



Meeting: Village Board
Meeting Date: 3/25/13
Agenda Item: 6e

Mission Statement

Delivering quality services in a courteous, cost-effective and efficient manner.

VILLAGE BOARD MEETING STAFF REPORT

REPORT TO: Burt R. McIntyre, President
Village Board of Trustees

REPORT FROM: Dave Wiese, Director of Community Development

AGENDA ITEM: Review and take action on CDBG-ED Revolving Loan Fund Manual

ACTION REQUESTED: Ordinance Resolution Motion Receive/File

POLICY ISSUE

Should the Village Board update the requirements and manual for the Revolving Loan Fund?

BACKGROUND INFORMATION

The U.S. Department of Housing and Urban Development (HUD) has completed its annual monitoring of Wisconsin's CDBG programs with the Wisconsin Department of Administration. HUD identified modifications that must be made when administering CDBG programs. This includes changes to:

- Low and Moderate Income (LMI) requirements
- CDBG funding in areas with revolving loan fund (RLF) balances
- Anti-pirating

The DOA provided the Village a model manual as an example. Staff has used the model example to complete and formulate the new manual.

FISCAL IMPACT:

Is There A Fiscal Impact? None.

STAFF RECOMMENDATION

Staff recommends the board approve the model Revolving Loan Fund manual in order to allow the Village to maintain the revolving loan fund program.

POLICY ALTERNATIVE(S)

The Village Board could take the following actions:

- Take no action

ATTACHMENTS

I Proposed Manual

II Letter from DOA

Village of Howard Revolving Loan Fund Manual

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FOREWORD

Community Development Block Grant (CDBG) funds are received from the U.S. Department of Housing and Urban Development. The Department of Administration (DOA) is the recipient and contracts with the Wisconsin Economic Development Corporation to manage activities associated with Economic Development. These economic development funds are used to provide grants to local units of government that use the funds to loan to a business. The 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 income persons.

When a business repays the community the loan (principal and interest payments), these funds are classified as program income and used to capitalize a local revolving loan fund (RLF). With the RLF, the community can make additional loans to businesses wishing to expand or locate in the community. When successfully administered, the community's revolving loan fund can expand the amount in its RLF to an amount in excess of the original amount it was able to retain. This happens when the community exercises due diligence by performing a thorough credit analysis to determine business viability and adequately securing and servicing the loan. In administering a RLF, a Community becomes a "bank" and accepts all of the responsibilities of a commercial lender when it makes a CDBG or RLF loan to a business.

This manual contains model RLF policies and procedures that govern the use of revolving loan funds.

SECTION 1. GENERAL PROVISIONS

1.1 PURPOSE

The purpose of the policies and procedures contained within this manual, hereafter referred to as the Revolving Loan Fund Manual, is to present the criteria which governs the economic development activities assisted with funds made available through the Community's Revolving Loan Fund (RLF) program.

1.2 OBJECTIVES

Economic development activities assisted with funds made available through the RLF Program are intended to meet the following objectives:

- (1) To encourage the creation and retention of permanent jobs, which provide a wage, appropriate to the skills and experience of the local labor force and that is competitive. The recipient of funds must agree that a minimum of 51 percent of the jobs created or retained shall be made available to low and moderate income persons. *See section 3.6(4) for requirement and definitions.*
- (2) To encourage the leveraging of new private investment into the Community in the form of fixed asset investment, particularly in land and buildings.
- (3) To perpetuate a positive and proactive business climate which encourages the retention and expansion of existing businesses and helps to attract desirable new businesses.
- (4) To implement the Community's Economic Development Plan goals and objectives.
- (5) To maintain and promote a diverse mix of employment opportunities and to minimize seasonal or cyclical employment fluctuations.
- (6) To encourage the development and use of modern technology and create safe work environments.
- (7) To encourage dairy producers to undertake capital improvement projects that will result in a significant increase in milk production

1.3 AMENDMENTS and MODIFICATIONS

The Community may from time to time amend the provisions imposed by the policies and procedures contained within the RLF manual and such amendments are subject to prior written approval by the Wisconsin Economic Development Corporation, Administrator or his/her designee of the Wisconsin Community Development Block Grant Program (CDBG) that provides the funds used to capitalize the RLF.

