

- The business must ask each existing employee to complete the Job Information form (**Appendix D)** to verify the number of positions currently held by LMI persons at the business. If a business is only proposing to retain existing employees and not create new positions, then at a minimum, 51% of the existing employees must be qualified LMI.

The test for determining whether an employee or applicant is LMI must be made based on the person's family income status *at the time the CDBG-ED assistance is provided.* One of the most important aspects of this is that the income the person would make from the assisted job under consideration is *not included in the calculation.*

Note that, since the determination of LMI status is to be made based on income at the time the CDBG-ED assistance is provided, a person who occupies a high-paying but low-skilled job may not qualify as a LMI person in a retained job, but the same job might be filled by a LMI person if it were to be created (instead of retained) or if it were to become available to be filled through turnover by a LMI person.

For created jobs, the benefit is intended for persons who are LMI prior to being hired. For retained jobs, the family must be LMI at the time the job is retained.

B. <u>Low Mod Area Wide Benefit (LMA)</u>

The Area Wide Benefit category is an activity that is available to all the residents of a defined "service area" that is primarily residential. At least 51% of all persons living within the area must be LMI. The local government determines the "service area".

An area is considered to meet the test of being LMI if it principally benefits (51 %) of LMI persons residing in the "service area" as determined by:

- The most recently available decennial Census/American Community Survey (ACS) information, together with the Section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. This information can be found at:

  http://www.hud.gov/offices/cpd/systems/census/lowmod/ ; or

  - The completion of a current survey of the residents of the "service area" by the LG.

Example: The start up or expansion of a retail operation (i.e., grocery store or Laundromat) that provides essential goods and services to a community of 950 people, 62 % of whom are LMI based on the above information.

C. ***Low Mod Limited Clientele (LMC)***

An LMC activity is one that provides benefits to a clearly specified group of persons rather than everyone in the area. If a population is targeted to be the beneficiary of a project, the project scope must demonstrate that the benefits to be provided to that population are not available to all residents and that the targeted population meets **one** of the criteria listed below:

1. Benefit is specifically targeted to a group "presumed" to be 51% or more LMI. The **"limited clientele"** definition can be applied only to those presumed LMI groups per CDBG regulations, which include:
   - ~ Abused Children
   - ~ Homeless Persons
   - ~ Battered Spouses
   - ~ Illiterate Adults
   - Migrant Farm Workers
   - Severely Disabled Adults
   - Persons Living With Aids
   - Elderly Persons
   - ~ Persons meeting the census definition of severely disabled adults; or
2. Information on family size and income shows that 51% of the clientele is LMI; or
3. Benefits are limited to LMI; or
4. Nature and location of the activity supports the conclusion that clientele is 51% or more LMI. (e.g., a daycare center that is designed to serve residents of a public housing complex.

In contrast to the Area Benefit category, it is not the LMI concentration of the "service area" of the activity that determines whether the activity will qualify or not, but rather the actual number of LMI persons that benefit from the activity.

Examples of economic development activities that may qualify:

- ✓ A **Job training** program for low- and moderate-income persons. Activities that provide training and other employment support services when the percentage of persons assisted is less than 51 % LMI may qualify if: the proportion of total cost borne by the CDBG-ED RLF is no greater than the proportion of LMI persons assisted; and when the service assists businesses,

CDBG-ED RLF is only used in the project to pay for the job training and/or supportive services;

- ✓ **Microenterprise** activities if the owner of the business is LMI. The local government must document the income of the business owner.

Documentation to determine the LMI status of an applicant or employee

When documenting income, the income status of an individual is made at the time the CDBG-ED job is filled. This may have an effect on the retention of high-paying, unskilled jobs counting as eligible except for turnover purposes. This is because a person who occupies a high-paying but low-skilled job may not qualify as a LMI person. Whereas a LMI person may fill the job at a lower pay rate if it were created or if it became available through turnover.

The following types of information will serve as documentation:

- A self-certification, "**Job Information Form**", (**Appendix D**) signed and dated by the new or retained employee stating his/her family size and total family income. This form should include the address of the employee; or
- Referrals from an agency that has agreed to refer individuals who are determined to be LMI based on HUD's definition of LMI. These agencies must maintain records, which must be available to DEED, showing the basis upon which they determined that the person was LMI;
- Qualification of employee or application for assistance under another program with income qualification that are as restrictive as those used by the CDBG program. Examples include referrals from public housing, welfare agency, or the Workforce Investment Act (WIA) program;
- Evidence that the individual is homeless; or
- The new or retained **employee** may be **presumed** to be LMI by way of residence address if:
    - He/she resides in a Census/ACS tract/block numbering area that has a 20% poverty rate (30% poverty rate if the area includes the central business district); and the area evidences pervasive poverty and general distress; or
    - He/she resides in a Census/ACS tract/block numbering area where at least 70% of the residents are LMI.
- The assisted **business** is located in a Census/ACS tract and the job will be within the same tract, the created or retained job is presumed to be LMI if the tract:
    - Has a 20% poverty rate (30% poverty rate if the area includes the central business district); AND
    - Evidences pervasive poverty and general distress by meeting at least one of the following:

(i) All block groups in the census tract have 20% or greater poverty rates; or

(ii) The specific activity is undertaken in a block group with a 20% or greater poverty rate; or

(iii) HUD determines that the tract shows other signs of distress (e.g., crime, homelessness, deteriorated housing, etc.)

This information can be found at the following website:

http://www.hud.gov/offices/cpd/systems/census/lowmod/

As a general rule, each assisted business shall be considered to be a separate project for purposes of determining whether the activity qualifies under the job creation and retention category for meeting a National Objective. However, in certain cases, the jobs may be **aggregated** by two or more assisted businesses. The following describes those circumstances:

- When CDBG-ED funds are used to **acquire, develop, or improve a real property** (e.g., a business incubator or an industrial park), jobs may be aggregated for all of the businesses which locate on the property, provided such businesses are not otherwise assisted with CDBG-ED funds; or
- Where CDBG-ED funds are used solely to provide **technical assistance** to businesses, jobs created or retained by all of the businesses receiving such technical assistance during any one year period may be aggregated; or
- When CDBG-ED funds are used for **public facilities or improvements (infrastructure),** that will result in the creation or retention of jobs, by more than one business, the jobs created or retained by all such businesses as a result of the public facility or improvement may (and sometimes must) be aggregated. **(Chapter 5.d "Infrastructure").**

2. *Elimination of Slums and Blight*

Activities under this National Objective are carried out to address one or more of the conditions which have contributed to the deterioration of an area designated as a slum or blighted area. The focus of this Objective is a change in the physical environment of a deteriorating area. This contrasts with the LMI benefit National Objective where the goal is to ensure that funded activities benefit LMI persons.

This difference in focus has an impact on the information that is required to assess the qualifications of an activity. Under the LMI benefit National Objective, determining the number of LMI persons that actually or could potentially benefit from an activity is central to qualifying the activity. Under the Elimination of Slum and Blight National Objective, determining the extent of and physical conditions that contribute to blight is central to qualifying an activity.

There are two categories that can be used to qualify activities under this National Objective:

- Prevent or eliminate slums and blight on an ***area*** basis; or
- Prevent or eliminate slum and blight on a ***spot*** basis.

Slum Blight Area Basis (SBA)

This category covers activities that aid in the prevention or elimination of slums or blight in a designated area. Examples of *economic development activities* that qualify when they are located within the slum or blighted area include:

- Infrastructure improvements in a deteriorated area;
- A low-interest loan to a business as an inducement to locate a branch store in a redeveloping blighted area.
- Renovation and reuse of abandoned, historic buildings.

To qualify under this category, the area in which the activity occurs must be designated as slum or blighted. The following tests apply:

- The designated area in which the activity occurs must meet the definition of a slum, blighted, deteriorated or deteriorating area under State or local law;
- Additionally, the area must meet either one of the two conditions specified below:
  - Public improvements throughout the area are in a general state of deterioration; or
  - At least 25 % of the properties throughout the area exhibit one or more of the following:
    - ~ Physical deterioration of buildings/improvements;
    - ~ Abandonment of properties;
    - ~ Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;
    - ~ Significant declines in property values or abnormally low property values relative to other areas in the community; AND
    - ~ Known or suspected environmental contamination.

Documentation must be maintained on the boundaries of the area and the conditions that qualified the area at the time of its designation. The designation of an area as slum or blighted must be re-determined every 10 years for continued qualifications. Documentation must include:

- A map and a narrative describing the boundaries of the target area; and
- One of the following:
  - A letter from the applicant, signed by either the mayor/board chair or the LG's legal counsel; or
  - A council/board resolution

The above must certify that the target area meets a legal definition of slum, blighted,

deteriorated or deteriorating area under state or local law (indicate the state or local law used), and that the CDBG-ED funding will be used to alleviate conditions that contributed to the determination of slum and blight area.

Minnesota Statutes contain two definitions that can be used as the basis for this determination:

- The HRA statute, which includes redevelopment projects, definition of "blighted" area can be found at MN Stat. 469.002, subdivision 11; or
- The TIF statute defining slum and blight is found at MN Stat. 469.174

Slum Blight Spot Basis (SBS)

These are activities that eliminate specific conditions of blight or physical decay on a spot basis and are not located in a slum or blighted area. Activities under this category are limited to *acquisition, clearance, relocation, historic preservation, remediation of environmentally contaminated properties, and building rehabilitation activities.*

If CDBG-ED funds are used for *Rehabilitation* only those conditions that are detrimental to public health and safety are eligible.

If *acquisition of real property* occurs, National Objective compliance is based on the use of the property after the *acquisition* takes place. The initial determination is based on the *planned* use of the property, but the final determination is to be based on the *actual* use. However, when property is acquired for the purpose of *clearance* to remove specific conditions of blight or physical decay, the clearance is considered to be the actual use of the property, but any subsequent use made of the property following clearance must be considered to be a "change of use" under 24 CFR 570.489(j).

An example of an economic development project is the provision of CDBG-ED funds to a business to demolish a decayed structure and construct a new building on the site.

Documentation must include:

- A map indicating the location of the site; and
- Documentation that the entire building (for acquisition/demolition) or certain building conditions (for rehabilitation); and
- Show how the proposed activity will eliminate those specific conditions of blight or physical decay.

3. ***Urgent Need (URG)***

Use of the urgent need National Objective category is rare. It is designed only for activities that alleviate emergency conditions which the local government certifies.

An example is the provision of CDBG-ED funds to a business that was damaged by a flood or tornado.

Urgent need qualified activities must meet the following criteria:

- The existing conditions pose a serious and immediate threat to the health or welfare of the community;
- The existing conditions (damage to businesses or public infrastructure) are of recent origin or recently became urgent (generally, within the past 18 months); and
- The local government certifies that it is unable to finance the activity on its own, and other sources of funding (FEMA, SBA, insurance) are not available.

Choosing the Right National Objective

Local governments may have options regarding which National Objective is used for a particular activity. Some projects may qualify for more than one National Objective. For activities that meet more than one National Objective, local governments may find it useful to document compliance with all the applicable National Objectives, especially if there is some uncertainty regarding the ability of an activity to meet the chosen National Objective upon completion.

For example, local governments may have concerns that an activity qualifying on the basis of creating jobs may not meet the test that at least 51% of the jobs created will benefit LMI persons. If the activity could also qualify under the slum/blight area category, it may be best served by documenting compliance with both National Objectives. This way, if the activity does not meet the LMI job creation criteria the local government can switch the activity to the slum/blight area National Objective rather than have the activity in noncompliance with CDBG rules.

Documenting National Objectives

Local governments must maintain records that projects meet one of the National Objectives. The records depend on the National Objective category. Detailed information is provided in **Chapter 10, Recordkeeping** of this manual.

The timing of documentation for activities is an important consideration. Compliance with National Objectives can be documented upfront for a number of the categories. For example, documentation for the following National Objectives can be established upfront:

- The LMI area benefit;
- Both Area Basis and Spot Basis; and
- Urgent Need

Some National Objectives must be documented over time.

- The LMI Jobs requirement that 51 % of the jobs will be "made available to" or "held by" LMI persons will require collecting documentation demonstrating compliance until completion of the project.

Chapter 4
PUBLIC BENEFIT STANDARDS (PBS)

When CDBG-ED funds are used for economic development projects for the purpose of creating/ retaining jobs for LMI persons, or to assist businesses that provide essential goods and services in a predominately LMI community, the local government **must** ensure that the project meets a minimum level of public benefit. The ***Public Benefit Standard*** is based on a "cost per job" calculation as detailed below. The use of these standards is **mandatory**.

THE PUBLIC BENEFIT STANDARDS ARE NOT THE SAME AS THE NATIONAL OBJECTIVE REQUIREMENT.

The PBS is separate from the National Objective requirement that 51% of the jobs actually created or retained be taken by LMI persons. The same factors (jobs and area served) are involved in the criteria for both requirements, however they are used differently. The PBS involves the total number of jobs created or retained without regard to how many (if any) benefit LMI persons. In contrast, the use of jobs for meeting a National Objective is determined by the percentage of the created or retained jobs that benefit LMI income persons, and only incidentally involves the total number of jobs. The determination of compliance with the LMI Jobs National Objective is based on the jobs that are actually created or retained and who actually benefits from those jobs. The focus for determining compliance for Public Benefit purposes lies in the number of jobs expected to be create or retained.

Similarly, for the Area Benefit factor, compliance with National Objectives is based on the percentage of LMI residents served, while public benefit is determined based on the number of LMI persons served.

Projects Involving Job Creation

In the case of job creation/retention projects, the Public Benefit Standards are really a "cost per job" calculation used to determine if the CDBG financial assistance per job created/retained is appropriate.

The "CDBG-ED cost per job" is calculated by dividing:
The total dollar amount of CDBG-ED funds to be spent for the activity, ***by***
The total number of jobs to be created/retained by the assisted business.

There are two levels of standards:

1. **Individual Benefit:** The individual benefit is used to determine PBS for a **single** business. The maximum amount of the CDBG-ED assistance cannot exceed **$50,000** for each job to be created/retained by the business.

2. **Aggregate Benefit**: The local government's **total** CDBG-ED financial assistance portfolio cannot exceed **$35,000** of CDBG-ED funds per job. This includes all jobs either created or retained or both.

   As with the individual activity can both create or retain jobs AND provide goods or service to residents of an area, the LG may elect to apply either of the aggregate standards to the project. However, only one standard shall be used for each such activity. That is, if the LG elects to use the Area Wide benefit, any jobs created or retained by the project

are not to be counted for purposes of applying the aggregate standard.

- The following activities may be excluded from the aggregate standards:
  - Jobs provided exclusively for unemployed persons or participants of WIA, JOBS, or TANF programs;
  - Jobs provided predominantly for residents of public or Indian housing units;
  - Jobs provided predominantly for homeless persons;
  - Jobs provided predominantly for low-skilled, LMI persons and the business agrees to provide clear opportunities for promotion and economic advancement (e.g., provision of training);
  - Jobs provided predominantly for persons residing in a census tract with at least 20% of the residents in poverty;
  - Assistance provided to businesses that operate in a census tract with at least 20% of the residents in poverty;
  - Activities that stabilize or revitalize a neighborhood that has at least 70 percent LMI residents.

Both the individual and aggregate standards are to be applied based on the number of jobs to be created or retained or to the number of persons residing the area served (as applicable), the business application is approved by the local government and prior to any assistance being provided. This is because there is always the possibility that a project might not proceed as planned, and for the purpose of this particular requirement, the business should only be held to the conditions that prevailed at the time the assistance was approved/provided. Nevertheless, the LG must keep records that show how it performed against the Public Service Standards based on actual jobs and LMI persons served. When the actual results consistently fall substantially below what is expected, the LG is expected to make adjustments in how it conducts its front end assessments for complying with the PBS for future projects.

Projects Involving Essential Goods and Services

For projects involving assistance to local businesses that provide essential goods and services in **predominantly LMI** communities, the Public Benefit is calculated as the cost per person benefitted. These projects must qualify as an **"area wide"** LMI benefit. This means the area served must consist of at least 51% LMI persons and the cost per LMI person residing in the area served by the assisted business cannot exceed $350, except in a census tract with at least 20% poverty or in a 70% LMI service area. In a 20% poverty area or 70% LMI service area, the cost per LMI resident cannot exceed $1,000.

- When CDBG-ED assistance is provided to **a business** that provides essential goods and services to a defined area that serves the LMI population, the amount per person benefitting cannot exceed $1,000/LMI person (i.e., grocery store, dry cleaners, other retail operations)
- The maximum amount of the local governments total CDBG-ED financial assistance

portfolio provided to businesses that provide goods/services to residents of an area cannot exceed **$350** CDBG-ED funds/LMI resident of that area. Such projects qualify as an Area Wide LMI benefit (National Objective).

(See Chapter 3, National Objectives for more information on "area wide" benefit.)

If the activity is limited to *job training*, the jobs assisted with CDBG-ED funds are considered as jobs created or retained when applying either the individual or the aggregate standards.

The local government may elect to apply the standards to the creation/retention of jobs OR to the provision of goods and services, but cannot count an activity under both standards; and

If an activity both creates/retains jobs and provides goods/services to residents of an area, the activity is ineligible only if it fails both standards.

See Chapter 5.d. "Infrastructure" for specific information on the application of the Public Benefit Standards as they apply to Infrastructure.

Chapter 5
ELIGIBLE ECONOMIC DEVELOPMENT ACTIVITIES

For any given economic development project, how the deal is structured (who pays for what, and who carries what out) may be the biggest determinant to how the activity qualifies as eligible for CDBG-ED funding. As will be discussed below, how the deal is structured, and which activity (ies) the funds are used for, affects whether or not the activity is subject to the Public Benefit Standards and Underwriting Guidelines.

This chapter also describes what is possible under the statute and the regulations. It is important for the local government administering the RLF to understand what is and is not allowed under the CDBG-ED program. An economic development project often involves a number of different activities that could be assisted in lieu of the specific assistance requested by a business. Consider, for example, a business that wants to expand and has requested financial assistance to pay for the construction of a building. It may be that the business needs to purchase land for the expansion or might be planning to pay to have the street widened or otherwise improved to support truck traffic. Either of these needs could be met with CDBG funds. This sort of assessment of alternative activities might also help determine whether Davis-Bacon would apply to the form of assistance being contemplated.

