

Sample Guidelines

For

Economic Development Grant/Loan Program

Operated By

City /County of _____

With

Community Development Block Grant
(CDBG) Funding

Adopted: April __, 201__

Department Updated: September 2022

[Department TA: Notes in red throughout this document are technical assistance provided by HCD and are meant to support Grantees in customizing this document for their own program. Comments in red should be deleted before finalizing and submitting the guidelines to HCD.]

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[Department TA: The page numbers on this table will need to be changed once final approved edits to guidelines are made.]

List of Attachments with Support Documents

ATTACHMENT A: Lender Loan Approval Memo

ATTACHMENT B: Lender CDBG Business Assistance Loan Agreement

[Department Technical Assistance (TA): The Lender / Jurisdiction may obtain draft CDBG BA loan agreement and documents from other Jurisdictions/Administrators but should have these draft legal documents reviewed and approved by local legal counsel prior to using them. Most important is to ensure legal documents clearly address the need of the borrower to use CDBG funds for eligible approved costs and ensure that national objective is met so that the project can be closed out with the Department and HUD.]

ATTACHMENT C: Lender Required Documents:

- 1) Jobs Tracking Form
- 2) Self Certification of Income Form
- 3) Loan Disbursement Schedule
- 4) Certification of No Conflict of Interest
- 5) Certification of No Job Pirating
- 6) Certification of Federal Regulatory Compliance.

[Department TA: The Lender may have additional required documents, i.e. BA Loan Application Form, etc. These should be listed above.]

ATTACHMENT D: Lender Adopted Business Loan Servicing Policies

[Department TA: The Lender can contact Department staff for draft business loan servicing policies and may wish to adopt those policies at the same time as the BA program guidelines.]

[Department TA: The Lender should not “re-write” / “re-format” these guidelines, as it will result in a much lengthier review and approval process by the Department.]

[Department TA: The Lender must edit these guidelines in track changes and provide the draft guidelines in track changes to Department CDBG contract representatives for review and approval prior to formal adoption via resolution by governing body.]

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) BUSINESS ASSISTANCE (BA) LOAN PROGRAM GUIDELINES

1.0 INTRODUCTION

The City/County of _____ here after call “Lender” has established a Business Assistance Loan Program, here after called “the Program”. The Program is designed to use public taxpayer dollars to stimulate economic growth and improve living conditions of low / moderate income residents in Lender’s community. The Program provides low cost loans to eligible for-profit businesses. In return, businesses are required to provide documentation of public benefit (commonly, the creation of new job), and meeting a national objective (typically filling most of the new job positions with persons qualified as low -moderate income). These Program guidelines describe policies and procedures required for award of loan funds to eligible borrowers. The guidelines have been adopted via resolution by the Lender and approved by the California Department of Housing and Community Development, here after called “Department”.

2.0 BUSINESS ASSISTANCE PROGRAM OVERVIEW

2.1 PROGRAM ADMINISTRATOR

The Lender has secured the services of a qualified program administrator here after called “the Administrator”. The Administrator will be charged with originating business assistance loans, documenting compliance with CDBG regulations and these Program guidelines. The contact information for the Administrator is:

Name:

Agency:

Address:

Phone Number:

E: Mail Address:

[Department TA: The Lender may use in-house staff or a third-party consultant as an Administrator. If a third party is used, Lender’s oversight staff’s contact information may be inserted here as well.]

2.2 PROGRAM SERVICE AREA

Financing under this Program is available to all eligible businesses physically located within the jurisdictional limits of the Lender. These funds may not be used in jurisdictions that receive CDBG funds from the federal Department of Housing and Urban Development (HUD) entitlement program. This Program is subject to CDBG service area requirement of substantially benefiting residents in the service area.

[Department TA: If the Lender is a county that has approval to serve non-entitlement incorporated cities, then each of the participating cities must be listed in the paragraph above. If the Lender is currently an entitlement community but is using CDBG Program Income (PI) funds under a Department approved Revolving Loan Fund (RLF), then the entitlement language above may be edited.]

2.3 SOURCE OF PROGRAM FUNDS

The Program is financed with CDBG federal funds provided by HUD to the Department, who in turn provides the CDBG funds to the Lender. As such, CDBG funds are federal money administered by the Department so both federal and state laws and regulatory requirements must be followed.

CDBG funds come to the Lender from two sources: 1) active grant contract agreement between the Department and Lender originating from annual competitive application process; 2) CDBG program income administered under PI reuse agreement between Department and Lender.

3.0 CDBG PROGRAM REQUIREMENTS

3.1 ELIGIBLE LOAN APPLICANTS

CDBG funds under this Program can only be expended on the eligible activity authorized under Title I of the Housing and Community Development Act of 1974 (hereafter called “Act”), section 105(a)(17): special economic development, providing direct financial assistance to private for-profit businesses.

An eligible applicant is:

- an existing business legally operating, with any required local business license, insurance, permits per local, state and federal requirements; or
- a start-up business that may not have all required licenses or insurance, but will obtain all required licenses, insurance, and permits prior to closing; or
- a person or persons wishing to buy an existing business; or
- a business leasing tenant space or owner-occupied business in the service area.

