

REVOLVING LOAN FUNDS

(FEDERAL FUNDS)

A local unit of government may establish a Revolving Loan Fund (RLF) with funds received from a variety of sources. The guidelines outlined here pertain only to those funds received through the repayment of a loan which was generated from the Community Development Block Grant (CDBG) Economic Development Set Aside program (ED) administered through the Department of Employment and Economic Development (DEED).

The recipient of an ED grant is authorized to keep all of the principal repayments and interest on the loan amount. The municipality must establish policies and procedures for the reuse of these funds. These guidelines must be submitted to and approved by your DEED Senior Loan Officer.

The municipality's RLF policies and procedures must adhere to the same requirements that are imposed on the state's ED program. In addition to the city's criteria, the following federal and state criteria must be included in the policies and procedures:

I. PURPOSE OF THE REVOLVING LOAN FUND

Revolving loan funds are to be used for business start ups, expansions, and retentions where jobs are created or retained. This may be accomplished by the following means:

- 1.) Creation or retention of permanent private-sector jobs in order to create above average economic growth;
- 2.) Stimulation or leverage of private investment to ensure economic renewal and competitiveness;
- 3.) Increase to the local tax base;
- 4.) Improvement of employment and economic opportunity for citizens in the region to create a reasonable standard of living; and
- 5.) Stimulation of productivity growth through improved manufacturing or new technologies.

II. ELIGIBLE EXPENDITURES

RLF's may be used to provide assistance for infrastructure, loans, loan guarantees, interest buy-downs, and other forms of participation with private sources of financing. The RLF assistance can be for no more than one-half of the cost of the project. The RLF is subject to all of the federal CDBG requirements.

Recently, HUD recognized the need to lessen the burden to grantees that are administering CDBG funded RLFs. The grantee may now allow a sub-grantee to use the CDBG funded RLF to make loans under the usual rules governing CDBG activities. The resulting repayments to the sub-grantee, however, would not be subject to the federal CDBG requirements. To accomplish this, a recipient of a RLF may designate a local nonprofit corporation organized under U.S. Statutes 501(c)(3), to serve the community development needs of the community, typically an EDA or HRA, as a Local Development Organization (LDO). The recipient may grant all or a portion of the CDBG funded RLF to the LDO, however, the recipient cannot recall the funds nor can they instruct the LDO on the use of the funds. However, DEED requires that the LDO have a policy in place for the use of the funds and it must be used for economic development purposes. The RLF recipient must notify DEED prior to finalizing such an arrangement.

III. ELIGIBLE PROJECTS

The grant or loan must be based on the following criteria:

- 1.) Creation of new jobs or retention of existing jobs
- 2.) Increase in the tax base;
- 3.) The project can demonstrate that investment of public dollars induces private funds;
- 4.) The project can demonstrate an excessive public infrastructure or improvement cost beyond the means of the affected community and private participants in the project;
- 5.) The project provides higher wage levels to the community or will add value to current workforce skills;
- 6.) Whether assistance is necessary to retain existing business; and
- 7.) Whether assistance is necessary to attract out-of-state business.

The grant or loan cannot be made based solely on a finding that the conditions in clause 6.) or 7.) exist. A finding must be made that a condition in clause 1.), 2.), 3.), 4.), or 5.) also exists.

IV. ELIGIBLE ACTIVITIES

RLF's may be used for the following activities:

- 1.) Purchase of land
- 2.) Construct a building or other improvements
- 3.) Renovate an existing building to accommodate the business
- 4.) Construct tenant improvements
- 5.) Purchase Capital Equipment
- 6.) Lease space in or purchase an existing building
- 7.) Purchase Inventory
- 8.) Use as working capital
- 9.) Site improvements
- 10.) Public facilities and improvements and privately owned utilities
- 11.) Workforce Development including job training and placement
 - a.) Training low skilled, low-income persons for specific jobs for which they have been hired and which require skill levels beyond what they now have;
 - b.) Training a pool of low-income prospective employees for specific jobs being created as a result of a CDBG-funded industrial expansion, where the employer agrees to give first consideration to filling the new positions with people from this pool;
 - c.) Re-training existing employees of a business as part of a project which qualifies as retaining jobs.
- 12.) Microenterprise Assistance
 - A. RLF assistance can be provided to persons owning or developing a microenterprise, which is defined as a commercial enterprise that has 5 or fewer employees, one or more of whom owns the enterprise.

