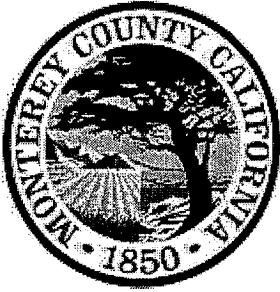


EXHIBIT B



COUNTY OF MONTEREY
ECONOMIC DEVELOPMENT DEPARTMENT
168 W. ALISAL STREET, 3rd FLOOR
SALINAS, CA 93901-2439
(831) 755-5391

**REQUEST FOR PROPOSALS
#10400**

For

**SMALL BUSINESS REVOLVING LOAN FUND
PROGRAM**

Proposals are due by 3:00 pm (PST) on July 22, 2013

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1.0 INTENT

- 1.1 The County of Monterey's Economic Development Department, hereinafter referred to as "County", is soliciting proposals from a qualified organization(s), hereinafter referred to as "CONTRACTOR", to manage the County's Small Business Revolving Loan Fund.
- 1.2 This solicitation is intended for a single, exclusive AGREEMENT.

2.0 BACKGROUND

- 2.1 The County of Monterey is located on the Central Coast of California, approximately 120 miles south of San Francisco.
- 2.2 The County of Monterey is seeking a partner to assist with the County Small business Revolving Loan Fund (SBRLF). The selected CONTRACTOR will work with the County, local financial institutions and business advocacy organizations to develop new lending opportunities; underwrite and package new loan requests; and manage daily loan servicing obligations, such as preparing monthly statements and posting payments; preparing monthly financial and portfolio activity reports; and act as the County fiscal agent for loan disbursement and collections. The selected firm will be expected to develop on-going relationships with all clients and proactively manage loans to identify potential issues early and present timely recommendations that may help prevent the borrower from going into default.

The loan program's goal is to assist expanding businesses in Monterey County that have been unable to obtain full financing through conventional lenders. This program is not meant to compete with banks or other lenders. It is intended to act in partnership with traditional lenders in order to supply the necessary capital to support job creation and/or retention within the County of Monterey. The SBRLF can make loans of \$10,000 to \$250,000. Loans are generally amortized over five to twenty years based on collateral and how the loan proceeds will be used. The minimum interest rate is four percent.

The SBRLF was originally capitalized with grants from the federal U.S. Department of Commerce, Economic Development Administration (EDA), the State Housing and Community Development Department (HCD) and local cities and the County. As of May 31, 2013, the loan portfolio has 19 outstanding loans with more than \$852,000 principal outstanding and approximately \$968,000 available to lend. The SBRLF can charge interest rates between 4% and 10%. The average rate on current loans is approximately 5.5%.

The SBRLF is self-supporting and relies on program fees, interest paid on loans and interest earned on accounts to cover all costs associated with the program. There are various grant agency limits on how much of this income may be used for administrative expenses. Please refer to the attached SBRLF Administrative Manual for details on how

the program operates. Because of the multiple funding sources and different requirements of the various programs, the selected CONTRACTOR must be able to understand and apply the requirements as they apply to specific loans.

The County will not be obligated to utilize any financial resources beyond those allowed by the grant sources to compensate the selected CONTRACTOR for implementing the SBRLF program.

3.0 CALENDAR OF EVENTS

- 3.1 Issue RFP Wednesday, June 26, 2013
- 3.2 Deadline for Written Questions Friday, July 12, 2013
- 3.3 Proposal Submittal Deadline 3:00 p.m., PST, Monday, July 22, 2013
- 3.4 Estimated Notification of Selection August 2013
- 3.5 Estimated AGREEMENT Date October 1, 2013

This schedule is subject to change as necessary.

- 3.7 **FUTURE ADDENDA:** CONTRACTORS, who received notification of this solicitation by means other than through a County of Monterey mailing, shall contact the person designated in the COUNTY POINTS OF CONTACT herein to request to be added to the mailing list. Inclusion on the mailing list is the only way to ensure timely notification of any addenda and/or information that may be issued prior to the solicitation submittal date. **IT IS THE CONTRACTORS' SOLE RESPONSIBILITY TO ENSURE THAT THEY RECEIVE ANY AND ALL ADDENDA FOR THIS RFP** by informing the County of their mailing information.

4.0 COUNTY POINTS OF CONTACT

- 4.1 Questions and correspondence regarding this solicitation shall be directed to:

Primary Contact for the County Darby Marshall, Housing Analyst
Economic Development Department
168 West Alisal Street, Third Floor
Salinas, CA 93905-1300
PHONE: (831) 755-5391 FAX: (831) 755-5398
mailto:marshall@co.monterey.ca.us

- 4.2 All questions regarding this solicitation shall be submitted in writing (E-mail or FAX is acceptable). The questions will be researched and the answers will be communicated to all known interested CONTRACTORS.
- 4.3 The deadline for submitting written questions regarding this solicitation is indicated in the **CALENDAR OF EVENTS herein**. Questions submitted after the deadline will not be answered.
- 4.4 Only answers to questions communicated by formal written addenda will be binding.
- 4.5 Prospective CONTRACTOR shall not contact County officers or employees with questions or suggestions regarding this solicitation except through the primary contact person listed above. **Any unauthorized contact may be considered undue pressure and cause for disqualification of the CONTRACTOR.**

5.0 SCOPE OF WORK

- 5.1 Contractor Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent of the original total contract price, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT price before computing the amount of work required to be performed by CONTRACTOR with its organization.
- 5.2 The Scope of Work includes but is not limited to the following and will be divided into three sections: Marketing, Underwriting and Program Administration. The CONTRACTOR will provide a cost estimate for fees associated with each of the program sections listed below (ATTACHMENT A). The selected CONTRACTOR, as the Program Administrator, will be responsible for ensuring the on-going success of the SBRLF programs, and compliance with the SBRLF Administrative Manual.

The CONTRACTOR'S services shall include the following:

MARKETING

- 5.2.1 Implementation of a marketing strategy that will reach the population targeted by each program.
- 5.2.2 Ensure that the marketing strategy is in compliance with all HCD and EDA grant regulations and the County's SBRLF Administrative Manual.

UNDERWRITING:

- 5.2.3 Prepare loan applications in compliance with all HCD and EDA grant regulations and the County's SBRLF Administrative Manual.
- 5.2.4 Prepare CDBG loan applications for County to submit to HCD for approval.
- 5.2.5 Document jobs created/retained.
- 5.2.6 Presentation of completed loan requests to loan committee for consideration /approval.

LOAN MANAGEMENT:

- 5.2.7 Document and book approved loans.
- 5.2.8 Prepare monthly statements for each individual borrower and receive/post borrower payments.
- 5.2.9 Ongoing monitoring of loans to insure that all terms and conditions of the loans are being met.
- 5.2.10 Conduct annual on-site visits of all current borrowers.
- 5.2.11 Maintain security interest in collateral, e.g. renew UCC filings as necessary
- 5.2.12 Notify the County of any loan no later than 45-days late after a missed payment. Such notice shall include a description of why the payment/s were missed and specific steps that the CONTRACTOR will take to work with the borrower to bring the account current and provide contact logs for delinquent loans with subsequent invoices.
 - 5.2.12.1 Any loan which the County identifies as delinquent without receiving notice from the CONTRACTOR or which is missing contact logs shall not be included in the calculation of fees due.

PROGRAM ADMINISTRATION:

- 5.2.13 Preparation of monthly financial statements for the County.
- 5.2.14 Provide financial and borrower information necessary to complete EDA and HCD grant reports as required.
- 5.2.15 Ensure that the programs are in compliance with all EDA and HCD grant regulations and the County's SBRLF Administrative Manual.

5.3 PROGRAM ELEMENTS

The following program elements are not part of the initial scoring for this RFP; however, are key components to the Scope of Work that will be required for the awarded vendor. This is for informational purposes.

- 5.3.1 The Small Business Revolving Loan Fund (SBRLF) program is one of the County's economic development tools for assisting small businesses. The SBRLF program requires that sound underwriting standards be applied to all loans.
- 5.3.2 The program also requires that businesses meet additional goals to meet the County's economic development objectives and grant agency requirements, as outlined in the attached SBRLF Administrative Manual, or as subsequently amended which include but are not limited to:
 - 5.3.3 Job creation or retention: For every \$20,000 of SBRLF dollars loaned, one full-time job must be created or retained.
 - 5.3.4 Private sector leveraging: The borrower is expected to match one to one every SBRLF dollar loaned with either a new equity contribution or private loans.
 - 5.3.5 Up to 70% of the portfolio can be for commercial enterprises. The remaining 30% is intended to assist industrial businesses.
 - 5.3.6 Each portfolio has additional, specific requirements including geographic limitations and who should principally benefit from the program.
 - 5.3.7 Preparing all loan applications proposed for CDBG funding for submittal to the State Department of Housing and Community Development for approval, prior to

the loan request being submitted to the loan committee. This preparation must meet all HCD requirements and use any document templates provided by HCD for this purpose.

- 5.4 The SBRLF must be self-supporting. The County can only use interest and fees earned on loan originations, interest earned on bank accounts and interest paid on outstanding principal to pay for all aspects of the CONTRACTOR's services.
- 5.5 The full program requirements are contained in the attached Appendices A, B, C & D.

6.0 CONTRACT TERM

- 6.1 The term of the AGREEMENT(s) will be for a period of three (3) years.
- 6.2 The AGREEMENT shall contain a clause that provides that County reserves the right to cancel the AGREEMENT, or any extension of the AGREEMENT, without cause, with a thirty day (30) written notice, or immediately with cause.

7.0 PROPOSAL/QUALIFICATIONS PACKAGE REQUIREMENTS

7.1 CONTENT AND LAYOUT:

7.1.1 CONTRACTOR should provide the information as requested and as applicable to the proposed goods and services. The proposal or qualifications package shall be organized as per the table below; headings and section numbering utilized in the proposal or qualification package shall be the same as those identified in the table. Proposals or qualifications packages shall include at a minimum, but not limited to, the following information in the format indicated:

<u>Proposal or Qualifications Package Layout:</u> Organize and Number Sections as Follows:	
Section 1	COVER LETTER (INCLUDING CONTACT INFO)
	SIGNATURE PAGE
	RECEIPT OF SIGNED ADDENDA (IF ANY)
	TABLE OF CONTENTS
Section 2	PRE-QUALIFICATIONS
Section 3	PROJECT EXPERIENCE AND REFERENCES (ATTACHMENT B)
Section 4	TECHNICAL ASPECTS OF PROPOSAL
Section 5	ENVIRONMENTALLY FRIENDLY PRACTICES
Section 6	PRICING (ATTACHMENT A)
Section 7	EXCEPTIONS
Section 8	APPENDIX

Section 1 Requirements:

Cover Letter: All proposals must be accompanied by a cover letter not exceeding two pages and should provide firm information and Contact information as follows:

Contact Info: The name, address, telephone number, and fax number of CONTRACTOR's primary contact person during the solicitation process through to potential contract award.

Firm Info: Description of the type of organization (e.g. corporation, partnership, including joint venture teams and subcontractors) and how many years it's been in existence.

Signed Signature Page and Signed Addenda (if any addenda were released for this solicitation). Proposal or qualifications packages submitted without this page will be deemed non-responsive. All signatures must be manual and in BLUE ink. All prices and notations must be typed or written in BLUE ink. Errors may be crossed out and corrections printed in ink or typed adjacent, and must be initialed in BLUE ink by the person signing the proposal.

Table of Contents

Section 2, Pre-Qualifications/Licensing Requirements:

Pre-Qualifications/Licensing: CONTRACTOR must acknowledge in writing that it meets all of the pre-qualifications and licensing requirements as set forth in Section 2.0 herein.

Section 3, Project Experience & References:

Key Staff Persons: CONTRACTOR shall identify key staff and their qualifications and experience proposed for the service identified herein.

Experience & References: CONTRACTOR shall describe at least 3 similar projects for which it provided services similar to the scope of work described herein. Please include phone number and email address if possible as the County will conduct reference checks using this information.

Violations: CONTRACTOR shall submit copies of all notices of violations, corrective action notices, enforcement actions or orders, warning notices, writings, or other forms of permit violation/non-compliance documentation (such as OSHA) received by CONTRACTOR, or any business organization owned or operated by the CONTRACTOR which are its parent company and/or subsidiaries, from any public agency during 2005 up to and including the present day.

Section 4, Technical Aspects:

CONTRACTOR shall provide a written and signed statement in this section which confirms that their proposal is inclusive of all elements necessary for a turn-key project.

Also include:

- Proposed Project Timeline to ensure compliance with meeting the County's needs as indicated in this solicitation.
- Descriptions of the proposed portfolio management elements, including responsibility for loan monitoring and initiating contact with delinquent borrowers.
- A description of the loan documentation software that the CONTRACTOR will use to originate and collateralize loans, including information the publisher and how the software meets California laws for lending, collateralization and documentation.
- A description of the CONTRACTOR's current loan approval process and how the CONTRACTOR envisions incorporating the SBRLF into the process.
- A description of any Loan Committees that the CONTRACTOR has established to review credit requests and monitor portfolio performance, including the economic sectors represented and demographic composition of the Loan Committee.
- A description of the CONTRACTOR's marketing and outreach efforts to small businesses.
- A description of how the CONTRACTOR follows up and works with delinquent borrowers.

Section 5, Environmentally Friendly Practices:

CONTRACTOR shall summarize all environmentally friendly practices it adheres to in the course of doing business as relevant to County's Climate-Friendly Purchasing Policy (*Reference: www.co.monterey.ca.us/admin/policies.htm*).

CONTRACTOR shall indicate whether or not it is a 'Green Certified' Business and state which governing authority administered the certification.

Section 6, Pricing & Warranty:

CONTRACTOR shall complete and submit pricing as per ATTACHMENT A – PRICING SHEET attached hereto.

Section 7, Exceptions:

Submit any and all exceptions to this solicitation on separate pages, and clearly identify the top of each page with "EXCEPTION TO MONTEREY COUNTY

SOLICITATION #” (indicate the applicable solicitation number). Each Exception shall reference the page number and section number, as appropriate. CONTRACTOR should note that the submittal of an Exception does not obligate the County to revise the terms of the RFP or AGREEMENT.