In addition, the loan applicant must provide documentation that the proposed project will meet CDBG eligibility criteria of national objective and public benefit per Sections 3.4 and 3.5. The loan applicant must provide documentation of meeting standard commercial underwriting criteria outlined in Section 6 of these guidelines as well as HUD CDBG mandated six underwriting standards described in Section 3.6. An eligible loan applicant must document compliance with all CDBG regulations listed in Section 3.7.

[Department TA: The Lender can be more restrictive and not allow start-up businesses to be eligible applicants, because of their high failure rate, or could mitigate this risk by requiring all start-ups to document business development class participation from a local small business development agency prior to loan approval. Any restrictions must be edited in track changes to this section.]

Specific ineligible loan applicants include:

- a business with an existing CDBG BA loan that has not been closed out with HCD;
- a business operating a private “exclusive” recreational facility;
- non-profit businesses are not eligible under this program;
- a businesses or person(s) with unresolved state / federal tax liens;
- a business or person in the process of filing for bankruptcy are not eligible until bankruptcy process is complete.

[Department TA: Lenders should carefully consider providing financial assistance to business models that disproportionately harm or exploit historically marginalized communities. Examples of these business models are multi-level marketing businesses which can disguise pyramid schemes, payday lenders, etc. Any program restrictions must be added to the list above in track changes.]

3.2 ELIGIBLE PROJECT COSTS

CDBG funds are non-discretionary and restricted to certain eligible costs. These eligible costs cover most expenses associated with economic development projects. Specifically, eligible CDBG economic development costs include:

- operating capital and inventory;
- furniture fixtures and equipment (FF&E), with or without installation costs;
- project site improvements, new construction or rehabilitation of leased space or owned building;
- engineering and architectural plans and required permits or fees;
- purchase of manufacturing equipment (with or without installation costs);
- refinancing of existing business debt when done in conjunction with restructuring of other existing private financing debt(s);
- purchase of real property, when it provides positive cash flow for new jobs;
- relocation grants for persons displaced due to funding of the project;
- purchase of an existing business, including documented value of good will.

These eligible costs must be connected to the business' ability to meet an eligible CDBG national objective per section 3.4 of these guidelines. Lender will only use CDBG loan funds to reimburse borrower for actual eligible / approved project costs.

3.3 INELIGIBLE PROJECT COSTS

CDBG funds are non-discretionary, limited to certain eligible costs described in Section 3.2 above. There are also a number of ineligible costs. Some ineligible costs include:

- costs incurred prior to submittal of BA loan application and environmental review completion;
- costs associated with residential housing development, i.e. on mixed use projects;
- costs associated with supporting "other" businesses the applicant owns;
- costs on a funded project NOT meeting a national objective;
- personal expenses such as cars, home repairs, not directly associated with the business;
- costs of paying off credit cards (personal or business);
- costs of paying off any personal debt not directly associated with business;
- providing CDBG loan as a revolving line of credit (LOC) is not eligible;
- cash payments of any kind made directly to the assisted business owner(s) (wages or draws) from loan proceeds
- costs associated with a funded project when the owner(s) or business is found to be on federal debarred list
- public infrastructure in support of the business
- research and development costs for future production (speculative)

Once approved, loan funds cannot be shifted from one approved type of cost to another without formal written approval of Lender. If there is a substantial change in the project scope of work or underwriting, then the loan must be re-evaluated and re-approved by Lender, per state and federal regulations, prior to loan closing or disbursement of CDBG funds.

[Department TA: The Lender must keep all the ineligible costs listed above. Lender can be more restrictive and not allow for certain eligible costs, e.g. monthly operations costs or debt refinance. Restrictions must be added to the list above in track changes.]

3.4 MEETING NATIONAL OBJECTIVE STANDARDS

All eligible activities funded under this program must meet a CDBG “National Objective” as described in the Act, Section 104(b)(3) and federal regulations 24 CFR Part 570.483. Detail on documenting the meeting of national objective standard for a project is contained in Department’s guidance on BA Activity Chapter Website. Projects not documented as meeting a national objective are an ineligible activity. Below is a general description of documenting how a BA project meets the national objective of benefit to low - moderate income (LMI) persons. The Lender will use Department specific guidance for ensuring each eligible project funded is documented as meeting a national objective.

BA projects normally meet a national objective standard when they create jobs and provide over half; at least fifty one percent (51%), of the new job positions to LMI qualified persons. BA projects proposing to provide most of newly created jobs to LMI persons must agree to allow the Lender, or their designated representative, to meet with each job applicant prior to hiring and complete a Department Self Certification of Income Form, see **Attachment C**. After all new hires are made, payrolls must be collected by the Lender and compared to the job applicant Income Certification forms to prove over half of all newly created job positions were provided to low-moderate income persons. This will prove the project’s job creation met the national objective of principally benefiting LMI persons and allow the Lender to close out the project with the Department and HUD. All documentation of national objective for jobs falls under Section 4.5 on confidentiality.