V. INELIGIBLE ACTIVITIES

RLF assistance may not be used for the following:

- 1.) Operation or expansion of a casino.
- 2.) For a project related to a sports facility. "Sports facility" means a building that has a professional sports team as a principal tenant.
- 3.) General promotion of the community.
- 4.) Professional sports teams.
- 5.) Privately owned recreational facilities that serve a predominantly higher income clientele where the benefit to users clearly outweighs the benefit of jobs created or retained.
- 6.) Acquisition of land for which a specific use has not been identified (i.e. land banking)
- 7.) Assistance to a for-profit business that is, or its owner is, the subject of unresolved findings of noncompliance related to previous CDBG assistance.
- 8.) For relocation of an out of state business.
- 9.) New housing construction.
- 10.) Planning for economic development projects.
- 11.) Job training that is not part of a CDBG eligible economic development activity to create or retain permanent jobs.

VI. PROJECT COSTS AND FINANCIAL REQUIREMENTS

This section is designed to assist the city **underwrite** economic development projects and to determine which projects are financially viable and will result in the most efficient use of CDBG funds.

If RLF dollars are to be used for publicly owned infrastructure, it is not necessary to follow the "Underwriting" criteria.

(See Attachment entitled, "Underwriting Criteria.")

VII. PUBLIC BENEFIT

A project using RLF funds must show a minimum level of public benefit. The amount of the assistance must not exceed \$50,000 per full-time equivalent, permanent job (created or retained).

VIII. NATIONAL OBJECTIVE

The project must meet at least one of two national objectives. These objectives are: Benefit to Low and Moderate Income (LMI) or Prevention or Elimination of Slums or Blight.

Low and Moderate Income

Job Creation/Retention.

The business to be assisted must commit to the creation and or retention of jobs with 51% of the jobs to be made available to or held by LMI persons. When jobs will be retained, the business must document that the jobs would be lost without the RLF assistance and that one or both of the following applies to at least 51% of the jobs:

- a.) The job is held by a LMI person; or
- b.) 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, a LMI person.

A position is “**Available to**” LMI persons if the following criteria applies to the position:

- a.) The job does not require special skills that can only be acquired with substantial training, work experience or education beyond high school.
- b.) The business agrees to hire unqualified persons and provide training; and
- c.) The city and the assisted business take actions to ensure that LMI persons receive first consideration for filling such jobs.

A job that is “**Taken by**” an LMI person if his/her household income is within the Section 8 income guidelines. (See attached Job Information form)

Retained Jobs

In order to consider jobs retained as a result of this assistance, there must be “clear and objective” evidence that permanent jobs will be lost without such assistance. For these purposes “clear and objective” evidence means that jobs will be lost would include:

- a) Evidence that the business has issued a notice to affected employees or made a public announcement to that effect, or
- b) 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.

To meet the LMI standard, 51% or more of the retained jobs must be either:

- a) Known to be held by LMI persons at the time this assistance is provided and/or
- b) Jobs not known to be held by LMI persons, but which can be reasonably expected to “turn over” to LMI persons within 2 years. (This would involve the grant recipient or business taking actions to ensure that such a job, upon turnover, will be either taken by or made available to a LMI person in a manner similar to that pertained to a newly created job.

Slums/Blight

An economic development project, such as commercial rehab, which aid in the prevention or elimination of slums or blight in a designated area may qualify under the Slum/Blight National Objective.

To qualify, the economic development activity must take place in an area that:

- 1.) Has been designated by the city as meeting a definition of a slum, blighted, deteriorated or deteriorating area under state or local law; and
- 2.) Has a substantial number of deteriorated or deteriorating buildings, or the public improvements are in a general state of deterioration.

The assisted activity must address the conditions that contributed to the deterioration of the delineated area.

The city must maintain documentation on the boundaries of the area and the condition which qualified the area when it was designated under state or local law.