SECTION 2. ADMINISTRATION

2.1 LOAN REVIEW BOARD

- (1) The Community shall establish a formal Loan Review Committee which shall consist of individuals representative of broad Community interests, and having special expertise and knowledge of commercial lending and economic development processes. The Village of Howard Community Development Authority shall serve as the Loan Review Committee. The Village Administrator or his/her designee shall or hi/her designee shall serve as RLF Administrator or his/her designee and assist with all loan applications. The RLF Adminsitrator will not be a voting member on the Loan Review Committee. Administrator or his/her designee
- (2) The Loan Review Committee shall have the authority to review, select and recommend loan applications for final approval. The Committee shall also have the authority to make policy recommendations for the administration of the program. Periodic activity reports prepared by the RLF Administrator or his/her designee or his/her designee shall be provided to members of the Community's governing body.
- (3) The RLF Administrator or his/her designee or designee shall explain the Program to prospective applicants, provide written information, assist applicants in completing applications, and process requests for financing. The Administrator or his/her designee, where necessary and appropriate, shall counsel or guide loan applicants to other more appropriate technical and financial resources when the loan applicant has needs beyond those available from the RLF program.
- (4) The Administrator or his/her designee or his/her designee shall periodically review all financial statements and loan amortization schedules of RLF loan recipients, review and approve documentation of business expenditures financed with RLF proceeds, record RLF security instruments, maintain the RLF accounting records which shall be segregated from other community accounts, and report semi-annually to the Wisconsin Economic Development Corporation regarding the use of the RLF funds.
- (5) The Community attorney shall prepare all loan agreements, review all promissory notes and mortgage or lien instruments, and counsel the Community on default matters.
- (6) The RLF Administrator or his/her designee or his/her designee shall be responsible for the maintenance of all other records for the local RLF, particularly those related to the expenditures of the RLF monies for program administration purposes.

2.2 MEETINGS

Loan review meetings shall be held on an as-needed basis. Pursuant to Section 19.84, Wisconsin Statutes, all Committee members and the general public shall be given prior notice of each meeting. A majority of the Committee in attendance at a meeting constituting a quorum shall be required for official Committee action. Official actions must have the support of the majority of the total Committee. Vacant positions on the Committee shall be counted in determining the total number of Committee members.

2.3 RECORDS

Written records of all program activities, including program meetings, loan applications, and related documents, shall be maintained in appropriate files. All files shall be maintained in a secure place with limited access by authorized personnel. The Community's legal counsel shall be consulted in regard to compliance with state and municipal open records laws.

The following files shall be established and maintained for each loan recipient:

- (1) Loan Application File: This file contains all application, business financial statements, personal financial statements, credit reports, business plan documents, and other supporting loan information submitted to the Community, including all applicable correspondence.
- (2) Loan Recommendation File: This file contains a summary of the analysis, recommended actions for the application, and a copy of the minutes for the Loan Review Committee meeting summarizing the action taken on the loan request.
- (3) Loan Closing File: This file contains copies of all loan-closing documents. All legal documents from the loan closing, including security instruments, the note and other applicable correspondence shall be placed in a locked, fireproof safe. The Community's legal counsel shall be involved in helping create and complete this file to ensure complete loan documentation. Copies of the loan closing documents and an amortization schedule will be provided to the loan recipient, along with an invoice, if applicable, for loan closing and servicing fees.
- (4) "A file system shall be established and maintained to ensure that loan repayments, financial information, the loan agreement, UCC updates, and other time sensitive documentation requirements are tracked and obtained as required. The system shall include the following files:
 - 1) Expiration dates for property, casualty and life insurance policies;
 - 2) Due dates for all financial statements;
 - 3) Expiration dates for UCC financing statements, the reminder to update being at least 45 days prior to the expiration of the UCC filing on hand;
 - 4) Scheduled dates of annual loan performance and covenant reviews;
 - 5)
 - 6) Due dates for property tax payments and dates by which the community expects to hear from the borrower regarding confirmation of payment of taxes;
 - 7) Review dates for job monitoring; and
 - 8) Dates on which loan recipients will be notified of scheduled changes in the loan amortization scheduled per loan agreements.

- (5) Financial Statement File: This file contains the business' periodic financial statements as required by the loan covenants with a statement indicating that the RLF Administrator or his/her designee reviewed the data.
- (6) Progress Report File: Loan recipients are required to submit periodic progress reports during the outstanding term of the loan.
- (7)
- (8) Repayment Monitoring File: This file includes the loan amortization schedule, status of payments, and the outstanding balance of the loan. Observations suggesting concerns or problems shall be reported to the RLF Committee and notations shall be placed in the file to remind the Administrator or his/her designee of the need to provide continued monitoring. Administrator or his/her designee

The Community will notify the loan recipient in writing of the deficiency and the action that will be taken should the payment not be made. Should there be a late payment, the Community will contact the loan recipient to determine the reason for the delayed payment. Contact may need to be made with other participating lender(s) to determine if their loans are current and to alert the lender of a potential problem. All payments shall be applied first to accrued late payment penalties, then to interest accrued and then to principal.