Section 8, Appendix:

Appendices: CONTRACTOR may provide any additional information that it believes to be applicable to this proposal or qualifications package and include such information in an Appendix section.

Section 9, Bonds:

The selected CONTRACTOR shall maintain and provide evidence that they have Fidelity Bond Insurance in an amount at least equal to Two Million Six Hundred Thousand Dollars (\$2,600,000) at the time the contract is executed.

7.2 **ADDITIONAL REQUIREMENTS:** To be considered “responsive,” submitted proposals or qualifications packages shall adhere to the following:

- 7.2.1 Four (4) sets of the proposal or qualifications package (one original proposal marked “Original” plus three copies) shall be submitted in response to this solicitation. Each copy shall include a cover indicating the company name submitting, and reference to “RFP #10400”. In addition, submit one (1) electronic version of the entire proposal or qualifications package on a CD, DVD, or USB memory stick. Additional copies may be requested by the COUNTY at its discretion.
- 7.2.2 Proposals or qualifications packages shall be prepared on 8-1/2” x 11” paper, preferably duplex printed and stapled together without binder or plastic enclosure (environmentally friendly). Fold out charts, tables, spreadsheets, brochures, pamphlets, and other pertinent information or work product examples may be included as Appendices.
- 7.2.3 Reproductions of the Monterey County Seal shall not be used in any documents submitted in response to this solicitation.
- 7.2.4 CONTRACTOR shall not use white-out or a similar correction product to make late changes to their proposal or qualifications package but may instead line out and initial in BLUE ink any item which no longer is applicable or accurate.
- 7.2.5 To validate your proposal or qualifications package, **submit the SIGNATURE PAGE** (contained herein) **with your proposal**. Proposals or qualifications packages submitted without that page will be deemed non-responsive. Proposal signature must be manual, in BLUE ink, and included with the original copy of the proposal. Photocopies of the Signature Page may be inserted into the remaining proposal copies. All prices and notations must be typed or written in BLUE ink in the original proposal copy as well. Errors may be crossed out and corrections printed in BLUE ink or typed adjacent, and must be initialed in BLUE ink by the person signing the proposal.

7.3 **CONFIDENTIAL OR PROPRIETARY CONTENT:** Any page of the proposal or qualifications package that is deemed by CONTRACTOR to be a trade secret by the

CONTRACTOR shall be clearly marked "CONFIDENTIAL INFORMATION" or "PROPRIETARY INFORMATION" at the top of the page.

8.0 SUBMITTAL INSTRUCTIONS & CONDITIONS

- 8.1 Submittal Identification Requirements: ALL SUBMITTALS MAILED OR DELIVERED CONTAINING PROPOSAL OR QUALIFICATIONS OR QUOTATION PACKAGES MUST BE SEALED AND BEAR ON THE OUTSIDE, PROMINENTLY DISPLAYED IN THE LOWER LEFT CORNER: **THE SOLICITATION NUMBER RFP #10400 and CONTRACTORS COMPANY NAME.**
- 8.2 Mailing Address: Proposal or qualifications packages shall be mailed to County at the mailing address indicated on the **Signature Page** of this solicitation.
- 8.3 Due Date: Proposal or qualifications packages must be received by County ON OR BEFORE the time and date specified, at the location and to the person specified on the **Signature Page** of this solicitation. It is the sole responsibility of the CONTRACTOR to ensure that the proposal or qualifications package is received at or before the specified time. Postmarks and facsimiles are not acceptable. Proposals received after the deadline shall be rejected and returned unopened.
- 8.4 Shipping Costs: Unless stated otherwise, the F.O.B. for receivables shall be destination. Charges for transportation, containers, packaging and other related shipping costs shall be borne by the shipper.
- 8.5 Acceptance: Proposals are subject to acceptance at any time within 90 days after opening. Monterey County reserves the right to reject any and all proposal or qualifications packages, or part of any proposal or qualifications package, to postpone the scheduled deadline date(s), to make an award in its own best interest, and to waive any informalities or technicalities that do not significantly affect or alter the substance of an otherwise responsible proposal or qualifications package and that would not affect a CONTRACTOR'S ability to perform the work adequately as specified.
- 8.6 Ownership: All submittals in response to this solicitation become the property of the County of Monterey. If a CONTRACTOR does not wish to submit a Proposal or qualifications package but wishes to acknowledge the receipt of the request, the reply envelope shall be marked "No Bid".
- 8.7 Compliance: Proposal or qualifications packages that do not follow the format, content and submittal requirements as described herein, or fail to provide the required documentation, may receive lower evaluation scores or be deemed non-responsive.
- 8.8 CAL-OSHA: The items proposed shall conform to all applicable requirements of the California Occupational Safety and Health Administration Act of 1973 (CAL-OSHA).

9.0 SELECTION CRITERIA

9.1 The selection of CONTRACTOR and subsequent contract award(s) will be based on the criteria contained in this Solicitation, as demonstrated in the submitted proposal. CONTRACTOR should submit information sufficient for the County to easily evaluate proposals with respect to the selection criteria. The absence of required information may cause the Proposal to be deemed non-responsive and may be cause for rejection.

9.2 The selection criteria include, but are not limited to, the following:

The selection of CONTRACTOR(s) and subsequent contract award(s) will be based on the criteria contained in this Request for Proposals, as demonstrated in the submitted proposal. CONTRACTORS should submit information sufficient for the County to easily evaluate proposals with respect to the selection criteria. The absence of required information may cause the Proposal to be deemed non-responsive and may be cause for rejection.

7.2 The selection criteria include, but are not limited to, demonstrated competence in the following:

- 7.2.1 Marketing loan programs to small businesses.
- 7.2.2 Underwriting experience.
- 7.2.3 Ability to request, prepare and/or file all documents necessary to underwrite and collateralize loans.
- 7.2.4 Ability to document approved loans in a timely manner.
- 7.2.5 Ability to prepare monthly statements and receive/post payments in a timely manner.
- 7.2.6 Experience developing work out plans with delinquent borrowers.
- 7.2.7 Experience in urgent project delivery with critical timelines.
- 7.2.8 Understanding of Community Development Block Grant and Economic Development Administration grant requirements.
- 7.2.9 Plan for complying with grant requirements, especially complying with requirements to document benefits for members of the Targeted Income Group.
- 7.2.10 Ability to package CDBG loan applications for submission to the State Department of Housing and Community Development for approval.
- 7.2.11 Experience in documentation of jobs created or retained.

7.3 A selected number of firms may be invited for an interview. CONTRACTORS invited for an interview will be evaluated based on the firm's presentation in terms of:

- 7.3.1 Grasp of project and services requirements
- 7.3.2 Related project experience
- 7.3.3 Experience in meeting critical delivery schedules
- 7.3.4 Proposed methodology to fulfill the intent of this RFP, including how the CONTRACTOR proposes to use COUNTY funds to leverage other sources of financing and keep all transactions at arms-length
- 7.3.5 Ability and capacity to fulfill the intent of this RFP
- 7.3.6 Ability to deliver within established time constraints

The County's last approved RLF Administrative Manual was approved by the U.S. Department of Commerce, Economic Development Administration and the County Board of Supervisors in October 2002. EDA has been working with the County to update the Administrative Manual to incorporate current federal and local laws and regulations. These documents are Appendices A and A1 to this RFP.

Section 5.5 incorrectly indicated that Appendices A, B, C, & D were attached to the RFP. The correct Appendices are listed below.

7.4.1 COMMUNITY DEVELOPMENT BLOCK GRANT MANAGEMENT MANUAL <http://www.hcd.ca.gov/fa/cdbg/> (Currently under revision)

7.4.1.1 Chapters

Chapter	Appendix
2 Program Operators	Appendix B1
3 Environmental Review	Appendix B2
4 Equal Opportunity	Appendix B3
5 Labor Standards	Appendix B4
10 Reports	Appendix B5
11 Audits	Appendix B6
14 Program Income & Revolving Loan Funds	Appendix B7
15 Economic Development	Appendix B8

Appendix B8 contains the Business Assistance Loan Checklist that must be completed and submitted to HCD before any loan can be funded using CDBG funds. HCD is currently updating the balance of Chapter 15, Economic Development. Appendix B

7.4.2 ECONOMIC DEVELOPMENT ADMINISTRATION

<http://www.eda.gov/InvestmentsGrants/Directives.xml>

7.4.2.1 Standard Terms & Conditions:

www.eda.gov/PDF/RLFSTCsRevised1007.pdf Appendix C

7.4 The successful CONTRACTOR will be invited to enter into negotiations with the County. The successful CONTRACTOR will be required to enter into an agreement with the County, which will include, but is not limited to APPENDIX A. The terms and conditions of an agreement are subject to provisions governing grants awarded to the County of Monterey. For additional information on those provisions see:

7.4.1 COMMUNITY DEVELOPMENT BLOCK GRANT MANAGEMENT MANUAL <http://www.hcd.ca.gov/fa/cdbg/> (Currently under revision)

- 7.4.1.1 Chapters
 - 2 Program Operators
 - 3 Environmental Review
 - 4 Equal Opportunity
 - 5 Labor Standards
 - 6 Relocation & Acquisition
 - 10 Reports
 - 11 Audits
 - 12 Monitoring
 - 14 Program Income & Revolving Loan Funds
(ATTACHED)
 - 15 Economic Development (currently under revision by the California Department of Housing and Community Development)

7.4.2 ECONOMIC DEVELOPMENT ADMINISTRATION

<http://www.eda.gov/InvestmentsGrants/Directives.xml>

7.4.2.1 Standard Terms & Conditions:

<http://www.eda.gov/PDF/RLFSTCsRevised1007.pdf>

7.5 AGREEMENT award(s) will not be based on cost alone.

8.0 PREFERENCE FOR LOCAL CONTRACTORS

Intentionally Omitted

9.0 CONTRACT AWARDS

- 9.1 No Guaranteed Value: County does not guarantee a minimum or maximum dollar value for any AGREEMENT or AGREEMENTS resulting from this solicitation.
- 9.2 Board of Supervisors: The award(s) made from this solicitation may be subject to approval by the County Board of Supervisors.

- 9.3 Interview: County reserves the right to interview selected CONTRACTOR before a contract is awarded. The costs of attending any interview are the CONTRACTOR'S responsibility.
- 9.4 Incurred Costs: County is not liable for any cost incurred by CONTRACTOR in response to this solicitation.
- 9.5 Notification: All CONTRACTORS who have submitted a Proposal or Qualifications Package will be notified of the final decision as soon as it has been determined.
- 9.6 In County's Best Interest: The award(s) resulting from this solicitation will be made to the CONTRACTOR that submit(s) a response that, in the sole opinion of County, best serves the overall interest of County.

10.0 SEQUENTIAL CONTRACT NEGOTIATION

County will pursue contract negotiations with the CONTRACTOR who submit(s) the best Proposal or qualifications or is deemed the most qualified in the sole opinion of County, and which is in accordance with the criteria as described within this solicitation. If the contract negotiations are unsuccessful, in the opinion of either County or CONTRACTOR, County may pursue contract negotiations with the entity that submitted a Proposal which County deems to be the next best qualified to provide the services, or County may issue a new solicitation or take any other action which it deems to be in its best interest.

11.0 AGREEMENT TO TERMS AND CONDITIONS

CONTRACTOR selected through the solicitation process will be expected to execute a formal AGREEMENT with County for the provision of the requested service. The AGREEMENT shall be written by County in a standard format approved by County Counsel, similar to the "SAMPLE AGREEMENT SECTION" herein. Submission of a signed bid/proposal and the SIGNATURE PAGE will be interpreted to mean CONTRACTOR HAS AGREED TO ALL THE TERMS AND CONDITIONS set forth in the pages of this solicitation and the standard provisions included in the SAMPLE AGREEMENT Section herein. County may but is not required to consider including language from the CONTRACTOR'S proposed AGREEMENT, and any such submission shall be included in the EXCEPTIONS section of CONTRACTOR'S proposal.

12.0 COLLUSION

CONTRACTOR shall not conspire, attempt to conspire, or commit any other act of collusion with any other interested party for the purpose of secretly, or otherwise, establishing an understanding regarding rates or conditions to the solicitation that would bring about any unfair conditions.

13.0 RIGHTS TO PERTINENT MATERIALS

All responses, inquiries, and correspondence related to this solicitation and all reports, charts, displays, schedules, exhibits, and other documentation produced by the CONTRACTOR that are submitted as part of the submittal will become the property of the County when received by the County and may be considered public information under applicable law. Any proprietary information in the submittal must be identified as such and marked "CONFIDENTIAL INFORMATION" or "PROPRIETARY INFORMATION". The County will not disclose proprietary information to the public, unless required by law; however, the County cannot guarantee that such information will be held confidential.

SAMPLE AGREEMENT SECTION

SAMPLE AGREEMENT BETWEEN COUNTY OF MONTEREY AND CONTRACTOR

This AGREEMENT is made and entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "County", and _____, hereinafter referred to as "CONTRACTOR."

SAMPLE RECITALS

WHEREAS, County has invited proposals through the Request for Proposals (RFP # _____) for _____, in accordance with the specifications set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has submitted a responsive and responsible proposal to perform such services; and

WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

S1.0 PERFORMANCE OF THE AGREEMENT

S1.1 After consideration and evaluation of the CONTRACTOR'S proposal, the County hereby engages CONTRACTOR to provide the services set forth in RFP # _____ and in this AGREEMENT on the terms and conditions contained herein and in RFP # _____. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:

This AGREEMENT including all its attachments, Exhibits and Appendix
RFP # _____ Addendum (or Addenda) # _____
RFP # _____ dated _____, including all attachments and exhibits
CONTRACTOR'S Proposal dated _____,
Payment and Performance Bonds
Certificate of Insurance
Additional Insured Endorsements

S1.2 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above-referenced contract documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order: AGREEMENT including all Attachments, Exhibits and Appendix, RFP # _____ Addendum/Addenda # _____, RFP # _____ including all attachments and exhibits, Bonds, Certificate of Insurance, and Additional Insured Endorsements.

