

# **DANE COUNTY ECONOMIC DEVELOPMENT REVOLVING LOAN FUND (ED-RLF)**



## **Policies and Procedures Manual**

Revised July, 2013

For information please contact  
Dane County ED-RLF Administrator  
Room 421 City County Building  
210 Martin Luther King Jr. Blvd  
Madison, WI 53703  
608.266.4006

THIS PAGE INTENTIONALLY LEFT BLANK

# FOREWORD

The Wisconsin Community Development Block Grant (CDBG) Program, administered by the Wisconsin Department of Administration, provides local governments with funds to use for economic development, more specifically, for business start-ups and expansion. These funds, received from the U.S. Department of Housing and Urban Development, are used to provide grants to local units of government that use the funds to make business loans. Each business, in return for use of the public funds, provides private investment towards the assisted activity and most importantly creates job opportunities, principally for the benefit of low and moderate persons.

In August 1991, Dane County was awarded a grant from the Wisconsin Development Fund (WDF) to provide a loan to Leisure Concepts, Incorporated, to expand their operation in the Town of Madison. Principal and interest repaid by Leisure Concepts, Inc. was used to capitalize the Dane County Economic Development Revolving Loan Fund Program. This fund provides a secondary source of financing for eligible businesses wishing to expand or locate in Dane County.

This manual contains the ED-RLF policies and procedures that have been adopted by the County to govern the use of revolving loan funds.

THIS PAGE INTENTIONALLY LEFT BLANK.

# Table of Contents

I. DEFINITIONS .....	7
II. LOAN FUND PROFILE – GENERAL PROVISIONS.....	9
GOALS OF ECONOMIC DEVELOPMENT REVOLVING LOAN FUND (ED-RLF) .....	9
PROGRAM INCOME .....	9
AMENDMENTS TO ED-RLF POLICY MANUAL.....	9
TECHNICAL ASSISTANCE .....	9
III. ELIGIBILITY.....	11
ELIGIBLE BORROWERS .....	11
ELIGIBLE PROJECTS .....	11
INELIGIBLE PROJECTS.....	12
JOB PIRATING.....	13
PUBLIC BENEFIT STANDARDS .....	14
IV. LOAN TERMS AND CONDITIONS.....	15
USE OF FUNDS.....	15
MATCHING FUNDS REQUIREMENT .....	15
LOAN SIZE .....	15
LOAN TERMS .....	15
INTEREST RATE .....	16
LOAN FEES.....	16
LOAN PRE-PAYMENT .....	16
COLLATERAL/SECURITY .....	16
INSURANCE.....	17
TIMELINE .....	17
DISBURSEMENT OF FUNDS.....	17
REPORTING REQUIREMENTS .....	17
COMPLIANCE WITH COUNTY ORDINANCES AND STATE STATUTES .....	18
FEDERAL REQUIREMENTS .....	19
V. LOAN APPLICATION AND INITIAL SCREENING .....	23
APPLYING FOR A LOAN.....	23
LOAN APPLICATION MINIMUM REQUIREMENTS.....	23
INITIAL SCREENING OF THE LOAN APPLICATION .....	24
APPLICATIONS DEEMED INCOMPLETE .....	24
APPLICATIONS THAT PASS THE INITIAL SCREENING .....	25
VI. UNDERWRITING .....	26
OBJECTIVES .....	26
ON-SITE VISIT .....	26
BUSINESS BACKGROUND CHECKS .....	26
BACKGROUND CHECKS ON OWNERS, PRINCIPALS, AND GUARANTORS .....	27
UNDERWRITING CRITERIA .....	28
INFORMATION PROVIDED TO APPLICANT .....	29
VII. LOAN REVIEW PROCESS.....	30
OVERALL PROCESS AND TIMELINE .....	30
CDBG LOAN APPLICATION REVIEW SUBCOMMITTEE .....	30
CDBG COMMISSION.....	31
TERMS AND CONDITIONS LETTER.....	32
LOAN AGREEMENT .....	33
COUNTY BOARD PROCESS .....	33
COUNTY EXECUTIVE AND COUNTY CLERK .....	33
APPLICATION APPROVAL .....	34
VIII. LOAN EXECUTION .....	35

LOAN AGREEMENT .....	35
IX. DISBURSEMENT AND COLLECTION OF FUNDS .....	36
DISBURSEMENT OF FUNDS.....	36
COLLECTION OF FUNDS .....	37
X. MODIFICATION AND DEFAULT .....	38
LOAN MODIFICATION.....	38
NOTICE OF DEFAULT.....	38
LATE PAYMENT PENALTY.....	38
MONETARY DEFAULT .....	39
FAILURE TO CREATE AND/OR RETAIN JOBS .....	39
XI. SUBORDINATION POLICY .....	40

# I. Definitions

---

Disbursement of Funds means the distribution of the loan funds to the Borrower as provided by the terms of the Loan Agreement.

Closing means the execution of the Loan Agreement and related Loan Documents by the Borrower. *Note: The County is not obligated to issue the loan funds until authorized by the appropriate oversight bodies, the Loan Agreement is signed by all parties, and all other conditions of closing, as described in the Terms and Condition Letter, are met.*

Commitment means, after execution of all required Loan Documents by the Borrower, authorization by the appropriate oversight bodies and Borrower's satisfaction of the conditions of closing, the Loan Agreement has been signed by the Dane County Executive and the County Clerk.

Family means all persons living in the same household who are related by birth, marriage, domestic partnership, or adoption.

First Consideration means the Borrower must document the use of a hiring practice whereby at least 51% of the persons interviewed for jobs created (or retained and open for hiring) are LMI and demonstrate that under usual circumstances the Borrower's hiring practices will result in the hiring of LMI persons for at least 51% of the jobs. Part of Borrower's hiring practice must include the posting of available positions with the local Job Service Office or Workforce Development Board.

Every applicant for an employment position must complete a self-certification form. See Appendix for example.

Full-time Job has the meaning set forth in s. 71.07 (2dx) (a) 4., Stats which reads: "Full-time job" means a regular, non-seasonal full-time position in which an individual, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least 150% of the federal minimum wage and receives benefits that are not required by federal or state law. "Full-time job" does not include training before an employment position begins."

Household means all persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share a housing unit.

HUD means the U.S. Department of Housing and Urban Development.

LMA means labor market area as that term is defined by HUD 24 CFR §570.210.

LMI Household means a household having an income equal to or less than eighty percent (80%) of the county median income, as determined by HUD, on an annual basis.

LMI Person means persons with household income less than eighty percent (80%) of the county median income by family size, as determined by HUD, on an annual basis.

Made Available To – means that jobs may be considered available to low-and-moderate income persons only if: (A) special skills that can only be acquired with substantial training or work

experience beyond high school are **not** a prerequisite to fill such jobs, or the Borrower agrees to hire unqualified persons and provide training; and (b) the County and the Borrower take actions to ensure that low-and-moderate income persons receive first consideration for filling such jobs. § 570.208 (a)(4)(iii).

Project means the use to which the Borrower will apply the proceeds of the loan.

Reasonable Rate of Return means a return on investment that is within +5/-5% of the subject industry standards *and* that does not disproportionately accrue to owner/shareholder compensation.

Retained Jobs – jobs are considered to be retained if there is adequate documentation that the jobs would actually be lost without the ED-RLF assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the ED-RLF assistance is provided: a) the job is known to be held by a low-and-moderate income person; or b) the job can reasonably be expected to turn over within the two years that loan funds are committed and that steps will be taken to ensure that it will be filled by, or made available to, a low-or moderate income persons upon turnover. § 570.208 (a)(4)(ii) .