- (9) Loan Review File: All loans are to be reviewed on an annual basis, and at such other times as may be deemed necessary by the Community. The review shall follow receipt of the fiscal year-end financial statements, the year-end progress reports. A report on the loan review shall be in the file and address the following: timeliness of monthly payments; condition of collateral securing the loan and status of security documents (i.e. mortgages, UCC filings); overall financial condition of the business; the presence of material liens or lawsuits; and violations of loan covenants and suggested corrective actions.

If the business is experiencing problems with any of the above criteria, the RLF Administrator or his/her designee is to work with the loan recipient to identify actions that are needed to correct the identified deficiencies, including possible restructuring of the loan to protect the Community's interest and meet the needs of the business. If appropriate, the Administrator or his/her designee will arrange for business assistance, including services available through the University of Wisconsin-Extension, Small Business Development Center (SBDC), the Service Corp of Retired Executives (SCORE), and other entities having an interest in serving the needs of businesses.

In the event the findings of the loan review suggest serious problems, particularly if the loan is at risk for default, the account shall be turned over to the Community attorney for legal action in order to initiate steps necessary to protect the loan and to ensure the maximum repayment of the balance due. Again, corrective actions may be achieved through restructuring or if necessary, foreclosure actions.

2.4 ADMINISTRATION

Reasonable administrative funds may be withdrawn from the RLF to cover personnel costs and other administrative expenses. Local funds may be used in situations when loan repayments are insufficient to cover administrative costs. Administrative expenses of up to fifteen (15) percent of program income may be used for direct loan administrative costs. In addition to paying costs for RLF administration, these funds may be used for the following:

- (a) Legal costs.
- (b) Consulting fees for credit analysis, business plan reviews and technical assistance.
- (c) Office supplies, copying, typing, mailing, and related.
- (d) Training costs.

To generate additional revenue to cover administrative costs, if necessary, the Community may also establish loan origination fees, closing fees, servicing fees, and other fees to cover charges directly related to either processing an application or servicing a loan. All fees collected go to the RLF. The accounting of the fee revenue placed in the RLF shall include separate line items to track administrative expenses recovered.

SECTION 3. ELIGIBILITY CONSIDERATIONS

3.1 ELIGIBLE AREA

The area served by the RLF program shall generally be within the corporate limits of the Community.

3.2 ELIGIBLE APPLICANTS

- (1) Applications may be submitted by the sole proprietor or Chief Executive Officer of any business wishing to establish a new operation or expand an existing operation in the Community.
- (2) No member of the governing body, loan review board, or any other official, employee, or agent of the Community who exercises decision-making functions or responsibilities in connection with the implementation of this program is eligible for financial assistance under this program.
- (3) No program loans will be made which are in conflict with Section 946.13 of the Wisconsin Statutes (Private Interest in Public Contract Prohibited).
- (4) Applicants shall not be disqualified based on age, race, religion, color, handicap, sex, physical condition, development disability as defined in s. 51.01(5), sexual orientation or national origin.

3.3 ELIGIBLE ACTIVITIES

Program loans shall be available to eligible applicants for the following activities: (1) The acquisition of land, buildings, and fixed equipment.

- (2) Site preparation and the construction or reconstruction of buildings or the installation of fixed equipment.
- (3) Clearance, demolition, or the removal of structures or the rehabilitation of buildings and other such improvements.
- (4) The payment of assessments for sewer, water, street, and other public utilities if the provision of the facilities will directly create or retain jobs.
- (5) Working capital (inventory and direct labor costs only).
- (6) Purchase of dairy cows resulting in significant long-term increases in capacity to produce milk.

3.4 INELIGIBLE ACTIVITIES

Program loans shall not be available for the following

activities: (1) Refinancing or consolidating of existing debt.

- (2) Reimbursement for expenditures prior to loan approval.
- (3) Specialized equipment that is not essential to the business operation.
- (4) Residential building construction or reconstruction (unless such reconstruction is intended to convert the building to a business or industrial operation).
- (5) Routine maintenance.
- (6) Professional services such as feasibility and marketing studies, accounting, management services, and other similar services. Legal services incurred in the closing of a RLF loan are eligible.
- (7) Other activities that the Loan Review Committee may identify during the administration of the program.

3.5 INELIGIBLE BUSINESSES

Program loans shall not be available for the following

businesses: (1) Speculative investment companies.

(2) Real estate investment

companies. (3) Lending

institutions.