S1.3 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the County, or immediate family of an employee of the County.

S1.4 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

S1.4.1 CONTRACTOR must maintain all licenses throughout the term of the AGREEMENT.

S1.5 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

S2.0 SCOPE OF SERVICE

[_____]

(Shall be consistent with Scope of Work defined in this Solicitation and shall include description of goods and/or services provided including timelines and deliverables. Shall also include itemized pricing (including tax), a total price, and all associated payment provisions. Additional conditions may be stated such as details regarding training, meetings, any "Acceptance Testing" or "Notice to Proceed" clauses and project management requirements if applicable.

S3.0 TERM OF AGREEMENT

- S3.1 The initial term shall commence with the signing of this AGREEMENT through and including _____, with the option to extend this AGREEMENT for _____ additional _____ year periods.
S3.1.1 County is not required to state a reason if it elects not to renew this AGREEMENT.
- S3.2 CONTRACTOR shall commence negotiations for any desired rate changes a minimum of ninety days (90) prior to the expiration of this AGREEMENT in order to be considered.
S3.2.1 Both parties shall agree upon rate extension(s) or changes in writing.
- S3.3 County reserves the right to cancel this AGREEMENT, or any extension of this AGREEMENT, without cause, with a thirty day (30) written notice, or immediately with cause.

S4.0 COMPENSATION AND PAYMENTS

- S4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the pricing sheet attached hereto.
- S4.2 Prices shall remain firm for the initial term of this AGREEMENT and, thereafter, may be adjusted annually as provided in this paragraph. County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.
- S4.3 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of this AGREEMENT.
- S4.4 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than 30 days.
- S4.5 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from County in writing.
- S4.6 Tax:
S4.6.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.

S4.6.2 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

S5.0 INVOICES AND PURCHASE ORDERS

S5.1 Invoices for all services rendered per this AGREEMENT shall be billed directly to the _____ department at the following address:

S5.2 CONTRACTOR shall reference the RFP/RFQ number on all invoices submitted to County. CONTRACTOR shall submit such invoices periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. County shall certify the invoice, either in the requested amount or in such other amount as County approves in conformity with this AGREEMENT, and shall promptly submit such invoice to County Auditor-Controller for payment. County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

S5.3 All County of Monterey Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).

S5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included the AGREEMENT must be approved by County in writing via an Amendment.

S6.0 STANDARD INDEMNIFICATION

S6.1 CONTRACTOR shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with CONTRACTOR's performance of this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

S7.0 INSURANCE REQUIREMENTS

S7.1 Evidence of Coverage:

S7.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition CONTRACTOR upon request shall provide a certified copy of the policy or policies.

S7.1.2 This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by County. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

S7.2 Qualifying Insurers: All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by County's Purchasing Officer.

S7.3 Insurance Coverage Requirements:

S7.3.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

S7.3.1.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

S7.3.2 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

S7.3.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less

than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

S7.3.4 Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT.

S7.4 Other Insurance Requirements:

S7.4.1 All insurance required by this AGREEMENT shall be with a company acceptable to County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.

S7.4.2 Each liability policy shall provide that County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

S7.4.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

S7.4.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.

S7.4.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

S8.0 RECORDS AND CONFIDENTIALITY

- S8.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this AGREEMENT, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.
- S8.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this AGREEMENT.
- S8.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this AGREEMENT.
- S8.4 Access to and Audit of Records: County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. The parties to this AGREEMENT may be subject, at the request of County or as part of any audit of

County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

S9.0 NON-DISCRIMINATION

- S9.1 During the performance of this contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).
- S9.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- S9.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all AGREEMENTs with subcontractors to perform work under the contract.

S10.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- S10.1 Independent Contractor: CONTRACTOR shall be an independent contractor and shall not be an employee of Monterey County, nor immediate family of an employee of County. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile, Workers' Compensation, unemployment, etc.) and all payroll-related taxes. CONTRACTOR shall not be entitled to any employee benefits. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.
- S10.2 Non-Assignment: CONTRACTOR shall not assign this contract or the work required herein without the prior written consent of County.
- S10.3 Any subcontractor shall comply with all of County of Monterey requirements, including insurance and indemnification requirements as detailed in SAMPLE AGREEMENT.

S11.0 CONFLICT OF INTEREST

- S11.1 CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of

services required under this AGREEMENT. Without limitation, CONTRACTOR represents to and agrees with COUNTY that CONTRACTOR has no present, and will have no future, conflict of interest between providing COUNTY services hereunder and any other person or entity (including but not limited to any federal or state environmental or regulatory agency) which has any interest adverse or potentially adverse to COUNTY, as determined in the reasonable judgment of the Board of Supervisors of COUNTY.

- S11.2 CONTRACTOR agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this AGREEMENT for COUNTY will be kept confidential and not be disclosed to any other person. CONTRACTOR agrees to immediately notify COUNTY in accordance with the Notices Section of this AGREEMENT, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this AGREEMENT. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to COUNTY hereunder.

S12.0 COMPLIANCE WITH APPLICABLE LAWS

- S12.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.
- S12.2 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.
- S12.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.

S13.0 DRUG FREE WORKPLACE

- S13.1 CONTRACTOR and CONTRACTOR'S employees shall comply with the COUNTY'S policy of maintaining a drug free workplace. Neither CONTRACTOR nor CONTRACTOR'S employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONTRACTOR shall, within five days thereafter notify the head of the

COUNTY department/agency for which the AGREEMENT services are performed. Violation of this provision shall constitute a material breach of this AGREEMENT.

S14.0 TIME OF ESSENCE

S14.1 Time is of the essence in respect to all provisions of this AGREEMENT that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this AGREEMENT.

S15.0 PERFORMANCE ASSURANCE AND WAIVER OF BREACH

S15.1 Assurance of Performance: If at any time County believes CONTRACTOR may not be adequately performing its obligations under this AGREEMENT or that CONTRACTOR may fail to complete the Services as required by this AGREEMENT, County may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in CONTRACTOR'S performance. CONTRACTOR shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this AGREEMENT. If County accepts the plan it shall issue a signed waiver.

S15.1.1 Waiver: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this AGREEMENT shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

S16.0 FORCE MAJEURE

"Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to acts of God, civil or military disruption, fire, strike, flood, riot, war, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.

If any party hereto is delayed or prevented from fulfilling its obligations under this AGREEMENT by Force Majeure, said party will not be liable under this AGREEMENT

for said delay or failure, nor for damages or injuries resulting directly from the inability to perform scheduled work due to Force Majeure.

CONTRACTOR shall be granted an automatic extension of time commensurate with any delay in performing scheduled work arising from Force Majeure. CONTRACTOR agrees to resume such work within three (3) days after the Force Majeure has subsided enough to do so.

S17.0 BOND REQUIREMENTS

The selected CONTRACTOR shall maintain and provide evidence that they have Fidelity Bond Insurance in an amount at least equal to Two Million Six Hundred Thousand Dollars (\$2,600,000) at the time the contract is executed.

S18.0 NOTICES

Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County's contract administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

TO COUNTY:
Director of Economic Development
County of Monterey
168 W. Alisal Street, 3rd Floor.
Salinas, CA 93901-2439
Tel. No.: (831) 755-5390
FAX No.: (831) 755-5398
spaurd@co.monterey.ca.us

TO CONTRACTOR:
Name _____
Address _____

Tel. No. _____
FAX No. _____
Email _____

S19.0 LEGAL DISPUTES

CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.

Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.

CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.

The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

~~--END OF SAMPLE AGREEMENT SECTION--~~

ATTACHMENTS/EXHIBITS AND SIGNATURE PAGE

ATTACHMENT A COST SHEET RFP 10400

The Scope of Work includes but is not limited to the following and will be divided into three sections: Marketing, Underwriting and Program Administration. The CONTRACTOR will provide a cost estimate for fees associated with each of the program sections listed below. The selected CONTRACTOR, as the Program Administrator, will be responsible for ensuring the on-going success of the SBRLF programs, and compliance with the SBRLF Administrative Manual.

The CONTRACTOR'S services shall include the following:

UNDERWRITING: **PER LOAN COST: \$** _____

- Prepare loan applications in compliance with all HCD and EDA grant regulations and the County's SBRLF Administrative Manual.
- Prepare CDBG loan applications for County to submit to HCD for approval.
- Presentation of completed loan requests to loan committee for consideration /approval.

LOAN MANAGEMENT: **PER LOAN COST: \$** _____

- Document and book approved loans.
- Prepare monthly statements for each individual borrower and receive/post borrower payments.
- Ongoing monitoring of loans to insure that all terms and conditions of the loans are being met.
- Document jobs created/retained.
- Conduct annual on-site visits of the businesses.
- Maintain security interest in collateral
- Develop and implement work out plans with delinquent borrowers.

PROGRAM ADMINISTRATION: **PER LOAN COST: \$** _____

- Development and implementation of a marketing program.
- Preparation of monthly financial statements for the County.
- Provide financial and borrower information necessary to complete EDA and HCD grant reports as required.
- Ensure that the programs are in compliance with all EDA and HCD grant regulations and the County's SBRLF Administrative Manual.

SIGNATURE PAGE

COUNTY OF MONTEREY
ECONOMIC DEVELOPMENT DEPARTMENT

RFP #10400
ISSUE DATE: APRIL 11, 2013



RFP TITLE: SMALL BUSINESS REVOLVING LOAN FUND PROGRAM

PROPOSALS ARE DUE TO THE DIRECTOR OF ECONOMIC DEVELOPMENT
BY
3:00 P.M., LOCAL TIME, ON May 9, 2013

MAILING ADDRESS:
COUNTY OF MONTEREY
ECONOMIC DEVELOPMENT
DEPARTMENT
168 W. ALISAL STREET, 3rd FL.
SALINAS, CA 93901-2439

QUESTIONS ABOUT THIS RFP SHOULD BE DIRECTED TO
Darby Marshall, marshalld@CO.MONTEREY.CA.US, (831) 796-755-5391

CONTRACTOR MUST INCLUDE THE FOLLOWING IN EACH PROPOSAL (1 original plus 3 copies):

ALL REQUIRED CONTENT AS DEFINED PER SECTION 8.1 HEREIN

This Signature Page must be included with your submittal in order to validate your proposal.
Proposals submitted without this page will be deemed non-responsive.

CHECK HERE IF YOU HAVE ANY EXCEPTIONS TO THIS SOLICITATION.

CONTRACTOR MUST COMPLETE THE FOLLOWING TO VALIDATE PROPOSAL

I hereby agree to furnish the articles and/or services stipulated in my proposal at the price quoted, subject to the instructions and conditions in the Request for Proposal package. I further attest that I am an official officer representing my firm and authorized with signatory authority to present this proposal package.

Company Name: _____ Date _____

Signature: _____ Printed Name: _____

Street Address: _____

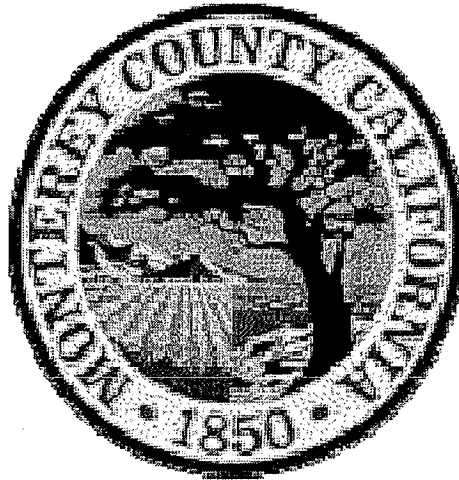
City: _____ State: _____ Zip: _____

Phone: () _____ Fax: () _____ Email: _____

License No. (If applicable): _____

License Classification (If applicable): _____

Monterey County Revolving Loan Fund Administrative Plan



October 1, 2002

Monterey County Revolving Loan Funds are capitalized with grants from:
U.S. Department of Commerce, Economic Development Administration
07-39-03105, 07-49-02640 & 07-49-02640.01
California Community Development Block Grant Program
92-EDBG-215 & 95-EDBG-395
California Trade & Commerce Agency,
Defense Adjustment Matching Grant Program C97-0021
County of Monterey Development Set Aside Program
City of Greenfield
City of King

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PART I. THE REVOLVING LOAN STRATEGY

Since 1989 the U.S. Department of Commerce, Economic Development Administration has awarded Monterey County three grants to capitalize Small Business Revolving Loan Funds. Each of these RLFs had slightly different target areas or beneficiaries.

- **Rural RLF – (RRLF [EDA Award #07-39-03105])** This is the County's' first RLF grant and was targeted for the Salinas Valley south of the City of Salinas and the unincorporated communities of Castroville, Moss Landing and Pajaro. The \$300,000 loan pool was capitalized using \$200,000 from EDA and local contributions totaling \$100,000.
- **Countywide RLF (CWRLF [EDA Award #07-49-02640])** This was the County's second RLF grant and was made in response to the economic dislocation associated with the closure of Fort Ord. The \$1,426,500 loan pool was capitalized using \$1,000,000 from EDA and \$416,500 from the Community Development Block Grant (CDBG) program. The CWRLF may also be identified as CDBD/CWRLF or EDA/CWRLF to denote specific funding restrictions.
- **Contractors RLF (CRLF [EDA Award #07-49-02640.01])** This grant was to recapitalize the CWRLF and establish a loan pool for contractors competing on projects associated with the conversion and reuse of Fort Ord. This \$695,982 recapitalization included \$350,000 from EDA, \$252,956 from the CDBG program and \$93,026 from the California Defense Adjustment Matching Grant program.