## **II. Loan Fund Profile – General Provisions**

---

### **GOALS OF ECONOMIC DEVELOPMENT REVOLVING LOAN FUND (ED-RLF)**

The objectives of the Economic Development Revolving Loan Fund (ED-RLF) are:

1. To expand or modernize existing or locally owned and managed enterprises.
2. To encourage the creation or retention of employment opportunities for low and moderate income County residents.
3. To leverage new private investment in downtown business districts and traditional business districts.
4. To assist businesses with high value-added products or services, especially in the agricultural sector.
5. To assist dairy producers with capital improvement projects that will result in a significant increase in milk production.
6. To implement Dane County and local community revitalization goals and objectives.

Dane County attempts to maintain a balanced and diverse loan portfolio representing different sizes and types of businesses, geographic areas, and managed risk.

### **PROGRAM INCOME**

Use of all proceeds and other program income from the Dane County ED-RLF loans shall be restricted to:

1. Additional loans that meet the objectives of the ED-RLF, and,
2. Administrative costs as permitted by federal, state, and local program guidelines.

### **AMENDMENTS TO ED-RLF POLICY MANUAL**

The Dane County CDBG Commission may, from time to time, amend the policies that govern the ED-RLF program. Amendments to ED-RLF policy that are not required by changes in federal or state law, or dictated by amendments to the Dane County Ordinances, are subject to the further approval of the Dane County Board of Supervisors. Such amendments are subject to prior written approval by the Wisconsin Department of Administration, administrator of the Community Development Block Grant (CDBG) Program that provides the funds used to capitalize the ED-RLF.

### **TECHNICAL ASSISTANCE**

The applicant for an ED-RLF loan will either be an existing business or, as a potential new business, the owner/applicant will have demonstrated significant effort toward attaining the knowledge, skills, and abilities necessary to successfully implement a new business.

Resources are available through a number of organizations in Dane County that will assist potential new businesses in conducting a market analysis, preparing a business plan, and undertaking the steps necessary to bring their business idea to fruition. A few of these organizations are listed below:

Wisconsin Economic Development Corporation (WEDC)

<http://wedc.org/start-your-business>

1-(800) 940-7232 – SBDC AnswerLine

Has a number of on-line resources plus features the Wisconsin Business AnswerLine that provides free information to small business owners and their staff in the state of Wisconsin on a wide variety of business topics. AnswerLine staff has access to an extensive document library, phone and web resources and often field calls about starting a business, business planning, permits and licensing, insurance, legal entity types and business financing topics. These resources can also be e-mailed to the caller to answer their questions quickly and efficiently. The AnswerLine is available from Monday to Friday, 8:30 AM to 4:30 PM. Call: 800-940-7232.

Service Corps of Retired Executives (SCORE)

<http://madison.score.org/>

(608) 441-2820

SCORE Madison provides free and confidential business advice and counseling tailored to meet the needs of your business and your personal objectives. SCORE Madison also offers workshops, for a modest fee, for both start-up and in-business entrepreneurs. SCORE counselors are real-world professionals with time-tested knowledge who donate thousands of hours to help small businesses succeed. Counselors are experts in such areas as accounting, finance, marketing, retail, manufacturing, management and business plan advisory & strategy review.

UW-Madison Small Business Development Center (SBDC)

<http://sbdc.wisc.edu/aboutus/default.asp>

1-(800) 940-7232 – SBDC AnswerLine

The SBDC staff of experienced business professionals teaches seminars, answer telephone questions and perform one-on-one counseling for business owners in Dane, Columbia and Sauk counties.

Wisconsin Women's Business Initiative Corporation (WWBIC)

<https://wwbic.com/>

(608) 257-5450 – Madison Office

WWBIC's mission is to promote economic development through microenterprise by providing access to capital including direct lending, one-on-one individualized business assistance, business education, and asset building financial awareness education programming, with an emphasis on women, people of color, and people of lower wealth and incomes.

Some of the forms needed to start a new business may be found at:

Wisconsin Department of Financial Institutions

[www.wdfi.org](http://www.wdfi.org)

Has forms available on-line to file to create the business legal entity.

Internal Revenue Service

[www.irs.gov](http://www.irs.gov)

Has forms to apply for a federal Employer Identification Number (EIN) and forms for filing federal taxes.

Wisconsin Department of Revenue

[www.revenue.wi.gov/businesses](http://www.revenue.wi.gov/businesses)

Has forms for Wisconsin business tax registration and to collect state sales tax.

State of Wisconsin

[www.wisconsin.gov/state/core/business\\_forms.html](http://www.wisconsin.gov/state/core/business_forms.html)

Has links to many of the needed business forms.

### III. Eligibility

---

The basic eligibility requirements for a ED-RLF loan are as follows:

#### ELIGIBLE BORROWERS

Each Borrower must:

- A. Be a for-profit business;
- B. Be duly organized, validly existing, in good standing and, when applicable, licensed to do business under the laws of the State of Wisconsin;
- C. Be located in one of the participating municipalities of the Dane County Urban County Consortium;
- D. Ensure that the business owners meet any citizenship or legal resident status requirements imposed by HUD;
- E. Possess the licenses, certifications, zoning approvals and permits necessary to operate the proposed business at the time the loan is approved;
- F. Be current, and ensure that all loan guarantors are current, on business and personal income taxes, real and personal property taxes, payroll and business taxes, and court-ordered judgments;
- G. Provide full disclosure of any outstanding litigation involving the business, the business owner(s) and any guarantor(s);
- H. Be in full compliance, and ensure that all guarantors are in full compliance, with all requirements related to any previous assistance received under the Community Development Block Grant program;
- I. Demonstrate a commitment to creating and/or retaining permanent full-time equivalent (FTE) jobs, at least 51% of which will be held by or made available to low-and-moderate income persons.

#### ELIGIBLE PROJECTS

Each project must:

- A. Reflect the County's articulated goals and priorities for economic development;
- B. Be consistent with the goals of the current Comprehensive Plan of the municipality where the project will be located and receive all necessary municipal approvals or authorizations;

- C. Demonstrate that the project will not go forward without the ED-RLF investment as demonstrated by a gap in needed financing or a gap in the rate of return;
- D. Be financially viable and demonstrate the economic ability to repay the loan;
- E. Leverage at least \$1 in non-federal funds for every \$1 of ED-RLF investment;
- F. Demonstrate that, to the extent practicable, ED-RLF funds will not be substituted for non-federal financial support;
- ~~G.~~ Provide copies of financing arrangements from all other sources of project financing, and written evidence that all other sources are committed at the time of application. Financing commitments that are contingent on Dane County's participation must be included in the application and clearly disclosed as such.
- H. Comply with HUD's public benefit standards (for further information regarding the public benefit standards, see below);
- I. Create and/or retain permanent jobs, of which 51% will be held by or made available to persons who are low-and-moderate income;
- J. Not provide more than a reasonable rate of return on the investment to the owner(s) of the assisted activity;
- K. Provide evidence that all project costs are reasonable;
- L. Be completed with 24 months of the loan commitment date, defined as the date the loan agreement is signed by the County Executive and the County Clerk;
- M. For all projects involving real estate acquisitions, demonstrate effective site control prior to loan commitment;
- N. Not begin until the County has completed an environmental review, the Loan Agreement has been executed and signed by the County Executive and the County Clerk, and a Notice to Proceed has been issued.

## **INELIGIBLE PROJECTS**

The following projects are ineligible for assistance (24 Code of Federal Regulations (CFR) §570.209(b)(3)(ii)):

- A. Activities not described as eligible projects are generally ineligible;
- B. General promotion of the community (as a whole);
- C. Assistance to professional sports teams;
- D. Assistance to privately-owned recreational facilities that serve a predominately higher income clientele where the benefit to users clearly outweighs the benefit of jobs created or retained;
- E. Acquisition of land for which a specific use has not been identified (i.e., land banking);

- F. Assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) or guarantor(s) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance;
- G. Political activities;
- H. Payment or refinancing of existing debt;
- I. Construction of new permanent residential structures or for any program to subsidize or assist such construction. Activities in support of the development of low or moderate income housing including clearance, site assemblage, provision of site improvements, and provision of certain public improvements and certain housing pre-construction costs set forth in 24 CFR §570.206(g), are not considered as activities to subsidize or assist new residential construction (24 CFR §570.207(a)(3)); or
- J. Projects involving the relocation of a plant, facility, or operation from one Labor Market Area (LMA) to another LMA if the relocation is likely to result in a significant loss of jobs in the LMA from which the relocation occurs (24 CFR §570.210). This is further explained in the next section on job pirating.