- (4) Gambling operations.
- (5) Non-public recreation facilities.
- (6) Other businesses not serving the interests of the Community.

3.6 MINIMUM REQUIREMENTS

To be eligible for funding, a proposed project must meet all of the following minimum requirements:

- (1) Private Funds Leveraged. The applicant must leverage a minimum of one dollar (\$1.00) of private funds for every one dollar (\$1.00) of loan funds requested. Higher leverage may be required at the discretion of the Loan Review Committee.
- (2) Cost Per Job Created. At least one (1) full-time permanent position or full-time equivalent must be created for every \$20,000 of program funds requested. The Committee may require lower job cost where warranted, (i.e. taking into consideration type of jobs, hourly wage, etc.)

- (3) Financial Feasibility and Business Viability. The applicant must demonstrate that the proposed project is viable and the business will have the economic ability to repay the funds.
- (4) Low and Moderate Income (LMI) Benefits. Each project must demonstrate that it meets the CDBG-ED national objective of benefiting low to moderate income persons as defined by CDBG regulations.

The project shall create jobs, at least 51% of the jobs will be held by or Made Available to LMI Persons.

“LMI Persons” means persons with household income less than eighty (80) percent of the median household income by family size in the County where the Project is located.

“Made Available to LMI Persons” means the Borrower will document that at least 51% LMI Persons were hired or Received First Consideration by interviewing at least 51% LMI Persons for created positions that do not require special skills or education beyond high school.

“Received First Consideration” means the Borrower must document and use a hiring practice that results in at least 51% LMI Persons interviewed for created positions and demonstrate that under usual circumstances this hiring practice will result in at least 51% LMI persons being hired. Part of the Borrower’s hiring practice must include the posting of available positions with the local Job Service Office or Workforce Development Boards.

The following documentation evidencing compliance must be collected:
A listing of all job titles which were planned to be held by or made available to low to moderate income persons, a commitment to hire or make at least 51% of jobs available to low to moderate income persons, a written plan for how such persons were given first consideration for jobs including what hiring process was used, a list of the low to moderate income persons interviewed for particular positions, including the size and annual income of the person’s family prior to interviewing for the position.

- (5) Compliance with Applicable Laws. Applicants shall comply with all applicable local, state, and federal laws and codes.
- (6) Project Completion. Projects shall be completed within 24 months from the date of the loan approval. Applicants shall provide the Community a project implementation schedule not exceeding 24 months for project completion and job creation, and maintain the positions created for 24 months.
- (7) Federal Anti-Piracy. The borrower must certify that it does not have immediate plans to relocate jobs in violation of CDBG Anti-Piracy regulations. The following language will be included in all agreements with the borrower. “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.”

SECTION 4. TERMS AND CONDITIONS

4.1 TERMS AND CONDITIONS

Loan terms and conditions shall be structured on need and ability to repay. Minimum standards shall include the following:

- (1) Loan Amount. Loan amounts are subject to the availability of program funds.
- (2) Interest Rate. The interest rate shall be established by the Loan Review Committee. (3) Terms for Loans.
 - (a) Working capital loans shall have a maximum term of seven years.
 - (b) Loans for machinery, equipment and fixtures shall have a maximum term of ten years.
 - (c) Real estate loans shall have a maximum term of 12 years which can be amortized on a 20-yr basis with the option of refinancing for an additional 8 years.
 - (d) In any case, the loan shall not have a term longer than the terms of the other private financing in the project.
- (4) Period of Payment. Terms may include longer amortization schedules with balloon payments. Amortization schedules shall be set up for monthly payments.
- (5) Repayment. Payment of interest and/or principal may be deferred during the implementation period of the assisted activity if merited in the loan application. Interest shall accrue during the deferment period and may be paid in full or added to the principal amount of the loan. Following the deferral period, interest and principal shall be paid for the remaining term of the loan.
- (6) Prepayment. There shall be no prepayment penalties.
- (7) Collateral. The community will seek to have the best possible collateral position possible to ensure that RLF loans are adequately secured.

SECTION 5. APPLICATION PROCEDURES

5.1 DISCUSSION OF REQUIREMENTS

Prior to submitting an application, the applicant shall discuss the program with the Administrator or his/her designee. The Administrator or his/her designee shall assist the applicant, as is reasonably necessary, in completing the application. All financial information shall be kept in a secured place with limited access by authorized personnel only.

5.2 TIMING

Applications may be submitted at any time during the calendar year.