Some BA projects may require CDBG funding to retain jobs. In this case CDBG loan funds will assist in keeping the business from closing or to avoid terminating some staff. This type of project must document that, at the time of application, over half of existing employee positions to be eliminated are held by LMI persons. As such, the business must agree to allow the Lender or their designated representative to interview existing employees and help them complete the Department’s Self Certification of Income Form. The business must also provide financial documentation that, if not for CDBG funding, the job positions will be lost and staff laid off. The business must also document that with the investment of CDBG funds, the business will continue operations and jobs can be retained. If approved and funded, the business employees must have Self-Certification of Income completed again, prior to Lender closing out the project. By verifying that, at the time of loan application and after loan disbursements, over half of the retained positions were LMI, then the project will have LMI national objective met and it can be closed out with the Department and HUD. All documentation of national objective for jobs falls under Section 4.5 on confidentiality.

A few BA projects may meet the LMI national objective by documenting that the BA loan applicant provides goods or services to the local community, and the business service area is primarily within the Lender's jurisdiction, and the service area is primarily residential, and the area is primarily occupied by low – moderate income persons. Thus the BA loan applicant must provide documentation of the business' service area. The Lender will use zoning maps to document the service area as primarily residential and located within the Program service area. The Lender will confirm the LMI status of the BA loan applicant's service area from American Communities Survey data, in accordance with HUD low - moderate area (LMA) benefit standard. Lender will require business to provide documentation of the goods or services they provide and justify the need for CDBG funds as part of providing goods and services. This documentation must be provided prior to loan approval. After expenditure of CDBG loan funds and documentation that the business continues to provide goods and services, then the project can be closed out with the Department and HUD. LMA national objective standard guidance is provided on Department's BA Activity Chapter webpage.

[Department TA: This sample guidelines includes language for all LMI national objectives. The Lender may choose to limit economic development projects to one or more of the LMI national objectives. Simply delete any non-applicable sections above.]

[Department TA: Language regarding consequences of business not meeting a national objective may be included above and in the loan agreement, making non-compliance a condition of loan default if the Lender will commit to take legal enforcement actions for non-compliance.]

3.5 MEETING PUBLIC BENEFIT STANDARDS

All eligible project activities funded under this program must meet a minimum CDBG "Public Benefit Standard" as described in the Act, section 104(b)(17) and federal regulations; 24 CFR Part 570.483(f)(g). Public Benefit is provided by the BA loan recipient in return for use of subsidized federal funds, and provides a funding limit or "cap". Meeting Public Benefit Standard is very different than meeting National Objective Standard and should not be confused. Lender will use detailed guidance on meeting Public Benefit Standards provided on Department's BA Activity Chapter webpage.

For BA projects meeting national objective via jobs provided to LMI persons, the Public Benefit standard is jobs, and the maximum CDBG loan funding available is limited to \$35,000 per job. The Lender will require BA loan applicants to provide an estimate of public benefit generated by investment of CDBG funds into the project via the Job Tracking Form, see **Attachment C**. This proposed level of public benefit will be verified after investment of CDBG funding. The actual level of public benefit (loan funds per job) may be greater than or less than the level proposed at the BA application stage. All public benefit data falls under the confidentiality Section 4.5.

For BA projects meeting LMA national objective, based on benefit (goods or services), the Public Benefit Standard is goods or services to LMI persons. In this case, the maximum CDBG funding available is limited to \$350 per LMI person in the business service area. For this public benefit standard, Lender will document compliance at the BA loan application stage prior to loan approval or closing.

CDBG public benefit requirements of the program will be disclosed by the Lender at the start of the application process. Lender will use financial underwriting to identify the need for BA loan subsidies and determine reasonable public benefit that will be generated from the project, i.e. the number of jobs created from proposed project. Projects with small amounts of public benefit may be required to bring in other sources of funding because of CDBG funding limits imposed by this standard.

[Department TA: The Lender may choose to be more restrictive and not allow for BA projects to meet public benefit standard for goods and services. If this is done then LMA national objective in Section 3.4 must also be deleted. Simply delete LMA paragraphs above to be more restrictive.]

[Department TA: If Department allows the Lender to use “Individual” public benefit cap amount of \$50,000 per job, and Lender chooses to allow for this standard, then Lender must add language to this section of guidelines to describe the policy for exceeding the “aggregate” standard for one BA applicant verses others. This additional policy language must clearly show that the Lender is not being arbitrary in allowing different BA applicants to use different public benefit levels, and at the same time, ensure that the HUD required aggregate standard maximum of \$35K per job is met on an annual basis for the program.]

3.6 MEETING SIX UNDERWRITING STANDARDS

In addition to documenting that the project meets CDBG public benefit standard, the project must also be documented as meeting six HUD underwriting standards, per federal regulation 24 CFR Part 570.483(e). These underwriting standards are required to document a minimum “due diligence” of the Lender and ensure projects are financially sound enough to meet public benefit and national objective standards, i.e. create new or retain existing job positions. The six HUD underwriting standards are general, qualitative and are supported by commercial underwriting standards in Section 6 of these guidelines. See Department BA Activity Chapter webpage for detailed guidance on compliance with each of the six HUD underwriting standards.

The Six Underwriting Standards are:

1. project costs are documented as reasonable (typically, third party cost estimates);
2. all sources of funding for the project are documented with final commitments;
3. to the extent practicable, CDBG funds are not substituted for private (non-federal) funds;
4. documentation that project is financially feasible (based on cash flow projections to support jobs and debt service, etc.);
5. to the extent practicable, the return of the owner’s equity investment is not unreasonable (based on level of equity and proposed CDBG loan terms);
6. to the extent practicable, CDBG funds are disbursed on a pro-rata basis with other financing provided for the project.