## **JOB PIRATING**

Job pirating refers to the use of federal funds to lure or attract a business and its positions from one community to another community. CDBG funds may not be used to assist for-profit businesses, including but not limited to business expansions, infrastructure improvement projects or business incubators, which are designed to facilitate business relocation, if the funding will be used to assist directly in the relocation of a plant, facility or operation and the relocation is likely to result in a *significant* loss of jobs in the labor market area (LMA) from which the relocation occurs. (See *Quality Housing and Work Responsibility Act of 1998*, (Pub. Law 105-276, Title V, §588) and 24 CFR §570.210).

- A business operation includes, but is not limited to, any equipment, employment opportunity, production capacity or product line of the business.
- The County is prohibited from providing CDBG funded assistance if the relocation of a plant, facility, or operation will occur within three-years of the date the assistance.
- A loss of jobs is significant if the number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that LMA or, in all cases the loss of jobs is 500 or more.
- A loss of 25-jobs or less does not constitute a significant loss of jobs.

The following language will be included in all contracts:

"The Borrower certifies it is and will maintain compliance with CDBG Anti-Piracy regulations as stated in 24 CFR 570.482(h). Violation of this regulation will constitute an Event of Default."

The federal prohibition will not apply if the applicant for assistance started a new business operation and that operation is totally unrelated to the current business, and the new business will operate in a new LMA. An example of such an exception to the job pirating prohibition would be

a food service business that decided to diversify and open a new plant in a different LMA to manufacture computer circuit boards.

## **PUBLIC BENEFIT STANDARDS**

The County is required to ensure that a minimum level of public benefit is realized when CDBG funds are utilized (24 CFR §570.209). The federal government has established certain standards that must be used to measure the level of public benefit achieved by each funded project.

### Standards for Each Project

A project will provide an insufficient public benefit and cannot be assisted with ED-RLF funds if the amount of ED-RLF funds provided will exceed:

- \$50,000 per full-time equivalent (FTE) permanent job (created or retained) or
- \$1,000 in goods and services per low-and-moderate income person..

### Aggregate Standards

Aggregate standards are based on all of the ED-RLF projects for which funds were first obligated during any given calendar year.

Project loans, in the aggregate, must either:

- Create or retain at least one FTE, permanent job per \$35,000 of ED-RLF funds committed; or
- Provide goods and services to an area where the number of low-and-moderate income (LMI) persons served by the business amounts to at least one LMI person per \$350 of ED-RLF funds committed.

## IV. Loan Terms and Conditions

---

Loan terms are designed to be somewhat flexible and the Commission will balance the need to maintain the financial viability of the business against ensuring a reasonable return on the County's investment.

### USE OF FUNDS

ED-RLF loan funds may be used for:

- Acquisition, development, or improvement of real property;
- Clearance, demolition, removal, and site preparation related to acquisition or rehabilitation;
- Fixed assets;
- Machinery and equipment;
- Inventory;
- Working capital.

### MATCHING FUNDS REQUIREMENT

Projects must leverage at least \$1 of non-federal funds for every \$1 of ED-RLF funds. However, based on the risk involved, leverage rates required by the CDBG Commission may be higher on working capital and improvements to real property.

Non-federal funds include: personal funds advanced by the Borrower; loan funds contributed by a bank, credit union, or savings and loan; private foundation funds; angel investor funds; and other non-federal sources.

Federal funds are defined as those originating from a federal source, such as the U.S. Department of Agriculture - Rural Development, U.S. Small Business Administration, and the Wisconsin Housing and Development Authority (WHEDA).

### LOAN SIZE

The minimum loan size is \$25,000. The maximum is based on the availability of funds.

### LOAN TERMS

The loan term will not exceed the useful life of the assets financed.

## **INTEREST RATE**

The interest rate is within two (2) points of the Prime Rate, as published in the Wall Street Journal on the business day most closely following the verified receipt of a completed application by the County. Lower interest rates may be negotiated based on need as determined by the CDBG Commission.

## **LOAN FEES**

Dane County, through action by the CDBG Commission, may establish loan origination fees, closing fees, servicing fees and other fees to cover reasonable charges directly related to either processing an application, or servicing a loan. All fees collected are retained by the ED-RLF.

The Commission has established a loan origination fee equal to 1% of the total loan amount. The loan origination fee is due, by certified check payable to Dane County, at the time of the loan closing.

## **LOAN PRE-PAYMENT**

Loans may be repaid at any time without penalty. However, pre-payment will not exempt the Borrower from the job creation/retention requirements.

## **COLLATERAL/SECURITY**

The loan will be secured through one or more of the following means:

- Promissory note;
- A mortgage on the real property being acquired/rehabilitated;
- A General Business Security Agreement secured by a UCC filing with the Wisconsin Department of Financial Institutions covering assets of the business including equipment, inventory, and supplies;
- Personal guarantees of 1) each proprietor, and/or 2) each limited partner who owns 20% or more interest and each general partner, and/or 3) each stockholder owning 20% or more voting stock, and/or 4) any partner or entity providing a guaranty on the loan;
- Collateral assignment of life insurance in an amount at least equal to the amount of the loan for each of the borrowers/guarantors;
- Collateral assignment of key-person insurance in an amount at least equal to the declining loan balance for each of the owners/guarantors;
- Other security documents that the County may require in its sole discretion to evidence the loan and otherwise protect its security interest and liens.



## **INSURANCE**

At all times during the term of the loan, the Borrower must maintain property/casualty insurance on all business assets and collateral in an amount at least equal to the Borrower's outstanding loans, and name the County as a lender loss payee/additionally insured for any and all items purchased with the loan.

For all projects involving construction, Borrowers are required to obtain, and keep in force, Workers Compensation Insurance. Evidence of such insurance must be provided at the loan closing and immediately upon subsequent ED-RLF staff request.

## **TIMELINE**

From the time that a completed loan application is received, it may take up to 160-days to obtain a commitment from the County. This time period is necessary for the completion of the underwriting process, the Commission to consider and approve the application, the County's attorney to draft the Loan Agreement and other loan related documents, the County Board to approve the Loan Agreement, and the County Executive and County Clerk to execute (sign) the Loan Agreement. This timeline presumes the applicant complies with all requirements in a timely manner.

## **DISBURSEMENT OF FUNDS**

(See 24 CFR Part 570, Appendix A)

To ensure that ED-RLF funds are not placed at a significantly greater risk than non-ED-RLF funds, to the extent practicable, ED-RLF funds will be disbursed on a pro rata basis with other funding sources. If funds will be disbursed pro-rata, the County will establish a draw down process with the Borrower for a term of not more than twelve (12) months. As loan funds are drawn by the Borrower, the Borrower will be charged interest on the cumulative amount of the draw.

No disbursement will be made without written evidence of approved expenditures. Evidence may include paid invoices/cancelled checks and/or unpaid invoices reflecting imminent purchases to be made with loan funds. Funds disbursement for unpaid invoices will require the approval of the Director of the Office of Economic & Workforce Development to ensure that matching funds are correctly being applied as required by the terms of the Loan Agreement.

## **REPORTING REQUIREMENTS**

Some of the information the Borrower will be required to provide is listed below. More detail regarding a Borrower's reporting responsibilities is included in the Section on Reporting.

- Payroll information regarding the persons on the Borrower's payroll during the payroll period immediately prior to the loan commitment.
- Jobs created – including the job titles, name of persons interviewed, name of first person hired for each position, date of hire, gender, race, ethnicity, income status, FTE status, hourly wage, number of hours worked per week, benefits. This is typically requested quarterly until the requisite jobs are filled.