A. ECONOMIC ADJUSTMENT PROGRAM OVERVIEW

1. Nature and Scale of Economic Adjustment Problems

a. Why area is eligible for EDA grants

Monterey County continues to experience economic distress as seen in its high annual average unemployment rate. Throughout the 1990's Monterey County's average unemployment rate was 11.3% compared to the U.S. average of 5.7%¹. During 2001 the U.S. unemployment rate averaged 4.8%, while Monterey County averaged 9.3%, almost 2 times the national rate. The two basic economic engines in the County, agriculture and tourism, both employ large, seasonal workforces. Because of the seasonal nature of these industries, the County's unemployment rate is subject to dramatic seasonal variations. For example, in January 2001 the unemployment rate was 15.8% but in August and September the unemployment rate was 5.4%.

In addition to the chronic high unemployment rate, the County has also experienced a number of natural disasters and military base closures over the last eleven years. These events, including the 1989 Loma Prieta earthquake, the closure of Fort Ord in 1992, flooding in 1995 and 1998, and the closure of the US Army Test and Evaluation Center and realignment of Fort Hunter Liggett in 1998 have also contributed to the County's eligibility for Title IX funding.

2. Process That Was Used to Develop Economic Adjustment Strategy

In February and March of 1992, the County of Monterey, in conjunction with more than 120 community leaders, went through a strategic planning process to develop a vision for the County. The Vision calls for a life of abundant quality with all the opportunities for individuals to

¹ Does not include 1999 or 2000. California has not adjusted unemployment for these years to reflect the March 2001 benchmark.

develop their full potential and pursue their dreams. The Vision focuses on protecting and enhancing the County's educational opportunities, the economy and the environment. Based on the County's vision, the Board of Supervisors continued to work with the community and developed a 15- point Economic Development Strategy. The County's Economic Development Strategy was adopted in June 1996. Since the Strategy was adopted in 1996, the Board of Supervisors has sponsored three Economic Strategy Forums to continue the process of refining the County's economic development policies.

The Monterey County Overall Economic Development Commission is charged with preparing the Comprehensive Economic Development Strategy Reports (CEDS). The CEDS is updated as needed to evaluate the County's progress toward implementing the County's Economic Development Strategy and to identify areas of the strategy that need to be amended.

3. Area Resources/Assets

a. Industries:

Monterey County's economic development strategy supports continued development and diversification of the County's two major industries, agriculture and tourism. At approximately \$2.6 billion, agriculture is the mainstay of Monterey County's economy. Uniquely rich soils, mild climate, abundant rainfall and water resources, progressive land use policies, a highly skilled farming community and major food processing plants and facilities which have operated in the area for generations help to form the most important single economic resource in the area. The County is actively working to develop more facilities that add value to the raw agricultural products.

This includes adding new product lines to existing food processors and developing new products. This strategy will create more permanent manufacturing jobs without endangering or ignoring our great natural agricultural strengths. One example of the County's efforts to capitalize on these economic sectors is the current planning effort to develop the marine and agricultural biotechnology industries.

At approximately \$1.5 billion, tourism is the second major component of the Monterey County economy. The spectacular coastline, mild weather, accessible beaches, wooded mountains, historic landmarks and world class hotels, restaurants and wineries, all in close proximity to several northern California metropolitan areas have made Monterey County an important recreational area and vacation destination. The County is working with the industry to develop additional destinations and develop the County's agricultural tourism assets, such as boutique wineries and farm stay opportunities. This industry also offers the opportunity to further diversify the County's economic base by attracting businesses that provide goods and services to them.

b. Natural resources

Monterey County's two largest industries, agriculture and tourism, exist largely because of the County's natural resources. These industries benefit from the mild climate, dramatic geography and rich soil. The County is currently working to develop policies and programs that will help link these industries together. Examples of these projects include farm stays and enhancing the tourism aspects of the wine industry. The large amount of produce grown in the County also provides the opportunity for the County to support development of additional value-added processing facilities such as those producing salads in a bag.

c. Work Force

Monterey County's had an average of 195,800 people in its labor force during 2001. However, just as the County experiences large, cyclical unemployment, the labor force expands and contracts depending on the season. In 2001, the County's labor force ranged from 191,000 to 201,400, a 5.3% change. The County's 2001 labor force changes were not atypical.

Based on information from the 1990 Census, more than 26% of the County's residents 25 years or older, and therefore the potential labor force, had less than a high school education. The low educational attainment makes economic diversification into new industries challenging.

d. Other Resources

The Monterey Bay region (Monterey, San Benito and Santa Cruz counties) is home to more than 15 research facilities, community colleges and state universities. The County is actively exploring ways to capitalize on the economic development potential these organizations represent. The County recognizes these institutions represent an excellent source of untapped potential, however the dominant economic sectors, agriculture and visitor servicing businesses do not provide sufficient opportunities or compensation to entice people to stay in the area once they complete their education.

e. Opportunities to Expand and Strengthen Existing and New Economic Activities

In terms of available land and labor force, the reuse of Fort Ord represents the greatest opportunity for Monterey County to create new economic activity and support the existing economic base. Since the closure of Fort Ord, the community has worked together to develop a Base Reuse Plan. This document, which is essentially a CEDS for base reuse, was developed to be consistent with and supportive of the County's economic development strategy. The Base Reuse Plan includes the following six areas of focus:

- Agricultural Center - The Agricultural center would include food processing and distribution with value added components for export. A global competitive state-of-the art Agricultural Center will be an advantage to the region's agricultural industry by providing coolers, processing distribution and packaging facilities;
- Educational Conference Center - To provide facilities for business and professional meetings with an emphasis on maximizing productivity and capitalizing on the wealth of information available from the nearby university/research complex that is proposed in the base re-use plan;
- High Technology Manufacturing - A scientifically oriented university that focuses on marine sciences, aquaculture, environmental sciences, agriculture and other related disciplines would develop theory in those areas. A local high tech manufacturing cadre of businesses would produce the instruments or other products to support industries in those related disciplines;
- Aquaculture - The Central Coast already has a number of these businesses, some of which may expand and consolidate their activities at Fort Ord. The opportunity to locate production operations adjacent to research facilities provides an incentive for businesses that rely on innovative techniques to improve productivity and profitability;
- Telecommunications - Certain types of telecommunication activities may be pursued, including international trade (particularly agriculture) and oceanographic activities;

- International Trade Resource Center - A resource center that can provide a full spectrum of services necessary to exploit the potentially large international market for local products and services.

Some of these activities may be appropriate for other areas within the County and will be pursued as opportunities present themselves.

4. Strategic Adjustment Goals & Objectives

The Economic Development Strategy for Monterey County stresses the importance of retaining and expanding existing businesses while attracting new compatible businesses that create quality jobs and a diverse and stronger economy. This is based on the County's vision statement, which outlines the County's economic goals. The central economic development themes are to maintain the high quality of life while increasing economic diversity and the income generation potential within the Community. To accomplish these objectives the vision statement places a premium on developing and retaining businesses that are compatible with the unique natural resources and environment of the County.

The County's economic development goals are defined in Section II of the County's Comprehensive Economic Development Strategy (CEDSD). Four of the key policies to achieving these goals are:

- The County shall support the retention, expansion and development of industries that preserve the environmental quality of the region and have national and global market potential including, but not limited to, agribusiness, tourism, retail trade and education.
- The County shall effect the coordination of federal, state and local, public and private resources to enhance the economic base and to promote economic diversification.
- The County shall encourage utilization of the available labor force and promote the retraining of workers to meet the needs of the County's changing economy.
- The County shall cooperate with the cities and private enterprise to promote economic development.

The primary objective of the RLFs is to diversify and strengthen the economic base of the local area and promote economic diversification by assisting businesses that are unable to secure necessary private financing for start up and expansion projects. The RLFs will be used to stimulate new investment in plant and equipment purchases and the retention and creation of private sector jobs. Revolving loan funds will be used to provide funding for a variety of small firms that are unable to finance some or all of their start-up or expansion plans through conventional financing resources for a variety of reasons, including a short operating history or inadequate collateral.

Once a RLF loan has been repaid, it is expected that the individual business will be eligible for SBA funding or private financing. At that point, the overall goals of increasing access to capital resources will have been accomplished.

5. Implementation Programs & Activities

a. Current

The Office of Economic Development (OED) is responsible for implementing the County Economic Development Program. OED contracts with a Community Development Corporation to all day-to-day management activities for the RLF programs. The OED also provides a variety

of business development and retention services including site location assistance, permit assistance and, under contract with the Small Business Development Centers, business counseling.

b. Planned

The OED continues to develop programs that will contribute to the overall success of the County's Economic Development Strategy. These programs include enhanced support for business retention, expansion and attraction. Key elements in these programs include the establishment of a "red team" that can quickly respond to businesses in danger of relocating to another area or closing and becoming more actively involved in the Central Coast Marketing Team. The CCMT is a regional marketing program that represents cities in areas of six Central California counties on the Internet and at trade shows.

6. Organizational Structure & Responsibility for On-going Adjustment Program

a. Agency responsible for evaluating and updating strategy as necessary

The Monterey County Board of Supervisors is responsible for adopting the County's Economic Development Strategy and Policies. The Board has charged the Monterey County Overall Economic Development Commission (OEDC) with developing economic development strategy and policy recommendations for the Board's consideration. The Monterey County Office of Economic Development provides staffing to the OEDC and is responsible for the day-to-day implementation of the County's Economic Development Strategy and policies.

The OEDC annually reviews the Comprehensive Economic Development Strategy to ensure that it is continuing to meet the needs of the County. Part of the OEDC's annual review includes developing recommendations for new or revised economic development policies and strategies to address the changing economic conditions within the County. The OEDC reviews the County's business development strategy and the RLF Administrative Plan to ensure that they remain consistent with amendments to the County's CEDS. The Monterey County Board of Supervisors annually reviews the RLF portfolio to ensure that the goals of the RLF Administrative Plan are being met.

b. Agencies that manage or coordinate implementation of strategy with emphasis on business development strategy that RLF is part of

The Office of Economic Development (OED) is the County's lead agency for managing and implementing the County's Economic Development Strategy. Part of OED's responsibility is the coordination and management of all economic development grant programs in the County, including the Revolving Loan Funds. The County contracts with the California Coastal Rural Development Corporation to provide the day-to-day program administration of the RLF programs, including marketing, loan packaging and servicing.

OED also works closely with a variety of community and economic development organizations throughout the County to coordinate economic development activities and advocate for policies that support economic development. The public sector agencies that OED works with include the various city and County land use departments, i.e. planning, public works and environmental health, and the economic development coordinators from the twelve cities in the County. OED also works with the Chambers of Commerce and Cabrillo and Gavilan College Small Business Development Centers to provide direct business assistance.

B. THE BUSINESS DEVELOPMENT STRATEGY

1. Objectives of Business Development Strategy

The core objectives of the County's Economic and Business Development Strategies are to support the retention, expansion, and attraction of businesses that will create quality jobs and economic diversification without compromising the County's high quality of life or the natural environment. The County's Economic and Business Development Strategy recognizes that existing businesses are the County's best economic development asset. These businesses provide the best opportunity to create new job opportunities and economic growth. Consequently, the County has developed a number of programs to help meet these businesses' financial, business planning, regulatory, and work force needs.

While existing businesses offer a tremendous opportunity for economic growth it is necessary for the County to continue to encourage new business start-ups and to attract compatible businesses expanding into the County. Many of the programs that are available for existing businesses can also be adapted to meet the requirements of these new and expanding businesses.

2. Pertinent Characteristics of Businesses Targeted by the Strategy

The County's Business Development Strategy targets businesses that have national and international market potential, including, but not limited to, agribusiness, retail trade, education, manufacturing, visual arts, film making, language arts/publishing, technology and marine science. Since more than 60% of the businesses in the County employ fewer than five people, most businesses that receive assistance, as a result of this strategy, will fall into this category. In these businesses, the owner is frequently handling a wide variety of tasks. The work required to meet existing regulatory requirements while maintaining the existing level of customer service does not always leave time for the small business owner to improve their business or learn about programs that could help them capitalize on growth opportunities. The Economic Development Strategy seeks to create linkages between these business owners and the multitude of small business resource programs that are available to help them grow.

3. Types of Assistance Needed by Businesses Targeted by the Strategy

Most of the small businesses that are targeted by the County's Economic Development Strategy can benefit from some form of business counseling or financial assistance. Business needs can be grouped into three broad categories; management counseling, regulatory assistance and financial assistance. To ensure that these needs are met, OED works closely with the Central Coast and Gavilan Small Business Development Centers to connect businesses with the appropriate services. In order to ensure that these services are available to businesses in Monterey County, the County provides funding for the SBDC's.

4. Programs and Activities Undertaken to Meet Business Needs

There are a wide variety of programs that have been undertaken by public sector and development organizations to assist businesses. Some the programs are:

a. Business Assistance

- Office of Economic Development – The lead organization charged with reviewing, recommending changes to and implementing the County's economic development policies and programs. OED provides site location and permit processing assistance to businesses interested in doing business in Monterey County. OED also acts as a referral service

directing businesses to agencies that can help businesses address a wide range of issues including business planning, financing and labor force needs.

- Monterey County Redevelopment Agency – The RDA provides many of the same functions as OED but to areas that have been designated as redevelopment areas under California law. The RDA also administers a variety of programs for community improvement in these areas.
- California Technology, Trade & Commerce Agency – The CTTCA has a variety of programs including business retention assistance, providing leads to local economic development officials, technical assistance for economic development program development and identification of state and federal funding sources.

b. Permit Assistance

- Monterey County One Stop Permit Center - The Permit Assistance Center supports the economic development effort of the County of Monterey primarily by being a center for dissemination of technical and procedural information regarding land use development.

c. Financial Assistance

- County RLF programs
- California Coast Rural Development Corporation – The CCRDC administers twelve different direct loan or loan guarantee programs, including the County's three RLFs. Because CCRDC administers so many programs they can frequently meet the financing needs of most businesses.
- Industrial Development Bonds - IDBs are the lowest-cost and most flexible financing alternative available to companies with manufacturing operations who need to expand, renovate or relocate their facilities.
- SBA loan programs – The SBA has a number of programs, including the 7a, 504, and the Export Working Capital Program to help meet the financial needs of the small business community.

d. Business & Financial Counseling

- Central Coast SBDC – operated as part of Cabrillo Community College in Aptos (Santa Cruz County)
- Gavilan SBDC – operated as part of Gavilan Community College in Gilroy (Santa Clara County)
- Service Corp. of Retired Executives (SCORE)
- The SBDCs and Score provide a wide range of services, including management and technical assistance and training and advice on business planning, marketing, finances, production and organization.
- BAYTRADE provides assistance to local businesses interested in accessing international markets.

e. Training & Employee Recruitment

- Employment Development Department – EDD administers the state's unemployment insurance program and provides employee placement services.
- Employment Training Panel – Assists businesses in acquiring and retaining skilled workers by subsidizing employer-training costs for individuals hired by eligible businesses.
- Hartnell Community College
- Monterey Peninsula Community College
 - Community Colleges provide a variety of technical and general education programs for people entering the work force, changing careers or upgrading their skills. Community

colleges work with local businesses to ensure that their curriculum is providing training relevant to industry requirements.