Providing direct financial assistance to a business may be the most common use of CDBG-ED funds to promote economic development, but it certainly is not the only way. Technical assistance, training, provision of infrastructure, and microenterprise assistance are just a few of the other statutory eligibility categories under which economic development activities can be carried out. Even within the realm of direct financial assistance, there can be loans, interest rate subsidies, participation loans, loan loss reserve funds, credit enhancements, third-party guarantees, etc.

As outlined in HUD's Guide to Eligible Activities and National Objectives and this chapter, the local government should take several key steps prior to funding any economic development activity. These steps include:

- Determine if the proposed activity is included in the list of eligible activities;
- Determine if the proposed activity falls within a category of explicitly ineligible activities; AND
- Determine if the proposed activity can meet one of the national objectives;

Determining the category of eligible activities under which an activity falls is important. The regulations and statutes place different requirements and stipulations on different categories. Additionally, the category of eligibility may dictate the costs that are eligible, the national objective under which the activity falls, and the rules that are triggered.

This chapter outlines those activities that are eligible for economic development assistance.

Chapter 5.a. Administration

Up to $5,000 of the RLF can be used for administrative costs, however, only to hire a consultant

for the application review, processing and servicing of individual projects. Fund from the RLF can be used for these costs provided:

1. The costs are reasonable for the services provided and are in accordance with OMB Circular A-87, 24 CFR Part 85, or 24 CFR Part 570.503, and do not exceed the amount authorized.

2. The local government has followed a state approved procurement process for the hiring of the consultant and has entered into a written agreement with the consultant.

In any case, the Local Government is responsible for ensuring that the CDBG-ED RLF's are used in a manner compliant with program requirements. Thus, they should assess the capacity of the consultant before selecting such to administer and/or implement the project. In addition, the Grantee is directly responsible for all environmental review requirements and for reporting to DEED.

Administrative costs must be supported by detailed timesheets and paid invoices that must be kept in the LG's RLF files.

Chapter 5.b.
Business Incubators

Incubators are multi-tenant buildings that provide affordable, flexible space along with a variety of office and professional services typically to small and/or new businesses. Incubators are different from other types of commercial and industrial facilities in that their purpose is to create an atmosphere conducive to the creation and growth of fledgling businesses. They also offer access to business and technical assistance provided through in-house expertise and/or a network of community resources.

CDBG-ED funds can be provided either to the developer or operator of an incubator, or to one or more of the businesses located within the incubator, as long as the activity is eligible and meets one of the National Objectives.

Eligible Activities for Incubators

A wide range of activities that pertain to the development and operation of an incubator or to a business within an incubator are eligible. Examples of these types of activities are listed below:

- For "hard costs" associated with the development, rehabilitation or property improvement of a building or the actual construction of a building to house the incubator. This can include:
    - acquisition of land and buildings;
    - architectural, engineering and design costs for construction or rehabilitation of an incubator;
    - construction of a new incubator building;
    - demolition of existing buildings to clear land for an incubator

- rehabilitation, preservation, or renovation of existing buildings for use as incubators;
- public improvements integral to an incubator including curbs, gutters, water/sewer improvements, street improvements, and lighting.

- For "soft costs" associated with the developer of the incubator or the businesses located within the incubator, including:
  - development of feasibility studies, business assistance strategies, market assessments,

  and tenant selection plans;
  - For the purchase of equipment for the incubator or for a business located within the incubator;
  - Technical assistance;

The ***Public Benefit Standards*** (**Chapter 4**) apply to the above activities.

If the local government assists individual businesses located within the incubator, it may be undertaken as a Microenterprise assistance activity, if so qualified. **(Chapter 5.f.)** Direct assistance to an individual business is not subject to the ***Public Benefit Standards.*** If a business does not qualify as a Microenterprise, the LG can provide assistance under "**Direct Financial Assistance to Businesses" (Chapter 8**.c.).

Documenting a National Objective

CDBG-ED funded development of an incubator or assistance to an individual business within the incubator is usually documented under the LMI job creation/retention National Objective or the LMI Limited Clientele National Objective, if the business qualifies as a microenterprise. It is possible that the development of an incubator could fall under the Slum and Blight National Objective, although the developer would need to demonstrate how the incubator helped address conditions that contributed to the decline of the area. Because of the nature and function of incubators and the businesses within them, it is highly unlikely that an activity would ever meet the urgent needs objective.

Low-and moderate–income persons benefit:

As with any other business assistance, this objective may be met either by the creation/retention of jobs, or by the provision of services to an area containing a sufficient concentration of low-and moderate–income residents.

When CDBG-ED assistance is provided directly to an individual business in an incubator, each business must meet the objective independently from the other business(es) in the incubator, unless that business has been funded through the Microenterprise activity.

When assistance is provided to a developer or operator of an incubator, compliance with the job creation/retention requirement can be met by aggregating (counting the jobs created by all of the businesses located within the incubator, unless the business was otherwise assisted with CDBG-ED funds).

- Businesses "occupying" the incubator are:
  - Those businesses that occupy space in the incubator at the time the CDBG-ED assistance is provided; and
  - Any other firms that move into the incubator after the assistance has been provided until enough firms are included in this count so that the total amount of space these firms occupy (or occupied) is equal to the total square footage of space in the incubator.
- Count the jobs created by each of the businesses described above as follows:
  - If those businesses are already housed in the facility when the assistance is provided, count the jobs created for ***three*** years from the date of the assistance OR until the business moves out of the incubator, whichever comes first.
  - For those businesses that enter the facility subsequent to the time of the provision of assistance, count the jobs created over a ***three*** year period from the date of their initial occupancy OR until the business moves out of the incubator, whichever comes first.

  In counting jobs, include any jobs created or retained by the incubator and the business, but exclude any positions held by the business owners and any other having a substantial equity in the business.

To help ensure that each business fulfills its responsibilities for meeting its share of the low/mod job requirements and for maintaining the necessary records and providing periodic reports, the agreement between the operator of the incubator and the business must specify these requirements. In addition, the agreement should describe the financial penalties or lease termination if the requirements are not met.

Slum/Blight:

The Slum/Blight National Objective may be used to if the business incubator meets one of the following:

- If the incubator is or will be in a slum or blighted area and if the assistance is for an activity which addresses at least one of the conditions which qualified the area as such (e.g., rehabilitation of a blighted building); or
- If the incubator is located outside of a slum or blighted area, if the assistance is for demolition, rehabilitation, or historic preservation designed to eliminate specific conditions of blight or physical decay on a spot basis.

Under this criterion, rehabilitation is limited to the extent necessary to eliminate specific conditions of blight or physical decay on a Spot Basis or to the extent necessary to eliminate specific conditions detrimental to the public health and safety. Relocation and property acquisition activities may also be assisted if they are an integral part of the demolition, rehabilitation or historic preservation activities.

Evaluation Criteria for Business Incubators

It is suggested that the LG use the following criteria when evaluating proposals for the seed funding of a business incubator:

- Evidence of demand for incubator services;
- Qualified management;
- Broad-based support from community-based organizations and businesses;
- Cluster concentration;
- Ability to leverage resources;
- A plan for self-sufficiency;
- Solid growth potential;
- An "economic base" sector that serves markets outside the region;
- A feasibility study and business plan; and
- Evidence of adequate support, since incubators often provide more services than the rents support.

The Incubator Development Process

When proposing to use CDBG-ED funds the following information provides a suggested process for the development of an Incubator.

The developer must first prepare a feasibility study to determine the need for an incubator facility.
Assuming that the basic CDBG-ED threshold criteria are met and the feasibility study yields a "go," the process of developing the incubator can commence. This process will necessitate that the following steps be taken:

- Locate a site for construction of new building or rehabilitation of existing building.
- Assemble a development team that includes:
  - Project sponsor;
  - Architect;
  - Attorney;
  - Engineer;
  - Contractor;
  - Financial consultant; and
  - Marketing consultant.
- Prepare financials, including pro formas, for the development phase and subsequent operational phase.
- Prepare marketing plan.
- Prepare management plan and ensure the availability of qualified staff.
- Identify project financing sources for both construction and permanent debt.
- Engage in design phase and environmental review.
- Address general developmental issues (e.g., zoning, utilities, curb cuts, etc.).
- Finalize construction contract with general contractor.
- Commence marketing phase and obtain preconstruction lease commitments, whenever feasible.

The National Business Incubator Association (NBIA) is a source of information and technical assistance. Potential incubator developers and CDBG-ED grantees should refer to its website at: www.nbia.org.

Chapter 5.c.
Direct Financial Assistance to a Business

CDBG-ED funds can be used to provide direct financial assistance to a **private, for profit** business in the form of loans, forgivable loans, loan guarantees, interest subsidies, or other assistance as defined by the local government. etc. The LG has much flexibility in determining what form(s) of financing they want to be available to businesses. (Chapter 2, Financing Economic Development Projects).

This chapter discusses the types of businesses and the activities that are eligible for these funds.

Eligible Activities:

1. Project based land acquisition
   - The local government may provide financial assistance to a business to assist with the purchase of real property (land and or building) for a commercial or industrial purpose and to create jobs.
   - Ineligible: Acquisition of property that is then expected to be donated or sold at less than the purchase price to the same entity from which the property was purchased is not an eligible activity since it is not considered to involve a legitimate change of ownership.
2. Construction of a new building or renovations to an existing building;
3. Purchase of machinery and equipment;
4. Site Improvements:
   - Demolition of buildings and improvements;
   - Removal of demolition products, rubble, and other debris;
5. Clean up or site clearance for the project, such as assistance with the removal of environmental contaminants or treatment of such contaminants to render them harmless. Example: Using CDBG-ED funds to clear an environmentally contaminated (brownfield) site on which a new business will locate that will create jobs, of which at least 51 percent will benefit LMI people.
6. Railroad spurs or similar extensions.
7. Working capital (receivable financing, purchase inventory, commercial supplies, etc.);

Eligible Businesses:

1. Retail operations;
2. Commercial facilities such as hotels, shipping distribution centers, or office buildings;
3. Industrial/manufacturing operations; and
4. Private, for profit businesses.

The ***Underwriting Guidelines*** (Chapter 7) and the ***Public Benefit Standards*** (Chapter 4) apply to <u>any</u> Direct Financial Assistance provided to a business.

Documenting a National Objective

Financial assistance to businesses typically qualifies under the Benefit to LMI Persons National Objective. As such, at least 51% of the full time job positions created or retained will be either "**made available to**" or actually "**held by**" persons whose annual family incomes are at or below 80% of the jurisdiction's county median income (Chapter 3 - National Objectives).

Financial assistance to businesses rarely qualifies under the Slum and Blight or Urgent Need

National Objectives.

Chapter 5.d.
Infrastructure

CDBG-ED funds may be used to provide publicly owned infrastructure to serve new or expanding businesses as part of a bigger economic development project. In such projects, the business benefitting from the infrastructure agrees to locate or expand in the community and agrees to create jobs principally benefitting LMI persons. In addition, some private utility activities are eligible for these funds.

Eligible Infrastructure Activities

Public Facilities

Though underwriting is not required for businesses benefitting from the public infrastructure improvements, the local government is strongly encouraged to review business plans, financial statements, hiring plans, etc. to demonstrate viability of the business(es). All other CDBG-ED requirements contained in this manual apply to public facilities projects.

The acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements and are carried out by the local government who is the **owner** of the facility.

Eligible types of facilities and improvements include:

- Infrastructure improvements (construction or installation) including, but not limited to:
    - Street and road improvements;
    - Sidewalk improvements;
    - Sewer and water improvements;
    - Flood and drainage improvements;
    - Parking facilities;
    - Solid waste facilities; and
    - Bridges

Ineligible Activities:

- The maintenance, repair and operation of public facilities;
- Costs of purchasing construction equipment;
- Government buildings;

Legal Agreement:

- Though the CDBG-ED funds do not flow directly to the business, the business is

benefitted by the public facilities project, therefore the business must enter into an agreement with the local government. At a minimum, the business must agree to the following:

- To carry out the expansion of its business facility;
- To create and maintain jobs having the required LMI benefit;
- To repay to the local government the amount of the CDBG-ED funds provided should the business fail to meet the requirements of the agreement;
  - ~ Repayment amount can be pro-rated if the job commitment is not achieved.
  - ~ The business must repay the total amount if the LMI requirement is not achieved.

Special Assessments

Special assessments are used to recover the capital costs of a public improvement through a fee levied or a lien filed against a parcel of real estate, either as:

- o A direct result of the benefit derived from the installation of a public improvement; or
- o A one-time charge made as a condition of access to an improvement.

Special assessment activities under CDBG-ED **can** be used to:

- o Recover capital costs of a public improvement

  - To recover CDBG-ED funds only against properties owned and occupied by non-LMI persons (and such assessments are program income); or

  - To recover non-CDBG-ED sources of financing, provided that CDBG-ED funds are used to pay the special assessment on behalf of all properties owned and occupied by LMI persons. (CDBG-ED funds do not have to be used to pay special assessments on behalf of properties owned/occupied by moderate-income residents if the local government does not have sufficient CDBG-ED funds to pay the assessments on behalf of all the LMI owner/occupants).

and/or

- o Pay for special assessments for public improvements not initially assisted with CDBG-ED Funds provided:

  - The installation of the public improvements was undertaken in compliance with all applicable requirements (e.g., environmental, citizen participation, and Davis-Bacon); and

  - The CDBG-ED funds are used to pay the special assessment on behalf of all LMI owner occupants (or for low-income owner/occupants only if there are not

sufficient funds to pay for all LMI owner/occupants).

Special assessments **cannot** be used to pay for:

- Because special assessments are not taxes the establishment of the value of real estate for the purpose of any type of taxes.
- Periodic charges based on the use of a public improvement, such as water or sewer user charges, even if the charges include the recovery of all or some portion of the capital costs of the public improvement.

Privately Owned Utilities

Privately owned utilities are those owned by a private company rather than a public agency. The rehabilitation or construction of these utilities is eligible under certain conditions.

- To acquire, construct, reconstruct, rehabilitate, and install the distribution lines and related facilities for privately owned utilities;
- A privately owned utility refers to service that is publicly regulated and is provided through the use of physical distribution lines to private properties; and
- Utilities include, but are not limited to, electricity, telephone, water, sewer, natural gas, and cable television.
- Privately-owned utility activities may qualify under all three of the national objectives, depending on the situation. The same requirements for documentation as for public facilities apply.

Documenting the National Objective and Public Benefit Standards

The typical National Objective for an economic development project where funds are used for infrastructure is the Low Moderate Jobs objective. If more than one business will be served by the infrastructure, the 51% LMI job requirement may be met by aggregating the jobs created or retained by affected businesses under the following criteria:

- If the CDBG-ED cost per job created or retained is **less** than $10,000 per full-time-equivalent (FTE) employee, the local government must ensure that 51 % of the jobs created or retained **by the businesses for which the project is principally undertaken** are made available to or held by LMI persons; and

For example, CDBG-ED funds are used to widen and upgrade an access road

to meet the needs of a manufacturing plant expansion that will create 175 new jobs. Other businesses located along or near the road may enjoy improved transportation access, but they did not request the improvements, have no known expansion plans, and have not committed to increase their employment levels.

- When the CDBG-ED cost per FTE job expected to be created or retained is $10,000 or more, the LG must ensure that 51% of **all jobs** created or retained by **all businesses benefitting from the infrastructure improvement** must be tracked for the purpose area are available to or held by LMI persons. For this purpose the jobs may be aggregated. This includes all businesses which, as a result of the project, locate or expand in the service area between the date the activity is awarded and one and one year after completion of the improvement. In addition, the activity must comply with the Public Benefit Standards.

  For example: A city needs to increase the capacity of its sewage treatment plant by 50% to accommodate the expansion of a poultry processing plant. The city agrees to use funds from its RLF to assist with expansion of the sewage treatment facility at a cost of $11,200 per new poultry plant job. Over the next 12 months, 4 new businesses decide to locate in town, because the city now has sufficient sewage treatment capacity to handle their effluent. ***The city must aggregate job creation figures for the poultry plant plus the 4 new businesses.***

The nature of job creation public facility activities means that local government must carefully plan these projects and track the businesses and jobs that result. Specifically, it is important to determine the amount of RLF funds that will be spent per job created/retained. Some community's limit the amount to less than $10,000 to keep things simple and minimize tracking to only the business(es) for which the improvement is undertaken (vs. any others that benefit within one year after completion.

The local government must assure that it has appropriate and enforceable legal documents in place running with the land and/or with each business that benefits from the improvement. This is particularly important if the cost per job will be more than $10,000 because national objective documentation must be obtained and maintained even if the businesses moved in after the facility/improvement was completed (up to one year).

Chapter 5.e.

Job Training

Job training can play an important role in a community's economic development program. It can increase the impacts of other economic development efforts, such as financial assistance to a business. The RLF can be used to provide financial assistance to a business for job training needs in one of several ways.

Eligible CDBG-ED Job Training Activities

- Training unskilled, LMI persons for specific jobs for which they have been hired and which require skill levels beyond what they now have;
- Training a pool of LMI prospective employees for specific jobs being created as a result of a CDBG funded industrial expansion, where the employer agrees to give 1st consideration to filling the new positions with people from this pool;
- Re-training existing employees of a business as part of a project which qualifies as retention of jobs; and
- Customized training to new employees of a business.

Types of Job Training Programs

A job training program's success depends upon whether or not it meets the needs of the people it serves. Many models have proven successful when used in the correct context. Some examples of job training programs are:

- Subsidized employment – providing financial assistance to a business to hire and provide on-the-job training to disadvantaged individuals.
- On-the-job training – financial assistance to pay for the training program.

The Job Training program must be linked to a specific position, i.e., this eligibility category is not an opportunity to set up a generic job training program, but rather is for training related to specific jobs.