IX. OTHER FEDERAL REQUIREMENTS

The RLF policies and procedures must comply with the following Federal laws, executive orders and regulations:

I. FAIR HOUSING AND EQUAL ACCESS

- a. Title VI of the Civil Rights Act of 1964, as Amended (42 U.S.C. 2000d et seq.) (24 CFR Part 1)
No person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance on the basis of race, color or national origin.
- b. The Fair Housing Act (42 U.S.C. 3601-3620) ((24 CFR Part 100-115)
Prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. Furthermore, section 104 (b) (2) of the Act requires that each grantee certify to the secretary of HUD that it is affirmatively furthering fair housing. The certification specifically requires grantees to conduct a fair housing analysis, develop a fair housing plan, take appropriate actions to overcome the effects of any impediments identified and maintain records on the analysis, plan and actions in this regard.
- c. Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259) (24 CFR Part 107)
Prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.
- d. Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101) (24 CFR Part 146)
Prohibits age discrimination in programs receiving Federal financial assistance.
- e. 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.
- f. Americans with Disabilities Act (ADA) (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225)
Provided comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The Act also states that discrimination includes the failure to design and construct facilities that are accessible to and usable by persons with disabilities and requires the removal of architectural and communication barriers that are structural in nature in existing facilities.

g. Section 504 of the Rehabilitation Act of 1973

Prohibits discrimination in Federally assisted programs on the basis of handicap. It imposes requirements to ensure that "qualified individuals with handicaps" have access to programs and activities that receive Federal funds.

h. Architectural Barriers Act of 1968 (942 U.S.C. 4151-4157)

Requires certain Federally funded buildings and other facilities to be designed, constructed or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people.

2. EQUAL OPPORTUNITY

a. Equal Employment Opportunity, Executive Order 11246, as amended.. (41 CFR part 60)

Prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin. Provisions to effectuate this prohibition must be included in all construction contracts exceeding \$10,000.

b. Section 3 of the Housing and Urban Development Act of 1968

Requires that, to the greatest extent feasible, opportunities for training and employment arising from CDBG will be provided to low-income persons residing in the program service area. Also, to the greatest extent feasible, contracts for work (all types) to be performed in connection with CDBG will be awarded to business concerns that are located in or owned by persons residing in the program service area.

c. Minority/Women's Business Enterprise (Executive Orders 11625, 12432, 12138) (24 CFR 85.36(e)).

City must prescribe procedures for a minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in all contracts.

3. LABOR REQUIREMENTS

All contracts for construction and installation of equipment must comply with the following:

a. Davis-Bacon and Related Acts (40 USC 276 (A)-7)

Ensures that mechanics and laborers employed in construction work under Federally assisted contracts are paid wages and fringe benefits equal to those that prevail in the locality where the work is performed.

b. Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333)

Provides that mechanics and laborers employed on Federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week, and provides for the payment of liquidated damages where violations occur. It also addresses safe and healthy working conditions.

c. Copeland (Anti-Kickback) Act (40 USC 276c)

Governs the deductions from paychecks that are allowable. Makes it a criminal offense to induce anyone employed on a Federally assisted project to relinquish any compensation to which he/she is entitled, and requires all contractors to submit weekly payrolls and statements of compliance.

d. Fair Housing Standards Act of 1938, As Amended (29 USC 201, et.seq.)

Establishes the basic minimum wage for all work and requires the payment of overtime at the rate of at least time and one-half. It also requires the payment of wages for the entire time that an employee is required or permitted to work, and establishes child labor standards.

In accordance with 24 CFR Part 5, CDBG funds may not be used to directly or indirectly employ, award contracts to or otherwise engage the services of any contractor or subrecipient during any period of debarment, suspension or placement of ineligibility status. Grantees should check all contractors, subcontractors, lower tier contractors and subrecipients against the Federal publication that lists debarred, suspended and ineligible contractors. See internet site at <http://www.arnet.gov/eplsl/>.

4. PROCUREMENT

The procurement standards of 24 CFR 85.36 apply.