- Work Force Investment Board (WIB) – The WIB is responsible for administering the federal Workforce Investment Act (WIA) in Monterey County.

Additional information on these programs may be found in the Monterey County Comprehensive Economic Development Strategy.

C. THE FINANCING STRATEGY

The County's Economic Development Financing Strategy is intended to provide public sector financial assistance that stimulates the creation of new jobs and private sector investment. The County has four tools available to support and encourage private sector job creation activities. These tools include:

- Federal and State grant programs that can be used to build the physical infrastructure, i.e. sewer, water and roads, necessary to support development or make large business loans.
- The Office of Economic Development is able to facilitate the issue of tax-exempt Industrial Development Bonds when the proceeds will be used by an industrial business to expand existing facilities. Because the bonds are tax-exempt they offer very attractive interest rates to qualified businesses.
- The County Office of Economic Development is also able to work with businesses to help them take advantage of a variety of state loan programs and tax incentives, including low interest loans to businesses that will recycle used products and the Manufactures' Tax Credit.

Because the first three programs are targeted to larger, established businesses or businesses in targeted industrial sectors, the County has developed a Small Business Revolving Loan Program Funds to assist small and start-up businesses.

The County has received a number of Federal and State grants to capitalize three distinct Revolving Loan Funds. These RLFs were established to address specific financing needs in different geographic communities and business sectors. In general, the RLF programs are designed to help businesses create long-term employment opportunities by helping businesses grow and providing access to counseling resources. The three programs also have specific geographic and/or business sectors that they are intended to target. These are:

- **Rural RLF:** The Rural RLF (RRLF [EDA Award #07-39-03105]) was originally capitalized in 1989 using an EDA grant and matching funds from the County and South County cities. The RRLF portfolio is targeted toward businesses located south of the City of Salinas in the Salinas Valley and generally north of the State Highway 183 extending west to the coast and north to the County line. Businesses in the City of Salinas are not eligible for loans through this program.
- **Countywide RLF:** The Countywide RLF (CWRLF [EDA Award #07-49-02640 & #07-49-02640.01]) was originally capitalized in 1993 using EDA and Community Development Block Grants. The portfolio was recapitalized in 1997 with additional EDA and CDBG funds. As the name implies, this program is intended to assist businesses anywhere in the County.

- The CDBG funds that are included in this portfolio may not be used for loans to businesses in any city that receives funding through the U.S. Department of Housing and Urban Development Entitlement Cities program. The ineligible cities are Monterey, Salinas and Seaside.
- **Contractor RLF:** The Contractor RLF (CRLF [EDA Award #07-49-02640.01]) was originally capitalized in 1997 with grants from EDA and California Trade and Commerce Agency and is operated as a sub-component of the CWRLF described above. The CRLF was developed as part of the County's response to the Fort Ord closure. As a result of the closure and the process of developing the CRLF, the County has found that local contractors face significant barriers to achieving long-term success:
 - They frequently do not have access to the "mobilization" capital they need to demonstrate the financial ability to complete projects when bidding on projects.
 - Many use high interest credit cards or take out additional home mortgages to finance project costs until the first payment is received from the contracting agency or general contractor. This erodes their ability to make long-term plans or build their business.
 - Many neglect the basic business and financial planning necessary to allow them to become stable and make a long-term contribution to the local economy.

The CRLF is designed to address these issues by making short-term loans that are repaid out the contract proceeds and requiring the contractor to participate in intensive business counseling and financial planning with the local Small Business Development Center. The County hopes that as a result of their participation in the CRLF, small contractors will lay a business foundation that will allow them to successfully bid on and complete projects that will in turn create more opportunities for the contractor and skilled laborers they employ, as well as increase local wealth.

Contractors bidding on projects anywhere in Monterey County are eligible for the CRLF program, however contractors bidding on projects on the former Fort Ord will be given funding priority. All contractors receiving RLF loans must be domiciled in Monterey County. Contractors domiciled in San Benito or Santa Cruz Counties may apply for loans through the CRLF with approval by EDA.

1. Eligible Financing Uses:

a. RRLF & CWRLF:

- **Land & Building Acquisition:** Acquisition and owner-occupied land and facilities for existing businesses including engineering and legal fees, grading, testing, site mapping, and related costs associated with acquisition and preparation of land or construction and rehabilitation of buildings including leasehold improvements.
- **Acquisition of machinery, equipment, furniture, fixtures and leasehold improvements:** This includes the delivery, installation, engineering, architectural, legal, insurance, and related costs (i.e. sales and use taxes) associated with acquisition and installation of machinery and equipment.
- **Brownfield Recycling:** Other investments, which will accelerate recycling of land and facilities for creating job activity, such as assistance to firms that plan to locate or expand in such facilities.

- Working capital needs: This includes financing the non-tangible costs associated with starting and/or expanding a business, such as payroll, inventory, raw materials etc.
- Economic Development Incentives: RLF financing may also be used as an incentive, through favorable loan terms, to attract new business or a business expansion into an eligible area. The business may be credit worthy but would otherwise not locate to the area without RLF financing as an incentive. When RRLF or CWRLF financing is proposed for this type of project, the Program Administrator (PA) must sufficiently document in the credit memorandum the need for RLF assistance and should obtain certification from the company that it would not locate the proposed project at the intended location without RLF assistance.
- Business Acquisition: RLF financing may be used to purchase an existing business if it can be documented that the business will cease to exist without RLF assistance. Business acquisitions should be rare and meet the more rigorous tests for repayment ability associated with loans purely for job retention.

b. CRLF:

Generally, the CRLF may be used for any of the eligible uses listed for the RRLF and CWRLF. However, it is expected that most loans will be for short term, working capital requirements and the acquisition of equipment.

2. Ineligible RLF Financing Uses:

Accept as otherwise noted, the RRLF, CWRLF and CRLF may not be used to finance the following types of activities:

- Relocation: Projects involving the relocation of any firm from one labor market area to another in such a manner as to cause unemployment at the location where such work previously was performed;
- Project Location: Projects that will not be located within the County of Monterey;
- Projects Not Consistent with Existing Economic Development Plans: Projects that are not consistent with; 1) Monterey County's Annual Comprehensive Economic Development Strategy (CEDS), or 2) relevant city economic development policies or strategies;
- Projects that Generate Temporary Employment: Projects that will not provide more than temporary alleviation of unemployment or underemployment within the County.
 - This provision does not apply to the CRLF because participating contractors will use the funds to complete specific, short-term, construction projects.
- Private Sector Funding Availability: Projects for which funds are judged to be otherwise available from private lenders;
- Repayment Ability Required: In general, projects that do not have a reasonable assurance of repayment of the proposed loan(s);
- Conflict of Interest: Projects which would create a conflict-of-interest for any current or former employee or officer of the PA, Board member, Loan Committee member, (or people related to them by blood, marriage or law) (Refer to section D.16 of EDA's Section 209 Revolving Loan Fund Grants Special Terms and Conditions for complete requirements);
- Private Developers: Private developers are not normally eligible for RLF assistance unless the activity financed is non-speculative, consistent with the strategic and lending objectives of the RLF, and directly benefits or will directly benefit identifiable business concerns.

- RLF capital may not be used to acquire equity or an interest in private businesses either through the purchase of stock or through the acquisition of assets, unless the need for RLF financing is sufficiently justified, and documented in the loan write-up, or credit memo.
 - Acceptable justification could include acquiring a business to substantially save it from imminent foreclosure or acquiring it to expand the enterprise with increased private investment.
- Investment: Loans for the purpose of investing in interest bearing accounts, certificates of deposits, or other investments not directly related to job creation/retention;
- Public/Quasi-Public Organizations: A public or quasi-public organization is not eligible to receive RLF financial assistance unless 1) the activity financed directly benefits or will directly benefit identifiable business concerns, and 2) there is reasonable assurance that the activity financed will result in increased business activity in the near term;
- Refinancing Existing Debt: On a case-by-case basis loan requests to refinance existing debt may be considered if: (1) there is sound economic justification and sufficient documentation in the loan write-up that the RLF is not replacing private capital solely for the purpose of reducing the risk of loss to an existing lender(s) or to lower the cost of financing to a borrower; (2) RLF funds are used to purchase the rights of a prior lien holder during an in-process foreclosure action in order to preclude a significant loss on an RLF loan. This action may be undertaken only if there is a high probability of receiving compensation within a reasonable time period (18 months or less) from the sale of assets sufficient to cover expenses and a reasonable portion of the outstanding loan obligation.

3. Current Financing Needs of Targeted Business Sector

The County's RRLF, CWRLF and CRLF programs have been established to support job creation and business development in Monterey County. These programs have been designed to provide financing for businesses that have a solid business plan and financial projections but are unable to finance their start-up or expansion plans through sources of conventional financing for a variety of reasons, including, but not limited to, inadequate collateral, lack of operating history, derogatory credit histories, etc. The financing needs of the targeted business sector are discussed further in Part I, C, 4, i. of this Administrative Plan.

The CRLF is designed to provide mobilization capital to small contractors who have a history of successfully completing projects but are unable to demonstrate the financial strength necessary to successfully bid on larger projects. The County wants to support and retain small contractors because of their role in the local economy. The CRLF is designed to help small contractors become more profitable and to invest more capital in their businesses by providing an alternative to financing projects start up costs with high interest credit cards. The CRLF will encourage small contractors improve their business and financial practices to increase their long-term prospects for prosperity by requiring them to participate in business counseling provided by the Small Business Development Centers. The long-term goal of the CRLF program is to provide the business foundation and credit history that will enable contractors to qualify for conventional financing and compete for larger projects, as well as increase local wealth.

4. Current Public and Private Financing Resources

In general the following policies apply to all three of the County's RLF programs.

Prevailing commercial lending policies/restrictions: Banking resources in Monterey County remain focused on working with the major firms located in the Salinas and Monterey Peninsula

areas. Our local private financial lending institutions are under enormous competitive pressures and are often unwilling to accept the risk associated with making long-term, fixed rate loans in fast changing financial market conditions. Area banks tend to favor loans for the expansion of profitable and stable businesses rather than loans for the higher risk endeavors or start-up businesses. The region continues to experience some branch office closures, bank mergers and changes of ownership. The decision to fund a loan application is usually made in a regional office in San Francisco or Los Angeles. Often, the corporate policies of these institutions do not fully take into account the needs and situations unique to our community.

Like almost all banking institutions in rural California, the area's commercial banks prefer to make short-term loans and, particularly for small loans, require minimum owner equity of 50% in a business. There is a need for longer term loans, for loans with lower equity requirements, for loans in the \$15,000 to \$50,000 range, for start-up capital, and for expansion capital for firms without existing banking relationships (i.e., firms that have been capitalized primarily by the owner's equity investment or high interest revolving credit).

Through its careful screening of applicants and its creative loan structuring, the RRLF and CWRLF will work with conventional lenders to meet the credit needs of riskier, but still credit worthy firms. For example, lenders assured of an adequate collateral cushion with an RLF subordinate loan would be more encouraged to participate, or participate more deeply than they would have otherwise. These RLF programs are designed to meet the credit needs of firms that would not otherwise be served by conventional lenders and, at the same time, provide funds adequate to the needs of the particular borrower.

5. Role of Public and Private Lenders in Supporting Business Development Strategy

The RLF program is intended to encourage private lenders participation in business development loans that they might not ordinarily consider, by accepting junior lien positions. The expectation is that once a business has successfully performed on a RLF loan, the business will achieve a level of stability that will allow it to qualify for conventional financing.

6. RLF's Financing Niche

RRLF and CWRLF: These programs have been developed to provide funding when conventional financing (bank, SBA, etc.) is either not available, available in amount insufficient to meet the needs of the business or is cost prohibitive for the small business. Frequently, funding through these programs will be used to augment conventional financing.

CRLF: This program was developed to provide mobilization capital for small contractors. This business group identified a need for short-term financing necessary to enable them to demonstrate that they have the financial resources required to successfully complete a variety of projects. These projects are primarily in the construction trades, i.e. building rehabilitation, plumbing, electrical, etc. The primary use for this program is to provide funding for short-term requirements (inventory, bonding, etc.) that cannot be funded through conventional financing sources because there are few assets available to secure the financing.

7. Types of Businesses

RRLF and CWRLF: These programs may be used by any business that will create or retain jobs in Monterey County. The County has identified certain, broadly defined business sectors for

targeting under the business development strategy. These business sectors are described in Part I, B. 1 and 2 of this Administrative Plan.