[Department TA: The Lender may not eliminate any of these standards. Lender may customize underwriting requirements in Section 6 of these guidelines.]

3.7 MEETING OTHER FEDERAL REGULATORY REQUIREMENTS

Since these CDBG BA loans are from a federal funding source, there are a number of federal laws and requirements which are triggered by their use. The Lender and Administrator will require BA loan applicants to provide project information which allows them to make a determination of required project compliance. BA applicants are required to sign loan disclosures and work with Lender to ensure each project is in compliance with any of the triggered, applicable regulations listed below.

[Department TA: The Lender may choose to not require BA loan applicants to sign certification of federal overlay compliance for NEPA, Relocation, and Prevailing Wage. If so, simply remove disclosure text below. Certification of No Conflict of Interest is also optional, so its reference below can be deleted. Certification of No Job Pirating is required by the Department and may not be deleted below. Regardless, documentation of compliance for all triggered federal regulations in this section must be in each BA project file at time of Department or HUD monitoring of the program.]

National Environmental Policy Act (NEPA): Every project funded under the Program must be reviewed under HUD NEPA regulations 24 CFR Part 58 and the Lender must sign and certify an Environmental Review Record (ERR) for each project prior to approval or disbursement of loan funds. The Lender is required to sign and certify the correct NEPA EER, per current Environmental Review Requirements *Chapter of Department's Grant Management Manual (GMM)*, along with any state review under California's Environmental Quality Act (CEQA).

The ERR level of review is based on the project's "aggregated" scope of work, which includes all proposed project funding. Any construction or equipment installation proposed will require more review work on the ERR. The ERR will be done early in application process, as soon as the project is deemed eligible and scope of work is finalized. No costs will be charged to the Borrower for this process. Applicants must sign Department certification form that no "choice limiting action" under NEPA regulations has or will take place. The form is included in **Attachment C**.

Prevailing Wage Compliance: If a project proposes to use CDBG funds to pay costs for any construction, then federal and state labor standards compliance must be documented. Davis-Bacon Act (40 USC 276a - 276a-5) and related laws are "triggered" when any CDBG funding is used to pay for any project construction costs. Lender will follow *Department guidance in current Labor Standards Chapter of the GMM* for prevailing wage compliance on funded projects.

Additional labor costs will be added to projects proposing to use CDBG to pay for new construction, rehabilitation, or equipment installation. The Administrator and Lender will work with loan applicants to ensure project compliance. The additional time and work required by prevailing wage regulations will be disclosed to the borrower as soon as possible. Any additional costs resulting from this regulation will be incorporated into the CDBG loan approval.

Acquisition and Relocation Laws: All BA applicants proposing to use CDBG funds for purchase of real property must comply with 49 CFR Part 24 Acquisition laws. Lender will provide required Seller Disclosure for execution as part of meeting this requirement.

All BA applicants proposing projects which trigger relocation compliance i.e. result in displacement of persons per Uniform Relocation Act (URA), must work with Lender to ensure compliance with this law. Additional costs associated with relocation compliance will be disclosed to the applicant prior to CDBG loan approval and included in project loan approval.

Required Prohibition of Job Pirating Certification: All BA applicants must sign a Certification of No Job Pirating. Job pirating is prohibited per CDBG federal regulation 24CFR 570.482 (h). Job pirating is defined as using CDBG public funds to facilitate the moving of a business and associated jobs from one jurisdiction to another (business attraction). As such, CDBG federal funds cannot be used to attract / subsidize a business to move from one labor market area to another or keep a business from moving out of a labor market by making a retention argument. Lender will require all applicants to sign a non- job pirating certification, **Attachment C**. Any questions regarding possible job pirating will be submitted to the Department for final determination.

Conflict of Interest Certification: BA loan applicants will sign a Certification of No Conflict of Interest. In accordance with state and federal regulations, no member of the governing body and no official, employee or agent of the local government, nor any other person who exercises policy or decision-making responsibilities (including members of the loan committee and officers, employees, and agents of the loan committee, the administrative agent, contractors and similar agencies) in connection with the planning and implementation of the CDBG BA program shall directly or indirectly be eligible for this program. Lender will require all applicants to sign a non- conflict of interest certification, **Attachment C**. Any questions regarding possible federal conflict of interest will be submitted to the Department for final determination. Any questions about state conflict of interest laws will be referred to Lender's legal council for final determination.

Required SAMs Unique Entity Identification (UEI) number, federal debarred verification and demographic data: All BA program applicants must obtain a DUN's number, if they do not already have one. The UEI number is free and can be obtained on line. In addition, prior to loan approval, the Lender will document that the business being assisted and all owners and affiliated businesses are verified as NOT on the federal debarred contractors list. HUD also requires that the Department and the Lender collect certain income and demographic data from the business and any beneficiaries of CDBG funds.

Required Benefit to Citizens of the Jurisdiction: Applicant must work with Lender to document substantial benefit to residents in the Program service area is obtained. This requirement does not apply to job retention. For projects proposing to document providing goods or services, the service area of the business must be within the jurisdictional limits.