5.3 PRIORITY

Applications shall be reviewed in the order received and based on readiness for the proposed project to proceed. In the event that loan funds requested exceed available funds, the following criteria will be used to determine which business(es) will be awarded the loan(s):

- (1) Eligibility of the applicants.
- (2) Eligibility of the project to be undertaken.
- (3) The extent to which private funds are to be leveraged.
- (4) The extent to which jobs are to be created, and the type jobs and wages.
- (5) The extent to which the loan can be secured.
- (6) Evidence of ability to repay the loan.
- (7) Size of the loan requested.
- (8) Timing of the proposed expenditures.
- (9) Completeness of application.
- (10) Other factors as deemed appropriate.

5.4 LOAN APPLICATION

Applicants shall submit an application using the form available from the RLF Program and that includes the following:

- (1) Business Description. A written description of the business, including the following:
 - (a) A brief history of the existing or proposed business, including when it started or is to start, type of operation, legal structure, markets, and products.

- (b) Key customers and clients.
 - (c) A personal resume of each principal associated with the business, including: number of years of experience in the business; educational background; and role in the proposed or existing business.
 - (d) Three years of financial history including balance sheets, profit/loss statements, cash flow statements and accountant notes.
- (2) Project Description. A description of how the business plans to use the requested funds. (3) Commitments from Private Lenders. This consists of commitments from all private lenders making loans to the project. Lender commitment letters should include:
- (a) Description of the type of loan being made by the lender (first mortgage, permanent financing, construction financing, etc.)
 - (b) The amount of the loan, interest rate, term, and security, availability, and repayment schedule and amounts.
- These commitments shall be obtained concurrently with the negotiation of the terms and conditions of the RLF Program loan to ensure the interest of the Community are secured.
- (4) Projections. Provide proformas (a balance sheet & income statement and cash flow statement). These should cover a three-year period and should be based on the assumption that the business will receive the requested loan.
- (5) Additional Information. Additional information as may be required by the Loan Review Committee, or the Administrator or his/her designee.

5.5 REVIEW PROCESS

Specific steps in the review process include the following:

- (1) Preliminary Review. The Administrator or his/her designee will review the application for completeness and verify that the proposed project meets the minimum requirements provided in Section 3.6. If the application is not complete, the Administrator or his/her designee will inform the applicant of the deficiencies.
- (2) Formal Review. The Loan Review Committee will meet to review an application within 30 days of the receipt of a completed application or at some other predetermined schedule. Once the review is completed and the proposal is acceptable for funding, the Loan Review Committee will forward the proposal to the governing body for final approval or to whatever other body has been authorized to act on loan requests.

- (3) Negotiation of Terms. Upon the tentative acceptance by the governing body, the Administrator or his/her designee will contact the business in writing to review and explain the terms of the loan.

- (4) Notice of Award. If the application is approved, a closing will be scheduled to execute the necessary loan documents.

- (5) Rejection of Award. If the application is not approved, the Administrator or his/her designee will send a letter to the applicant stating the reasons for rejection and offer to meet with the applicant to explore ways to strengthen the loan request or to identify alternative funding sources.

SECTION 6. DISTRIBUTION OF FUNDS

6.1 LOAN PROCEDURES

Prior to releasing funds, the following documentation must be in place or provided at the appropriate time during the term of the loan.

- (1) Notice of Award. The Loan Review Committee must have reviewed and approved a complete application for an eligible applicant.
- (2) Loan Agreement. The Community attorney shall prepare a loan agreement, which shall be executed by the Community's CEO, Clerk and the Chief Executive Officer of the business.
- (3) Promissory Note. A promissory note shall be prepared by the Community attorney and signed by the Chief Executive Officer at the time of loan closing. The note must be dated; it must reference the agreement between the Community and the business; and, it must specify the amount and terms of the loan funds delivered.
- (4) Security. Mortgage or lien instruments or personal guarantees provided as security for all loans shall be prepared by the Community attorney and executed at the time of the loan closing. The Community attorney, or Administrator or his/her designee, shall record the instrument and place a copy in the project file to include:
 - (a) Mortgage and/or security agreement.
 - (b) UCC searches and filing.
 - (c) Guarantee agreement.
 - (d) Title insurance or Abstract.
 - (e) Assignment of Life Insurance.
 - (f) Casualty Insurance binder.
 - (g) Personal guarantee.
 - (h) Other documentation as may be appropriate.
- (5) Repayment Schedule. A loan repayment or amortization schedule shall be prepared by the Administrator or his/her designee after the loan proceeds are fully disbursed. The repayment schedule shall be dated and signed by both the CEO and the Chief Executive Officer of the business. 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 prior to the release of program funds.