CRLF: The Contractors Revolving Loan Fund is specifically targeted to assist women-owned business enterprise (WBE), disabled veteran-owned enterprise (DVE); minority-owned business enterprise (MBE); or small disadvantaged business enterprise (SDBE) obtain non-conventional loans, to facilitate initial costs related to construction or services and/or materials contracts. Businesses that will benefit from this program could be involved in any of the construction trades, landscaping, building maintenance or supply construction and/or maintenance services and supplies. The following criteria govern eligibility for the CRLF program:

- Be a Monterey business applying for financial assistance to complete a project in Monterey County;
- Be licensed by the State of California, or appropriate agency, to conduct business and be in good standing with the State of California Contractor's Licensing Board or appropriate issuing agency;
- Be able to verify business income for periods required by the CRLF. This requirement will be to verify banking relationships, evaluate financial statements, bank deposits and credit rating(s).
- Other relevant information may also be required by the PA to determine the extent to which the business has the financial capability to complete a contract and meet all obligations including repayment of the proposed CRLF loan;
- Be unable to obtain all or part of the proposed RLF financing from conventional private sources as determined by the PA, based on information supplied by the contractor.
- Contractors from San Benito and Santa Cruz Counties are eligible for this program if they agree to work with the One-Stop Career Development Center to make a good faith effort to fill new jobs created as a result of CRLF financing with Monterey County residents and are approved by the US Department of Commerce, Economic Development Administration (EDA) prior to the loan being presented to the loan committee.

8. Types of Financing

The County's three Revolving Loan Funds (RRLF, CWRLF and CRLF) provide essential financing for small business start-up and expansion when conventional lenders cannot or will not finance the entire project and the RLF may be the sole funding source for businesses that are unable to qualify for any conventional financing. These programs will accept subordinate liens to encourage conventional lenders to participate in financing these business ventures.

Since banks are generally not willing to take the risks associated with fixed term loans to the small contractor community, the CRLF program is the only source of financing available for inventory acquisition, bonding and related mobilization expenses.

9. Standard Loan Terms

RRLF & CWRLF: The terms for all three RLF programs (RRLF, CWRLF and CRLF) are intended to be flexible enough to provide borrowers with terms that will allow them to become stable business ventures. These programs will help entrepreneurs take advantage of start-up and/or expansion opportunities by minimizing monthly debt service requirements during the initial start-up or expansion phase when the potential return on investment is smallest. To accomplish this goal, loan terms will be determined on a case-by-case basis to balance the goal

of supporting the small business creation and growth while maximizing the rate at which funds revolve. Terms may include longer repayment periods, stepped payments and the use of balloon payments. In general, loan terms will not exceed the useful life of the equipment financed or five (5) years in the case of working capital loans.

CRLF: The CRLF program is intended to provide short term, low interest loans to small contractors to help carry them through receipt of the initial progress payment. The length of the contract that qualified the contractor for the CRLF program will determine the length of the loan. It is anticipated that most loans made through this program will not exceed six (6) months.

10. Impact of RLF on Accomplishing the Economic Adjustment Objectives

a. Restructuring/strengthening the local economy:

The County's primary objective is to support the enhancement of the economic base and promote economic diversification that will utilize the County's available labor force and promote the retraining of workers to meet the needs of a changing economy. The County will focus on business retention, expansion and development of industries that preserve the environmental quality of the region and have national and global market potential including, but not limited to, agribusiness, tourism, retail trade and education. The RLF will encourage entrepreneurs to start businesses that will provide basic services that are currently not available in the County and to the agriculture and tourist-related industries to attract visitor dollars into the County.

b. Stimulating Private Investment

The RLF programs will stimulate private sector investment by:

- Providing gap financing and accepting subordinate lien positions to leverage conventional financing
- Helping to reduce debt service requirements for small businesses by providing a more affordable means to finance business start-up and expansion than high interest revolving credit

c. Enhancing Job Opportunities:

To ensure that the displaced worker and the long-termed unemployed will be linked with the jobs created through the RLF, the County will work with the local Workforce Investment Board (WIB) and Department of Social Services. Companies that receive RLF assistance will be encouraged to use these resources to fill new jobs. Large loans, more than \$150,000, will generally be required to enter into a first source hiring agreement with these agencies.

The RLF will target permanent full-time jobs in the industrial, commercial, retail and tourism areas. Loans solely for saving of jobs will be approved only when it is clearly evident, and documented, that the jobs will be lost in the imminent future without RLF assistance. Firms receiving assistance primarily to save jobs must be integral to the functioning of the local economy.

- Loans involving CDBG matching funds must meet HUD's Targeted Income Group (TIG) benefit requirement that 51% of the jobs created will be filled by persons earning 80% of the County's median income.

D. FINANCING POLICIES

1. Standard Lending Terms, Concessionary or Special Financing Techniques to Achieve Business Development Strategy

RRLF & CWRLF: The RLFs will generally seek to fully collateralize (i.e. book value) all small business loans and to obtain the maximum amount of collateral available to minimize losses in event of liquidation. In order to better protect the RLF, the County may take a superior position on selective collateral or attempt to enter into co-lender agreements with private lenders in order to share collateral and provide a pro-rata distribution formula for disposing of assets in the event a loan defaults. However, the RLF may accept a subordinate collateral position or accept less than full collateralization in order to further the economic development objectives of the RLF.

The RLF may negotiate with private lenders to enter into a co-lender agreement that will spell out rights and duties of all parties, their interest in business assets and how business assets will be disposed of in the event of default. This arrangement will be used whenever possible.

CRLF Program: Because the program is intended to help small contractors establish their credit worthiness, they will generally only be required to make interest payments during the loan term. The final principal and interest payment will be made by the contracting entity directly to the CRLF PA on the borrower's behalf. Since an Assignment of Contract Proceeds will secure the loans it will not generally be necessary for the CRLF to take a subordinated collateral position on other business or personal assets.

2. Conflict of Interest – Program Administration

If any RLF loan (RRLF, CWRLF and CRLF) is part of a financing package that includes funds that are controlled or managed by the PA and the PA has a potential risk of loss, either from a loan or from compensation, the County RLF must have a superior or equal collateral position to the funding source. This provision is intended to help avoid the appearance that the PA has a potential conflict of interest by taking a superior collateral position, to the detriment of the County RLFs.

3. Loan Application and Origination Fees

- RRLF & CWRLF Programs: Applicants will be charged a \$200 application fee and a loan origination fee equal to 2% of the loan amount.
 - The borrower shall pay any direct costs incurred in loan processing and closing.
 - When deemed appropriate by the PA and the Loan Committee, the loan origination fees may be deducted from the loan amount.
- CRLF Program: Applicants will be charged a \$100 application fee and a loan origination fee equal to 1% of the loan amount.
 - The borrower shall pay any direct costs incurred in loan processing and closing.
 - When deemed appropriate by the PA and the Loan Committee, the loan origination fees may be deducted from the loan amount.
- The PA, with the County's approval, may waive any or all fees.

4. Range of Allowable Interest Rates

RRLF & CWRLF Programs: Interest rates for loans will generally be set at the prime lending rate as reported by the Wall Street Journal on the day of loan closing. The maximum RLF interest rate shall be the prime rate plus two percent quoted in the Wall Street Journal at loan

closing, or the maximum allowed under state law, whichever is lower. The minimum RLF interest rate shall be four percentage points below the Wall Street Journal prime rate quoted in the Wall Street Journal, at the time of closing, but never less than four percent.

All loan terms require prior approval by Monterey County as described in Part II, Section A. 4. The utilization of sub-prime or adjustable interest rates will be based on the following criteria:

- Linking interest rates to job creation - the more jobs the business says they are going to create the lower the rate. The interest rate should be reviewed annually to ensure that the anticipated job creation actually takes place and if it does not the rate could go up.
- Capital improvement projects may be offered a lower rate to offset the increased cost of compliance with prevailing wage requirements
- Higher rates for working capital
- Lower rates for business sectors targeted by the County's Comprehensive Economic Development Strategy

CRLF Program: A fixed Interest Rate of prime, minus I point based on the current Wall Street Journal rate on the day the loan closes. However, the rate may be higher, as determined by the Loan Committee depending on risk and other factors. Interest will be calculated from date the loan closes. Payment schedules will generally be monthly interest payments with the balance due upon completion of the contract.

5. Requirements for Equity and/or Cash Injections by RLF Borrowers

RRLF & CWRLF: In general the County would like to see evidence that the borrower is committed to the project. Generally this will be demonstrated by a personal financial interest in the business venture that will be financed. The amount or percentage of capital or lien free assets that will be added to the project from borrower or investor sources (equity) will be determined by the proposed use of RLF funds and the business' operating history.

- Fixed asset loans, the standard equity requirement will normally be twenty percent (20%) of the total project cost
- Working capital loans, the standard equity requirement will be twenty percent (20%) of the total project cost
- New companies, those with less than two (2) years of operating history, the equity requirement is 20%

The County may consider deviations from these general guidelines if the proposed project is in an area that has been targeted by the County's business development strategy, there is evidence of excess security and/or the borrower has a proven history of operating successful businesses.

6. Standard Repayment Terms

RRLF & CWRLF Programs: In general, loan terms will be based on the useful life of the assets being financed and the cash flow of the borrower. The following guidelines will be used to establish maximum loan terms:

- Real property loans will not exceed 25 years
- Machinery and equipment loans will be for the useful life of the machinery and/or equipment financed and generally will not exceed 10 years
- Working capital loans will not exceed five (5) years

Within these general guidelines, the portfolio will place an emphasis on making shorter-term loans to accelerate the reuse of the RLF dollars; to other borrowers.

Repayment will normally be accomplished in equal monthly installments, including principal and interest over the life of the loan. RLF loan terms will normally equal the loan term of the participating private lender, but may extend beyond that of the private lender if necessary.

In certain situations the RLF can be used as a tool to meet a short-term financing gap. The RLF may also employ the use of balloon loans, i.e. the loan may have a shorter-term call period, but be amortized over a longer period (not to exceed the weighted average useful life of the fixed assets or five years in the case of working capital loans.)

CRLF Program: Generally, CRLF borrowers will be required to make monthly interest only payments and repay the outstanding loan balance following the filing of the Notice of Completion from contracting entity (i.e. the General or Prime Contractor or other contract issuing entity) responsible for the project on which the loan was granted. One condition that will be attached to single project loans, will the execution of an Assignment of Contract Proceeds between the borrower and the contracting entity. This document will authorize the contracting entity to deduct the outstanding amount due on the CRLP loan (including fees and penalties, if any) from the borrower's final payment as specified under the loan terms enumerated in the loan documents describing the terms and conditions for repayment of the loan. The contracting entity will forward the final payment to the PA.

7. Moratoria on Principal Payments & Maximum Moratorium Period

RRLF & CWRLF Programs: A moratorium on principal payments providing for interest only payments for up to six months will be allowed if found necessary to assist a borrower with temporary cash flow problems.

CRLF Program: In general, the CRLF requires interest payments during the loan period, with the full principal due from the "Prime Contractor" when the Notice of Completion is filed.

8. Key Factors to Determine When Deviations will be Employed

In general, deviations from these policies will be considered only if it significantly improves the likelihood of the loan being brought current or to minimize the potential loss to the RLF. The County retains the authority to determine when a deviation should be considered. The PA shall exercise due diligence when recommending that the County consider a deviation from these policies.

9. Types of Collateral Required

RRLF & CWRLF: Security will be required, as necessary, to adequately collateralize RLF loans, and serve as a secondary source of payment. In the case of fixed asset loans, security will usually be, at a minimum, liens on the assets financed in addition to other assets of the business or owner/investor(s). Working capital loans will normally be secured by receivables, inventory and fixed assets. A landlord's consent or similar document will normally be obtained where a borrower leases its facility in order to ensure access to inventory and equipment collateral. It will also be the general policy to require personal guarantees by the applicant's principals that may be secured, as appropriate, by liens on personal assets. Adequate insurance coverage on the business assets, required where fixed assets are primary security for the RLF loan. Key man insurance that

specifies the County as the loss payee may also be required, as appropriate. Flood insurance is required if applicable.

CRLF: An Assignment of Contract Proceeds executed by the contracting agency to ensure that the loan is repaid out of the contract proceeds. Additional security such as liens on equipment and business assets may also be required, if deemed prudent to protect RLF assets.

10. The Minimum and Maximum Loan Sizes for RLF Program

RRLF: Loans made using the RRLF funds will generally be between \$5,000 and \$100,000 and average \$50,000. The maximum loan size for the RRLF is \$100,000.

CWRLF: Loans made using the CWRLF program will range between \$10,000 and \$200,000 and average \$125,000. The maximum loan size for the CWRLF is \$250,000 without prior EDA approval.

CRLF: Loans will normally be between \$5,000 and \$25,000, with discretion to make loans up to \$100,000 on a case-by-case basis. Loans for more than \$25,000 will be expected to have significant, measurable and lasting economic impact. In no event will a loan exceed \$100,000 without prior EDA approval.

E. PORTFOLIO STANDARDS & TARGETS

1. Anticipated Uses as a Percentage of RLF Portfolio

a. Small/Large Businesses:

RRLF & CWRLF: At least eighty-five percent (85%) of total RLF loan funds are targeted for small businesses, as defined by the US Small Business Administration. The SBA small business definition is based on the North American Industry Code System (NAICS) and either annual sales or number of employees and is available on-line at www.sba.gov/size. Fifteen percent (15%) of the RLF may be used to assist large businesses (as defined by the SBA for the type of business), eligible for RLF funds.

CRLF: It is anticipated that 100% of the CRLF loans will be made to small contractors. Under the NAICS, general building and heavy construction contractors must have annual receipts of more than \$27.5 million to be considered large contractors. Special trade construction contractors have a size standard of \$11.5 million.

b. Commercial/Industrial:

RRLF & CWRLF: (70/30%): Seventy percent (70%) of all RLF loan funds are targeted for commercial projects and thirty-percent (30%) targeted to support industrial projects.

Commercial projects must meet one of the following standards:

- Must have significant job creation potential, i.e. significantly less than the portfolio standard (\$20,000:1)
- Offer services that are underserved or not currently offered in the community
- Have a significant potential for stimulating other economic development activity
- Provide vitally needed services

Because Monterey County is predominately an agricultural and visitor serving economy, there may be insufficient demand for industrial/manufacturing loans to meet this target. In order to continue supporting business and job development the County may use more than 70% of the

funds for commercial projects. In the event that the County needs to reduce the industrial portion of the portfolio below 30%, the County's first priority will be to target loans for businesses that provide services that support the agricultural or visitor-serving industries but are not currently available locally. The County will then consider other commercial projects that have significant potential to increase employment or contribute to the tax base.