National Objective

In certain circumstances job training activities can be considered to meet the LMI Limited Clientele objective even when the percentage of persons assisted is less than the 51% threshold. The special circumstances under which this is allowed are:

- When the only use of the CDBG-ED funds in the project is for job training; and
- The proportion of the total cost of the job training to be paid with CDBG-ED funds is not greater than the proportion of the total number of assisted LMI persons.

Chapter 5.f.
Microenterprise Development

Microenterprises are the smallest, least visible portion of the business world, but are one of the

major job generators in our economy. However, they range in type and capacity. They include a range of service providers and retail businesses. Some examples are the home- based daycare provider, the roving automobile mechanic, or the hairdresser who serves the neighborhood. Some microenterprise businesses are operated part-time, by owners who use the extra income to supplement wage and salary employment.

Definition of Microenterprise

The CDBG regulations provide the following definitions:

- A "microenterprise" is a commercial **for-profit** enterprise that has five or fewer employees, one or more of whom owns the enterprise.
- "Persons developing microenterprises" means persons who have expressed interests in and who are, or after an initial screening process are expected to be, actively working toward developing businesses, each of which is expected to be a microenterprise at the time it is formed.

Note: This definition differs from SBA's definition.

Eligible Activities

Eligible microenterprise activities include providing:

- **Direct Financial Assistance**: Loans for the establishment, stabilization and expansion of microenterprises;
- **Training and Technical Assistance:** For owners of microenterprises and persons developing microenterprises including business assessment, advice and support relating to the development of business plans, management development, cash flow, customer service, competitive analysis, securing funding, recordkeeping and marketing;
- **Support Services:** In conjunction with one of the above, general support to owners of microenterprises and persons developing microenterprises including peer support programs, counseling, childcare, or transportation.

The CDBG-ED program does not cap the amount of assistance that may be provided to a microenterprise. However, many recipients limit the level of microenterprise financial assistance in order to target small startups, minimize the recipient's financial exposure, and help the assisted business to maintain a reasonable debt level.

Given their size and level of development, loans to microenterprises are usually quite small, ranging from $500 to $20,000. The small size of the loans, combined with the cost of large amounts of technical assistance, means that such programs usually require ongoing public subsidy.

Microenterprise activities are not subject to the ***Public Benefit Standards*** ***if*** **they are maintained as a separate program, apart from the general RLF requirements.**

- The CDBG regulations specifically state that a RLF program open to both microenterprises and non-microenterprises cannot exempt a microenterprise applicant from the *Public Benefit* tests. For this reason, **a microenterprise loan fund should be**

kept separate from the general RLF program.

- Depending upon the program type selected by the recipient, underwriting criteria must be established. (Chapter 7-Underwriting)

Many administrators of RLF's **require** that the microenterprise borrower obtain **Technical Assistance** on issues such as budgeting, marketing, or business planning in conjunction with the microloan in order to help alleviate risk and assure success.

- Training and technical assistance are critical for microenterprises, many of which are startup concerns requiring intensive business planning, basic accounting, and market research assistance.
- This makes microenterprise development a very labor intensive and expensive strategy.
- Since there are programs already in place to provide counseling or training to small businesses, projects should incorporate these existing services whenever possible and not attempt to create new or duplicative programs. Training should be provided by approved or accredited providers, such as the Small Business Development Centers.

Documenting National Objective for Microenterprise Activities

There is substantial flexibility in how CDBG-ED funded microenterprise activities can meet a National Objective. The most typical approaches are:

- **Limited Clientele** (LMI Jobs). Microenterprise assistance can qualify under these criteria if the business owner is LMI. This eliminates the need to track job creation or retention. In certifying LMI status, the LG need look only at the owner's income, not that of any employees. Furthermore, that person is presumed to continue to qualify as LMI for up to a 3-year period after the CDBG-ED assistance is provided. Note, however, that in order to qualify as an eligible microenterprise activity, the business must still meet the definition of "microenterprise" each time new financing is provided.
- **LMI Job Creation/Retention.** If the owner is not LMI, the recipient can still provide microenterprise assistance by meeting these criteria.

See Chapter 3 for additional information on National Objectives.

Chapter 5.f.
Technical Assistance (TA)

Technical assistance is among the most frequently cited needs by small business owners, bankers, and ED practitioners. There are two types of Technical Assistance eligible to be paid for with CDBG-ED RLF funds:

1. For training and or technical assistance to the *local government* ***to increase its capacity to carry out eligible economic development activities.*** This could include such topics as

RLF administration, HUD-CDBG training, NDC training, etc. This can include payment for tuition, training, and travel expenses.

Prior to undertaking the technical assistance, the local government must determine:

- The eligibility of the activity for which the capacity is to be built; and
- Whether it is likely that a national objective will be met once the TA has been received. This is especially important because the TA will only meet a national objective IF the economic development activity will meet a national objective.

2. For the provision of technical assistance and/or training directly to *businesses* on topics such as business planning or accounting. Assistance to a business can range from general help with business planning to specialized assistance in creating an Internet site for online sales. Whatever its nature, good TA can enable entrepreneurs to recognize and address the inherent operating and financial risks of owning and managing a business.

   The scope and intensity of the assistance will depend heavily upon the business owner's level of business experience and the specific situation. For example, startup businesses may require assistance with business planning and accounting systems, while existing firms might need help with quality improvement or facility design (i.e., managing cash flow). TA programs must be tailored to specific needs and should utilize professionals with solid industry experience and an ability to assess the critical problems within any business.

   Furthermore, TA usually works hand-in-hand with financial assistance because:

   - There is a strong incentive for a business owner to use technical assistance productively if access to financing is made contingent upon receiving up-front and/or continuing TA;
   - Timely TA can help prevent a business loan from going into default.

   Technical Assistance to a business can be done in a number of ways:

   - Among the most common sources of TA are local nonprofit agencies and community development corporations, private-sector professionals willing to discount/donate their services, and the service programs of the U.S. Small Business Administration (www.sba.gov);
   - Hiring a contractor;
   - Granting funds to an organization such as community college or regional planning organization to allow them to provide the TA.

Chapter 6
Ineligible CDBG-ED Activities

The general rule in the CDBG-ED program is that any activity not stated in the HCDA should be considered ineligible.

However, the following activities are addressed in CDBG rules and may not be assisted with CDBG funds under any circumstance:

- ***Buildings or portions thereof used for the general conduct of government.***
- ***General Government Expenses.***
- ***General promotion of the community as a whole.***
- ***Political Activities.*** CDBG funds may not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration.
- ***Operating and maintenance expenses.*** The general rule is that any expense associated with repairing, operating, or maintaining public facilities, improvements, and services.
- ***Assistance to professional sports teams.***
- ***Assistance to privately owned recreational facilities that serve predominantly a higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to LMI persons;***
- ***Acquisition of land for which the specific proposed use has not yet been identified (i.e. spec building or land banking);***
- ***Projects that do not meet a national objective.***

The following activities are not addressed as ineligible in statute, but it is strongly recommended that they not be eligible"

- ***Refinancing*** *of existing debt;*

Chapter 7
UNDERWRITING/CREDIT ANALYSIS

Underwriting is associated with risk. It is the disciplined process an analyst pursues in determining risk, in establishing procedures which enable a lender or investor to take only "reasonable" risks, and in evaluating rewards so that they are commensurate with the risks incurred. In addition to the financial underwriting of a publicly funded loan to a business, the reviewer must also consider social factors, such as job creation.

This chapter will provide information on CDBG-ED underwriting criteria as well as a brief study on credit analysis.

Public vs. Private Underwriting

A **private underwriter** has a clear goal. He/she has a fiduciary responsibility to maximize returns (for a given risk level) and, if employed by a corporation, maximize shareholder value. Although the private lender may have other legitimate concerns (development of distressed areas, job creation, entrepreneurship, etc.), these concerns typically do not materially compromise his/her fiduciary obligations. Moreover, the private lender has only one source of return, namely repayment from a loan transaction.

Public underwriters have multiple goals. Not only must the underwriter satisfy criteria concerning social goals (job creation, national objective, Davis-Bacon, etc.), the public underwriter also has a financial responsibility to utilize public funds wisely. The public lender can incur more risk and accept less return on investment than the private lender since its source funding is interested as much in the social benefits of a loan program as a return on investment and preservation of capital.

The return to the public lender is multiple. In addition to principal and interest payments, the public lender can collect various taxes (property, wage, sales, business license, etc.), depending on the local tax structure. Accordingly, the total return to the public lender on a transaction with a relatively low interest rate may be enhanced significantly by a loan which generates increased investments, jobs, and business activities and thus increased tax revenues.

Public lenders should understand their niche—to be compatible with conventional lenders by providing loans that conventional lenders would not accept, not to compete with or displace them. Public lenders should be prepared to take on more risk than conventional lenders, but that additional risk should be reasonable and related to the public purpose the funds are intended to accomplish.

In general, there are 2 basic types of underwriting – Business Loans and Real Estate Transactions. They are analyzed differently. Both will be discussed later in this chapter. However, before general Underwriting criteria are discussed for each of these areas, the CDBG regulatory requirement will be explained.

HUD regulations provide guidelines for financial analysis and public benefit standards. These guidelines are applicable to projects that are funded with CDBG-ED funds. The financial guidelines and objectives are voluntary, but are recommended as a "best practice" and are used by DEED to evaluate projects. The Public Benefit Standards are **mandatory** (Chapter 4, Public Benefit Standards).

Together, these standards and guidelines require LG's to determine reasonable public assistance and benefit based on general cost principles and specific program standards.

HUD's "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements" which are known as "Underwriting Guidelines" are designed to assist the LG to select economic development projects that are financially viable, have a need for the financing and will result in the most effective use of CDBG-ED funds. The use of these guidelines is **voluntary**; however they are recommended as a "**best practice"** and are described below. If the local government chooses not to use these guidelines they must development their own criteria. This following criterion outlines the 6 objectives for economic development underwriting.

Note: these guidelines do not apply to administration, public facilities or microenterprises activities.

1. **Project Costs are Reasonable**

A breakdown of all costs (including working capital) associated with the project should be evaluated to determine the reasonableness of each cost. This will help to avoid providing too much or too little CDBR-ED assistance for the proposed project.

If the budget is found to be overstated, there is probably no need for the loan. Conversely, if the budget is understated, the quality of the project may be adversely affected which could jeopardize the success of the business. In extreme cases, the project may go unfinished or fail.

The LG can control these risks in the following ways:

- Receive quotes from independent, third parties for construction, as well as machinery and equipment costs;
- Compare the proposal with costs of comparable projects;
- Use guaranteed contracts, performance bonds, or letters of credit; and
- Use retainages for contractor's fee, developer's fee or leasing reserve.

2. **All Sources are Committed**

The LG wants to avoid the risk of approving and disbursing funds to fund a portion of the project without sufficient funds from other sources to complete the project. The LG should first, review all proposed sources of financing necessary to carry out the project to determine if the project is ready to proceed. Prior to the commitment of the RLF funds, the LG should receive letters of commitment from other lenders, equity partners, etc. that will be participating in the project financing affirming that the funds are available.

Before the RLF funds are disbursed, the LG should require closing documents from other lenders.

3. **CDBG-ED Funds are Not Substituted for Non-Federal Funds**

The LG should clearly establish that there is a need for the loan. Begin by reviewing the project to ensure that the RLF will not be used to substantially reduce the amount of non-

CDBG-ED financial support. The LG should assure that all other available financing, whether it is private or other public (local, Initiative Foundation, Regional Development Organization, SBA, etc.) has been maximized. To determine that the assistance is needed, the LG should conduct a financial underwriting analysis, including reviews of appropriate projections of revenues, expenses, debt service and returns on equity investments. The extent of this review should be appropriate for the size and complexity of the project and should use industry standards, taking into account any unique factors of the project such as risk and location.

Historically, public lenders have established the need for public investment if a project has one or two types of funding gaps:

- Financing gap; or
- Rate of return (ROR) gap.

Financing Gap—A financing gap is determined by calculating the amount of debt the project can support, and computing the amount of equity the project can generate or the owner has available. A financing gap is determined as follows:

Step 1: Determine the budget.
Step 2: Calculate the amount of debt the project can support.
Step 3: Compute the amount of equity the project can generate or the owner has available.

- ~ If the budget is greater than/equal to the sum of debt plus equity, then there is a financial gap. The loan is needed.
- ~ If the budget is less than the sum of debt plus equity, there is no financing gap and, therefore, there is no need for the loan.

The concept sounds complicated but is quite simple. Assume you contract to buy a house for $100,000. You go to your lender who will loan you $80,000 based on your income. You have $12,000 in equity. Since your budget of $100,000 (ignoring closing costs for simplicity) is greater than the sum of debt and equity ($92,000), the transaction cannot occur since there is a financing gap. If you access an additional $8,000, you can complete the deal.

Rate of Return Gap —The rate of return (ROR) gap is a variation of the financing gap and is the ratio of income received by the owner to the equity invested by the owner and is determined as follows:

Step 1: Determine the budget.
Step 2: Calculate the amount of debt the project can support.
Step 3: Compute amount of equity necessary to complete the project.
Step 4: Compare the benefits of the project to the equity invested. Is the return a market rate?

- ~ If the market rate is greater than/equal to the rate of the prospective project, a gap exists. Public funds should be invested.
- ~ If the market rate is less than the rate of the prospective project, there is no gap and thus no need for public investment.

A simple example of how this would work: A rental house costs an investor $100,000 and will have a debt of $80,000. The equity required to complete the house is $20,000. The benefits are estimated at $1,000 per year in a return market that is averaging 10%. The return on this property is 5% ($1,000/$20,000). If the market is demanding a 10% return, why would a rational investor accept a prospective project with a 5% return? Thus, a ROR gap exists and public funds can be injected into the project, thereby pushing the ROR to a market rate that
will entice an owner to invest his/her equity in the deal.

The ROR method is more applicable to real estate transactions than business deals, particularly for smaller projects.

4. Financial Feasibility

The public benefit a local community expects to derive from a RLF assisted project will not materialize if the project is not financially feasible. The assisted business should be able to achieve a level of operation that is successful in the near and long term. It should provide sufficient cash flow to repay debt and provide a reasonable ROR on equity invested. Feasibility is a threshold, because an infeasible project will be unable to repay the public investment, or meet the community development objectives if the business fails or is foreclosed upon. In a co-lending opportunity, the private lender can be a resource for conducting the feasibility analysis.

Determination of feasibility requires an understanding of the industry, and the ability to test various assumptions about operations. Working with lenders who have this experience will be helpful to local governments. Viability or sustainability is achieving feasibility over the long run. Public underwriters need to be concerned that the venture remains feasible or viable for at least the term of the loan. Repayment terms are a part of feasibility because if the terms are too harsh, the survival of the business is jeopardized.

Calculating the financing gap determines the least amount of public funds needed to complete
the project. However, keep in mind that that addition of public debt, particularly amortizing public debt, may cause the other lenders to reduce their loan amounts. Adding public debt can affect the conventional debt and equity and public lenders must find the proper combination which closes the gap.

In addition to the financial underwriting reviews, evaluate the management experience and capacity of the business owner. Based on this analysis, identify those elements, if any, that pose the greatest risks contributing to the project's lack of financial feasibility.

5. Owner's Equity Return is Reasonable

The CDBG-ED RLF should not provide more than a reasonable return on investment to an owner, given industry rates of return, local conditions, and the risk of the project. However, it is difficult to compute return on equity for small business projects. The use of standardized publications to calculate RORs for small businesses is not recommended. There are significant variations in the data and there are many anomalies associated with small businesses that skew the results. This approach is more applicable to publicly

traded companies or real estate projects. For real estate ventures, the return on equity should come from cash flow of the project, not capital sources.

Repayment terms are a part of feasibility because, if the terms of repayment are too lenient, the borrower may receive an excessive ROR – one above the going market rate.

The local government is not expected to limit the provision of the CDBG-ED assistance as to jeopardize the chance of success of the project. At the same time, it is inappropriate to substitute the RLF for equity funds if the project's rate of return suggests additional equity should be invested. **Equity funds should bear the greatest risk of all funds invested in a project.**

6. **Disbursement of RLF Funds on a Pro Rata Basis**

As a general rule, the RLF funds should be disbursed proportional to the percentage of the project that is funded or serve as "take out" financing, where funds are disbursed upon completion of the project. The RLF should not be placed at greater risk than other lenders. This will help to avoid the situation where a problem develops that blocks the completion of the project after all or most of the RLF funds have been disbursed.

Example: if CDBG funds are 20 percent of the project, each dollar of CDBG-ED funds disbursed for the project should be matched by four dollars from other funding sources.

See Appendix C – Credit Analysis which provides the basic concepts of credit review and underwriting but does not replace a credit course.

Chapter 8
Other Federal Requirements

Chapter 8.a.
Acquisition and Relocation

Whenever Federal funds are used in a project involving the acquisition, rehabilitation or demolition of real property, a Federal law known as the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act)* generally applies. Real Property is defined as land, including all the natural resources and permanent buildings on it. Section 104(d) of the Housing and Community Development Act "The Barney Frank Amendment" applies to the displacement of people or businesses due to the acquisition, rehabilitation or demolition of a building.

For economic development projects these requirements will typically apply to the purchase of a building by a business and the building houses either another business or people who will be required to move.

The local government should contact its DEED representative

to further discuss these requirements if a project involves acquisition of land or a building or displacement of a business or individual residing in that building.

The "Uniform Act"

The "Uniform Act" establishes minimum standards for Federally funded projects that require the acquisition of real property or that displace persons from their homes, businesses, or farms.
Objectives of the "Uniform Act"

- To provide uniform, fair, and equitable treatment of persons whose real property is acquired or who are displaced in connection with Federally funded projects;
- To ensure relocation assistance is provided to displaced persons or businesses to lessen the emotional and financial impact of displacement;
- To ensure that no individual or family is displaced unless decent, safe, and sanitary (DSS) housing is available within the displaced person's financial means;
- To help improve the housing conditions of displaced persons living in substandard housing; AND
- To encourage and expedite acquisition by agreement and without coercion.