- (7) Evidence of Program Expenditures. Documentation must be provided by the business to evidence program expenditures prior to the release of funds. Documentation shall include bills and invoices or receipts for materials, final bills of sale or canceled checks. All documentation shall be reviewed and approved by the Administrator or his/her designee.
- (8) Fixed Equipment. Fixed equipment financed with program funds must have been purchased, delivered, and installed. The Administrator or his/her designee shall verify the installation of fixed equipment.
- (9) Other Documentation. As appropriate or necessary, the borrower may be asked to provide the following:
- (a) A certificate of status from the Department of Financial Institutions.
 - (b) The Articles of Incorporation and by-laws.
 - (c) A Board resolution to borrow funds and Secretary's certificate.
 - (d) Current financial statements.
 - (e) Evidence of having secured other funds necessary for the project.
 - (f) An Environmental Assessment for real estate loans which may either be a Phase I, II, or III analysis, depending on the environmental condition of the site.

With the above documentation in place, the Administrator or his/her designee will schedule a loan closing. All documents will be executed before funds are disbursed, and mortgages and UCC Statements shall be recorded with the Register of Deeds and the Secretary of State, (The Appendix contains a model Loan Closing Documentation Checklist).

SECTION 7. POST APPROVAL REQUIREMENTS

7.1 OBLIGATION OF LOAN RECIPIENT

In addition to the terms and conditions of the loan, all borrowers shall agree to comply with the following:

- (1) The creation or retention of the agreed upon number of jobs within 24 months of the date of the execution of the loan agreement with the Community.
- (2) Not to discriminate on the basis of age, race, religion, color, handicap, sex, physical condition, development disability as defined in s. 51.01(5), sexual orientation or national origin in any employment or construction activity related to the use of the business loan funds.
- (3) To use the loan money only to pay the cost of services and materials necessary to complete the project or activity for which the loan funds were awarded.
- (4) To permit inspections by persons authorized by the Community of all projects and properties assisted with loan funds. Related project materials shall also be open to inspections, which include, but may not be limited to, contracts, materials, equipment, payrolls, and conditions of employment. Requests for inspection shall be complied with by the borrower.
- (5) To maintain records on the project as may be requested by the Community. These files shall be maintained as long as the loan is active or for at least three (3) years after completion of the work for which the loan has been obtained, whichever is longer.
- (6) To submit periodic progress reports to the Administrator or his/her designee in accordance with the schedule in the loan agreement. These reports shall report on project progress including number of jobs created or retained during the loan agreement.
- (7) To maintain fire and extended coverage insurance on the project property required during the term of the loan. The Community shall be listed as Loss Payee, Mortgagee, or "additional" insured on the policy. Term life insurance may be required of the applicant to cover the loan balance through the life of the loan.
- (8) To abide by all federal laws, when applicable. These include, but may not be limited to: The Civil Rights Act of 1964; the Age Discrimination Act of 1975; the Davis-Bacon Act, as amended; the Contract Work Hours and Safety Standards Act; the Copeland "Anti- Kickback" Act; and, all regulations pursuant to these Acts.
- (9) *To collect the attached self-certification forms from every applicant for each job created by CDBG funds.*

SECTION 8. PERFORMANCE MONITORING

8.1 PRIVATE LEVERAGE COMMITMENTS

The Administrator or his/her designee shall monitor the use of the funds and expenditure of private leverage commitments. Documentation may include invoices or receipts for materials and supplies, letters from lenders, final bills of sale, and canceled checks.

8.2 HIRING OF NEW EMPLOYEES

The Administrator or his/her designee shall monitor the borrower's progress in meeting agreed upon job creation or retention goals. Job creation must be documented using payroll records. Before-project and after- project payroll records should be provided by the borrower to document job creation. Failure of the business to provide the targeted number of jobs may be a condition for default unless the business can show it made a good faith effort to create the targeted number jobs but did not succeed due to reasons beyond its control. In all hires the borrower must meet the LMI requirement. *In addition, to ensure compliance with the LMI requirements, employers must collect the attached self-certification forms from every applicant for each job created by CDBG funds.*

8.3 DEFAULT

In the event the business is in default on any of the terms and conditions of the loan agreement, all sums due and owing, including penalties, shall, at the Community's option, become immediately due and payable. To exercise this option, the Community's attorney shall prepare a written notice to the business. The notice shall specify the following:

- (a) The default.
- (b) The action required to cure the default.
- (c) A date, not less than thirty (30) days from the date of the notice, by which the default must be cured to avoid foreclosure or other collective action.
- (d) Any penalties incurred as a result of the default, jobs, etc.