CRLF: The County will attempt to make one hundred percent of the CRLF portfolio available to general, building, landscaping, building service (janitorial), or other contractors. However, up to 30% of the portfolio may be used to fund loans to firms that supply materials to contractors.

c. **New Business:**

It is anticipated that 60% of the RRLF and CWRLF portfolio will be made to start-up businesses. Up to 40% of the CRLF portfolio may be used to support start-up businesses.

d. **Business Expansion:**

It is anticipated that 25% of the loans will be made to support the expansion of existing businesses. Most of the loans made through the CRLF will be in support of business expansion projects.

e. **Business Retention:**

It is anticipated that 15% of the RRLF and CWRLF loans will be made to support business retention, to save jobs that would be lost without RLF financing. Loans for this purpose will require extensive review to ensure that the business will remain viable as a result of RLF financing and to maximize likelihood of repayment. The County does not anticipate making any business retention loans through the CRLF program.

f. **Anticipated Percentage of RLF Portfolio for Specific Uses:**

In general the RRLF and CWRLF portfolios will be managed so that no more than 85% of the portfolio is for working capital. The balance of the portfolio will be targeted to loans for purchasing fixed assets. It is not anticipated that a significant percentage of the portfolio will be used to purchase real property since conventional financing will use fund this activity or make tenant improvements because of the added cost of complying with prevailing wage requirements.

g. **Private Investment Leveraging Ratio for Portfolio:**

RRLF & CWRLF: The private sector leveraging ratio is defined as the amount of private dollars proposed as part of the finance package divided by the amount of the proposed RLF loan. The portfolio standard leverage ratio is established at two private dollars to every one RLF dollar. This ratio may vary in individual cases, so long as the loan portfolio as a whole achieves a standard ratio of 2:1 private to public dollars.

If other public lending sources are involved in the loan package, the maximum public participation in such a package may not normally exceed fifty percent (50%) of the total project. The RLF will attempt to maximize private sector involvement in each project in order to leverage its funds and diversify risk.

When the RLF is used in conjunction with an SBA 504 loan program, 90% of the guaranteed amount and all of the unguaranteed amount will count as the private leverage part of the RLF loan ratio.

h. Source of Leverage

Private leverage for RLF funds may consist of financing from conventional lenders and/or other private sources including new cash investments made by the owners and stockholders of the business:

i. Cost Per Job for Portfolio

RRLF & CWRLF: In general, these portfolios will have a ratio of \$20,000 per job-created or saved. Individual loans may have job cost ratios that exceed \$20,000 per job. Self-proprietorships and owners/principals of companies are not counted towards the job creation/retention goal.

- No loan funded using CDBG may have a cost per job that exceeds \$35,000.

CRLF: This portfolio will also use the \$20,000 per job ratio as a target. However, because most loans will be made to support specific short-term contracts it is not realistic to expect the CRLF to create long-term job opportunities. The positive economic impact of the CRLF program is based on helping the contractors achieve long-term success, not solely on job creation and retention; this target may not always be met.

F. RLF LOAN SELECTION CRITERIA

RRLF & CWRLF: The two primary eligibility criteria for the RLF loan programs are job creation/saving jobs and stimulating private sector investment. Any loan request that meets both of these criteria will be considered for funding. In the event that there is more demand than available funds, the County will prioritize loans based on those criteria and those described below.

RRLF & CWRLF Priority Lending Criteria:

- Businesses in economic sectors targeted by the County's economic development strategy
- Related to the economic revitalization of the former Fort Ord
- Greatest economic multiplier effect, i.e. industrial or commercial activities that add value to a locally produced product and result in additional money flowing into the County
- Provides a good or service that was formerly purchased outside the area.
- Creates a new visitor destination or supports additional travel spending
- Projects with the greatest potential to increase sales and/or property tax receipts.

Disaster Selection Criteria Considerations:

- In the event that Monterey County is impacted by extraordinary natural or man-made disasters, the County may use the RLF to support business recovery, and saving of jobs consistent with this approved RLF Administrative Plan.

CRLF: The primary criterion for this loan program is providing business development opportunities for small contractors. In the event that there is more demand than available funds, the County will prioritize loans based on the criteria described below.

CRLF Priority Lending Criteria:

- Projects located on the former Fort Ord.
- Supports permanent, not project specific, job creation.

G. PERFORMANCE ASSESSMENT PROCESS

Annually the Overall Economic Development Commission (OEDC) will review the County's Comprehensive Economic Development Strategy (CEDS) and the RLF's role in implementing that strategy. Based on the annual review, the OEDC may recommend changes to the County's financing strategy to make it more responsive to the community's financing needs. The OEDC will also review the RLF portfolio annually to ensure that it continues to meet the requirements of the grants and Administrative Plan.

PART II. REVOLVING LOAN FUND OPERATIONAL PROCEDURES

A. ORGANIZATIONAL STRUCTURE

The County will contract with a Program Administrator (PA) to handle the day-to-day operation of the County's various RLF programs including: marketing, preparing loan write-ups, presenting credit requests to a Loan Committee, loan documentation and loan payment processing, loan disbursements and collections.

The County will use a competitive Request for Proposals process to select the firm that will provide these services. The County will issue a RFP not less frequently than every three years. The firm selected to administer the County's RLF programs must meet all County requirements for employee dishonesty, automobile liability and general liability. Currently, the County requires contractors to provide evidence of General Liability and Automobile Liability insurance of \$1,000,000.

Currently the County has a contract with the California Coastal Rural Development Corporation (CCRDC) to provide program and fiscal administration for the RLF programs. In addition to the County's RLF portfolios, CCRDC administers a variety of other federal, state and private loan portfolios and has staff, and retained legal counsel, that are fully qualified to manage commercial loan portfolios. CCRDC is responsible for:

- Marketing the various RLF programs
- Working with applicants to complete loan applications
- Preparing loan write-ups and presenting them to the Loan Committee
- Preparing loan documents for approved loans
- Recording all security instruments, i.e. UCC-1, Deeds of Trust
- Disbursing loans to borrowers in accordance with the Loan Committee direction.
- Preparing monthly invoices for borrowers.
- Receiving and posting payments
- Preparing monthly account reconciliation's and drafting required grant reports.
- Working with delinquent borrowers for the first 120 days

The County is responsible for the following aspects of the RRLF, CWRLF and CRLF programs:

- General oversight of the program
- Competitive selection of the PA
- Review all loan write-ups for consistency with Administrative Plan before loans are presented to the Loan Committee
- Review and approve loan terms and conditions before they are submitted to the loan committee
- Final approval for all foreclosure actions
- County approval authority rests with the Principal Administrative Analyst for Economic Development or their designee.
- The County will send out customer satisfaction surveys to all applicants.
 - The results of these surveys will be discussed with the Program Administrator quarterly and be considered when negotiating new agreements.
 - The County may contact the Program Administrator immediately to resolve significant customer service problems.

The County has established separate, interest earning, bank accounts for each program and funding source. The use of separate accounts allows the County to segregate the different funds and ensure that they are used for the purposes that they were awarded. If the County receives additional grants, from any source, to recapitalize the RLF pool, additional accounts will be established.

1. Identification & Development of Appropriate Financing Opportunities

The PA shall be responsible for marketing the County's Revolving Loan Funds. The PA will promote the program using a variety of means. First, there will be media coverage of the RLF. Second, area bankers and the Small Business Development Centers will be made aware of the loan program so that they can recommend it to their clients when appropriate. Third, PA staff will make public appearances to inform local chambers of commerce, downtown business groups and other business development organizations of the availability and extent of the program.

Furthermore, specific efforts will be undertaken to inform the minority community of the RLF program. The primary method will be via the U.S. Commerce Department's Minority Business Development Center serving Monterey County. Outreach will be coordinated with Spanish language television, radio and print media.

The RLF programs will be advertised at least annually through a public notice in the newspaper or distribution of flyers provided there are funds available for lending.

2. Business Assistance to Prospective and Actual Borrowers

Technical assistance is also available to loan applicants from a variety of programs including the Small Business Administration, Service Core of Retired Executives and the Small Business Development Centers located at Cabrillo and Gavilan Community Colleges. These organizations are available for consultation not only on available financing but also on business plan development, marketing and other key business areas. Referrals will also be made to other agencies as deemed appropriate.

The Cabrillo and Gavilan Community College Small Business Development Centers offer regular small business management courses, individual consultations with business faculty and technical assistance with business planning. The Cabrillo and Gavilan College SBDC services are available at a very low cost to any business located in Monterey County.

3. Loan Management

In general, the PA will be responsible for overseeing the day-to-day management of the RLF program. These duties include, but are not be limited to:

- Marketing the availability of RLF program
- Following up with delinquent borrowers funds for the first 120 days
- Processing loan applications
- Preparing monthly financial reports, i.e. balance sheets and all required grant approved loans reports
- Document and disburse loans
- Preparing monthly invoices for borrowers
- Preparing credit analysis and loan write-ups and recommendations for the Loan Committee
- Receiving and posting borrower payments

The Monterey County Office of Economic Development will provide general oversight for the PA. Within OED, the Principal Administrative Analyst and Budget and Operations Analysts will be responsible for providing this oversight. At a minimum the County will provide the following oversight activities to ensure that the program operates in accordance with the grant terms and conditions:

- Review and approve each loan write-up to ensure that the loan requests are consistent with this Administrative Plan and grant requirements before the loan is presented to the Loan Committee.
- Acting on loans that are more than 120 days delinquent, up to and including foreclosure if appropriate
- Reviewing the PA's monthly financial reports
- Reviewing and transmitting all required grant reports to appropriate grant agency

The specific duties and how they will be carried out will be enumerated in the County's contract with the PA.

4. Loan Committee

A Loan Committee shall be responsible for approving all loan requests and loan modifications. Prior to any loan package being presented to the Loan Committee, the Principal Administrative Analyst for Economic Development (or their designee) must review the loan package, proposed terms, and impact of the proposed loan on the overall portfolio and concur with the loan being forwarded to the Loan Committee for consideration.

The Loan Committee, through the PA, may make loan policy recommendations to the County Office of Economic Development. The Loan Committee may not initiate foreclosure actions without approval of the Monterey County Board of Supervisors. The Monterey County Overall Economic Development Commission (OEDC) will review loan policy recommendations and forward them to the Monterey County Board of Supervisors for final approval. The Monterey County Board of Supervisors is the only body authorized to initiate foreclosure actions.

California Coastal Rural Development Corporation (CCRDC), the County's current PA, has established a Loan Committee and Board of Directors to review and approve all loan programs administered by the organization. The County will work with CCRDC to ensure that the Loan Committee and Board of Directors meet all EDA requirements for financial experience and that it represents the ethnic diversity of the community.

According to CCRDC's By-Laws, the loan committee must have a minimum of five members, which reviews and approves all loans for less than \$50,000. All loans of more than \$50,000 are then presented to the Board of Directors for a final review and approval for loans greater than \$100,000. A quorum, including at least one member with lending experience, of the appropriate body (i.e. Loan Committee or Board of Directors) must be present to consider approving or amending any loan. A quorum is defined as 50% plus one of the membership.

Under CCRDC's Small Business Administration charter, a majority of the loan committee shall be experienced in banking and lending operations to be carried out by the Corporation. The SBA requires that the Board of Directors must include representatives from three of the four following membership groups:

- Governmental organizations responsible for economic development in the central coast counties of California, the Corporation's area of operations;
- Financial institutions that provide commercial long-term fixed asset financing in the central coast counties of California;
- Community organizations dedicated to economic development in the Corporation's area of operations such as chambers of commerce, foundations, trade associations, colleges and universities; and
- Businesses in the Corporation's area of operations; and
- At least one director, other than the President, shall have commercial lending experience in conformance with the United States Small Business Administration's rules, regulations and standards then in effect.

All members of the Loan Committee will receive a copy of this Administrative Plan and use it to determine whether a credit request meets the requirements of the Monterey County RLF programs.

Loan Committee and Board of Director deliberations for loan approval will adhere to the Conflict of Interest requirements contained in the EDA Standard Terms & Conditions dated December 1998. Members of the Loan Committee and Board of Directors must recuse themselves from deliberation process for loan approval where they have a professional interest. This would not normally apply if the banking relationship were limited to normal checking and/or savings accounts.

If the County contracts with a PA that does not have a standing Loan Committee, the County Board of Supervisors will appoint a five member Loan Committee that represents the geographic diversity of the County and meets all other EDA requirements including those of Section II.A. of EDA's RLF plan guidelines. This loan committee will have the same authority described above.

B. LOAN PROCESSING PROCEDURES

1. Standard Loan Application Requirements

At a minimum the following information will be collected for each loan application:

- A brief history of the business
- Management resume for the borrower
- Two (2) years of business tax returns
- Debt schedule
- Business organization documents, i.e. articles of incorporation, by-laws, certificate of good standing, fictitious name statements, partnership agreements, etc.
- Personal financial statements for anyone who owns 20% more of the business operation
- Three (3) years of personal tax returns for all borrowers completing the personal financial statements
- Interim business financial statement dated within 90 days of the loan application
- Year-end business balance sheet and income statements
- Financial projections for the next three (3) years
 - This requirement may be waived for applicants to the CRLF program
- Project description including how loan proceeds will be used and sources of funding
- Copies of any permits or licenses associated with the opening and/or operation of the business

- Copy of any contracts, i.e. purchase contract, if the loan will be used to buy a business

Applicants for the CRLF will also need to supply:

- Copy of contractor's license, if a contractor
- References from jobs completed in the last two (2) years. The reference should include a description of the work completed, value of the job and a contact.

The PA may request additional documentation to complete a loan application as needed.

2. Credit Reports

The PA is responsible for obtaining and reviewing credit reports for all loan applicants. In general, a negative credit history is not a basis for denying a loan request to the County's RRLF and CWRLF programs, but it will be considered when evaluating loan approvals and collateral requirements.

Because the Contractor RLF is based on the contractor's ability to perform, more than their credit history, the decision to grant a loan will be weighted toward past performance rather than credit history.