Local governments conducting a project under the Uniform Act must carry out their legal responsibilities to affected property owners and displaced persons. They should plan accordingly to ensure that adequate time, funding, and staffing are available to carry out their responsibilities.

More information on the "Uniform Act" can be found at:

- **49 CFR Part 24**: federal regulations implementing the Uniform Act.
- **HUD Handbook 1378** provides policy and guidance on implementing the Uniform Act.
- HUD's website: http://www.hud.gov/offices/cpd/library/relocation/index.cfm

"The Barney Frank Amendment"

Section 104(d) of the Housing and Community Development Act (HCDA) provides minimum requirements for CDBG funded programs or projects when units that are part of a community's low-income housing supply are demolished or converted to a use other than low- or moderate-income dwellings.

These requirements are triggered by the use of CDBG funding in a project involving the demolition or conversion of low- or moderate-income housing. It should be noted that CDBG funding used solely for relocation assistance or project administration does not trigger Section 104(d) requirements.

More information can be found at:

- **24 CFR Part 42:** federal regulations implementing Section 104(d).
- **HUD Handbook 1378** provides policy and guidance on implementing Section 104(d).

Chapter 8.b.
CITIZEN PARTICIPATION

Citizen notification and involvement in the planning and implementation of the proposed project is required. At a minimum, the LG must hold two public hearings, one held prior to approval of the business application and a second hearing at some point through project implementation.

The Local Government can follow its internal policy for Public Hearings. The notice for the 1st public hearing must include the name of the business to be assisted, the amount of funds requested, what the funds will be used for, the number of jobs to be created and the number of LMI jobs.

Samples of PH notices can be found in

NOTICE OF PUBLIC HEARING
FOR 1st PUBLIC HEARING
(PRE- AWARD)

SUGGESTED FORMAT

NOTICE OF PUBLIC HEARING
FOR 2ND PUBLIC HEARING
(POST AWARD)

SUGGESTED FORMAT

NOTICE OF PUBLIC HEARING
TO OBTAIN CITIZEN COMMENTS ON THE IMPLEMENTATION OF THE PROJECT FUNDED BY THE CITY OF _____ ON BEHALF OF

_____
(Name of Business)

NOTICE IS HEREBY GIVEN that the City Council (the "Council) of the City of _____, _____ County, Minnesota, will hold a public hearing on _____, _____ , 20__ at _____ at the City Hall, _____
(Day) (Month, Date) (Time) (Address)
relating to the implementation of the project partially funded by the City of _____'s Community Development Block Grant-Economic Development (CDBG-ED) Revolving Loan Fund. A summary of the project as completed will be on file and available for public inspection at the office of the City Administrator at City Hall during regular office hours.

All interested persons may appear at the hearing and present their view orally or in writing.

Chapter 8.c.
CONFLICT OF INTEREST

In small communities, it is possible that a conflict of interest may arise when undertaking programs that provide assistance to small businesses in the community. The local government should be aware of the applicable conflict of interest requirements and must evaluate conflicts and potential conflicts involving its employee, agent, consultant, officer, or elected official or appointed official of the local government, that are receiving funds on behalf of the local government.

Conflicts of interest and potential conflicts of interest are governed by Minnesota Statutes and Federal Regulations at:

- Minnesota Statutes 471.87-471.89 and 412.311
- Federal Regulations at 24 CFR, Part 570.611

In addition, there may be local laws governing conflict of interest.

The local unit of government is responsible for evaluating conflicts in the context of Minnesota Statutes, and any local laws. DEED (with the assistance of the Minnesota Office of the Attorneys General, if needed) is responsible for evaluating conflicts to the federal laws, and granting exceptions to those laws, where warranted.

The general rule is persons acting on behalf of the LG in a CDBG-ED RLF decision making role or who are in a position to gain inside information (and their family members) cannot obtain a financial interest or benefit from the CDBG-ED RLF. This prohibition ends one year after the decision making person has left his/her position.

If the local government needs to request an exception to the Federal conflict of interest regulation, they must provide to your DEED loan officer the following:

1. An opinion of the local government's attorney stating that the interest for which an exception is sought would not violate State or local law, or falls under the "exceptions" of the State or local law.
2. A description of the nature of the conflict. Include sufficient detail, such as the relationship that results in the conflict, how long the person has been in the position (if applicable), whether the person is in a position to gain inside information, whether the person participates or participated in any part of the loan decision making process (such as approving individual applications), whether the interest or benefit was present before the person was in their current position, etc.
3. Evidence that there has been a public disclosure of the conflict (i.e., copy of council minutes, copy of meeting announcement with conflict on the agenda).

All correspondence and support documentation must be retained by the local government in a separate file.

A sample "Conflict of Interest Interview Form" that local governments may feel free to use or adapt is attached. If after completing the Interview Form there appears to be a possible conflict, the "Conflict of Interest Worksheet", also attached, must be completed by the local government and reviewed by DEED.

CONFLICT OF INTEREST INTERVIEW FORM

CDBG-ED Revolving Loan Fund Program

Are you or have you been one of the following, during the last 12 months:

___ Wage earner
___ Consultant
___ Officer
___ Elected Official
___ Appointed Official

of the:

___ Local government/its agents Name Position:_____
___ Managing/consulting agency Name Agency: _____

OR

Do you or have you or any family member had a business relationship with any of the above named persons?

If yes, describe:

Note: If a conflict exists, it may be possible for the local government and its agents to request an exception to the conflict from DEED by completing and submitting the "Conflict of Interest Worksheet" which is attached.

_____ _____
Signature of Applicant Date

CONFLICT OF INTEREST WORKSHEET

Date:

Local Unit of Government:

Is the individual within the last 12 months or currently, an employee, agent, consultant, officer, or elected official or appointed official of the state, or unit of local government, or any designated public agencies, or sub-recipients that are receiving assistance for the CDBG-ED RLF program?

If No, no further action is required.
If Yes, the local unit of government must provide to DEED the following:

Description of the conflict:

- Disclosure of the nature of the conflict.
- Assurance that there has been a public disclosure of the conflict.
- Describe how the public disclosure was made.
- An opinion of the attorney for the local unit of government that the interest for which the exception is sought would not violate State or local law.

1. Has or does this individual exercise any functions with respect to the CDBG-ED loan? Describe.

2. Does this individual participate in the decision-making process?
   If yes, they must officially announce that they remove themselves from the decision making process.

3. Is this individual in a position to gain inside information?

4. Does this individual have, or will obtain a financial interest or benefit from the activity?

5. Does the individual involved have an interest in any contract, subcontract or agreement, or the proceeds there under for themselves, their family, or those with whom they have business ties?

The following will be completed by DEED and returned to the Local Unit of Government.

Based on all the information gathered and the answers to questions above, I recommend:

_____ Approval of the request for an exception to the conflict of interest rules.

_____ Denial of the request for an exception to the conflict of interest rules.

_____

Sr. Loan Officer Date

Chapter 8.d.
Eminent Domain

The local government is prohibited from using CDBG-ED funds for projects that seek to use the power of eminent domain, unless that power is sought for certain public uses. "Public use" is not to be construed to include economic development that primarily benefits private entities. Therefore, the restriction exists on the use of CDBG-ED funds for or in connection with applications of eminent domain powers.

The following are eligible as public uses:

- Mass transit, railroad, airport, seaport or highway projects;
- Utility projects which benefit or serve the general public (including energy-related, communication-related, water-related, and wastewater-related infrastructure);
- Structures for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government; and
- Projects that involve the removal of an immediate threat to public health and safety or the removal of brownfields.

If a project involves eminent domain, the LG should review State law.

Chapter 8.e.
ENVIRONMENTAL REVIEW

All CDBG-ED PROJECTS ARE SUBJECT TO AN ENVIRONMENTAL REVIEW

DEED's Environmental Manual and other information regarding environmental review can be found at:

http://mn.gov/deed/government/financial-assistance/community-funding/#

This manual is designed for "community development" type projects and for the most part does not address economic development, however the appropriate forms are included. The environmental review process for economic development projects will be discussed in this section.

- The purpose of the environmental review process is to analyze the effect a proposed project will have on the people and the natural environment within a designated project area and the effect the material and social environment may have on a project.
- The local government is the responsible entity and must complete an environmental review for **all** projects.
- The Environmental Review process is governed by the following:
  - National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*)
  - HUD Environmental Review Procedures: 24 CFR Part 58

    http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title24/24cfr58_main_02.tpl
  - Council on Environmental Quality regulations: Title 40, Chapter V, Part 1500.1 - .2

    http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr1500_main_02.tpl

- The local government is required to ensure that environmental information is available before decisions are made and before actions are taken. In order to achieve this objective, Part 58 prohibits the commitment or expenditure of CDBG-ED funds until the environmental review process has been completed.
  - The local government may not spend either public or private funds (CDBG-ED, other Federal or non-Federal funds), or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until environmental clearance has been achieved.
  - The local government must avoid any and all actions that would preclude the selection of alternative choices before a final decision is made – that decision being based upon an understanding of the environmental consequences and actions that can protect, restore and enhance the human environment (i.e., the natural, physical, social and economic environment).

Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken, even with the local government's or other project participant's own funds, prior to obtaining environmental clearance.

- For purposes of the environmental review process, "commitment of funds" includes:

- Execution of a legally binding agreement (such as a property purchase or construction contract);
- Expenditure of CDBG-ED funds;
- Use of non-CDBG funds on actions that would have an adverse impact--- e.g., demolition, dredging, filling, excavating; and
- Use of non-CDBG funds on actions that would be "choice limiting"--- e.g., acquisition of real property; leasing property; rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures, conversion of land or buildings/structures.

- It is acceptable for the local government to execute non-legally binding agreements prior to completion of the environmental review process. A non-legally binding agreement contains stipulations that ensure the project participant does not have a legal claim to any amount of CDBG-ED funds to be used for the specific project or site until the environmental review process is satisfactorily completed.

Determination of the Appropriate Level of Review

- To begin the environmental review process, the local government must first determine the environmental classification of the project. The term "project" can be defined as all activities to be done, including site improvements, building renovation, acquisition, construction, purchase of machinery, working capital that are geographically, functionally, or integrally related, regardless of funding source, to be undertaken by the business in whole or in part to accomplish a specific objective.
- Most economic development projects have many activities, so the local government must follow the review steps required for the most stringent classification.
- The level of review required and the amount of time it will take varies depending on the nature of the project which may impact project scheduling.
- The five environmental classifications are:
  - Exempt Activities;
  - Categorically Excluded Activities Not Subject to Section 58.5;
  - Categorically Excluded Activities Subject to Section 58.5;
  - Activities Requiring an Environment Assessment; OR
  - Activities Requiring an Environmental Impact Statement.
- Related activities are ones that:
  - Automatically trigger other actions;
  - Cannot or will not proceed unless other actions are taken beforehand or at the same time; OR
  - Are mutually dependent parts of a larger project.

1. ***Exempt Activities***

- Certain activities are by their nature highly unlikely to have any direct impact on the environment. Accordingly, these activities are not subject to most of the procedural requirements of environmental review.
- The following activities may be exempt from environmental review for economic development projects. For a list of all activities refer to the environmental regulations.
  - Technical assistance or training;
  - Any of the categorically excluded activities subject to Part 58.5 (as listed in 58.35(a)) provided there are no circumstances which require compliance with any other Federal laws and authorities listed at Part 58.5 of the regulations. Refer to the section below on categorically excluded activities subject to Part 58.5.
  - A project that has no other activities except working capital.
- The local government must also determine if any of the following requirements are applicable and address as appropriate.
  - the Flood Disaster Protection Act;
  - the Coastal Barriers Resources Act; and
  - HUD's requirement for disclosure of properties located in airport runway clear zones.
- If a project is determined to be exempt, the local government is required to document in writing that the project is exempt and meets the conditions for exemption.

  See Section EN-A1 in DEED's Environmental Manual for the correct forms to be completed.

2. ***Categorically Excluded Activities not Subject to 58.5***

- The following activities, specifically related to economic development, have been determined to be categorically excluded from NEPA requirements and are not subject to Section 58.5 compliance determinations. For a complete list of these activities refer to 24 CFR Part 58.35(b).
  - Economic development activities including but not limited to equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;
- The local government must also determine if the following requirements are applicable and address as appropriate.
  - the Flood Disaster Protection Act;
  - the Coastal Barriers Resources Act; AND
  - HUD's requirement for disclosure of properties located in airport runway clear zones.
- To complete environmental requirements for Categorically Excluded projects not Subject to 24 CFR Part § 58.5, the local government must take the following steps:
  - Complete the Statutory Checklist;
  - Identify and describe the specific project activity or activities and provide information about the estimated amount of CDBG-ED and other funds to be used.

- Make a finding of Categorical Exclusion not Subject to § 58.5
- Complete the Certificate of Exemption;
- Place all documentation in the Environmental Review Record.

- A finding of "Categorical Exclusion not Subject to § 58.5" does not require a public notice and the request for release of funds (RROF).

3. ***Categorically Excluded Activities Subject to 58.5***

- While the following activities are categorically excluded from NEPA requirements, the local government must nevertheless demonstrate compliance with the laws, authorities and Executive Orders listed in 58.5.
  - The following are categorically excluded activities that typically pertain to economic development projects. For a complete list of activities refer to 24 CFR Part. 58.35(a).
    - Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size, or capacity of more than 20 percent.
    - Rehabilitation of buildings and improvements when the following conditions are met:
      - For commercial, industrial and public buildings:
      - The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
      - The activity does not involve a change in land use, e.g. from commercial to industrial, or from one industrial use to another.
    - Acquisition (including leasing) or disposition of or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.
    - Combinations of the above activities.
- To complete environmental requirements for Categorically Excluded Projects Subject to 24 CFR Part § 58.5, the local government must follow the directions provided in DEED's Environmental Manual:

  http://mn.gov/deed/images/EN-A2-EnvironmentalReviewForCE.pdf

- Upon completion of the forms, etc., the local government will make one of three environmental findings:
  - The project converts to exempt;
  - The project invokes compliance with one or more of the laws and/or authorities and, therefore, requires public notification and approval from DEED;
    - The local government must publish or post a public notification known as the Notice of Intent to Request Release of Funds (NOI/RROF).
    - After the seven-day comment period has elapsed, the local government must prepare the Request for Release of Funds (RROF) and Environmental Certification. The Environmental Certification certifies that the local government is in compliance with all

the environmental review requirements. The RROF and Certification must be signed by the Certifying Officer and submitted to DEED. The local government must receive the release of funds from DEED before proceeding forward with the project.

- The unusual circumstances of the project may result in a significant environmental impact, therefore, compliance with NEPA is required and further review warranted i.e., Environmental Assessment or Environmental Impact Statement.

- The ERR must contain a written determination of the local governments finding that the project is categorically excluded subject to § 58.5. This determination should:
  - Include a description of the project (including all the related activities, even though CDBG- ED funds may not be used for all of them);
  - Cite the applicable subsection of § 58.35(a);
  - Provide the total estimated project cost;
  - Provide written documentation as to whether or not there were any circumstances which required compliance with any of the Federal laws and authorities cited in §58.5; AND
  - Information required in the Environmental Manual:

    http://mn.gov/deed/images/EN-A2-EnvironmentalReviewForCE.pdf

4. Environmental Assessment (EA)

- Activities which are neither exempt nor categorically excluded (under either category) will require an environmental assessment (EA) documenting compliance with NEPA, HUD and with the environmental requirements of other applicable Federal laws.

- To determine the steps to complete the environmental requirements for projects requiring an environmental assessment, the local government must review the "Guide for EA Projects" in DEED's Environmental Manual found at:

  http://mn.gov/deed/images/EN-A3-EnvironmentalReviewForEA.pdf

- Upon completion of the steps detailed in the "Guide for EA Projects" including consultation with applicable agencies and persons, the local government must make a determination as to whether the project will or will not have a significant impact on the environment. This can be done once the review has been completed and any comments have been addressed appropriately. The local government must select one of the following two findings/determinations:

  - The project is not an action that significantly affects the quality of the human environment and, therefore, does not require the preparation of an environmental impact statement; OR
  - The project is an action that significantly affects the quality of the human environment and, therefore, requires the preparation of an environmental impact statement.

- In most instances, the environmental assessment will result in a finding that the project is not an action that significantly affects the quality of the environment and, therefore, does not require an environmental impact statement. If this is the case, the responsible entity must complete the following:

  - Publish and distribute a public notice called a Combined/Concurrent Notice of Finding of No

Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF).

- The RROF and Environmental Certification must be submitted to DEED no sooner than 16 days after publishing the combined/concurrent notice. The Certification must be signed by the local government's Certifying Officer.
- DEED must hold the Release of Funds for a 15-day period to allow for public comment. If no comments are received during this time, DEED will send back a signed Release of Funds and the project may proceed.

- If the environmental assessment will result in a finding that the project will significantly affect the environment and, therefore, requires an environmental impact statement, the local government should contact DEED for guidance.

5. Environmental Impact Statement

- An Environmental Impact Statement (EIS) details the local government's final analyses and conclusions, according to NEPA, related to potential significant environmental impact of the project. The local government must follow prescribed steps in the course of preparation, filing and review of an Environmental Impact Statement (See 24 CFR 58, Subpart G, and 40 CFR 1500-1508).
- An EIS may be required when:

  - The project is so large that it triggers density thresholds, and common sense suggests it may have a substantial environmental impact.
  - A Finding of Significant Impact (FOSI) is found as a result of completing an environmental assessment for the project.
  - Preparation of an EIS is mandatory if the project meets any of these requirements below:
    - Any project to provide a site or sites for hospitals and nursing homes with a total of at least 2,500 beds.
    - Any projects to remove, destroy, convert or substantially rehabilitate at least 2,500 existing housing units.
    - Any project to construct, install or provide sites for at least 2,500 housing units.
    - Any project to provide water and sewer capacity for at least 2,500 housing units.
      Any project that exceeds the 2,500-unit threshold for nonresidential housing construction.

- EISs are very rare under the CDBG program. Contact DEED if there is any indication that an EIS may be necessary.