SECTION 9. USE OF LOAN REPAYMENTS AND REPORTING

9.1 RLF PROGRAM

Repaid loans shall be re-deposited into the Revolving Loan Fund account and used in a manner consistent with the policies and procedures manual. A separate accounting record for each loan shall be kept to account for all funds loaned. The RLF account shall be audited on an annual basis and the Administrator or his/her designee shall provide reports at times and on forms as required by the state of Wisconsin.

SECTION 10. LOAN SERVICING

10.1 MONITORING

The Administrator or his/her designee shall monitor each loan to ensure compliance with the loan terms and conditions and to monitor the financial health of the business to ensure continued repayment of the loan. The monitoring will also ensure that all recordkeeping requirements are met particularly in regard to job creation and expenditures of matching funds.

A loan servicing file shall be established and maintained for each loan recipient that includes all written correspondence; a record of important telephone conversations; a list of applicable loan covenants; certificates of insurance for builder's risk, property-casualty, and life insurance, as applicable; and documentation for job creation and retention including low and moderate income certifications forms.

10.2 RECORDKEEPING

In addition to the above, the RLF financial management records must be comprehensive and designed to provide the following information:

- (a) A Revolving Loan Fund Register that records all deposits and disbursements to and from the RLF, including funds used for RLF administration.
- (b) A CDBG Loan Repayment Register that records repayments made by each business which has received a loan from the RLF. It also tracks the balance of repayments from all loans from the RLF.
- (c) A Collection Register for every loan made. Each register contains the business name, loan date, loan amount, terms, and date repayment begins. Payments are divided into principal and interest payments with a declining principal balance.
- (d) RLF Loan Repayment Registers that record repayments made by each business, which has received a loan from the RLF. It also tracks the balance of repayments from all loans from the RLF.

LOAN CLOSING DOCUMENTATION CHECKLIST

	Date Requested	Date Received	If Recording Required:		Not Applicable
			Date Recorded	Date Returned	
FOUNDATION DOCUMENTATION					
Financial Statements	_____	_____	_____	_____	_____
Certificate of Corporate Good Standing from Sec. of State	_____	_____	_____	_____	_____
Loan Commitment Letter	_____	_____	_____	_____	_____
Loan Agreement	_____	_____	_____	_____	_____
Borrowing Resolution or Agreement	_____	_____	_____	_____	_____
Certified Copy of Resolution Authorizing Actions Taken	_____	_____	_____	_____	_____
Sole Ownership Affidavit	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____
GUARANTEES/DEBT SUBORDINATION					
Unlimited, Limited, or Specific Guarantee	_____	_____	_____	_____	_____
Spousal Consent	_____	_____	_____	_____	_____
Debt Subordination	_____	_____	_____	_____	_____
Authorizing Resolution or Agreement	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____
POSSESSORY COLLATERAL INCLUDING LIFE INSURANCE					
Possession of Policy	_____	_____	_____	_____	_____
Assignment of Policy as Collateral	_____	_____	_____	_____	_____
Transmittal Letter and Request for Acknowledgement and Policy Information	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____
NONPOSSESSORY COLLATERAL					
Release of Prior Lender Filings	_____	_____	_____	_____	_____
Security Interest Subordination Agreement	_____	_____	_____	_____	_____
Business Chattel Security Agreement	_____	_____	_____	_____	_____
Selective Business Security Agreement	_____	_____	_____	_____	_____
Financing Statement	_____	_____	_____	_____	_____
Financing Statement Fixtures - Real Estate Records	_____	_____	_____	_____	_____
Motor Vehicle Perfection	_____	_____	_____	_____	_____
Insurance Binder on Collateral	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____
REAL ESTATE					
Survey	_____	_____	_____	_____	_____
Appraisal	_____	_____	_____	_____	_____
Casualty Insurance Binder	_____	_____	_____	_____	_____
Title Insurance Binder	_____	_____	_____	_____	_____
Title Insurance Policy	_____	_____	_____	_____	_____
Title Opinion Based on Abstract	_____	_____	_____	_____	_____
Check of Legal Description on Survey Against Deed Against	_____	_____	_____	_____	_____
Mortgage Against Title Insurance Binder	_____	_____	_____	_____	_____
Environmental Audit	_____	_____	_____	_____	_____
Mortgage	_____	_____	_____	_____	_____
Business Real Estate Security Agreement	_____	_____	_____	_____	_____
Flood Plain Certificate	_____	_____	_____	_____	_____
Flood Plain Notice	_____	_____	_____	_____	_____
Real Estate Mortgage Subordination Agreement	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____
NOTE DISBURSEMENTS					
Business Note	_____	_____	_____	_____	_____
Statement	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____
COMPLETED BY:					
RENEWED BY:					



**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

SCOTT WALKER
GOVERNOR
MIKE HUEBSCH
SECRETARY

Division of Housing
101 E. Wilson Street, Floor 5
P.O. Box 7970
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November 6, 2012

Dear Revolving Loan Fund Partner:

We have some important information to share about your Community Development Block Grant (CDBG) program. This letter contains the requirements you must follow in administering the CDBG program in your community.