4.0 LOAN PROCESSING AND APPROVAL

4.1 FAIR LENDING COMPLIANCE

The Program will be implemented in ways consistent with the Lender's commitment to fair lending laws. No person or business shall be excluded from participation in, denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with Program funds on the basis of his or her religion or religious affiliation, age, race, color, ancestry, national origin, gender, marital status, familial status (which specifically refers to the number or ages of children in the household), physical, intellectual or emotional disability, sexual orientation, or other basis. All personal information of loan applicants will be kept confidential, per Section 4.4.

4.2 LOAN APPLICATION PROCESSING

Loan applications will be processed on a first come first served basis. Immediately upon receipt of the application, the administrator will create a file that will contain the application and all subsequent documentation collected. The Administrator will begin by reviewing the application and documents for initial eligibility per Section 6.1. Applicants that do not meet basic CDBG requirements of the program will be sent a letter of explanation. All BA applications received, regardless of the outcome, will be kept on file to document fair lending standards. Applications that meet basic eligibility requirements will be contacted for a site visit and collection of additional information.

[Department TA: Lender should customize the paragraph above to meet the needs and priorities of the Program. Lender must clearly document the process, including any accommodations meant to mitigate the harm of historical inequities. NOTE: site visits to business applicants is not an HCD requirement.]

The business will be required to provide accurate financials for past, current and future projection of the business operations. All owners will have credit checks conducted as part of loan underwriting per Section 6.0. The Administrator may provide sample financial Excel forms (balance / cash flow sheets, profit and loss, personal financial statements, and proforma) but in no instance will the Administrator's or Lender's staff generate financial numbers for an applicant. The applicant will be offered referrals to local business support organizations to assist applicants in producing proper financial statements, develop a business plan, conduct market study or develop industry accounting practices.

[Technical Assistance: The Lender should document the step-by-step flow of the loan process here.]

Loan applicants are responsible for providing accurate and timely information to the Administrator as part of the loan process. This may include:

- disclose all business owners with twenty percent or more ownership;
- disclose all other businesses the owners have an ownership interest of twenty percent (20%) or more;
- provide current personal financial statements for each owner;
- disclose sources of collateral and security;
- provide business historic financial information, including year to date;

- disclose sources of cash for any equity investment proposed;
- provide third party documentation of eligible project costs;
- provide market study or document basis of future sales projections;
- provide management capacity documentation for ability to execute;
- provide necessary information to clear federal overlays in Section 3.7.

If the loan applicant does not provide required information and documentation to the Administrator in a timely fashion, then there will be delays in the loan approval process.

Once the Administrator has compiled a complete loan file with all the credit, financial, and underwriting information needed to show loan is eligible under these guidelines, then a loan approval memo will be drafted. The memo will be submitted to Lender for their approval. Once approved, the Administrator and Lender will submit project set up report to Department and craft loan documents for signing at closing with the Borrower.

4.3 PROGRAM LOAN APPROVAL PROCESS

The Lender's _____ (fill in name of loan committee) shall be made up of an odd number of persons. The Lender's staff will ask committee members to volunteer for this board. Committee members can be from local financial institutions, the Lender, or other interested parties who have the professional capacity to review and evaluate commercial loans. See **Attachment A** for Lender loan approval memo format.

Loan approval meetings will be scheduled by Lender staff in conjunction with Administrator staff once a loan has been underwritten and is ready for review and approval. Lender staff will be responsible for reviewing each loan application funding proposal and recommending approval or rejection for the loan. Committee members may request additional information and or attach contingencies on closing or funding of the loan. If the loan is approved, then the project can move forward with loan closing.

If Lender approval is not obtained, then the BA loan applicant can take dispute resolution actions, per Section 4.5 of these guidelines.

[Department TA: The Lender must approve each project receiving CDBG BA loan funds. If projects are reviewed by a committee of professionals (per language above), then the Lender will need to set up policies for how the group members are selected (is it a formal committee that must follow the Brown Act or an informal committee). There must also be policies for if the group's determination is final or if the Lender staff can veto the group's recommendation, etc.]

[Department TA: The Lender may set up a different approval process then stated above. For example, the Lender may choose to have one staff, i.e. the CDBG Authorized Representative, approve all BA loans and not provide for a committee review.]

[Department TA: Lender may choose to use this same committee for reviewing loan servicing requests by existing CDBG BA loan borrowers for change of loan terms, etc. This same committee could also approve CDBG housing projects under Lender housing program. Some Lenders may want BA loans to be presented to their governing body,

which would require additional language in this section and extend the loan approval process out.]

4.4 LOAN APPLICANT CONFIDENTIALITY

Administrator or Lender or any persons involved in the loan process for this Program will not disclose any of applicant's business or personal confidential information as part of loan review and approval process. All confidential information of businesses will only be disclosed to persons required to view the information as part of loan review and approval. All personal and business confidential information of loan applicants will be kept in a locked secured storage facility and are not available to persons outside of the program. If the Lender or Administrator or Department receives a formal public records request for a loan applicant file, then only non-confidential information, as verified by legal counsel, will be provided.

4.5 APPLICANT DISPUTE RESOLUTION/APPEALS PROCEDURE

Any business applying for assistance through this CDBG program has the right to appeal, if their application is denied. The appeal must be made in writing to the Administrator and the Lender. The Lender will schedule a meeting for the appeal to be heard. If the application is denied a second time, then the person may ask to have their appeal presented to the Lender's governing body for a final decision.