- Employee Income Certifications - information provided by each employee to be included on a form provided by the County and signed by the employee regarding the family income at the time of hire. Borrower must typically submit these certification forms quarterly until the requisite jobs are filled. A Sample income Certification form is attached as Appendix B.
- Documentation that all permits, licenses, and any other required registrations are maintained. Typically requested annually.
- Documentation that all required insurance is maintained on all covered property and chattel. Typically requested annually.
- Annual Financial Statements for the business. ED-RLF staff may request that the Borrower provide financial statements more frequently and may also request additional financial information.
- Other items deemed necessary by the County to determine the continuing financial solvency of the business and compliance with all terms of the Loan Agreement.

The County, or a subcontractor acting on its behalf, will conduct an on-site visit(s) to determine the existence and condition of loan collateral.

## **COMPLIANCE WITH COUNTY ORDINANCES AND STATE STATUTES**

Projects must comply with all applicable State Statutes and Dane County Ordinances, including, but not limited to the following:

### 1. Affirmative Action

Loan recipients shall during the terms of the loan agreement, take affirmative action to ensure compliance with sec. 111.321, Wis. Stats., and Chapter 19 of the Dane County Code of Ordinances (hereinafter referred to as Chapter 19), not to discriminate against any person, whether an applicant or recipient of services, an employee or an applicant for employment, on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs. The contractor shall provide a harassment-free work environment. This provision shall be applied, but not limited, to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, including apprenticeship, rates of pay or other forms of compensation.

The loan recipient agrees to post in conspicuous places available for employees and applicants, notices setting forth the provisions of this agreement as they relate to affirmative action and non-discrimination.

The loan recipient shall utilize to the fullest extent targeted businesses in connection with this agreement and provide them with an opportunity to compete for any subcontract.

The loan recipient agrees to furnish all information and reports required by the contract compliance program as provided in s. 19.57, as the same relates to affirmative action,

and shall permit access to books, records, accounts and persons who have relevant information to determine compliance with chapter 19.

## 2. Equal Benefits

Pursuant to Dane County Ordinance Chapter 25.016, loan recipients shall provide the same benefits to employees with domestic partners as they do to employees with spouses, or the cash equivalent if a benefit cannot reasonably be provided.

## **FEDERAL REQUIREMENTS**

With federal funds come a number of federal requirements:

### Access to Records

Representatives and employees of the County, HUD, the Comptroller General of the United States, and the employees or representatives of any other government agency with oversight or audit responsibilities for the CDBG program, have the right of access to any pertinent records of Borrower and to the Borrower's premises as necessary to audit, examine, or investigate any aspect of Borrower's expenditures related to the Loan Agreement. Note: Wisconsin's Open Records law will also apply to the release of records and reports gathered or developed under the auspices of the CDBG program. See generally Wis. Stats. 19.32, *et seq.*

### Anti-Lobbying Certification

Prior to entering into a Loan Agreement, the Borrower will be required to sign a certification attesting to the following:

1. No federally appropriated funds have been paid, or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal contract, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this CERTIFICATION be included in the award documents for all sub-awards at all tiers (including subcontractors, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

## Audits

Upon the request of representatives and employees of the County, HUD, the Comptroller General of the United States, and the employees or representatives of any other government agency with oversight or audit responsibilities for the CDBG program, the Borrower shall comply with the request and provide all information relating to the subject loan, and provide access to the Borrower's premises as necessary, for any audit or investigation of any aspect of Borrower's actions, reporting, and/or expenditures related to the Loan Agreement. Borrowers response shall be as soon as practicable and without delay.

## Conflicts of Interest

### Persons Covered

The conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part

### Conflicts Prohibited

The general rule is that no covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

Immediate family is defined to include:

- Spouse
- Domestic Partner
- Fiancée/Fiancé
- Parents
- Siblings
- Children – including adopted children
- In Laws – including parents-in-law, children in-law, brothers-in-law, sisters-in-law
- Anyone who receives more than 50% of their support from a covered person (e.g., foster child)

## Copyrights

The U.S. Department of Housing and Urban Development (HUD) reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes:

The copyright in any work developed under a grant, sub-grant, or contract under a grant or subgrant; and

Any rights of copyright to which a grantee, sub-grantee, or a contractor purchases ownership with grant support. (24 CFR §85.34)

### Debarred or Suspended Contractors (Excluded Parties List System – EPLS)

No contracts may be awarded to any party that is debarred or suspended or is otherwise excluded from participating in any federal assistance programs.

### Environmental Review Requirements

Each project must meet the environmental review requirements found at 24 CFR Part 58. Proper documentation of compliance with or exemption or exclusion from the environmental regulations must be issued before any CDBG funded project may proceed. Incurring certain project related costs including, but not limited to, those related to signing an option/purchase/easement/lease agreement, signing purchase orders for equipment, and signing consultant and construction contracts prior to authorization and/or completion of the environmental review will jeopardize the County's authority to approve any CDBG funding for the proposed project.

Dane County is responsible for conducting the environmental review and issuing a Notice to Proceed. More information regarding the Environmental Review Process may be found here:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/environment/review](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/review)

### Equal Opportunity Provisions

The Civil Rights Laws and related laws and regulations are designed to protect individuals from discrimination on the basis of race, national origin, religion, color, sex, age, handicap, and familial status. As applied to the CDBG Program, they protect individuals from discrimination in housing, employment, business opportunities, and benefits created by CDBG projects.

Relevant laws include:

- A. Title VI and Title VIII of the Civil Rights Act, which provides that no person shall be excluded from participation, denied the benefits, or subjected to discrimination on the basis of race, color, familial status, or national origin under any program receiving federal financial assistance.
- B. Section 109 of the Housing and Urban Development Act of 1992, as amended, provides that no person shall be excluded from participation (including employment), denied benefits or subjected to discrimination on the basis of race, color, sex, national origin, age or qualified handicapped, under any program or activity, funded in whole or in part under the CDBG program.
- C. Executive Order 11246, as amended, provides that no person shall be discriminated against, on the basis of race, color, religion, sex, or national origin in any place of employment during the performance of federally-assisted construction contracts.
- D. Section 3 of the Housing and Urban Development Act of 1968, as amended, provides that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed to low-and-very-low income persons.
- E. Section 504 of the Rehabilitation Act of 1973 the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968, as amended, which provide that no otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to

discrimination under any program or activity receiving federal funds and that buildings or facilities that are altered, constructed or designed with federal funds comply with federal standards for accessibility.

- F. Executive Orders 11625 and 12432 (concerning Minority Business Enterprise and 12138 (concerning Women's Business Enterprise and 24 CFR 85.36 which require that affirmative steps are taken to assure that women and minority businesses, small businesses, and local businesses are utilized when possible as sources of supplies, equipment, construction, and services.
- G. Chapter 19 of the Dane County Ordinances – which prohibits discrimination in employment on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs.

#### Federal Labor Standards

Davis-Bacon (and related Acts), will apply to all projects involving over \$2,000 in construction, rehabilitation, and/or demolition work. Federal Labor Standards provisions will be required in all bids and contracts. Such requirements will include, but are not limited to, provisions governing the following; payment of prevailing wages; posting of required notices at the job site; submission of certified weekly payrolls; periodic on-site interviews with workers; and compliance with reporting requirements. CDBG funds may finance activities other than construction work without triggering Davis-Bacon requirements, even though CDBG funds are part of an overall project which may involve construction work (e.g., the purchase and set-in-place (but not the installation) of machinery and equipment). More information is available on the Department of Labor web site at: <http://www.dol.gov/compliance/laws/comp-dbra.htm> .

#### Record Retention

Borrower shall retain all records related to the project and job hires for five (5) years following the date of the last job hire.

#### Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA)

Borrower shall comply with all URA requirements in applicable acquisition, rehabilitation, and demolition projects. Compliance shall include notifications to owners and/or occupants of protections and applicable assistance under 49 CFR part 24.  
<http://www.gpo.gov/fdsys/pkg/FR-2005-01-04/pdf/05-6.pdf>

# V. Loan Application and Initial Screening

---

## APPLYING FOR A LOAN

Loan applications may be submitted at any time. Applications are available on the County web site at [http://www.dane-econdev.org/financing\\_and\\_capital.aspx](http://www.dane-econdev.org/financing_and_capital.aspx) , or may be obtained by contacting the Dane County ED-RLF staff at (608) 266-4006.

Three (3) copies of the completed application and all accompanying materials must be mailed to:

Dane County ED-RLF Administration  
RM 421 City-County Building  
210 Martin Luther King, JR BLVD  
Madison, WI 53703

E-mail applications will not be accepted or processed.

Applications will be processed in the order in which they are received and deemed complete.

## LOAN APPLICATION MINIMUM REQUIREMENTS

The application requirements will differ depending upon the type of project proposed. Real estate projects, for example, will require evidence of site control and an appraisal in addition to the items listed below. The following items represent the minimum documentation that must be submitted before a loan application will be accepted:

- Completed and signed loan application;
- Business plan, including market analysis;
- Hiring plan that details the number of positions to be created and/or retained, the number of positions held or to be filled by LMI persons, the type of position, average wage, any special skills or training required, the timetable for hiring and whether or not health care will be or is provided for the position. The plan must indicate who will be responsible for hiring and collecting required data.
- Map of business location;
- Resumes of applicant's owners and key management staff;
- Applicant's financial statements, and if available, CPA prepared balance sheets and income statements for the most recent three years with 3-year projections with one (1) year month-to-month projections and detail supporting the assumptions used to support the projections. Also include interim statements not less than 45 days old and federal tax returns covering the most recent 3-year period for the applicant business, for owners of 20% or more of the applicant, and for all proposed guarantors.;

- ❑ Personal financial statements of owners of 20% or more of the Borrower;
- ❑ Release of Information form(s) signed by applicant that will allow County to obtain information from all lenders from which the applicant applied for conventional financing.

The Loan Application packet contains a complete checklist that will serve as a guide to the submission requirements.

## **INITIAL SCREENING OF THE LOAN APPLICATION**

The initial screening criteria are considered to be thresholds that must be met or exceeded before an application will be forwarded to underwriting and an environmental review. Loan applications will be screened by the Dane County ED-RLF staff to determine that the following criteria are met:

- ❑ Loan application is complete and signed;
- ❑ All required supporting documentation has been provided;
- ❑ Business to be assisted is located in one of the participating jurisdictions of the Dane County Urban County Consortium;
- ❑ Project reflects the County's articulated goals and priorities for economic development;
- ❑ Project is an eligible use of ED-RLF funds;
- ❑ The project is consistent with the Comprehensive Plan of the municipality in which it will be located, and the chief elected official of the municipality has provided written correspondence indicating local support;
- ❑ The chief elected official of the municipality where the where the project will be located has provided written correspondence indicating that no municipal Revolving Loan Fund exists, OR that the proposed project applied and did not receive funds with documentation of the decision, OR that the proposed project did not apply for available funds;
- ❑ The commitment to jobs to be created is consistent with the required public benefit standard;
- ❑ Sufficient funds are available in the ED-RLF to meet the request.

The Dane County ED-RLF staff may request an in-person and/or on-site meeting to discuss any issues or questions regarding the application.

## **APPLICATIONS DEEMED INCOMPLETE**

If the Dane County ED-RLF staff determines that a submitted application is incomplete, staff will provide the applicant with a written list describing the omissions and ask the applicant to provide the missing information and/or documentation.



## **APPLICATIONS THAT PASS THE INITIAL SCREENING**

Once the ED-RLF staff determines that an application is complete, staff will screen the application to determine whether it meets the threshold eligibility requirements described in this Manual. Applications that pass the initial screening will be referred for an environmental review as needed, and underwriting.

If the project will involve construction, rehabilitation, or demolition of real property, an in-person meeting will be scheduled with the Loan Applicant and County CDBG staff to discuss the applicable federal requirements, i.e., federal labor standards and environmental review procedures. The Loan Applicant will provide written acknowledgment of the discussion and the materials received at this meeting.

# VI. Underwriting

---

## OBJECTIVES

The CDBG regulations contain Guidelines and Objectives for Evaluating Project Costs and Financial Requirements (24 CRF Part 570, Appendix A). The underwriting guidelines are designed to provide a framework for selecting projects that are financially viable and will make the most effective use of available funds. The objectives of the underwriting guidelines are to ensure that:

- A. Project costs are reasonable;
- B. All sources of project financing are committed;
- C. To the extent practicable, ED-RLF funds are not substituted for non-Federal financial support;
- D. The project is financially feasible;
- E. The return on the owner's equity investment will not be unreasonably high; and
- F. To the extent practicable, ED-RLF funds are disbursed on a pro rata basis with other finances provided to the project.

The County's underwriter will conduct background checks on the applicant (business), the principals and the proposed guarantors.

The underwriter will also examine the financial feasibility of the project by applying various industry standards, ratios, and statistical analysis as appropriate in the examination of the financial information provided by the applicant.

## ON-SITE VISIT

The Underwriter and ED-RLF staff will conduct an on-site visit of the project. The on-site visit is a vital step in understanding the business and to better inform the underwriting process. The underwriter may ask for additional specific information during the course of the on-site visit.

## BUSINESS BACKGROUND CHECKS

Business background checks are conducted to determine the strength of the business. As part of this examination, the following resources, among others, will be used:

- Access Dane – to determine the location of the business, identify the property owners, and to obtain information on whether property taxes are current.

- ❑ Better Business Bureau – to determine whether the business meets BBB accreditation standards, to examine customer reviews and complaints, and to identify any government actions.
- ❑ Dane County Register of Deeds – to determine mortgages and liens recorded against the property that is being used for collateral.
- ❑ Westlaw – to check history of business, associated businesses, and principals throughout the United States.
- ❑ Wisconsin Circuit Court Access Program – to check on outstanding litigation involving the business, business owners, guarantors and operators.
- ❑ Wisconsin Department of Financial Institutions – to verify the legal name of the business, effective date of registration, registered agents, registered office of record, charter document filing history, current status (i.e., delinquent, dissolved), and to verify that annual reports are filed as required. In addition, UCC filings will be examined to determine existing liens on any collateral.
- ❑ Wisconsin Department of Revenue – to check on filing frequency and on payment of payroll and business taxes.
- ❑ Dane County Treasurer – to determine the payment history and status of real and personal property taxes involving the business, the applicant, business owners, guarantors and operators.

## **BACKGROUND CHECKS ON OWNERS, PRINCIPALS, AND GUARANTORS**

Background checks on owners, principals, and guarantors are conducted to determine their capacity to manage the business, provide collateral, and to achieve projections. As part of this examination, the following will be reviewed.

- ❑ Access Dane – to verify ownership of property to be used as collateral and to obtain information on the whether property taxes are current.
- ❑ Dane County Register of Deeds – to determine mortgages and liens recorded against any property that is being used for collateral.
- ❑ Westlaw – to check on out-of-state criminal or civil filings and any additional financial history that may be relevant to the solvency and integrity of the applicant, principals or guarantors.
- ❑ Wisconsin Circuit Court Access Program – to check on outstanding litigation that may impact the ability to operate the business or to maintain assets.
- ❑ Wisconsin Department of Safety and Professional Services and related agencies – to verify that needed licenses and certifications are obtained and are current.
- ❑ Dane County Treasurer – to determine the payment history and status of real and personal property taxes involving the business, the applicant, business owners, guarantors and operators.

## UNDERWRITING CRITERIA

The main criteria for underwriting business loans are:

Mission – Project reflects the County’s articulated goals and priorities for economic development;

Threshold Requirements Met - Project meets the minimum eligibility requirements for the program.