The U.S. Department of Housing and Urban Development (HUD) has completed its annual monitoring of Wisconsin's CDBG programs with the Wisconsin Department of Administration.

HUD identified modifications that must be made when administering CDBG programs. This includes changes to:

- Low and Moderate Income (LMI) requirements
- CDBG funding in areas with revolving loan fund (RLF) balances
- Anti-pirating

We have detailed those changes outlined below, and also included the new CDBG manual for revolving loan funds for your reference.

Low and Moderate Income (LMI) Requirements

To meet the LMI objective, the Code of Federal Regulations (24 CFR 570.483(b)(4)(iii)) requires that:

(iii) Jobs will be considered to be available to low and moderate income persons for these purposes only if:

- (A) Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and
- (B) The unit of general local government and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs" (emphasis added).

This means that at least 51% of the interviewees for created positions must be low or moderate income individuals as identified in self certification forms. A sample of the self-certification form that must be used accompanies this letter.

To comply with this regulatory requirement, **all contracts and manuals must contain the following language:**

- “LMI Persons” means persons with household income less than 80% of the median household income by family size in the County where the Project is located.
- “Made Available to LMI Persons” means the Borrower will document that at least 51% LMI Persons were hired or received first consideration by interviewing at least 51% LMI Persons for created positions that do not require special skills or education beyond high school.
- “Received First Consideration” means the Borrower must document and use a hiring practice that results in at least 51% LMI Persons interviewed for created positions and demonstrate that under usual circumstances this hiring practice will result in at least 51% LMI persons being hired. Part of the Borrower’s hiring practice must include the posting of available positions with the local Job Service Office or Workforce Development Boards.
- Every applicant for an employment position associated with the Project must complete the self-certification form.

CDBG-ED Funding In Areas with Revolving Loan Fund (RLF) Balances

When available, HUD requires that RLF funds be used before new program funds. This is consistent with the policy under 24 CFR 570.489(e)(3)(i) and 570.504(b)(2)(i), respectively, that RLF program income will be used “to the maximum extent feasible” and CDBG program dollars used only where RLF funds have been “substantially disbursed.”

DOA’s contracted agent, the Wisconsin Economic Development Corporation (WEDC), will be reviewing applications to determine the availability of regional revolving loan funds based upon a stringent policy for new project requests. If you have a balance of at least 20% of the total CDBG-ED loan that is *not* substantially disbursed, RLF funds will be used to cover at least a portion of the total loan. This presumption of revolving loan fund availability can be overcome by documenting the following:

- Loan balance history
- Utilization rate
- Projects funded
- Commitment of funds to other projects
- Extraordinary circumstances demonstrating significant economic impact or significant risk to the project including natural disasters, events and circumstances out of the control of the local RLF, and bad debt

In order to receive project approval, the application will be reviewed for the following criteria: objective, total funds estimated for the project, and the total amount recommended for CDBG funding, including documentation about the availability of regional revolving loan funds. Regional revolving loan funds will be used first for projects when available. In addition, the State will use separate contracts for the awards: (1) a contract between the State and the municipality, and (2) a contract between the municipality, regional non-profit development authority, and the borrowing business.

Anti-Pirating

HUD has directed the State to add language in CDBG-ED contracts covering the prohibition on job pirating under the Code of Federal Regulations (24 CFR 570.482(h)). That regulation provides:

CDBG funds may not be used to directly assist a business, including a business expansion, in 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.

Moving jobs from one LMA to another includes moving jobs from one state to another state, and one community in Wisconsin to another community in Wisconsin. To comply with this directive, grantees will be required to certify that the business does not have immediate plans to relocate jobs as required by CDBG Anti-Piracy regulations.

The following language must be included in all contracts and manuals:

“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.”

To assist you with these changes, we have attached a sample manual and a self-certification form.

If you have any questions about these requirements, contact Chela O'Connor at 608-210-6751 or Chela.OConnor@wedc.org.

Please provide an approved, electronic copy of the manual for your community with the required changes by December 31, 2012, to Chela.OConnor@wedc.org.

Thank you for your continued commitment and collaboration.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Marks', with a long horizontal line extending to the right.

Lisa Marks, Administrator
Division of Housing