4.6 EXCEPTIONS / SPECIAL CIRCUMSTANCES

Exceptions are defined as any action, which would depart from policy and procedures stated in the guidelines. The Lender or Administrator's staff may initiate consideration of an exceptional/special circumstance to the policies in these guidelines as long as it does not violate CDBG federal / state requirements. A written analysis of the exception will be prepared and submitted with loan approval request. This analysis shall contain a narrative, including the staff's recommended course of action and any written or verbal information supplied by the applicant. The loan approval shall be made after review and acceptance of the exceptional/special circumstances request.

Examples of potential exception scenarios include, but are not limited to:

- A low-income person does not have the credit history or collateral required by underwriting.
- A person of color does not have the traditionally recognized or minimal length of experience in the business

[Department TA: The Lender may delete Section 4.6, but then they cannot allow for any deviation from the policies and procedures in the guidelines. If this Section is kept in place, it is important that each exception be reviewed and documented closely so that each applicant is treated equitably.]

Grantees/Lenders/Administrators are encouraged to review Appendix B: Equity and Belonging Toolkit for information on designing a program intended to mitigate inequities based on race, gender, etc.

4.7 LOAN CLOSING PROCESS

After Lender approval, submittal BA Loan Certification and Project Set Up Report to Department, the Administrator and Lender will prepare for the loan closing with Escrow Company. The Administrator will prepare the loan closing documents; prepare title and lien searches, and UCC-1 filings, if appropriate. Lender legal counsel will review all agreements and documents, as necessary.

[Department TA: The Lender is not required to use local escrow companies to ensure borrower CDBG loan documents are properly executed, liens for loan security are recorded and loan funds are disbursed in a timely fashion for borrower reimbursement. Lender may set up a different loan closing process than stated above, but that loan closing process must be clearly described in this section.]

The Borrower will sign all the necessary documents and agreements. The Lender will request reimbursement of eligible costs from the Department after Borrower has submitted documentation of eligible expenditures and Lender has paid for those costs.

5.0 DESCRIPTION OF LOANS

5.1 DETERMINATION OF LOAN AMOUNT

The Program has no minimum loan amount. The maximum loan amount is \$300,000.

Actual loan amounts will be based on the business' need for capital to conduct the proposed project's scope of work and meet public benefit standards. Most often the amount of CDBG funding is limited based on "gap" in project financing or ability of business to support new debt or pay for required jobs from business future cash flow projections or by the amount of collateral that the business can provide as security for the CDBG debt. If there are not sufficient CDBG funds for the project, then the Administrator can assist in finding other project funding.

[Department TA: The Lender may set a minimum loan amount. This can be justified by the amount of loan origination costs for a BA loan and Department cap on activity delivery. BA loan amounts must not be "backed into" based on maximum public benefit, i.e. \$35,000 per job, but based on identified financial "gap".]

5.2 DETERMINATION OF LOAN TERM

The BA loan term is tied directly to what-which project costs are funded with CDBG funds and what security is being pledged for the loan. If a business only wants operating capital then the term of the loan is normally five years. If a business wants to pay for equipment and supplies, then the term of the loan can be extended out to 10 years. If the loan is for real property improvements and can be secured on real property, then the terms can be extended out to 20 or 30 years. A loan amortization term can be longer than the loan term, so an equipment loan may have a term of ten years but an amortization term of fifteen years, which will create a lump sum payment at year ten. Administrator will confirm that the proper term is given based on the use of the CDBG funds and loan security / collateral being provided.

[Department TA: The Lender may set up a different method of determining BA loan terms. However, any different method proposed for setting loan terms must be clearly described and not be arbitrary in nature.]

5.3 DETERMINATION OF LOAN INTEREST RATE

Loan interest rates will start with three percent (3%). This rate will be increased, if the investment of CDBG funds at the three percent level causes the business to have an excessive profit, or return on investment (ROI). See HUD underwriting standards discussion of undue enrichment on Department's BA Activity Chapter webpage for direction on how to set interest rate to comply with this standard. By allowing the interest rate to move and not be fixed, the Lender can best tailor the loans under this program to meet the cash flow needs of different businesses in the community and ensure public benefit and national objective standards are met.

[Department TA: The Lender may set up a different method of determining a BA loan interest rate. However, any different method proposed for setting loan interest rate must be clearly described and not be arbitrary in nature. Any different method must also take into account ROI requirement from HUD underwriting standards.]

5.4 LOAN PROCESSING FEES

The CDBG program provides administration funds to pay for all loan processing and servicing costs. No direct loan fees will be charged to the borrower. Also, there is no pre-payment penalty on the loans under this Program.

[Department TA: The Lender may allow for loan fees to be paid from the borrower. If this is allowed, then this Section must have a clear description of what the loan fee will be used to pay for (escrow fees, appraisal reports, labor standards compliance, relocation costs, etc.). Loan fees obtained from borrowers must be used to pay for eligible CDBG loan origination / activity delivery costs before requesting federal funds (cannot deposit fees into jurisdiction general fund for non- CDBG BA uses). In no case shall the borrower loan fees be used to pay the same costs paid for by federal treasury or PI funds (double dipping).]