Ability to Repay – Usually expressed in a simple calculation called the debt coverage ratio (DCR). The DCR = cash flow available for debt service / debt service. The minimum preferred DCR is 1.15. For real estate deals, the DCR = Net Operating Income / Debt Service. In real estate projects involving business tenants, the feasibility of the project and the ability of the project to generate sufficient income are also considered.

Collateral – Provides security to County in the event of loan default and the subsequent liquidation of assets pursuant to the terms of the Security Agreement between the County and the Borrower. The value of the collateral securing the loan is measured by a ratio called loan-to-value (LTV). Loan to value = Loan / Lesser of (1) Cost or (2) Liquidation Value. LTV ratios vary as to the nature of the asset being financed. An appraisal is used to determine value in real estate deals. The following are generally accepted loan-to-value standards:

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

Match – The project provides at least \$1 of non-federal funds for every \$1 of ED-RLF funds requested.

Owner Equity – The owner’s real property and/ or cash investment in the project.

Balance Sheet Analysis – An examination of the financial soundness of the business by calculating the ability to collect receivables and pay bills in a timely fashion, manage inventory, generate sufficient cash flow relative to cash needs, and whether the owner is paid a reasonable salary or charges reasonable fees, according to usual and customary business practice and accounting standards.

Management Experience – The management team needs to have industry experience in all aspects of the business: sales and marketing, finance, operations, personnel, etc. The management team normally shall include the principals, directors, senior management, and consultants.

Development Team Experience – The development team in a real estate project normally shall include the developer, architect, contractor, property manager, syndicator, leasing agents, etc. In small projects, the owner may perform all of the roles. The business reputation and credit history of the project developer are a focus of analysis.

Business Plan – The strength of the business plan and the first year monthly cash flow statements are important. A startup or small business applicant needs to demonstrate an understanding of the market in order to create a market niche or offer a unique product or service to differentiate itself. For existing businesses, the applicant is in an industry experiencing stable

trends and/or the applicant has a favorable competitive position and there is demonstrated demand for the applicant's product or service.

Borrower and Community Commitment – The commitment to the project shown by both the applicant and the community in which the project is, or will be, located..

Job Creation – The ability of the project to meet or exceed HUD's public benefit standards requiring the creation and/or retention of permanent full-time equivalent jobs 51% of which must be held by or made available to, low-and-moderate income Dane County residents..

## **INFORMATION PROVIDED TO APPLICANT**

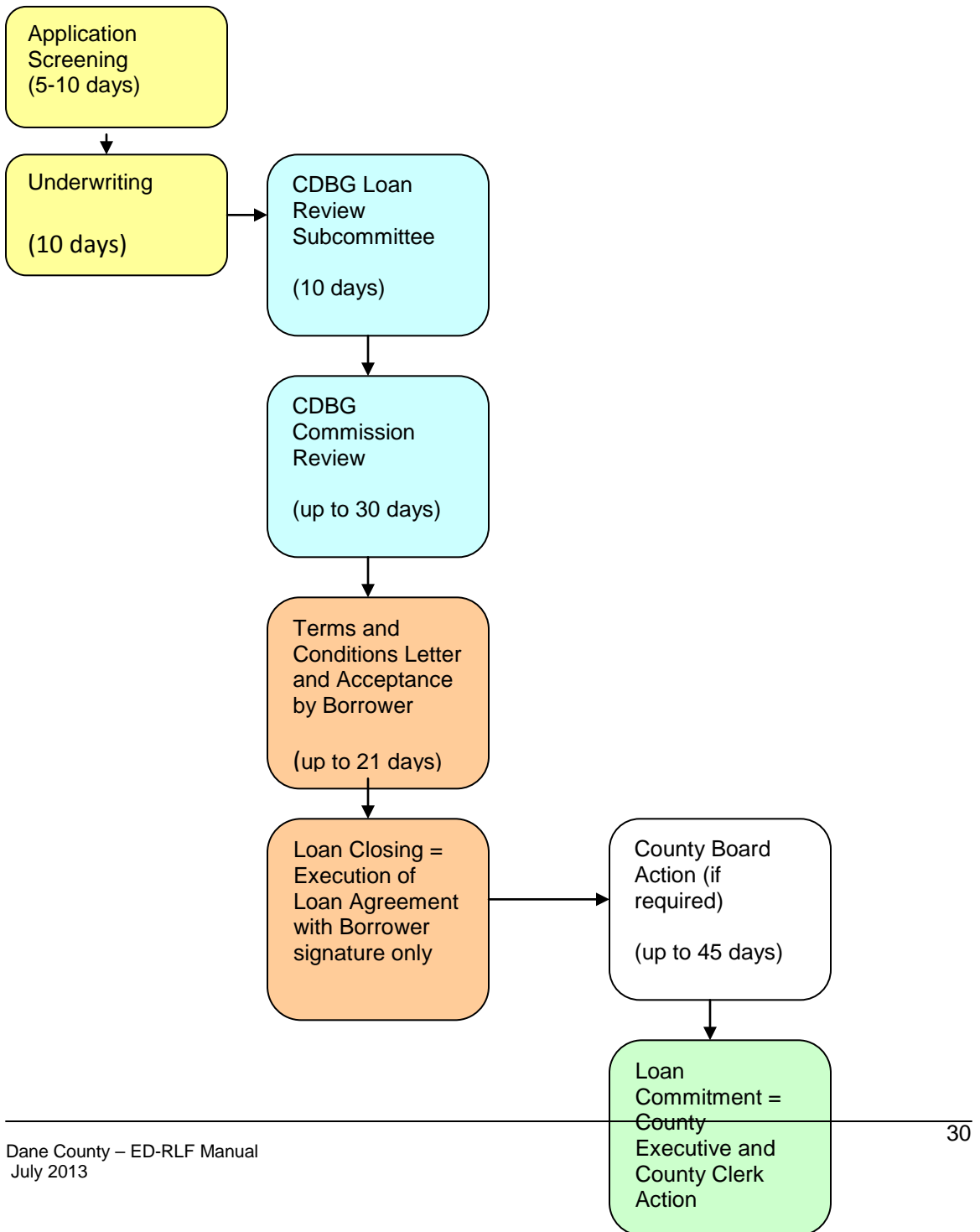
The ED-RLF staff will provide the applicant with a copy of the underwriter's report at the time it is released to the CDBG Loan Application Review Subcommittee and/or CDBG Commissioners.

# VII. Loan Review Process

---

## OVERALL PROCESS AND TIMELINE

The overall process and timeline is depicted below. Please note that a loan agreement is not valid until positive action is taken by the appropriate oversight bodies, it is signed by all parties, and all conditions of closing are met.



## **CDBG LOAN APPLICATION REVIEW SUBCOMMITTEE**

When the underwriting of the loan application is complete, the loan application and the underwriter's report will be reviewed by the CDBG Loan Application Review Subcommittee. The Subcommittee is appointed by the Chair of the CDBG Commission. Members have expertise in banking and economic development. The Subcommittee meetings are publicly noticed in accordance with state statutes and are open to the general public. The agendas and minutes are posted on the County web site, [www.countyofdane.com](http://www.countyofdane.com). The Dane County ED-RLF staff will provide this information to the applicant.

Meetings of the Subcommittee are scheduled to coordinate with meetings of the full Commission, and as needed, the Dane County Personnel and Finance Committee, and County Board. The Subcommittee will not review, act on, or make any recommendation to the full CDBG Commission if the applicant and relevant principals are not in attendance at the meeting.