Chapter 8.f.
FAIR HOUSING, ACCESSIBILITY, AND EQUAL EMPLOYMENT

The local government must adhere to all the basic tenets of fair housing and equal opportunity regulations. To demonstrate support for ensuring these tenets, local governments must endorse in attitude and deed all regulations for fairness in the provision of their CDBG-ED RLF program and the projects it funds.

Fair housing and equal opportunity laws are like an umbrella, intended to protect individuals from discrimination in housing, employment, through business opportunities such as contracting, or through other benefits created by CDBG-ED projects.

Applicable Laws

- This chapter is broken down into three broad areas for the applicable requirements:
  - Fair Housing;
  - Handicap Accessibility; AND
  - Equal Opportunity.

1. *Fair Housing*

Though the provisions of the Fair Housing Act apply to housing, the local government should be aware that these provisions apply to the locality as a whole and not just to a specific project, whether it is for housing or economic development. The local government must understand that implementing fair housing activities is an essential part of their responsibilities as the administrator of a CDBG-ED funded Revolving Loan Fund.

Fair housing actions should increase housing opportunities and affirmatively promote fair housing throughout the entire housing market at all income levels. These activities may include independent actions by the local government or cooperative ventures with housing related industries, such as mortgage lenders, home builders, and local non-profits working in housing. The local government is expected to take progressive actions to further fair housing with each CDBG-ED funded project.

The local government must assure that all CDBG-ED funded activities undertaken as part of the project are conducted in a manner so that :

No person shall be subjected to discrimination because of:
race, color, religion, sex, disability, age, familial status, or national origin.

- Segregated facilities, services, or benefits and different treatment are prohibited.
- The local government should take care to ensure the following:
  - Access to any advantage arising out of the project is not:
    - Denied solely on the basis of race, color, religion, sex, disability, familial status, or national origin; OR
    - Offered for the enjoyment of a segment of the population in such a way as to intentionally exclude any member of these protected groups.
- Selection of sites and locations for facilities and improvements do not have an exclusionary or discriminatory effect.
- RLF evaluation criteria and administrative practices do not have a discriminatory effect.
- Affirmative action is used to overcome the effects of past discrimination.

- A Fair Housing Poster is displayed in a prominent place at the office of the local government.

Fair Housing Activities

- The Fair Housing Act provides that, in connection with the design and construction of multi-family housing, the public use and common areas must be accessible and usable by persons with handicaps, all doors must be designed to be wide enough for wheelchair accessible, and all premises should be of adaptive design (e.g., reinforcements within a bathroom to allow installation of grab bars).
- The Local government's undertaking of housing projects and activities must ensure fair housing rules are followed in the provision of housing services and assistance. Opportunities for purchase or rental, terms and conditions, advertising and marketing information, and availability of real estate services should not discriminate.
- If the local government has not done so, it must take steps to ensure fair housing in its community. Some examples of possible actions are listed:
    - Developing and implementing a fair housing resolution;
    - Marketing information concerning housing services and activities should be disseminated through agencies and organizations that routinely provide services to protected groups;
    - Criteria for selecting recipients of housing services or assistance should be evaluated for any discriminatory effect;
    - Policies guiding the provisions of relocation housing and services for persons displaced by housing activities should be evaluated for discriminatory effect; and
    - Legal documents used by the local government and lending institutions should be reviewed and revised if necessary to eliminate any discriminatory intent or practice.
- It is important for the local government to understand both the Fair Housing Amendment and Section 504. The Fair Housing Amendment requires that a landlord must allow a tenant to make reasonable modifications to a unit paid for by the tenant. Section 504 provides that the landlord is responsible for making reasonable accommodations. Finally, the accessibility logo should be used in housing projects where units are available for the disabled.

Affirmative Marketing

- The local government must adopt affirmative marketing procedures and requirements for all CDBG-ED assisted housing with five or more units.
- Requirements and procedures must include:
    - Methods for informing the public, owners and potential tenants about fair housing laws and the local government's policies (for example, use of the Fair Housing logo or equal opportunity language);
    - A description of what owners and/or the local government will do to affirmatively market housing assisted with CDBG funds;
    - A description of what owners and/or the local government will do to inform persons not likely to apply for housing without special outreach;
    - Maintenance of records to document actions taken to affirmatively market CDBG-assisted units and to assess marketing effectiveness; and
    - Description of how efforts will be assessed and what corrective actions will be taken where

requirements are not met.

2. *Handicapped Accessibility and Section 504*

Program Accessibility

- Communication is an important component of program accessibility. Disabilities involving impairments to hearing, vision, speech or mobility may affect communication. Members of the community who have disabilities must be able to access and enjoy the benefits of a program or activity receiving CDBG-ED funds; therefore, varied approaches may be required to assure effective communication and information dissemination.

  Specifically, the local government must be receptive to the requests and needs of the disabled person(s) within the community when determining which auxiliary aids or services are necessary. For the purposes of Section 504 compliance, the target population includes: the hearing impaired, visually impaired, mobility impaired, developmentally disabled, and those persons requiring in-home care or institutional care. The local government must furnish auxiliary aids and services, as necessary, which may include:

  - For persons with hearing impairments:
    - Qualified sign language interpreters;
    - Note takers;
    - Telecommunication devices for deaf persons (TDDs);
    - Telephone handset amplifiers;
    - Assertive listening devices (devices that increase the sound in large group settings);
    - Flashing lights (where aural communication is used, such as warning bells);
    - Video text displays (devices that display text that is simultaneously being spoken can be used where a public address system provides information);
    - Transcription services; AND
    - Closed and open captioning.
  - For persons with vision impairments:
    - Qualified readers;
    - Written materials translated into alternative formats (e.g., Braille, audio tape, large print);
    - Aural communication (e.g., Bells or other sounds used where visual cues are necessary); AND
    - Audio description services (i.e., through a headset, a narrator describes what the visually impaired person cannot see).
- The local government must ensure effective communication with persons with all types of disabilities in all activities. Where the local government communicates with applicants and beneficiaries by phone, a TDD is required or an equivalent system must be available. Please note that the local government is not required to take any action that would result in a fundamental alteration in the nature of a program or activity or undue financial and administrative burdens.

Facilities

- "Facility" is defined under Section 504 as any portion of a building, equipment, roads, walkways, parking lot or other real property. "Accessible" for non-housing purposes means that a facility or portion of a facility can be approached, entered and used by individuals with physical handicaps.
- Non-housing programs, as well as existing facilities in which they are situated, must be readily accessible to and usable by persons with disabilities. Accessibility programs will be determined once again under self-evaluation. The focus of program access is providing programs in the most integrated setting possible. Providing separate or different programs is illegal unless necessary to achieve equal opportunity.
- Methods of improving program access in existing facilities can include the following:
  - Relocating programs to accessible facilities or accessible portions of facilities;
  - Acquiring or building new facilities;
  - Selectively altering facilities;
  - Changing operating policies and procedures;
  - Assigning aides to assist beneficiaries;
  - Adding or redesigning equipment or furnishings; and
  - Conducting home visits.

Special Requirements for Local Governments with 15 or More Employees

- There are two additional requirements for Section 504 compliance for local governments (called "recipients" under 504 to include public agencies, instrumentalities, and public and private entities including nonprofits) with 15 or more full or part-time employees:
- Designation of responsible employee and adoption of grievance procedures:
  - At least one person must be designated to coordinate 504 and related compliance efforts. The agency coordinator should be designated in writing and identified in any written notices.
  - A grievance procedure must also be adopted incorporating due process standards and allowing for prompt local resolution of any complaints of discrimination based on disability. Existing grievance procedures can often be adapted to satisfy this requirement.
  - Any individual or authorized representative who believes that they have been denied opportunities or treated differently due to their race, color, national origin, sex, age, disability, religion and familial status may file a complaint. The complaint may be filed with the local government or HUD.
- Notification to participants, beneficiaries, applicants and employees of their nondiscriminatory provisions. In summary, the local government must provide notice regarding the following:
  - The local governments must publish in a newspaper of general circulation the notice "Policy of Non- Discrimination on the Basis of Disability Status."
  - The local government must include the same language found in their policy of nondiscrimination (mentioned in the first bullet) in all material used for recruitment or general information.

- The local government must ensure that all members of the population with visual or hearing impairments are provided with the information necessary to understand and participate in the programs offered.
- Methods for ensuring participation may include qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.

24 CFR Part 42: Federal regulations implementing Section 104(d).
HUD Handbook 1378 provides policy and guidance on implementing Section 104(d).

Other Accessibility Rules

Americans with Disabilities Act of 1990 (ADA)

- The Americans with Disabilities Act of 1990 (ADA) guarantees equal opportunities for persons with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. Unlike Section 504 which applies only to programs and activities receiving Federal financial assistance, the ADA applies even if no Federal financial assistance is given. Title II of ADA prohibits discrimination based on disability by State and local governments.
- Facilities
  - Title II also requires that facilities that are newly constructed or altered, by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and usable by persons with disabilities. Facilities constructed or altered in conformance with either the Uniform Federal Accessibility Standards (UFAS) or the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) shall be deemed to comply with the Title II Accessibility requirements, except that the elevator exemption contained in Section 4.1.3(5) and Section 4.1.6(1)(j) of ADAAG shall not apply.
- Roads and Pedestrian Walkways
  - Title II specifically requires that all newly constructed or altered streets, roads, highways, and pedestrian walkways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level or pedestrian walkway and that all newly constructed or altered street level pedestrian walkways must have curb ramps at intersections . Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.

Architectural Barriers Act of 1968

- The Architectural Barriers Act of 1968 (ABA) requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with Federal funds, except privately-owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG funds are subject to the ABA and must comply with the Uniform Federal Accessibility

Standards (UFAS). In practice, buildings built to meet the requirements of Section 504 and the ADA will conform to the requirements of the ABA.

Self-Evaluation Plan and Transition Plan

Self-Evaluation Plan

- Self-evaluation is required by both Section 504 and the Americans with Disabilities Act. Self-evaluation promotes inclusion of the programmatic and project-specific alternations that are necessary to ensure long term compliance with the requirements.
- If the local government has not already performed a Section 504 self-evaluation of programs, services, and activities to determine if they are programmatically and physically accessible to person with disabilities, they must conduct such evaluation and document all needs. Note: If a local government has already performed a self-evaluation, a new one is not required.
- A local government should also involve persons with disabilities in these evaluations. While performing the self-evaluation, a careful inspection of the following should be performed to determine if they are free from discriminatory effects and practices:
    - Evaluate current policies and practices and analyze them to determine if they adversely affect the full participation of individuals with disabilities in its programs, activities, and services. Be mindful of the fact that a policy or practice may appear neutral on its face, but may have a discriminatory effect on individuals with disabilities.
    - Modify any policies and practices that are not or may not be in compliance with Section 504 or Title II and Title III of the ADA regulations. (See 24 CFR Part 8 and 28 CFR Parts 35, 36.)
    - Take appropriate corrective steps to remedy those policies and practices that either are discriminatory or have a discriminatory effect. Develop policies and procedures by which persons with disabilities may request a modification of a physical barrier or a rule or practice that has the effect of limiting or excluding a person with a disability from the benefits of the program.
    - Document the self-evaluation process and activities. HUD recommends that all recipients keep the self-evaluation on file for at least three years, including records of the individuals and organizations consulted, areas examined and problems identified, and document modifications and remedial steps.
- An approach many local governments have used to examine service and program accessibility is to do a walk-through of the process required for participation. Analyze not only the physical path traveled, but also the administrative requirements, service delivery, eligibility criteria, and application procedures.
- Any policies and practices that are found to be discriminatory or contrary to Section 504 requirements must be modified and steps taken to remedy the discrimination.

Transition Plan

- If structural barriers have been identified during the self-evaluation process and cannot be removed with nonstructural solution, a Transition Plan must be completed and made available for public review and comment.
- The plan must address the following items:
  - Identification of physical obstacles in the facilities that limit program accessibility;
  - Description of the method that will be used to make facilities accessible;
  - Specify a schedule to achieve full program compliance and, if the plan is longer than one year, identify steps to be taken during each year;
  - Indicate the person responsible for implementing the plan; and
  - Identify the person or groups with whose assistance the plan was prepared.
- The local government is not necessarily required to make each existing facility or every part of an existing facility accessible. The Transition Plan must involve persons with disabilities and/or representative organizations.

Employment and Contracting

Employment and contracting activities also trigger employment and contracting rules related to equal employment practices.

Employment

- Nondiscrimination is a requirement of employment and employment practices. Employment opportunities may not be denied on the basis of race, color, national origin, sex, age, religion, familial status, or disability. Affirmative action and equal employment opportunity policies are fundamental aspects of CDBG-ED funded activities.
- The **Americans with Disabilities Act** modifies and expands the Section 504 Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.
- The **Equal Employment Opportunity Act** empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, State, and local governments under the Civil Rights Act of 1964.
- Steps that can be taken to prevent discrimination in employment include the following:
  - Review of jurisdictional employment policies and procedures for discriminatory intent or practice and document review;
  - Advertise employment opportunities and/or to recruit employees for project-related positions;
  - Develop and maintain employment data that indicates staff composition by race, sex, handicap status and national origin; and
  - An Equal Employment Opportunity Poster must be displayed in a prominent place at the office of the local government.

- Specifically, Section 504 has a number of general prohibitions against employment discrimination. The local government must ensure that the following items are adhered to:
  - No qualified individual with a disability shall, solely on the basis of their disability be subject to discrimination in employment under any program or activity that receives Federal assistance.
  - Any local government cannot legally limit, segregate or classify applicants or employees in any way that negatively affects their status or opportunities because of disability.
- In pre-employment and employment activities, discrimination based on a disability must not occur and reasonable accommodations must be made to the physical or mental limitations of otherwise qualified individuals unless it creates undue hardship for the local government. HUD regulations specify that an employer is prohibited from discrimination in the following instances:
  - Recruiting, advertising, and processing of applications;
    - Hiring, upgrading, promoting, tenure, demotion, transfer, layoffs, termination right or return from layoffs, illness, and rehiring;
    - Rates of pay and any other forms of compensation;
    - Job assignments, classifications and descriptions, organizational structures, lines, progression, and seniority lists;
    - Leaves of absence, sick leave, or any other leave;
    - Fringe benefits available by virtue of employment;
    - Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities and selection for leaves of absence for training;
    - Employer sponsored activities (including social or recreation programs); and
    - Any other term, condition, or privilege of employment.
- The local government may not participate in a contractual or other relationship that subjects qualified disabled applicants or employees to discrimination.
- Reasonable accommodation, under Section 504, in employment is determined on a case-by-case basis. It means reasonable modifications on the job or in the workplace to enable a disabled person to perform the job for which she/he is qualified. Section 504 does not require the hiring or promotion of someone simply because she/he has a disability.

Section 3

- Section 3 of the Housing and Urban Development Act of 1968, as amended, requires the provision of training, employment and other economic opportunities that arise through HUD-financed housing and community development assistance to lower-income residents of the project area, particularly residents of government-subsidized housing, to the greatest extent feasible and consistent with Federal, State, and local laws and regulations. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the project area. Amendments to Section 3 in 1992 included requirements for providing these opportunities in contracts for housing rehabilitation, including lead-based paint abatement, and other construction contracts.

  Section 3 applies when public instruction project or activity exceeds certain thresholds. Contractors and subcontractors providing services on projects for which the total amount of

the housing and community development assistance exceeds $200,000 and the amount of the contract or subcontract exceeds $100,000 are required to comply with Section 3. If a local government receives housing or community development assistance for a covered project that is funded in part with CDBG funds, Section 3 requirements apply to the entire project or activity.

- It is important to document efforts made to comply with Section 3 through recordkeeping. Files should contain memoranda, correspondence, advertisements, etc., illustrating contractor and subcontractor attempts to hire low income residents and business concerns.

Fair Housing and Equal Opportunity
Major Regulations and Requirements

Federal and State Laws and Regulations (included amendments)	Fair Housing and Nondiscrimination	Accessibility	Equal Employment and Contracting
Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act): This Act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promotes fair housing.	X	X	
Title VI of the Civil Rights Act of 1964: This Act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on and/or national origin under any program or activity receiving Federal financial assistance.	X		
Restoration Act of 1987. This Act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives Federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability, or age in a program or activity which does not directly benefit from such assistance.	X		
Section 109 of Title 1 of the Housing and Community Development Act of 1974: This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title I of the Act.	X		X

The Fair Housing Amendment Act of 1988: This Act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand of the Justice Department jurisdiction to bring suit on behalf of victims in Federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.	X		
The Housing for Older Persons Act of 1995 (HOPA): Retained the requirement that the housing must have one person who is 55 years of age or older living in at least 80 percent of its occupied units. The Act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 and older.	X		
The Age Discrimination Act of 1975: This Act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving Federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws.	X		
Section 504 of the Rehabilitation Act of 1973: It is unlawful to discriminate based on disability in Federally assisted programs. This section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funding assistance.	X	X	X
The Americans with Disabilities Act of 1990 (ADA): This Act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.	X	X	X

Executive Order 11063: This Executive Order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with Federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal government.	X		
Executive Order 11259: This Executive Order provides that the administration of all Federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.	X		
Section 109 of Title I of the Housing and Community Development Act of 1974: Requires that no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded with CDBG funds on the basis of race, color, religion, national origin, or sex.	X		X
The Equal Employment Opportunity Act: This Act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, State, and local governments under the Civil Rights Act of 1964.			X

Chapter 8.g.
Participation of Faith-Based Organizations

In 2003, HUD issued a Final Rule which removed barriers to the participation of faith-based organizations, while adhering to the First Amendment requiring separation of church and State.