[Department TA: The Lender may allow for a BA loan pre-payment penalty. That penalty must be accounted for as CDBG program income funds and used per Department PI requirements.]

6.0 LOAN UNDERWRITING STANDARDS

6.1 INITIAL LOAN EVALUATION

CDBG funds are designed to support people, communities, and businesses who have not historically (and often do not presently) have access to traditional forms of financing. The lender can use the questions below to identify the people and businesses who would benefit the most from CDBG support, and as a way to mitigate the harm done by a financial system that fails to include them.

Each project/business will be evaluated based on past performance, future financial forecasts, and the extent to which supporting the business supports the mission of the

CDBG program. The following questions should be asked upon receipt of a loan application. While answers will vary by applicant, these questions are designed to identify eligibility but also highlight areas of assistance to support applicants in successfully completing the terms of the loan.

- Is business an eligible applicant, per Section 3.1?
- Are the proposed project costs eligible, per Section 3.2 & 3.3?
- Will project meet a CDBG national objective, per Section 3.4?
- Will business meet public benefit jobs required in Section 3.5?
- Does project appear to meet six HUD underwriting standards, per Section 3.6?
- Are federal overlays triggered that will adversely impact project development?
- Does the business and owner pay bills on time, collect on time?
- Does owner have a detailed “business plan”?
- Does owner have documented market demand for projected sales?
- Does owner have management capacity to operate the business?
- Does owner have financial accounting capacity to operate the business?
- Is the owner contributing a reasonable amount of equity?
- Is the owner able to get conventional bank financing, if not, why not?
- Was the business financially viable in the past (net income covers debt)?
- Are there reasonable financial assumptions for future viability/success?
- Is there enough collateral available to secure the proposed loan?
- Is the owner’s personal financial status stable?

By collecting enough initial application information to answer the above list of questions, the Administrator will have a good sense of how strong a borrower is, and how successful they will be, if assisted with a CDBG loan. Most of this information is collected on the loan application form and verified verbally at the initial site visit with the owner. By meeting the borrower and asking these questions the Administrator will know what additional information/documentation needs to be collected to provide a clear picture of how CDBG funds can be used to assist the BA loan applicant. These questions demonstrate the need for CDBG funds and business eligibility.

[Department TA: The Lender may add or subtract from the list of questions above. The Lender’s loan application form should help to answer most of these questions. For additional information on how to leverage CDBG funds to mitigate harm in the lending process see Appendix B: Equity and Belonging Toolkit.]

After the initial review, the Administrator/ application processor will collect the proper information required for loan underwriting. The required documentation is listed in the CDBG underwriting guidance document provided on Department’s BA Activity Chapter webpage. At this same time, Administrator and Lender will begin regulatory compliance documentation, per Section 3.5. The amount of documentation and detailed underwriting is based on size of the loan and type of business (existing or start up) and what LMI national objective is used. Additional documentation may be required for a business with special circumstances.

6.2 PERSONAL AND BUSINESS CREDIT REQUIREMENTS

Each applicant will have third party credit reports obtained showing credit scores and payment history. All owners and their spouses with twenty percent (20%) or more interest in the business will have their credit reports reviewed.

It is not uncommon for business owners and/or businesses to have a low credit score or lack of credit history. If a personal credit reporting service provides a low credit score or shows poor credit history, the Lender should use trauma-informed approaches to gather more information from the owner, so that the Lender can generate written documentation in support of approving the loan.

If it is available, the Dunn and Bradstreet report for the primary applicant business and all associated businesses of the owners (20% or more ownership) will be reviewed. If a Dunn and Bradstreet report is not available, as is commonly the case, the Lender will contact vendors or suppliers of the business to inquire as to the business payment history.

[Department TA: The Lender must review credit documentation of loan applicants in order to meet the HUD underwriting standard of project financial feasibility. Any method proposed for evaluating applicant credit should be intentionally designed and clearly described in Section 6.2. Information on how to design a credit review process that is equity centered, see Appendix B: Equity and Belonging Toolkit.]

6.3 PERSONAL AND BUSINESS FINANCIAL INFORMATION

Personal financial statements will be required for each person who owns 20% or more of the business. Financial statements need to show all assets and liabilities of the person. In addition to these statements, federal tax return statements for owners and the business for the past three years are needed to give a historic perspective of income.

For the business fiscal year, historic financial statements will be required. These will consist of past three year's balance sheets and cash flow statements, generated from past tax returns and quarterly year to date statements. These statements should be put together by the person responsible for doing the bookkeeping and finance management for the business. Past tax returns will be provided to document the statements provided. Based on these statements the Lender / Administrator can develop ratios for debt service and payment history, etc.

The business will also need to provide future projected financials. These will consist of pro formas showing projected revenue and costs for the business on a monthly basis for each fiscal year for a minimum of three years from application date. Start-ups may need to provide up to five years of projection statements to show "break even" point of business. Two sets of pro formas need to be completed: one showing the business projections with CDBG financing; and a second set showing the business with conventional financing. This will provide evidence of the benefit / increased profit the business is receiving by using the more affordable CDBG loan. These pro formas must also show the increased costs to the business from adding the new job positions and the CDBG debt service.