Prior to the meeting of the CDBG Loan Application Review Subcommittee, each member of the Subcommittee will receive a copy of the loan application, supporting materials, and the underwriting report. Information of a personal nature, such as bank and investment account numbers, social security numbers, etc. will be redacted from the materials before they are provided to the Subcommittee. Applicants will make a short presentation about their request (up to 20 minutes) and be available to the Subcommittee members for questions. This presentation is an important part of the Subcommittee's consideration of the applicant's loan request. Any materials provided to the Subcommittee as part of the application and/or in open session are considered a part of the public record. If properly noticed in its posted agenda, the Subcommittee may go into closed session to discuss certain aspects of the application if permitted by Wisconsin's open meetings law. (See Wis. Stats. §19.85(1))

After its consideration of the application, supporting materials, the underwriter's report, the applicant's statements and any other information brought before it, the CDBG Loan Application Review Subcommittee will vote on the recommendation it will make to the full CDBG Commission. The CDBG Loan Application Review Subcommittee may recommend:

- Approval of the loan application as presented; or
- Approval of the loan application with additional terms or conditions on the loan; or
- Action be tabled until the applicant submits additional information; or
- Denial of the loan application.

## **CDBG COMMISSION**

The recommendations of the CDBG Loan Application Review Subcommittee are then presented to the CDBG Commission.

The 13-member CDBG Commission is appointed by the County Executive and members have interest and expertise in housing, economic development, and community services. The Commission's membership includes two County Board Supervisors representing districts wholly outside the City of Madison, two at-large citizen members, and nine members who are residents of and represent the towns, villages, and cities of the Dane County Urban County Consortium.

The CDBG Commission usually meets the fourth (4th) Thursday of each month (excluding November and December when meetings are usually held the second Thursday). Meeting agendas are publicly noticed in accordance with state statutes, and posted on the County web site, and identify the meeting dates, times, and location and agenda items. The Commission will not review or act on any application unless the applicant(s) and all relevant principals are in attendance at the meeting.

Applicants will make a short presentation (up to 15 minutes) and are to be available to the Commission members for questions. The applicant's presentation will play an important part in the CDBG Commission's deliberations. Any materials provided to the Commission members as part of the application and/or in open session are considered a part of the public record. If properly noticed in its posted agenda, the Commission may go into closed session to discuss certain aspects of the application if permitted by Wisconsin's open meetings law. (See Wis. Stats. §19.85(1))

After its consideration of the Subcommittee's recommendations, the applicant's statements and any other information brought before it, the Commission will vote. The Commission may vote to table the application until the applicant submits additional information or the Commission may vote to recommend:

- Approval of the loan application as presented; or
- Approval of the loan application with additional terms or conditions on the loan; or
- Denial of the loan application.

If the CDBG Commission votes to approve the loan application, with or without additional terms or condition, the Commission's recommendation then goes to the County Board.

NOTE: Special meetings of the CDBG Loan Application Review Subcommittee and/or the full Commission are scheduled only with the approval of the CDBG Commission Chair. Applicants and/or Borrowers requesting special meetings will be charged the full cost of underwriting, special meeting fees, and all other County expenditures, which the County, at its sole discretion, determines to be attributable to the special meeting request. This special meeting fee shall not exceed \$500.00 and is due and payable in certified funds five (5) days prior to the special meeting date, whether for a Loan Review Subcommittee or CDBG Commission agenda. Failure to pay the full costs, and/or to pay timely, will result in deleting the item from the agenda and/or special meeting cancellation by the Commission Chairperson.

## **TERMS AND CONDITIONS LETTER**

If the loan application is approved by the CDBG Commission, the Dane County Corporation Counsel will draft a Terms and Conditions Letter stating the loan terms and conditions as dictated by the Commission. The Borrower will have 21 days from the date of the Terms and Conditions Letter to sign the Letter and return it to:

Dane County ED-RLF Administration  
RM 421 City-County Building  
210 Martin Luther King, JR BLVD  
Madison, WI 53703



We encourage the use of hand delivery, or certified/registered USPS mailing. Electronic submission will not be accepted or processed.

Note: The issuance of a Terms and Conditions Letter is not a binding agreement requiring the issuance of the requested loan funds by the County. The Letter will state the basic terms and conditions that will later be incorporated into the Loan Agreement (see below).

A sample Terms and Conditions Agreement is included in the Appendix to this Manual

## **LOAN AGREEMENT**

If the Borrower accepts and signs the Terms and Conditions Letter, and returns it timely, the Dane County Corporation Counsel will draft the Loan Agreement, Promissory Note, Security Agreement, Guaranty(ies) and other loan related documents with the assistance of the Dane County ED-RLF staff. This process is covered more fully in the section of the Loan Manual entitled Loan Execution.

A sample Loan Agreement and additional sample loan documents are included in the Appendix to this Manual.

## **COUNTY BOARD PROCESS**

Loan Agreements must be approved by the County Board. The County Board approval process is initiated when a resolution for the approval of the loan is introduced at a County Board meeting. The resolution is then referred to various County Board Committees that must take action before the resolution is acted upon by the full County Board. One of the last Committees to review the resolution is the Personnel & Finance Committee. Personnel & Finance will not take action on the resolution until the Loan Agreement is signed by the Borrower. (Note: The Borrower's signature on the Loan Agreement does not indicate loan approval, or confer any right to further approval by the County). The recommendation of the Personnel & Finance Committee is forwarded to the County Board for action. If the resolution is adopted by the County Board, it goes to the County Executive and County Clerk who are then authorized to sign the Loan Agreement thereby committing the County to the terms of the contract.. If the County Board does not adopt the resolution approving the Loan Agreement, no further action is taken.

Typically, Dane County ED-RLF staff provides information to the elected officials at these meetings, and is available to answer questions that may arise. Borrowers are strongly encouraged to attend all meetings at which their request is an item on the agenda.

All of the Subcommittee, Commission, Committee and County Board meetings are publicly noticed and open to the public.

## **COUNTY EXECUTIVE AND COUNTY CLERK**

All Loan Agreements approved through the resolution process by the County Board are referred to the County Executive.

If the County Executive does not sign the Loan Agreement no further action is taken.

If the County Executive vetoes the adopted County Board resolution, the Board may override the veto with a two-thirds majority vote (25 of 37) of the Board. If the Board fails to override the veto,

no further consideration of the same resolution may again be presented during that legislative session.

### **APPLICATION APPROVAL**

No project may begin until the County has completed an environmental review and the County has issued a Notice to Proceed.

No loan funds will be disbursed until the Borrower has executed all required Loan Documents and the Loan Agreement has been signed by the County Executive and the County Clerk.

## VIII. Loan Execution

---

### LOAN AGREEMENT

If the Borrower accepts the Terms and Conditions, by signing and returning, in a timely manner, the Terms and Conditions Letter, Corporation Counsel will draft the Loan Agreement, Promissory Note, Security Agreement, Guaranty(ies) and all other required Loan Documents with the assistance of the Dane County ED-RLF staff.

Once the Terms and Conditions letter is signed and returned by the Borrower, the ED-RLF staff will work with the County Board Supervisor members of the CBDG Commission to draft the County Board resolution approving the issuance of the loan and the terms of the Loan Agreement and will schedule the resolution on the County Board agenda.

Prior to the date of the first County Board Committee meeting during which the loan approval resolution is scheduled to be considered, the ED-RLF staff will meet with the Borrower for the purposes of obtaining the Borrower's and Guarantor's signatures on all required Loan Documents.

If the County Board passes the resolution approving the issuance of the loan and the terms of the Loan Agreement, the Loan Agreement will be immediately forwarded to the County Executive for signature.

A sample Loan Agreement, Promissory Note, Security Agreement, Guaranty and other related Loan Documents are included in the Appendix to this Manual.

# IX. Disbursement and Collection of Funds

---

## DISBURSEMENT OF FUNDS

No loan funds will be disbursed until the borrower has executed all required Loan Documents and the Loan Agreement has been signed by the County Executive and the County Clerk.