The following policies were established (24 CFR §570.200(j)):

- Faith-based organizations are eligible for CDBG funding on an equal footing with any other organization. There is no Federal requirement for an organization to incorporate or operate as a nonprofit to obtain tax-exempt status under Section 501(c) (3) in order to receive CDBG funds.
- Organizations may not use direct CDBG funds to support inherently religious activities such as worship or religious instruction. If an organization does conduct such activities, the activities must be offered separately from activities funded by the CDBG program, in time or location.
- Faith-based organizations retain their independence from Federal, State, and local governments, including their exemption from the Federal prohibition on employment discrimination on the basis of religion for employees not involved in CDBG-funded activities (§570.607).
- Faith-based organizations, like all organizations implementing HUD-funded programs, must serve all eligible beneficiaries without regard to religion. The CDBG statue and regulations prohibit any person from being denied the benefits of, or being subjected to discrimination, on the basis of religion under any activity funded in whole or in part with CDBG funds.
- Faith-based organizations, like all organizations, may receive CDBG funds to acquire, construct, or rehabilitate buildings and other real property as long as the funds only pay the costs attributable to CDBG activities.
- This applies to State or local funds if a State or local government chooses to commingle its own funds with CDBG funds.

For more information regarding the participation of faith-based organizations in the CDBG Program, see the following resources:

- HUD Center for Faith-Based and Community Initiatives:
  http://portal.hud.gov/hudportal/HUD?src=/program_offices/faith_based

Chapter 8.h.
"Anti-Pirating" of Jobs

The purpose of the CDBG-ED program is to create jobs, but not if assistance will result in other jobs being lost in another community or region. Therefore, under federal anti-pirating statutes, CDBG-ED funds cannot be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from one area to another if the relocation is likely to result in a significant loss of employment in the Labor Market Area from which the relocation occurs.

Federal regulations set the following parameters for a company's relocation from one LMA to another and whether the number of jobs being lost will trigger the anti-pirating provisions:

- Loss of < 26 jobs: is not a significant loss, so the anti-pirating regulation is not triggered.
- Loss of > 499 jobs: is significant and would automatically invoke the anti-pirating provisions.
- Loss of 26 – 499 jobs: is significant if the job loss is more than .1% of the total number of persons in the labor force in the LMA.
- A job is considered to be lost if the job is relocated within 3 years of the provision of CDBG-ED assistance to the business.
- Job relocation within the same LMA is not subject to the anti-pirating requirement.

Before directly assisting a business with CDBG-ED funds, the local government must obtain a written certification from the business that includes:

- A statement as to whether the financial assistance will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another, and, if so, the number of jobs that will be relocated from each LMA.
- If the assistance will not result in a relocation covered by this section, the certification must state that neither the business, nor any of its subsidiaries, have plans to relocate jobs at the time the agreement is signed that would result in a significant job loss; and
- The loan agreement shall provide for full reimbursement of any assistance provided to the business in the event the assistance results in a relocation prohibited under this section.

- **Labor Market Area (LMA)**: A LMA is an economically integrated geographic area where individuals can live and work within a reasonable distance or can readily change employment without changing their place of residence.

  A list of LMA's within the U.S. can be found at:

  www.bls.gov/lau/lmadir.pdf.

Chapter 8.i.
LABOR STANDARDS

Federal Labor Standards rules apply to project using CDBG-ED funds that involve physical construction such as building construction, public facilities, and installation of equipment. These requirements should be given careful consideration when planning CDBG-ED funded economic development projects. When applicable, the local government must be proactive with the business receiving the financing to assure that the contractor(s) are aware of the requirements and that the construction contract(s) between the business and the contractor(s) contain the necessary language to ensure compliance.

Under the labor laws, the prime or general contractor is responsible for full compliance with applicable requirements, including all employers/subcontractors on the project. The local government is responsible for the administration and enforcement of the requirements to ensure compliance, including obtaining and providing the correct wage decisions to the contractor(s); ensure that the labor standards provisions are included in bid and contract documents; and monitor contractors for compliance with wage rates and collecting restitution form contractors that violate wage requirements.

The labor standards requirements apply to the following:

- Construction work including, but not limited to building renovation, remodeling, and site development, when even $1 of CDBG-ED funds is used for these activities;
- Installation of equipment if the installation cost is greater than $2,000; and
- Installation of public infrastructure by the local government.

The labor laws that may apply to CDBG-ED funded construction work include the following:

- **The Contract Work Hours and Safety Standards Act** apply to contracts over $100,000 and requires that workers receive overtime compensation (time and one half) for hours worked in excess of 40 hours in one week.
- **Copeland "Anti-Kickback" Act** requires that workers be paid weekly, that deductions from workers' pay be permissible, and that contractors maintain and submit weekly payrolls.
- **Davis-Bacon Act**: Triggered when construction work over $2,000 is financed in whole or in part with CDBG-ED funds. It requires that construction workers receive no less than the prevailing wages being paid for similar work in the same area.

HUD has published the following guides that are available for downloading from its website:

- "Making Davis Bacon Work: A Practical Guide for States, Indian Tribes and Local Agency's"
- "Contractor's Guide to Davis-Bacon: Prevailing Wage Requirements for Federally-Assisted Construction Projects."

For detailed information on the labor standards requirements, please refer DEED's Labor Standards Manual which can be found on the DEED website at:

http://mn.gov/deed/images/Labor_Stards_Hbook_07.pdf

Chapter 9

FINANCIAL MANAGEMENT

The basic requirements for accounting for the RLF must include the following:

1. The CDBG-ED funded RLF must be accounted for separately.
2. Financial records on the receipt and expenditure of the Revolving Loan Funds must be maintained.
3. At a minimum, a Loan Register, which is an account that provides documentation for each business loan funded with the RLF. The Register should include the following information:
    a. Name of Borrower
    b. Date Loan Made
    c. Amount of Loan
    d. Terms of the loan (interest rate, maturity date and frequency of payments).
    e. Payments and current balance
4. Revolving Loan funds must be disbursed for economic development projects before additional requests are made for new CDBG-ED funds. The LG will also be expected to maximize to the greatest amount feasible the provision of funds from this account to any new Small Cities Development Program application.

The remainder of the chapter provides a brief overview of the requirements that may be applicable to the financial management of the CDBG-ED funds. It is recommended that the LG review the following information. The financial management system required for the local government and the use and accounting for CDBG-ED funds is governed by:

1. OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments." This circular establishes principles and standards for determining allowable costs under Federal grants.
2. OMB Circular A-133, "Audits of State and Local Governments."
3. 24 CFR Part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

Standards for Financial Management Systems

The Local Government must have financial management systems in place to comply with the following standards:

- Provide effective control over and accountability for all funds, property and other assets;
- Identify the source and application of funds for federally-sponsored activities, including records and reports that:
    - Verify the "reasonableness, allowability and allocability" of costs; and
    - Verify that funds have not been used in violation of any of the restrictions or prohibitions that apply to the federal assistance (through the use of budget controls and adequate accounting records).
- Permit the accurate, complete and timely disclosure of financial results in accordance with State reporting requirements.
- Minimize the time elapsing between the transfer of funds from the U.S. Treasury and disbursement

by the State or LG.

Internal Controls

Internal controls are the combination of policies, procedures, job responsibilities, personnel and records that together create accountability in an organization's financial system and safeguard its cash, property and other assets.

- Through its system of internal controls, an organization can ensure that:
  - Resources are used for authorized purposes and in a manner consistent with applicable laws, regulations and policies;
  - Resources are protected against waste, mismanagement or loss; and
  - Information on the source, amount and use of funds are reliable, secured and up-to-date and that this information is disclosed in the appropriate reports and records.
- The basic elements of an internal control system include:
  - An organizational chart setting forth the actual lines of responsibility of personnel involved in financial transactions.
  - Written definition and delineation of duties among key personnel involved in financial transactions.
  - An accounting policy and procedures manual that includes:
    - Specific approval authority for financial transactions and guidelines for controlling expenditures;
    - A set of written procedures for recording of transactions; and
    - A chart of accounts.
  - Adequate separation of duties so that no one individual has authority over a financial transaction from beginning to end. In other words, one person should <u>not</u> have responsibility for *more than one* of the following functions:
    - Authorization to execute a transaction.
    - Recording of the transaction.
    - Custody of the assets involved in the transaction.
  - Hiring policies ensuring that staff qualifications are commensurate with job responsibilities.
  - Control over assets, blank forms and confidential documents so that these types of documents are limited to authorized personnel only.
  - Periodic comparisons of financial records to actual assets and liabilities (i.e., reconciliation). In cases where discrepancies are found, corrective action must be taken to resolve such discrepancies.

Budget Controls

The Local Government must have procedures in place to compare and control expenditures against

approved budgets for CDBG-ED RLF funded activities.

- The Local Government should:
  - Maintain in its accounting records (see below) the amounts budgeted for eligible activities;
  - Periodically compare actual obligations and expenditures to date against planned obligations and expenditures, and against projected accomplishments for such outlays; and
  - Report deviations from budget and program plans, and request approval for budget and program plan revisions.

Cash Management

The Local Government should have procedures in place to minimize the amount of time that elapses between receipt of CDBG funds and the actual disbursement of those funds, which will curtail

unnecessary drawdowns of CDBG funds and minimize the cost of financing the CDBG program by the federal government.

- Requirements concerning cash management include the following:
  - The LG must include accurate information in drawdown requests;
  - Funds drawn down erroneously must be returned. (This includes funds drawn down under the cash advance method where the expenditure of funds is delayed.)
  - Disbursement of funds must occur in a timely manner. While there is no explicit time period, the general rule is that payment must take place within three business days of deposit of CDBG funds. If payment takes longer than three business days, written justification should be maintained in the files.
  - If grant advances are placed in an interest-bearing account, interest income must be remitted to the U.S. Treasury. (However, interest amounts up to $100 per year may be retained by the state for administrative expenses.)

Audit Requirements

States, Local Government and nonprofit organizations that expend $750,000 or more in federal financial assistance (including non-CDBG-ED funds) in the Local Government's fiscal year must have an audit done in accordance with the requirements of the Single Audit Act (**OMB Circular A-133** "Audits of States, Local Governments and Non-profit Organizations").
If the Local Government expends less than $750,000 a year in federal awards, it is exempt from the audit requirements for that year; however, records must be available for review. A **single audit** is an audit that includes both an entity's financial statements and its federal awards (from all applicable federal programs).

The audit must be performed by an independent auditor in accordance with Government Auditing Standards and must be conducted in accordance with the OMB circulars.

If the Local government wishes, they may use funds from the RLF to pay for the share of the A-133 audit costs that relate to the percentage of CDBG-ED funds audited. For example, if an A-133 audit is required and CDBG-ED funds represent 50% of audited federal expenditures, RLF funds can be used to pay for no more than 50% of the A-133 costs.

In order to use RLF funds to pay for A-133 audit costs, the LG must procure audit services as outlined in the Procurement section of this chapter.

Funds from the RLF cannot be used to pay for any portion of a non A-133 audit.

The Catalog of Federal Domestic Assistance Number for the Community Development Block Grant program is 14.228.
The most current version of Circular A-133 can be found at the following link:

www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2014

Procurement

Regulations governing procurement of goods and services for which the CDBG-ED RLF will be used require that LG's use competitive processes to procure those goods and services (24 CFR 85.36), in particular procuring a consultant or an engineer. Through the competitive process, two or more vendors or contractors bid to provide the LG with the most favorable price, quality and service.

Depending on the nature of the purchase and the number of available providers, the LG may select from the following options:

1. Small purchases procedures;
2. Competitive sealed bids (formal advertising);
3. Competitive negotiation;
4. Noncompetitive negotiation.

The LG must maintain documentation that shows that professional services were procured in accordance with 24 CFR, Part 85. Services obtained from a special purpose unit of government, such as an HRA, Port Authority or EDA are not required to be procured by competitive negotiation. All construction performed by the Local Government must be procured by competitive bidding.

The CDBG procurement requirements do not apply to a private business if the CDBG-ED RLF will be provided for construction purposes or for the purchase of equipment. However, as part of the Underwriting process, the business must provide the LG with documentation that such costs are reasonable.

If the LG has not adequately documented a procurement process, it may be liable for all funds expended on the good or service.

Change of Use

The standards described in this section apply to real property within the Local Government's control that was acquired or improved, in whole or in part, using CDBG funds in excess of$100,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after final close-out of the grant from which assistance to the property was provided.

The Local Government may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, unless the Local Government provides affected citizens with reasonable notice of and opportunity to comment on any proposed change, and either:

- The new use of the property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or
- The Local Government determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify as meeting a National Objective, it may retain or dispose of the property for the changed use if the state's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non- CDBG funds for acquisition of, and improvements to, the property.

- Following the reimbursement of the CDBG program, the property no longer will be subject to any CDBG requirements.

Chapter 10
MONITORING/JOB TRACKING/CLOSEOUT

MONITORING

Monitoring begins when the RLF loan is approved and continues through project completion. The purpose of monitoring is to be proactive with any issues or concerns the business may have, to determine if the business is in compliance with various conditions of the Loan Agreement, including project timing, job creation and meeting the National Objective. For example, the local government should:

- Require regular progress reports that flag any pending or anticipated problems. At a minimum, this must be done on an annual basis, so the LG can prepare the "RLF Report" for submittal to DEED; and
- Make periodic visits to the business to evaluate progress and discuss issues and provide any technical assistance needed.

Additional information on Loan Servicing can be found in Chapter 1, Revolving Loan Funds.

If issues are found during the monitoring visit, the LG should attempt to either provide the necessary technical assistance or refer the business to an organization that can assist, such as the Small Business Development Center.

JOB TRACKING

The business is required to track job creation for compliance with the LMI National Objective from the date the Local Government receives the application until the project is complete. The project is complete when the "project" as defined in the application is finished and the job creation goals are met. To determine the end date, the business must provide the LG with an estimated time frame for completion of the project. In most cases the project itself will be complete before the job goals are met. DEED allows up to two years.

If the project is complete and the job goals are met before the end date, the business must continue to report until the end date. If, at the end date, the goals are *not* met, the LG, after holding a public hearing, can amend the loan agreement to provide additional time for the business to meet the job goals. The business must provide a written request to the LG explaining the reasons for not meeting the National Objective within the time frame and the likelihood of compliance within a reasonable period of time.

Job Creation Scenarios:

a. Project is complete; job goals and LMI are met at the end date:
   1. Job Information forms (Appendix D) to LG;
   2. Documentation of expenditures;
   3. LG "closes" the file, expect for receipt of payments; and
   4. LG documents this information in next annual report to DEED;
   5. No additional reporting to DEED.

b. Job creation is at or above the agreed level but jobs for LMI persons do not meet the 51% threshold.

1. Fifty-one percent of **all** new jobs must meet the LMI requirement.
2. End date can be extended to provide additional time to meet the National Objective; or
3. The business may provide documentation that at least 51% of the created jobs were made available to LMI persons. This process requires supporting documentation on all applicants and a narrative analysis explaining the "made available to" process (Chapter 3-National Objectives); or
3. The business must repay 100% of the loan at an accelerated rate.

c. Job creation below the agreed upon level. The business must provide to the LG a detailed narrative analysis outlining the reasons for not meeting the job goal. The LG may look favorably upon the situation as long as no more than $35,000 (Chapter 4, Public Benefit Standards) of CDBG-ED RLF funds are spent on each full-time equivalent job created or retained, and as long as a National Objective has been met. For infrastructure improvements, no more than $10,000 of CDBG-ED RLF funds can be spent for each FTE job created or retained, and as long as a National Objective is met.

d. No Job Creation –

1. If the business is still operating, but no jobs were created as a result of the CDBG-ED assistance, procedures outlined in item b. above should be followed.
2. If the business is no longer operating, the LG must determine the appropriate course of action based on its Revolving Loan Fund Policies.

GENERAL CLOSEOUT REQUIREMENTS

The local government must ensure that statutory and regulatory requirements that govern the CDBG-ED program have been met prior to closing a project. This includes that the jobs have been created, a National Objective has been met, project costs have been documented, compliance with environmental and labor standards, etc. When the determination has been made that the project is in compliance, the LG must state this on the next annual Report Form and further reporting on the project is no longer required.

Chapter 11
RECORDKEEPING

The Local Government must maintain files and records on its organization, financial and administrative systems, compliance with the CDBG-ED requirements, as well as the specific project(s) funded with the RLF. Accurate recordkeeping is crucial to the successful management of the fund.

Citizens must be provided with reasonable access to these records consistent with applicable State and local laws regarding privacy and confidentiality. Furthermore, DEED, HUD, the Comptroller General of the United States, or their authorized representatives, State Auditor and Legislative Auditor has the right to access all local government program records. This right is not limited to the retention period (discussed below).

Under the uniform administrative requirements of the CDBG regulations, the LG is required to retain CDBG records for a period of not less than five years from the date the activity was assisted. However, DEED recommends that the records be maintained until the loan to the business is paid in full.

This chapter provides a listing of the documentation that should be on file with the local government.

A. General Administrative Files. The local government must maintain files and records that relate to the overall administration of the CDBG-ED RLF.

1. Citizen participation information;
2. Fair Housing and Equal Opportunity records;
3. Environmental Review Records;
4. Documentation of compliance with other Federal requirements (e.g., Davis Bacon, Uniform Relocation Act, etc.).

B. Financial Records.

1. Loan Register;
2. Source documentation (invoices, canceled checks, etc.);
3. Procurement files (bids, contracts, etc.);
   a. Request for Proposal or document used to notify prospective consultants/others;
   b. List of respondents, including contact information and the dollar amount of each proposal;
   c. Description of the process used to select the consultant/others, including the rationale for the selection;
   d. Executed Contract(s).
4. Bank account records for the RLF;
5. Financial reports;
6. Relevant financial correspondence.

C. Project Records

Individual files for each business funded and establish a system for ensuring that every file contains the necessary information. Consider a Table of Contents and Checklist for every file.