5. CONFLICT-OF-INTEREST

For the procurement of property and services, the conflict-of-interest provisions at 24 CFR 85.36 and 24 CFR 84.42 apply. This requires the city to maintain written standards governing the performance of their employees engaged in awarding and administering contracts. At a minimum, these standards must:

- a. Require that no employee, officer, agent of the city or its subrecipient shall participate in the selection, award or administration of a contract supported by CDBG if a conflict-of-interest, either real or apparent, would be involved;
- b. Require that grantee or subrecipient employees, officers and agents not accept gratuities, favors or anything of monetary value from contractors potential contractors or parties to subagreements; and
- c. Stipulate provisions for penalties, sanctions or other disciplinary actions for violations of standards.

A conflict would arise when any of the following has a financial or other interest in a firm selected for award:

- a. An employee, agent or officer of the grantee or subrecipient;
- b. Any member of an employee's, agent's or officer's immediate family;
- c. An employee's, agent's or officer's partner; or
- d. An organization that employs or is about to employ an employee, agent or officer of the grantee or subrecipient.

In cases not covered by the above, the CDBG regulations at 24 CFR 570.611 governing conflict-of-interest apply. These provisions cover employees, agents, consultants, officers and elected or appointed officials of the city or subrecipient. The regulations state that no person covered who exercises or has exercised any functions or responsibilities with respect to CDBG activities or who is in a position to participate in decisions or gain inside information:

- a. May obtain a financial interest or benefit from a CDBG activity;
- b. Have an interest in any contract, subcontract or agreement for themselves or for persons with business or family ties.

This requirement applies to covered persons during their tenure and for one year after leaving the city or subrecipient entity.

Upon written request, exceptions to these provisions may be granted by HUD on a case-by-case basis only after the city has:

- a. Disclosed the full nature of the conflict and submitted proof that the disclosure has been made public, and
- b. Provided a legal opinion from the city stating that there would be no violation of state or local law if the exception were granted.

6. ENVIRONMENTAL REVIEW

The city is responsible for undertaking environmental reviews in accordance with the Environmental Handbook. The ER must be completed before funds are committed.

7. FLOOD INSURANCE

Section 202 of the Flood Disaster Protection Act of 1973 (42 USC 4106)

Requires that CDBG funds shall not be provided to an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

- a. The community is participating in the National Flood Insurance Program, or it has been less than a year since the community was designated as having special flood hazards; and
- b. Flood insurance is obtained.

8. DISPLACEMENT, RELOCATION, ACQUISITION AND REPLACEMENT OF HOUSING

Projects involving acquisition, rehabilitation or demolition may be subject to the provisions of the Uniform Relocation Act.

X. STATE REQUIREMENTS

1. MINNESOTA INVESTMENT FUND (MS.116J.8731)

Wage Goals - Businesses receiving RLF assistance must pay each employee total compensation, including benefits not mandated by law, that on an annualized basis is equal to at least 110% of the federal poverty level for a family of four, which as of July 1, 2009 is \$11.66 per hour. The federal poverty level changes annually.

Retail Businesses are not prohibited from receiving federal ED assistance.

2. MUNICIPAL RIGHTS, POWERS, DUTIES (MS 471.87-471.88)

An officer of the city may not have a personal financial interest or personally benefit financially from the business to be assisted.

3. BUSINESS SUBSIDY LAW (MS 116J.993-116J.995).

Any state or local government agency or public entity that provides financial assistance to a business must comply with this statute.

4. FIRST SOURCE AGREEMENT (MS 116L.66)

A business that receives grants or loans in an amount greater than \$200,000 must agree to list any vacant or new positions with the MN Department of Employment and Economic Development.

5. SURETY DEPOSITS REQUIRED FOR CONSTRUCTION CONTRACTS (MS 290.9705)

When a contract exceeds \$100,000 and a non-Minnesota construction contractor has been hired to perform the work, the city must do one of the following:

- a. Deposit with the Department of Revenue, 8 % of every payment made to the contractor; or
- b. Have in its possession a Waiver of Withholding from the Department of Revenue.

6. GOVERNMENT DATA PRACTICES (MS 13)

Information contained in the application for assistance will become a matter of public record with the exception of those items protected under the Minnesota Government Data Practices Act.

To assist you, the following DEED compliance handbooks can be found on the DEED website at:
www.deed.state.mn.us/SCDP/manuals.htm.

- Environmental Handbook
- Labor Standards Handbook
- Fair Housing Equal Opportunity Handbook
- Acquisition and Relocation Handbook