Disbursement of funds shall be suspended in the case of any technical and/or material default by Borrower as defined by the terms of the Loan Agreement. The events of default under the terms of the Loan Agreement will include, at a minimum: failure to make timely payment of interest and principle; failure to provide timely, complete and accurate records; and failure to meet LMI hiring/retention requirements. The determination that an event of default has occurred and the suspension and resumption of disbursements will be within the sole discretion of the Director of the Department of Economic and Workforce Development in consultation with the Corporation Counsel or their designee.

Prior to the disbursement of loan funds, the following documentation must be in place, or provided at the contractually agreed upon time during the term of the loan:

1. Loan Agreement. The Dane County Corporation Counsel shall prepare a Loan Agreement which shall be executed by the Borrower, Dane County Executive and the County Clerk.
2. Promissory Note. A promissory note shall be prepared or approved by the Dane County Corporation Counsel and signed by the Borrower. The note must be dated, reference the Loan Agreement between Dane County and the applicant, and it must specify the amount and terms of the loan.
3. Security. Mortgage or lien instruments and personal guarantees provided as security for all loans shall be prepared or approved by the County Corporation Counsel and executed at the time of the loan closing. The Corporation Counsel or designee shall record the instrument and place a copy in the project file to include sufficient number of the following documents to provide adequate loan security:
  - Mortgage and/or security instrument.
  - UCC searches and filing.
  - Corporate and Personal Guarantee(s)
  - Title insurance or Abstract.
  - Assignment of Life Insurance.
  - Casualty Insurance binder.
  - Other documentation as may be appropriate.
5. Repayment Schedule. The ED-RLF staff shall prepare a loan repayment or amortization schedule after the loan proceeds are fully disbursed providing for monthly payments of principal and accrued interest during the life of the loan. The repayment schedule shall be dated and signed by both the County Executive and the Borrower. At that time, the repayment schedule shall be attached to both parties' copies of the agreement.

6. Evidence of Permits, etc. Documentation must be provided by the applicant that all necessary permits, licenses, and any other registrations required have been obtained by the applicant within 30 days of execution of the Loan Agreement.
7. Evidence of Program Expenditures. Documentation must be provided by the applicant to evidence project expenditures either prior to or within 15 days of the release of funds. Documentation shall include the originals of bills and invoices or receipts for materials, final bills of sale or canceled checks. The ED-RLF staff shall review all documentation, and may request additional information as needed.
8. Fixed Equipment. Fixed equipment financed with program funds must have been purchased, delivered, and installed within 30 days of the release of funds. The ED-RLF staff shall verify the installation of fixed equipment in an on-site visit. Written documentation and photographs of the installed equipment, sufficient to ensure identification and verification, shall be appended to the County file.

Upon submission of a request for reimbursement and pertinent documentation, the ED-RLF staff shall monitor and verify the use of the funds and expenditure of private leverage commitments. If verified, and upon the approval of the Director of the Office of Economic Development, the staff will prepare payment reimbursement within ten days of receiving the request.

All disbursements are made by check from Dane County to the borrower and mailed to the borrower address given under terms of Schedule A of the Loan Agreement.

## **COLLECTION OF FUNDS**

Loan repayment of principle and accrued interest shall occur on a monthly basis according to the amortization schedule prepared by the ED-RLF staff.

At Closing, Borrower shall provide the bank information and all authorization(s) necessary to allow Dane County to withdraw funds in an ACH debit transaction from the borrowers' financial institution. This bank information shall be in writing and shall include the ABA Number of the subject bank, the complete mailing address of the bank, the subject account number from which the funds will be drawn, and the type of account (Checking or Savings).

The ACH withdrawal will take place on the 15th of each month. If the 15th falls on a Saturday or Sunday, the draw will occur on the following Monday. If the 15th is a holiday, the draw will occur on the next business day.

Should the Borrower change financial institutions, the Borrower shall provide its new banking information to the ED-RLF staff within 3-business days. All changes must be in writing on the Borrower's letterhead.

It is the Borrower's responsibility to have sufficient funds in the account prior to the draw date. No draw date will be altered except as described above. If the draw is returned for insufficient funds or any other reason, the technical default provisions will commence.

# **X. Modification and Default**

---

## **LOAN MODIFICATION**

The terms of a fully executed Loan Agreement will not be modified in any respect, except upon the written agreement of all parties thereto. Modification of loan terms is within the authority of the CDBG Commission taken at a scheduled and publicly noticed meeting of the Commission.

Borrowers seeking any modification of the Loan Agreement must provide re-application information as directed by the Dane County ED-RLF staff at least fifteen (15) days prior to the date on which the modification request is scheduled to be heard by the CDBG Commission/ED-RLF Loan Review Subcommittee. Incomplete re-applications will not be placed on an agenda.

Borrowers requesting modification will be charged the full cost of underwriting, special meeting fees, and all other County expenditures, which the County, at its sole discretion, determines to be attributable to the modification request. This special meeting fee shall not exceed \$500.00 and is due and payable in certified funds five (5) days prior to the meeting date at which the modification request is on the Loan Review Subcommittee agenda. Failure to pay the full costs, and/or to pay timely, will result in deleting the item from the agenda and/or meeting cancellation by the Commission Chairperson.

## **NOTICE OF DEFAULT**

In the event the Borrower is in default as defined by the Loan Agreement the Dane County Corporation Counsel, or designee, shall prepare a written Notice of Default and mail such Notice to the Borrower. The Notice shall specify the following:

- The event and date of the alleged default.
- The action required to cure the default.
- A date, not less than ten (10) days from the date of the Notice of Default for monetary default and thirty (30) days from the Date of Default for non-monetary default, by which the default must be cured to avoid foreclosure or other collection action.
- Any penalties incurred as a result of the default.

## **LATE PAYMENT PENALTY**

A late payment penalty in the amount of \$200 for any portion of the monthly payment that is more than 15 days past due from the regular due date specified in the Loan Agreement shall be assessed and payable on the 16<sup>th</sup> day after the applicable monthly due date. The same process used to collect the monthly payment will be used to collect any late penalties.

## **MONETARY DEFAULT**

When any ED-RLF loan payment is five (5) days or more past due, the loan is in default. Dane County Corporation Counsel or designee will notify the Borrower in writing of the default status. The County reserves the right to pursue all rights and remedies under the loan documents and applicable federal and state law to collect loan amounts outstanding. These options include, but are not limited to: securing a new loan payment plan approved by the borrower and CDBG; turning collection of the loan over to a collection agency; imposing late payment penalties and higher loan repayment interest rates, in addition to and not in lieu of any other remedy; and declaring the loan in default.

Should the loan be declared in default, the account will be turned over to the Corporation Counsel for legal action in order to recover the proceeds through whatever collections action the Corporation Counsel deems appropriate including, but not limited to, the liquidation of collateral and the exercising of personal guarantees.

## **FAILURE TO CREATE AND/OR RETAIN JOBS**

If any Borrower shall fail to create and/or retain the jobs required by the Loan Agreement, the Borrower shall be subject to fines for non-performance, as well as any other penalty provided in the Agreement.

The Dane County ED-RLF/CDBG staff shall report to the CDBG Commission regarding all loans in default as soon as practicable and without delay. Defaults shall be placed on the agenda of the next regularly scheduled Commission meeting, except that amendment of a noticed meeting agenda shall not be made less than 24 hours (excluding weekends and holidays) before the scheduled meeting date.

# XI. Subordination Policy

---

The Dane County CDBG Program will consider a loan subordination request from a borrower who has a loan with Dane County only where the subordination does not diminish the security interests of Dane County.

Guidelines include:

1. A non-refundable fee of \$150.00 will be submitted with the subordination request (check payable to Dane County).
2. The Dane County loan will be in no less than second position.
3. The County will agree to a subordination no more than once in any 12-month period.

The County will require a minimum of 10 working days to review the documents and an additional 5 working days to make a determination.

The Dane County Executive or Dane County Clerk is authorized to sign subordination agreements on behalf of the County.

/cdbg – policies – crlf subordination.doc  
7.25.2013 - Adopted by the CDBG Commission