1. Business Application
2. Job Creation Plan
3. Underwriting Review
4. Staff write up and recommendation
5. Award letter

6. Public Hearing minutes, notice of public hearing, affidavit of publication
7. Loan Documentation
   a. Loan Agreement
   b. Promissory Note
   c. Security Documents
   d. Amortization Schedule
8. Amendments, Revisions, Extensions, etc.
9. Evidence of having met a National Objective
10. Eligibility of the project;
11. Compliance with other program requirements, including environmental review, labor standards
12. Documentation of project expenditures (invoices, contracts, canceled checks, final sworn construction statement(s)
13. Status of the project, including job creation
14. Correspondence file

D. Environmental

1. Environmental Review Record

2. Copies of Public Notices and Affidavits of Publication, if applicable

3. Notice of Environmental Clearance from DEED, if applicable

4. Correspondence file

5. See DEED Environmental Manual for detailed information:

http://mn.gov/deed/government/financial-assistance/community-funding/

E. Fair Housing Records

1. Documentation of the action(s) the local government has taken to affirmatively further fair housing, including records on funds provided, if any, for such actions;

2. Demographic data (actual survey or latest Census/American Community Survey data) depending on the project undertaken may include:

   - The population of the jurisdiction of the unit of general local government receiving CDBG funds;
   - The minority population of the locality (number and percentage);
   - The target area population;
   - The minority population of the target area (number and percentage);

- The number of disabled, elderly households, and female-headed households in the target area; and
- A map of the locality showing the locations of assisted housing units, concentrations of minority population, concentrations of LMI, and the target area.

F. Direct Benefit Records

The local government must maintain statistical information on the persons benefitting from the project. Records must be kept by race, ethnicity, and gender, and head of households. For most economic development projects, this will be accomplished by having on file the "Job Information Forms" **(Appendix D)** for each new or retained employee.

G. Section 504 Records, when applicable

1. A copy of the self-evaluation;
2. A copy of the transition plan;
3. A list of interested persons who were consulted;
4. A description of areas and buildings examined and any problems identified;
5. A description of modifications made and remedial steps taken to comply with the regulations; and
6. Evidence that new or substantial rehab multi-family projects were constructed/rehabilitated to meet 504 standards.

H. Employment and Contracting

Data on employment of the local government that is carrying out an activity funded in whole or in part with CDBG funds. The data to be maintained in the files includes:

1. A description of the local government work force in percentage by race, gender, job title, salary, and hire date;
2. The percentage of minorities in the jurisdiction of the local government thatis receiving CDBG funds and the percentage of minorities working for that unit of local government;
3. The number of project area residents employed with CDBG-ED funds;
   - Data should show the percentage by race and gender of the personnel in any department, office, or agency of the local government using CDBG-ED funds to employ staff.
   - For example, if CDBG funds are being used to pay a portion of a bookkeeper's salary in the accounting department of the city, then employment data should be available for the department.

4. Government hiring practices and policies;

5. Affirmative Action Plan (if applicable);

6. Documentation of the affirmative actions the local government has taken to overcome the effects of prior discrimination as determined through a formal compliance review or court proceeding, where the local government has previously discriminated against persons on the grounds of race, color, national origin, or sex in administering a program or activity funded in whole or in part with CDBG funds.

7. Procurement procedures and implementation plan;

8. Minority and Women Business Enterprise (MBE/WBE) outreach and networking;

9. MBE and WBE reporting;

10. Section 3 Plan;

I. Labor Standards:

DEED's Labor Standards Manual can be found on the DEED website at:

http://mn.gov/deed/government/financial-assistance/community-funding/

J. Documentation for meeting a National Objective

National Objective	Records to be Maintained
LMI – Area Benefit	• Boundaries of service area; • Information on the primarily residential character of the service area; • Percentage of LMI persons that reside in the service area; and • The data used for determining percentage of LMI persons.
LMI – Limited Clientele	One of the following: • Documentation showing that the activity is designed for exclusive use by a segment of the population presumed by HUD to be LMI persons; • Documentation describing how the nature and the location of the activity establishes that it will be used predominantly by LMI persons; or • Data showing the family size and annual income of each person receiving the benefit; Additional Information: • Data showing that barriers to mobility or accessibility have been removed and how the barrier removal was restricted to the extent feasible to one of the particular cases authorized under this category; or • Documentation showing that the activity qualifies under the special conditions regarding job services where less than 51 % of the persons benefiting are LMI persons.

LMI --Job Creation "Taken by LMI"	**Loan Application:** • A commitment by the business that at least 51% of the jobs on a FTE basis, will be held by LMI persons; • A listing, by job title, of employees at the time the application for assistance is submitted (identifying which are part time, if any) which will determine the base employment; • A listing, by job title, of the permanent jobs to be created; **Loan Agreement:** • The base number of FTE permanent jobs; • The number of FTE permanent jobs to be created; • A statement that at least 51% of the jobs, on a FTE basis, will be held by LMI persons. • Evidence supporting the estimated total number of jobs to be created; **Reporting information:** • A listing, by job title, race, ethnicity, gender and handicapped status of the permanent jobs actually created and those initially taken by LMI persons; • A description of how the lmi status of those hired was determined; • A description of how the total number of jobs was determined. • Job Information form for each person hired which includes the size and annual income of the person's family prior to the time the person was hired for the job, or evidence the person qualifies as "presumed" to be LMI based upon location of the business or the person's residence

LMI Job Creation "Available to LMI"	**Loan Application:**
	• A commitment by the business that it will make at least 51% of the FTE jobs available to LMI persons and will provide training for any of those jobs requiring special skills or education;
	• A listing, by job title, of employees at the time the application for assistance is submitted (identifying which are part time, if any), which will determine the base employment;
	• A listing, by job title, of the permanent jobs to be created, indicating which jobs will be available to LMI persons, which jobs required special skills or education, and which jobs are part-time; and
	• A description of the actions to be taken to ensure that LMI persons receive first consideration for these jobs.
	• Evidence supporting the estimated total number of jobs to be created;
	
	Loan Agreement:
	• The base number of FTE permanent jobs, which must be maintained until the end date;
	• The number of FTE permanent jobs to be created;
	• A statement that at least 51% of the jobs, on a FTE basis, will be made available to LMI persons;
	Reporting information:
	• A listing, by job title, race, ethnicity, gender and handicapped status of the permanent jobs actually created and those initially taken by LMI persons;
	• A listing by job title of the permanent jobs created and which jobs were available to LMI persons;
	• A description of how "1st consideration" was given to such persons for these jobs;
	  ○ Type of hiring process was used;
	  ○ Names of LMI persons interviewed for a particular job; and
	  ○ Names of LMI interviewees who were hired.

LMI – Job Retention	**Loan Application:** • Evidence that, in the absence of the LG's RLF assistance, the jobs would be lost; • A commitment by the business to meet the standard for retained jobs involving the employment of LMI persons; and • A listing by job title, of permanent jobs retained, indicating which of those jobs are part-time and (where it is known) which are held by LMI persons; • For each retained job to be held by a LMI person, a Job Information form on the size and annual income of the person's family or evidence that the person may be presumed to be LMI based on the location of the business or the person's residence;

LMI – Job Retention – Jobs claimed to be "available to" LMI persons based on job turnover	**Loan Application:**
	• A listing of the retained jobs that are projected to become available within two years of assistance;
	• The basis of the determination that the job is likely to turnover within two years of assistance;
	
	Loan Agreement:
	Statement that at least 51% of the jobs, on a FTE basis, will be "made available" to LMI persons;
	• The base number of FTE permanent jobs;
	
	Reporting Information:
	• The actual turnover date;
	• The name and income status of the person who filled the vacancy;
	• If the person who took the job was not a LMI person, records to demonstrate that the job was "made available" to LMI persons:
	  ○ The name(s) of person(s) interviewed for the job and the date of the interview(s);
	  ○ The income status of the person(s) interviewed; and

Slum/Blight- Area Basis	• Boundaries of the area; and • Description of the conditions that qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the qualifying criteria (i.e., the area meets a definition of slum, blighted, deteriorating area under state or local law); and • One of the following: A letter from the applicant, signed by either the mayor/board chair or the LG's legal counsel; or A council/board resolution **Reporting Criteria:** • How the assisted activity addressed one or more of the conditions that contributed to the deterioration of the area.
Slum/Blight- Spot Basis	• A map indicating the location of the site; and • Description of the specific condition of blight or physical decay treated; • Documentation that the entire building (for acquisition/demolition) or certain building conditions (for rehabilitation) are hazardous to public health and safety
Urgent Need	• Documentation concerning the nature and degree of seriousness of the condition requiring assistance; • Information on the timing of the development of the serious condition; and • Evidence that other financing resources are not available.

CHAPTER 12

WEBSITES, LAWS, REGULATIONS, EXECUTIVE ORDERS, ETC.

It is the responsibility of the Local Government to ensure that the CDBG-ED RLF comply with all applicable Federal and State laws, regulations and executive orders. The specific laws, regulations, executive orders pertaining to the CDBG program are available on the World Wide Web.

Following are the websites for major Laws, Regulations, OMB Circulars and Executive Orders that pertain to the CDBG program:

Department of Housing and Urban Development: www.hud.gov

HUD Exchange: www.hudexchange.info/cdbg-state/

CPD Notices: www.hudexchange.info/manage-a-program/cpd-notices/ *

CPD Memoranda:
www.hudexchange.info/community-development/cdbg-memoranda/ **

Office of Management and Budget (OMB) Circulars:
www.whitehouse.gov/omb/circulars_default/

Presidential Executive Orders:
http://www.archives.gov/federal-register/executive-orders/

Minnesota Rules, Chapter 4300, Community Development Block Grants:
www.revisor.mn.gov/rules/?id=4300

HUD Laws and Regulations: www.hud.gov/offices/cpd/lawsregs/index.cfm

* CPD Notice: A Notice is a document issued, in this case by HUD's Office of Community Planning and Development, to clarify or inform regarding a specific topic.

** CPD Memoranda: HUD provides guidance on the CDBG program through Policy Memoranda.

Publications:

Basically CDBG for States:
https://www.hudexchange.info/resource/269/basically-cdbg-for-states/

HUD's Guide to Eligible Activities and National Objectives:
https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/

HUD Economic Development Toolkit: www.hud.gov/offices/cpd/economicdevelopment/toolkit/index.cfm

CDBG Toolkit on Crosscutting Issues
https://www.hudexchange.info/resource/34/cdbg-crosscutting-issues-toolkit-contents/

Applicable laws, regulations and Executive Orders (classified in general by compliance area) include but are not limited to the following:

General:

1. Title I of the Housing and Community Development Act of 1974, as amended. www.hudexchange.info/community-development/cdbg/-laws-and-regulations
2. 24 CFR, Part 570, Subpart I, Community development Block Grant: State Program Regulations, and Subpart C, Eligible Activities. www.ecfr.gov/ecfr
3. Section 104 (a) (3) of the HCDA & 24 CFR 570.486 (5): Citizen Participation.
4. 105(h) of the HCDA; 24 CFR Part 570.482; Section 588 of the Quality Housing and Work Responsibility Act of 1998: Job Pirating Provisions
5. 31 U.S.C. 1352, Anti-Lobbying
6. 24 CFR 570, Appendix A, "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements.
7. 24 CFR 570.482(f). Public Benefit Standards.

Financial Management:

1. 24 CFR Part 85. Administrative Requirements for Grants and Cooperative Agreements to State, Local and Recognized Indian Tribal Governments, ads modified by 24 CFR 579, Subpart J, "Grant Administration." Also known as "the Common Rule." www.hud.gov/offices/lead/library/lead/24_CFRPART_85.pdf
2. OMB Circular A-133. Audits Management.
3. OMB Circular A-87. Cost Principles.

Civil Rights:

1. Title VI – Civil Rights Act of 1964.
2. Section 109 –Title I –Housing and Community Development Act of 1974. Nondiscrimination in Programs and Activities Receiving Assistance under Title I of the HCDA.
3. Title VIII of the Civil Rights Act, 1968, as amended. 4. Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.
4. Executive Order 11246 – Equal Employment Opportunity, as amended by Executive Order 11375.
5. Executive Order 11063 – Equal Employment Opportunity, as amended by Executive Order 112259.
6. Section 3 of the HCDA of 1968, as amended;

7. Section 118 of Title I, Community Development and Housing Act 1974, and implemented by HUD regulations; 24 CFR, part 135.
8. Age Discrimination Act of 1975.
9. Section 504 of the Rehabilitation Act of 1973 and Implementing regulation (24 CFR Part 8). Nondiscrimination Based on Handicap.
10. Fair Housing Amendment Act of 1988; 24 CFR 570.487(b) Fair Housing Act.

Labor Standards

1. Fair Labor Standards Act
2. The Contract Work Hour and Safety Standards Act (40 U.S.C. 327-330 as supplemented by Department of Labor regulations.
3. The Davis Bacon Act (40 U.S.C. 276(a) to (a-7), as supplemented by Department of Labor regulations.
4. The Copeland "Anti-Kickback" Act of 1986 (18 U.S.C. 874) as supplemented by Department of Labor regulations.

Acquisition/Relocation

1. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (46 U.S.C. 4601 and regulations at 49 CFR, Part 24. www.hud.gov/relocation

Environmental

1. The National Environmental Policy Act (NEPA) of 1969, as amended by Executive Order 11991 of May 24, 1977 and the Council on Environmental Quality's (CEQ) NEPA Regulations, 40 CFR Parts 1500-1508.
2. HUD Environmental Standards (24 CFR, Part 51) Environmental Criteria and Standards.
3. Environment Review procedures for the CDBG Program, 24 CFR Part 58
4. The National Historic Preservation Act of 1966, as amended, particularly Section 106.
5. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971.
6. The Reservoir Salvage Act of 1960, as amended, particularly Section 3, as amended by the Archeological and Historic Preservation Act of 1974.
7. Flood Disaster Protection Act of 1973, as amended.
8. Executive Order 11988, Floodplain Management, May 24, 1977.
9. Executive Order 11990, Protection of Wetlands, May 24, 1977.
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.
11. The Coastal Zone Management Act of 1972, as amended.
12. The Safe Drinking Water Act of 1974, as amended.
13. The Endangered Species Act of 1973, as amended; particularly Section 7.

14. The Archeological and Historic Preservation Act of 1974.
15. The Coastal Resources Barriers Act of 1982.
16. The Wild and Scenic Rivers Act of 1968, as amended.
17. The Clean Air Act Amendments of 1970, as amended.
18. Farmland Protection Policy Act of 1981
19. Notice of Runway Clearance Zone
20. EPA Sole Source Aquifers, 40 CFR Part 149.
21. Noise Abatement and Control, 24 CFR Part 51.

Appendix A
DEFINITION OF INCOME

Income includes the following:

General Category	Statement from 24 CFR 5.609 paragraph (b) (June 25, 2014)
1. Income from wages, salaries, tips, etc.	The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
2. Business Income	The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
3. Interest & Dividend Income	Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in #2. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of $5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on

	the current passbook savings rate, as determined by HUD.
4. Retirement & Insurance Income	The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in #14 of Income Exclusions).
5. Unemployment & Disability Income	Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay (except as provided in number 3 of Income Exclusions).
6. Welfare Assistance	Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments: • Qualify as assistance under the TANF program definition at 45 CFR 260.31; and • Are not otherwise excluded under the Income Exclusions section. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of: • the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; ***plus*** • the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is reduced from the standard of need by applying a percentage, the amount calculated under this section shall be the amount resulting from one application of the percentage.
7. Alimony, Child Support, & Gift Income	Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
8. Armed Forces Income	All regular pay, special day and allowances of a member of the Armed Forces (except as provided in number 7 of Income Exclusions).
9. Tuition	Any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

Income Exclusions

Annual Income does not include the following:

General Category	Statement from 24 CFR 5.609 paragraph (c) (April 1, 2004)
1. Income of Children	Income from employment of children (including foster children) under the age of 18 years.
2. Foster Care Payments	Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
3. Inheritance and Insurance Income	Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in # 5 of this section).
4. Medical Expense Reimbursements	Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
5. Income of Live-in Aides	Income of a live-in aide (as defined in 24 CFR 5.403).
6. Student Financial Aid	The full amount of student financial assistance paid directly to the student or to the educational institution.

7. Armed Forces Hostile Fire Pay	The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
8. Self-Sufficiency Program Income	a. Amounts received under training programs funded by HUD. b. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS). c. Amounts received by a participant in other publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program. d. Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time. Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.
9. Gifts	Temporary, nonrecurring, or sporadic income (including gifts).
10. Reparations	Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.
11. Income from Full-time Students	Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household or spouse).
12. Adoption Assistance Payments	Adoption assistance payments in excess of $480 per adopted child.
13. Social Security & Veterans	Deferred periodic amounts from SSI and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Dept. of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.
14. Property Tax Refunds	Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
15. Home Care Assistance	Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled family member at home.

16. Other Federal Exclusions	Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions of 24 CFR 5.609(c) apply, including: • The value of the allotment made under the Food Stamp Act of 1977; • Payments received under the Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions); • Payments received under the Alaskan Native Claims Settlement Act; • Income derived from the disposition of funds to the Grand River Band of Ottawa Indians; • Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes; • Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program; • Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721); • The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first $2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands; • Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal workstudy program or under the Bureau of Indian Affairs student assistance programs; • Payments received from programs funded under Title V of the Older Americans Act of 1985 (Green Thumb, Senior Aides, OlderAmerican Community Service Employment Program); • Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation,M.D.L. No. 381 (E.D.N.Y.); • Earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments; • The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990; • Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, state job training programs and career intern programs, AmeriCorps); • Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation; • Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990; • Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran; • Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act; and • Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998.

Appendix B
DEFINITIONS

Following are some of the definitions of terms that pertain to the CDBG-ED program that will be referred to in this manual:

- **Annual Income**: As defined under HUD's Section 8 Low Income Limits, annual income is the gross amount (before deductions) of income earned by all adult family members.
- **CDBG-ED:** Community Development Block Grant Program-Economic Development program.
- **DEED:** Minnesota Department of Employment and Economic Development.
- **ENTITLEMENT:** Metropolitan cities or urban counties that receive annual CDBG funding directly from HUD. Minnesota Entitlements include the cities of: Bloomington, Coon Rapids, Duluth, Eden Prairie, Mankato, Minneapolis, Moorhead, North Mankato, Plymouth, Rochester, St. Cloud and St. Paul,; and the counties of Anoka, Dakota, Hennepin, Ramsey, St. Louis and Washington. Entitlements are administered directly by HUD.
- **Family:** All persons living in a household who are related by birth, marriage or adoption. Family income is used for economic development.
- **HUD:** U.S. Department of Housing and Urban Development. CDBG funds are provided to states through HUD. HUD established the regulations and requirements for the program and has oversight responsibilities for the use of CDBG funds.
- **Local Government**: The public entity that has received CDBG-ED funds from the State of Minnesota.
- **LMI – Low and Moderate Income:** A household/family having an income equal to or less than the Section 8 Low Income limit (80% of the area median) as established by HUD.
- **Low Income:** A household/family having an income equal to or less than the Section 8 Very Low Income limit (50% of the area median income) as established by HUD.
- **Moderate Income:** A household/family having an income equal to or less than the Section 8 Low Income limit (80% of the area media), but greater than the Section 8 Very Low Income limit (50% of the

area median).