A project sources and uses form must be provided to show all funding required for completing all project activities. This form will show the owner's equity as well as private bank financing and any other investments from other sources. The sources and uses give a clear idea of what costs the CDBG loan will cover and its information must be reflected in the pro formas as described above.

Using the information in these financial statements, along with any back up documentation required, will allow the Administrator to do the project's underwriting analysis. This analysis will include both the conventional lending underwriting and HUD required underwriting. This analysis will be provided to the LAB for use in loan approval.

[Department TA: The Lender may modify the financial disclosure/documentation requirements in this section of the guidelines, however, there must be enough financial information required in this section to allow for compliance with HUD six underwriting standards. Requirements in this section cannot be used arbitrarily.]

6.4 COLLATERAL REQUIREMENTS

All loans under this program will be collateralized using normal commercial lending standards. Collateral coverage will be assessed based on assets available as security and the level at which they are already liened. CDBG funding is typically in a subordinate position to banks and other lenders.

It is the goal of the Program to get the best lien position possible to ensure loan repayments. Types of collateral may include:

- Secured liens on real property,
- UCC liens on machinery, equipment, or other fixtures,
- Lease assignments, as appropriate,
- Personal and corporate guarantees, as appropriate, and
- Life insurance assignment and other collateral, as appropriate.

Appraisal of assets may be required as part of determining how to obtain the best lien positions for the CDBG loan. Combined loan to value ratio on collateral for the typical CDBG loan should not exceed ninety percent (90%). Equipment and inventory secured should be properly discounted to reflect actual resale value when doing loan to value calculations.

[Department TA: The Lender must require that loan security be requested from the borrower. If the Lender allows for BA loans to be approved without loan security, then this section of the guidelines must clearly describe: when unsecured loans will be allowed; list reasons for not securing collateral on certain BA loans and securing collateral on others, such that the program requirement is not arbitrary.]

6.5 BUSINESS EXPERIENCE AND MANAGEMENT CAPACITY

The BA loan applicant will provide resumes and management histories to show the experience of business owners and their management staff in successful operation of the existing business or something comparable. Existing businesses proposing to use CDBG BA funds to create jobs, must have at least an updated business plan if not a new plan.

For BA loan applicants proposing to use CDBG funds for a non-operational start-up businesses or for applicants that wish to use CDBG funds to purchase an existing business or for applicants that wish to use CDBG funds for job retention (to keep the business from closing) a comprehensive business plan will be required. The comprehensive business plan will include a detailed analysis of what management capacity is needed for the business to be successful and identify resources that the business will utilize to meet the identified capacity needs.

[Department TA: The Lender must not delete this Section as it is required for HUD six underwriting standard of financially viable. If the Lender wishes to modify the management capacity language in this section, then it must clearly state what requirements are for this section of the guidelines. Requirements in this section cannot be used arbitrarily.]

7.0 LOAN SERVICING

7.1 LOAN SERVICING RESPONSIBILITIES

Borrower will be provided loan servicing information from the Lender. The Lender will retain all original project files within locked storage. Original legal documents will be kept in locked fire proof filing system for future loan servicing. Lender will provide annual income tax interest statements to the borrower for their tax purposes.

BA loan repayments will be collected by Lender's loan servicing agent:

Name:

Agency:

Address:

Phone Number:

E: Mail Address:

All loan payment will be made directly to the Lender and deposited into current CDBG PI accounts. If payments are collected by a third party, all gross collected CDBG BA loan payments will be provided to the Lender on a monthly basis for deposit into the proper CDBG program income account.

[Department TA: The Lender may use Administrator to also service BA loan repayments / compliance. If this is proposed, then scope of work for loan servicing must include in the subrecipient agreement or federal procurement process.]

The borrower may be required to provide the Lender / loan servicing agent with periodic financial statements of the business and proof of insurance annually. Upon reviewing the borrower's financial statements, the Lender may require the business to take actions that improve the business cash flows. Borrower may be required to meet with business development staff to assist in stabilizing or building capacity.

Borrower must disclose any sale of equipment or assets that are used as loan security by the Lender. The borrower may submit a written request to the Lender to change the

CDBG loan terms, if the business is not able to fully service CDBG debt repayments or if they wish to pre-pay the loan by making one or more larger payments.

7.2 LOAN SERVICING POLICIES

The Lender has adopted a set of loan servicing policies that outline how the loan servicing agent will proceed if payments are late or no payments are received. The policies also outline how loan files will be set up and protected. A copy of these adopted loan servicing policies will be provided to each BA loan recipient at loan closing.

8.0 PROGRAM OVERSIGHT BY LENDER

8.1 OVERSIGHT OF PROGRAM ADMINISTRATOR

The Lender is ultimately the responsible entity for the CDBG BA loan program. Lender will oversee the Administrator and communicate with the loan applicants and borrowers as needed to explain CDBG compliance.

The Administrator is responsible to the Lender and loan applicants to assure that the Program is implemented in compliance with these program guidelines, and state and federal regulations. In addition, Administrator staff will ensure that loan applicant projects are underwritten in a timely and responsible manner. This includes working closely with BA loan applicants to ensure they provide accurate financial statements through documenting BA project compliance for project close-out with Department and HUD. Administrator will review all loan documents with borrowers prior to loan closing.