- **National Objective(s):** Refers to the three main goals of the CDBG program
    1) Benefit to LMI persons;
    2) Prevention or elimination of slums/blight; or
    3) Urgent need.

  All projects funded with CDBG-ED funds must meet a national objective. Economic development projects typically meet the Benefit to LMI persons objective.

- **Non-Entitlement Area**: The State of Minnesota, excluding those areas identified in the Entitlement definition.

- **Regulations:** Refers to the implementing requirements that are developed and issued by the agency responsible for a certain program or requirement. In the case of the CDBG program, regulations are issued by HUD and can be found at 24 CFR Part 58.

- **RLF – Revolving Loan Fund:** a separate fund with a set of accounts that are independent of other program accounts.

- **Statute/Statutory:** Refers to requirements which have their basis in the law passed by Congress. In the case of CDBG, the statute is Title 1 of the Housing and Community Development Act of 1974.

- **URA –Uniform Relocation Act:** Federal regulation governing the acquisition of real property and the relocation or displacement of persons from federally assisted projects.

- **Very Low Income:** A household/family having an annual income that does not exceed 50% of the area median as established by HUD.

Appendix C
CREDIT ANALYSIS

Professional credit analysis is beyond the limited scope of a chapter in a manual of this nature. Accordingly, this chapter identifies the primary concepts of credit analysis and financial underwriting but does not try to replace a credit course.

In general, there are two basic types of underwriting -- Business Loans and Real Estate Transactions. They are analyzed in 2 different ways that will be discussed in this section.

1. **Business Loans** involve operating companies that provide services or produce goods. Payment of debt service is a function of cash flow generated by operations of the company. Examples of operating companies are retail businesses, industrial concerns, wholesalers, etc.;
2. **Real Estate tran**sactions are typically referred to as developer deals. Cash flow for repayment of debt service is derived from leases to third-party tenants. Examples of real estate transactions are shopping centers, industrial parks, office buildings, incubators, etc.;

Business Loans

The main criteria for underwriting business loans are:

- Ability to repay;
- Collateral;
- Commitment;
- Balance sheet analysis;
- Management experience; AND
- Credit history.

Of these six credit criteria, the ability to repay is generally the most important to public lenders. However, all are important and the absence of any one may be sufficient to decline a loan request.

1. The Ability to Repay

The ability to repay is usually expressed in a simple calculation called the debt coverage ratio (DCR). It is defined as follows:

Debt Coverage Ratio = Cash Flow Available for Debt Service / Debt Service

In general, private lenders look for a minimum DCR of 1.25. This translates into a project having $1.25 of cash flow available for every $1 of new and existing debt service. Many public lenders accept a ratio of 1.1 to 1.15. Although the calculation is simple, determining the cash flow available for debt service can require judgment and experience.

If the analyst knows two of the variables in a three variable equation, he can solve the unknown. For example, if a private lender has a DCR of 1.25 and there is $100,000 of cash flow available for debt service, debt service cannot exceed $80,000.

2. **Collateral**

If the project cannot repay the loan from cash flow, the lender attempts to collect payment by liquidating the asset pursuant to the specific lien securing the loan. This ability is measured by a ratio called loan-to-value (LTV). It is expressed as follows:

Loan to Value = Loan / Lesser of (1) Cost or (2) Value

LTV ratios will vary as to the nature of the asset being financed. The following are generally accepted loan-to-value standards (maximums):

Asset	LTV
Real Estate	80%
Machinery &	50-75%
Equipment Inventory	50-60%
Receivables	75%

3. **Commitment**

If the methods of repayment are insufficient, the lender must attempt to collect on other collateral, generally in the form of personal and corporate guarantees. Owners must guarantee the loan although the guarantee may be proportionate to their ownership interests. For example, an owner with 20 percent interest in a company borrowing $100,000 would guarantee $20,000 personally although the company would be liable for the entire loan.

4. **Balance Sheet Analysis**

The balance sheet must be sound before a loan is made. Soundness is determined primarily by analyzing the following:

- Does the company collect its receivables? An inability to collect receivables will hamper cash flow;
- Does the company pay its bills? Late or missed payments may indicate poor cash flow or unreliable character;
- Is the company managing its inventory? Sloppy inventory practices may be indicative of overall management deficiencies;
- Does the company generate sufficient cash relative to its cash needs?
- Is the owner paying himself/herself a reasonable salary or charging reasonable fees?

An affirmative answer to these five questions probably means the balance sheet is in sound condition.

5. **Experienced Management**

The management team, which includes the principals, directors, senior management and consultants, must have experience in all areas of running the business: sales, finance, operations, personnel, etc. They should have direct experience in these areas or have comparable businesses skills that can be transferred.

6. **Credit History**

The owners and management should have favorable credit histories, a reputation for treating customers fairly, no bankruptcy in the past five years, and a clean criminal record. In most cases, a credit report and a Dun & Bradstreet check are sufficient.

Evaluating Startups/Small Loans

The credit criteria enumerated above reflect professional standards. Startups or small loans (under $15,000) may have trouble satisfying all of these criteria. In general, these classes of loans are high risk. Accordingly, public lenders will probably have to allocate disproportionate staff time in monitoring and servicing these loans and increase reserves when compared to a portfolio reflecting professional standards.

A widely disseminated statistic indicates that only one business out of every five is in existence 5 years after its inception, although these statistics may also reflect businesses that are bought out or go public as no longer in existence. Recent research is beginning to explore this more and challenge the reliability of this statistic. For example, a BLS study showed 66 percent of business startups still in business after 2 years, and 44 percent in business after 4 years.

Regardless of which statistic is more accurate, a portfolio focusing on startups must address high risk factors and plan for loss rates which far exceed a portfolio targeted to existing and expanding businesses.

One tool that can help reduce the risk associated with lending to such businesses is the provision of business training and ongoing technical assistance to businesses receiving loans. Recipients should investigate options for providing this assistance, such as:

- Small Business Administration (SBA) Business Centers;
- Local educational institutions; and
- Business mentoring through institutions such as the local Chamber of Commerce.

In addition to the conventional criteria, a public lender should consider the following additional factors:

1. **Business Plan**

   A business plan can identify obviously worthy or unworthy ventures; however, an analyst should not over rely on a business plan. The worth of a business plan is increased greatly if the entrepreneur does it personally. Remember, you are financing the entrepreneur, not the accountant or consultant who writes the plan. Of particular importance is monthly cash flow statement for the first year. A handwritten cash flow statement prepared by the entrepreneur can be far more relevant than the fanciest computerized spreadsheet.

2. **Borrower Commitment**

   How much money the borrower commits is generally not as important as having the borrower put everything he has into the deal? Although there are many caveats, a borrower injecting most of his assets into a potential transaction is less likely to let the deal fail than someone injecting a fraction of their net worth. The borrower should sign personally for the loan and should be prepared to take out a minimum salary until the business is established.

3. Niche

   It is difficult for a small firm to compete with much larger companies on price. Is the entrepreneur committed to customer service? A startup or small business needs to understand the

market in order to create a market niche or offer a unique product or service to differentiate itself.

Real Estate Transactions

Real estate transactions are also called developer deals. Cash flow for repayment of debt service is derived from leases to third party tenants. Examples of real estate transactions are shopping centers, industrial parks, office buildings, incubators, etc. Despite the range of properties, all real estate deals are analyzed in essentially the same manner.

Real estate transactions are expressed as the following:

Gross Rent	$250,000	
Vacancy and Uncollected Rents	-$ 20,000	Effective Gross
Rents	$230,000	
Operating Expenses	-$120,000	
Net Operating Income	$110,000	

Net operating income (NOI) pays claims in the following priority:

- Mandatory debt service;
- Replacement reserves;
- Non-mandatory or cash flow loans; and
- Distributions to owners.

This is a cash definition. The owners collect cash (rents) and pay out cash (operating expenses). The remaining cash is the NOI and pays lender debt, funds the replacement reserves, and provides a return to investors.

Underwriting analysis is only as sound as the quality of the information an analyst uses. The proper way to determine rents, operating expenses (taxes, utilities, maintenance, insurance, management, etc.) is to observe the market. Find comparable properties to the subject and adjust accordingly.

It is also important to identify any tenant contributions. For example, if a property leases for $10 per square foot with the tenant paying all operating expenses and a "comparable" property leases for $15 per square foot with the landlord paying all expenses, the amount of the tenant contribution is important in comparing the two properties.

Real Estate Loan Underwriting Criteria

Business loans and real estate loans have similar underwriting concepts, but each transaction is analyzed differently. Relevant criteria for real estate underwriting include:

- Ability to repay;
- Collateral;
- Commitment to project; AND
- Experience of development team.

All of these criteria are important and rejecting only one may be cause to reject the loan.

1. **Ability to Repay**

   A lender is concerned with the ability of the project to repay the existing and proposed debt service.

The primary ratio lenders utilize to determine this capacity is the debt coverage ratio, defined as follows:

DCR = Net Operating Income / Debt Service

Although the math is simple, determining NOI can be involved. Finding comparable properties and making adjustments to the subject property to establish rents, vacancy rates, and operating expenses requires experience and judgment. In using NOI, the lender uses a stabilized year. For example, if a project takes 2 years to lease-up, the lender utilizes the stabilized vacancy beginning in year 3 but does not inflate the rents in calculating DCR.

Most conventional lenders have a threshold for DCR in the range of 1.20 to 1.3 with public lenders accepting a range of 1.1 to 1.15. In general, the lender wants a high probability of leasing (if not signed leases) and tenants of acceptable credit quality. For larger projects, a market or feasibility study or appraisal is often required.

In general, the lender wants a high probability of leasing (if not signed leases) and tenants of acceptable credit quality. For larger projects, a market or feasibility study by an independent third-party professional is often required.

2. Collateral/Appraisals

The second means of repayment is liquidating the mortgage or deed of trust which secures the real estate loan. Lenders measure this capacity with the loan-to-value (LTV) ratio, defined as follows:

LTV = Loan / Value

An appraiser normally determines value. The appraiser should have experience with comparable projects and have the necessary State certifications. If properly prepared, the appraisal should have a wealth of information concerning rents, vacancy and operating expenses. In general, the purpose of the appraisal should be to determine fair market value with fee simple ownership.

Questions to ask:

- What is the purpose of the appraisal?
- Has the appraiser valued similar projects as to type and scale?
- Are the comparables really "comparable"?
- What are the assumptions and limiting conditions?

The threshold LTV for conventional lenders for real estate projects is generally in the range of 75 percent to 80 percent. Public lenders will usually go as high as 90 percent.

3. Commitment to Project

Larger transactions may include a developer, a syndicator, multiple investors and property manager. For these types of projects, it may be difficult for a general partner of a limited partnership development to sign a recourse note for the mortgage due to complicated tax issues. However, a developer can show commitment in other ways:

- Completion guarantee;
- Recourse during the construction period;
- Deferral of development fee until construction is finished and project leased; or
- Guarantee cash flow shortfalls.

For smaller projects without these issues, the owner can sign personally and/or corporately. In addition to the equity injected into the project, commitment by the owners and the developer reduce the risk to the lender and enhance the success of the venture.

4. Experience of the Development Team

It is critical to the success of the transaction that the development team has experience in completing projects of similar type and scale. The development team includes the developer, architect, contractor, property manager, syndicator, leasing agents, mortgage banker, etc. In smaller projects, the owner may perform all of the roles listed above. The developer of the project should have a good credit history and be reputable.

All the criteria are important and any may be sufficient to refuse a loan request. Business loans and real estate loans have similar underwriting concepts, but each transaction is analyzed differently. For a real estate project involving business tenants, two levels of analysis are needed: (1) to determine the feasibility of the real estate project; and (2) to determine whether the project will generate the projected rents.

The following thresholds may serve as general rules of thumb:

- A loan-to-value (LTV) ratio of no more than 80 percent (for real estate).
- A debt coverage ratio (DCR) of at least 1.15-1.25.

Using prudent underwriting standards and risk management techniques can help communities insulate risk to an acceptable level.

Risk Continuum

LOAN CHARACTERISTIC	Lower Risk ←		→ Higher Risk
Debt Coverage Ratio	1.25+	1.15	1.00
LTV Ratios	0.5	0.8	1.0+
Structure of Loans	Approximates an installment loan with even payments, includes a debt service reserve in the loan amount	Interest only payments with balloon payment due at end of the term	
Structure of Third Party Portfolio	Numerous borrowers and projects, none of which account for more than 20-30% of total portfolio	Majority of funding allocated to one borrower or project	
Leverage	Private lender participation	Solely financed with CDBG funds	

The security requirement would be satisfied by a specific lien on the real estate (mortgage or deed of trust) or a UCC filing on personal property, plus some form of general lien (personal, corporate guarantee, developer completion, etc.).

If the transaction does not conform to the underwriting thresholds, the borrower should pledge additional security. Examples of additional security pledged include the following:

- Income stream from a "seasoned" loan portfolio;
- Parking revenue;
- Pledge of tax increment from a tax increment financing district;

- Pledge of land or property (must have value); or
- General obligation of the community.

JOB INFORMATION FORM

This form must be completed within two weeks of hiring.

The City of has received Community Development Block Grant (CDBG) funds to increase employment. Certain information must be collected regarding each position and the employee accepting the position. This information will not be disclosed or released by this office without your consent, except to the City of or its agent, Minnesota Department of Employment and Economic Development and to the federal Department of Housing and Urban Development.

The objective of the CDBG program is to create/retain jobs, of which a minimum of 51% will be "held by" low and moderate income (LMI) persons. An LMI person means a member of a family having an income equal to, or less than, the Section 8 low-income limit established by HUD.

1. The family's entire income must be counted. A family is all persons living in the same household who are related by blood, marriage, or adoption.
2. Adult children who continue to live at home
3. A dependent child who is living outside of the home.

EMPLOYEE CERTIFICATION (To be completed by the Employee)	The information in this section is asked for the sole purpose of gathering data. The data is compiled and provided to the U.S. Department of Housing and Urban Development for purposes of evaluating compliance with Civil Rights laws.

1. The employee accepting this position is:

☐ Male ☐ Female ☐ Female Head of Household

☐ Person with a disability ☐ Hispanic ☐ Eligible for Section 8 Housing

2. The employee's household:

☐ (1) White ☐ (2) Black/African American

☐ (3) Asian ☐ (4) American Indian/Alaskan Native

☐ (5) Native Hawaiian/Other Pacific Islander ☐ (6) American Indian/Alaskan Native White

☐ (7) Asian & White ☐ (8) Black/African American & White

☐ (9) American Indian/Alaskan Native & Black/African American ☐ (10) Other Multi-Racial

3. Were you unemployed prior to accepting this position? ☐ Yes ☐ No

4. What is the number of family members living in your household? _____

5. Locate your family size in the far left column in the chart below. Check the one box in the same row as your family size that reflects your family income for the past 12 months and prior to accepting this position.

Family Size	**Family Income Level**			
	EXTREMELY LOW	**LOW**	**MODERATE**	**NON-LMI**
1 Member	☐ $ or less	☐ $ to $	☐ $ to$	☐ $ or more
2 Members	☐ $ or less	☐ $ to $	☐ $ to$	☐ $ or more
3 Members	☐ $ or less	☐ $ to $	☐ $ to$	☐ $ or more
4 Members	☐ $ or less	☐ $ to $	☐ $ to$	☐ $ or more
5 Members	☐ $ or less	☐ $ to $	☐ $ to$	☐ $ or more
6 Members	☐ $ or less	☐ $ to $	☐ $ to$	☐ $ or more

If more than 6 family members, state total family income: $_____

Per Section 8 Income Limits for effective December 18, 2013.

If requested, I would agree to make my financial records available to the city or its agent for verification of the above information. I certify that this income information is, to the best of my knowledge and belief, a true, correct and complete statement of my financial condition as of the date stated herein and I understand that this information is subject to verification by authorized representatives of the City of and or its agent.

Signature (Employee) _____ Date _____

Printed Name _____ Home Phone Number _____

WARNING: Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.

COMPANY CERTIFICATION (To be completed by the Company.)	1. Wages $ _____ Total annual hours for this position $ _____ Hourly wage exclusive of benefits. $ _____ Hourly value of benefits.

2. Benefits that apply to this position

- ☐ Health
- ☐ Dental
- ☐ Life Insurance
- ☐ Retirement
- ☐ Long/Short Term Disability
- ☐ Other: _____

I certify to the following:

That _____ (Employee) was hired for _____ (Job Title) on _____ (Date).

☐ That this position meets the "held by" LMI criteria as outlined on Page 2.

☐ That this position does not meet the LMI criteria.

☐ That this employee is:
- ☐ a new hire
- ☐ a recall from a temporary layoff
- ☐ recalled from a permanent layoff
- ☐ accepting a lateral transfer
- ☐ accepting a promotion

Company Officer _____ Date _____

GRANTEE CERTIFICATION (To be completed by the Grantee)	I acknowledge that I have reviewed the above information and it meets the following criteria: ☐ Held by an LMI person ☐ Non-LMI

	Project Director	Date
WARNING: Title 18, Section 1001 of the U.S.Code states that a person is guilty of a felony for knowlingly and willingly making false or fraudulent statements to any department of the United States Government.		

Substantial Amendment to the State of Minnesota's 2018 Annual Action Plan Comments:

No comments were received as of close of business October 9, 2018.