3. Appraisal Reports

The value of pledged collateral must be verified through a market analysis, appraisal or other means that are deemed appropriate for the particular project. Appraisals must be performed by qualified personnel and should include a review of prior uses to determine the potential for environmental contamination.

4. Environmental Reviews

The County is responsible for ensuring that all federal, state and local environmental regulations are complied with when making loans through the RLF program. As stated in the contract with the County, the PA will take all necessary steps to ensure that borrowers comply with all federal, state and local requirements regarding potential impacts to the physical and human environment.

The County has developed and will implement an environmental review process in accordance with the intent of the National Environmental Policy Act of 1969, as amended (P.L. 91-190), as implemented by the "Regulations" of the President's Council on Environmental Quality (40 CFR Parts 1500-1508) as listed in Section D, paragraph 10, Section 209 Economic Adjustment Program, Revolving Loan Fund Grants, Standard Terms and Conditions, December 1998.

Typically, the responsible regulatory agency, i.e. city planning department, local air quality management district, etc, will review the proposed project for its potential environmental impacts when the business begins seeking regulatory approval, i.e. application for a business license, building permits, etc. Copies of any required permits and licenses must be submitted with the loan application as described in Part II, Section B, 1.

The County will not approve any project that has been denied a permit or license by any regulatory agency because the project will adversely (without mitigation) impact flood plains, wetlands, significant historic or archeological properties, drinking water resources, or nonrenewable natural resources. The County will not review the environmental status of any project before the PA presents the loan package unless specifically requested to do so.

The PA must undertake an environmental review if a loan will involve the acquisition of real property or the alteration of the physical environment as in construction. In these cases all borrowers will:

- Cooperate with the appropriate city or county staff in completing an Environmental Review Record.
- Complete an environmental/hazardous waste questionnaire.
- If deemed necessary by the PA or appropriate regulatory agency, permit a Phase I or Phase II environmental site assessment by a qualified inspector.
- All loans for construction or remodeling will comply with the California Environmental Quality Act (CEQA), PRC Section 21000, et. seq. as amended.
- If a loan project requires the preparation of environmental impact assessments or reports for potential impact areas included in the National Environmental Policy Act of 1969 or local or state requirements, it will be the applicant's responsibility to see that these requirements are met.
- Projects locating within the boundaries of Fort Ord must meet the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Community Environmental Response Facilitation Act of 1992 (CERFLA) prior to receiving RLF assistance.

All reviews will be consistent with the National Environmental Policy Act of 1969 as amended and implemented at 40 CFR Parts 1500-1508 and the following acts as appropriate:

- Clean Air Act, 42 USC 7411, et. seq.
- Water Pollution Control Act, USC 33 1251, et. seq.
- Coastal Zone Management Act of 1972 16 USC 1451, et. seq.
- Executive Order 11988, Floodplain Management
- Executive Order 11990, Protection of Wetlands
- Endangered Species Act of 1973, 16 USC 1531 et. seq.
- Safe Drinking Water Act, 42 USC 300f- 300j-9
- Wild and Scenic Rivers Act, 16 USC seq. 1271, et. seq.
- Resource Conservation and Recovery Act of 1976, 42 USC 6901
- Coastal Barriers Resources Act, 16 USC 3501, et. seq.
- Comprehensive Environmental Response, Compensation and Liability Act of 1980 PL 96-510 and as amended
- National Historic Preservation Act, 16 USC 470, et. seq

The PA is required to ensure that all federal, state and local environmental review requirements are met by potential borrowers.

5. Standard Collateral Requirements

The County will generally secure its loans to the maximum extent possible to ensure an adequate secondary source of repayment. The following types of collateral will generally be sought to secure RLF loans:

- Business assets
- If insurance is required, (i.e. business asset, flood and/or key man), the County must be named as the loss payee and/or mortgagee.
- Adequate liability and hazard insurance may be required, as appropriate.

- A landlord's consent or similar document will normally be obtained where a borrower leases its facility in order to ensure adequate access to inventory and equipment collateral.
- Real property will require a Deed of Trust and Title Insurance.
- Fixed asset loans will generally require UCC-1 on all assets financed by the loan as collateral plus existing and assets acquired with RLF assistance, as applicable
- Working capital loans will generally require UCC-1 on all accounts receivable, inventory and available fixed assets.
- Any other assets of the business and/or owner/investor(s), (i.e. personal residences), necessary to adequately collateralize the loan.
- Generally, personal guarantees will be required for all owner or affiliates controlling 20% or more of the business to fully collateralize the loan. Personal guarantees may be secured by appropriate liens on personal assets, (i.e. personal residences).

Collateral pledged for each loan will depend upon the RLF loan amount, the overall risk of the credit, and the availability of personal and business assets to be pledged as collateral. Personal guarantees of all 20% or more owners and affiliate companies will be required for each loan unless there is a sound justification given which is included in the loan write-up and thereby approved by the loan committee.

6. Standard Cash Injection/Equity Requirements

General Requirement: For each individual loan the equity requirement will generally be twenty percent of the total project cost. It is the County's general philosophy that existing equity or existing cash injection into the business indicates a reasonable level of commitment to the business; therefore, consideration will be given to existing equity in determining new equity required as a result of the project being financed. Exceptions may be made on a case-by-case basis depending upon the particular project and how it helps accomplish the County's business development strategy. The equity requirements for the County's RLF programs are described in Part I, D, 5.

The PA will use a financial statement not more than 120 days old to determine existing equity. Working capital loans may satisfy the equity requirement by demonstrating an equivalent amount of net working capital.

7. Loan Write-Up

The Loan Write-Up is the document that credit decisions will be based on. The Loan Write-Up must contain sufficient information for the Loan Committee to determine the credit worthiness of applicants and determine the potential impact on the overall RLF portfolio goals described in Part 1, Sections B, C, D, E and F of this Administrative Plan, if the loan is approved.

At a minimum, the Loan Write-Up must include the following information:

- A summary of how the proposed project meets the objectives of the County's business development strategy and impacts the overall RLF portfolio, (i.e. cost per job, leverage, etc.)
- The loan program, (i.e. RRLF, EDA/CWRLF, CDBG/CWRLF, CRLF) that will be used to fund the loan if it is approved
- Evidence that the RLF is not being used in-lieu of available private sector financing
 - The primary support for this will be a statement of justification, prepared and signed by the PA. The secondary support may be a decline letter from a bank or a letter stating that a bank is unable to loan the full amount requested.

- An overview of the firm including:
 - History and management
 - A description of any required licenses and permits and whether or not the applicant has applied for or received the license/permit.
 - Any environmental issues identified during the permitting process should be addressed in this section
 - Products or services it will provide
 - Marketing strategy and conditions
 - Project financing
 - How the project addresses the RLF objectives listed in Part I, Section F of this Plan
 - An analysis of the borrower's ability to repay the loan and meet other financial obligations
- Collateral recommendations presented in a table format that lists the lender and the assigned collateral and the value of the assigned collateral. The filing position and collateral value should be listed below the appropriate financing source.
 - Business assets that are being used to secure a loan will include an estimate of the market value and estimated liquidation value of the assets.
 - If business assets will be shared among the lenders (e.g. RLF and SBA loans), the assets must be individually listed with their market and resale values below the financing source they will secure.
- Loan terms including the interest rate, scheduled payment amount and all loan covenants

8. Procedures for Loan Approval

The following procedures generally apply to all three of the County's RLF programs:

- The PA's staff will review loan applications for completeness, program compliance and regulatory compliance.
- Review of completed environmental review documents to ensure that the project meets federal and local environmental regulations.
- Acceptance of loan application by a staff representative of the PA
- Detailed review and final written recommendation to Loan Committee by PA's staff, based on loan criteria, strength of business and principals and all other factors
- No loan will be recommended for approval without the determination that there is a reasonable assurance of repayment and the applicant meets the program requirements. The recommendation will include the loan terms and conditions.
- Prior to any loan being submitted to the Loan Committee for consideration, the County must first review the proposal and notify the PA in writing that the loan meets the objectives of the RLF program.
 - The PA will provide a copy of the loan write up and loan cover sheet to the County to make this determination.
 - A copy of the loan cover sheet is included in this Administrative Plan as Appendix I.
- After the County has notified the PA that the proposed loan is eligible for the program, the PA may present the loan request to the Loan Committee.
- Loan Committee will decide whether to approve or decline the loan request and what terms and conditions will apply. Loans will be approved by majority approval. The PA will maintain minutes of all Loan Committee and Board of Director's meetings where loans through any of the County's RLFs are considered.

- The PA will notify applicant in writing of the Loan Committee decision within 72 hours of the decision.
- If the request is approved the notification will include the loan terms and any special conditions that must be satisfied prior to loan closing.
- If the request is declined the notification will include reasons for denial.

C. LOAN CLOSING AND DISBURSEMENT PROCEDURES

The following procedures generally apply to all three of the County's RLF programs unless otherwise noted.

1. General Loan Closing Requirements

Upon Loan Committee approval of a RRLF or CWRLF loan, the PA will:

- Prepare loan-closing documents, with attorney review as necessary
- Request Uniform Commercial Codes (UCC) searches for existing liens
- Request preliminary title search, if appropriate
- Disburse proceeds according to Loan Committee instructions or terms of loan
- Complete any remaining legal, regulatory or other housekeeping matters

RRLF and CWRLF: The PA will use all due diligence to ensure that approved loans are closed within 30 days of approval.

CRLF: Upon Loan Committee approval of a CRLF loan, the PA will notify the applicant. The notice shall include the following information:

- The applicant has up to six (6) months to present the PA with: a) contract award, b) a Letter of Intent to Award, or c) a Notice to Proceed.
- Funding will be made available on a first come basis as long as funds are available.
- The loan approval date does not secure the contractor's funding position, which is determined by the contractor's receipt of a bona fide contract.
- Once the applicant presents one of the required documents, the PA must review an updated credit report and financials dated within 30 days of the proposed loan closing date to make a determination that no material changes to available collateral or credit risk have occurred since the Loan Committee initially considered the credit request.
- In these cases, the PA will reserve loan funds pending a new review and approval of the loan request by the Loan Committee.
- The Loan Committee may over subscribe the CRLF to accommodate the potential delay between loan approval and contract award. Because of over subscription, all loans will be funded on a first come basis until all funds have been lent.
- The potential for over subscription must be disclosed to all borrowers when the loan application is accepted and again when the borrower is notified that a loan has been approved.
- Pursuant to the Mechanics Lien Law, the CRLP shall be empowered to impound funds in the case of default by a borrower.
- All contracts will be structured and evidenced by an Assignment of Contract Proceeds to ensure that funds are adequate to repay the CRLP loan. This provision is to ensure collection and repayment to the CRLP of all amounts, including fees, penalties and the original loan amount. The Assignment of Contract Proceeds requires the contracting agency to obtain the

PA's signature prior to payment to the contractor to ensure that the CRLP receives full repayment.

2. Loan Closing Documentation Requirements

Prior to disbursing any loan the PA is responsible for ensuring that that all necessary security instruments and related documents are filed and copies placed in the borrower's file. These security instruments and/or agreements may include, but are not limited to:

- Loan Agreement
- Promissory Note
- Personal Guaranty
- Recorded UCC-1, UCC Search
- Deed of Trust, Title Insurance
- Landlord's Consent
- Agreement of prior lien holder, as appropriate
- Evidence that the borrower has applied for or obtained all insurance required as a condition of the loan
- A cancelled check for the first premium payment will be sufficient evidence that the borrower has met this requirement or Certificate of Insurance
- Because RLF loans will frequently provide gap financing for other programs, it may be necessary for collateral to be pledged to the various participating programs. In these cases the following documents will also be required:
- An Intercreditor Agreement that details how the assets are split and the rights and duties of each lien holder.

If possible, separate UCC-1s that specifically list the assets that will secure each loan should be prepared and recorded.

Additionally, loans funded through the Contractor RLF will require, at a minimum, the following document prior to loan closing:

- Executed Assignment of Contract Proceeds.
- The Assignment of Contract Proceeds must be signed by each contract awarding entity or general contractor will ensure that CRLP borrowers cannot receive all payments due under a contract until the CRLP loan is paid in full.

3. Loan Disbursement Requirements

The PA will make all disbursements in accordance with the Loan Committee conditions. These may include, but are not limited to:

- Requiring direct payment to vendors for equipment purchased
- Phased disbursement for working capital
- Evidence that contracts with vendors have been executed and require pre-payment

The PA is authorized to disburse loans from the appropriate RLF account in accordance with the loan conditions approved by the Loan Committee. All loan disbursement checks require two (2) signatures.

D. LOAN SERVICING PROCEDURES

1. Loan Payment & Collection Procedures

The PA is responsible for ensuring that borrowers meet their repayment obligations. The PA will take the following steps to ensure that borrowers are aware of their obligations:

- Prepare and mail monthly invoices to all borrowers. The invoice will indicate the amount and date that the next payment is due and late penalties that will be assessed if the payment is received after the due date.
- The County will allow borrowers a five-day grace period between the payment due date and the date late penalties will be applied.
- The PA may use a coupon books instead of monthly invoices but must be vigilant to ensure that borrowers are reminded of late or missed payments in a timely manner.
- Posting payments to the borrowers account on the day the payment was received and adjusting the outstanding principal balance accordingly.
- The PA will deposit all loan payments into bank accounts owned by the County within 72 hours of receiving the payment.

Idle loan funds will be held in federally insured, interest-bearing accounts. The interest earned on these accounts may be used to pay for administrative expenses in the year it is earned up to the maximum allowed (currently \$100 per year).

2. Loan Monitoring Procedures

All loans will require borrowers to submit copies of the following documents:

- Quarterly DE-6 filings, the California payroll tax report that lists earnings and taxes by employee SSN
- Annual business and personal financial statements
- Business and personal tax returns

Depending on the credit risk of the business and the use of funds, the borrower may be required to submit monthly, quarterly or semi-annual financial statements. Loans for working capital may also require accounts receivable and payable aging reports. In addition to documentary monitoring, the PA will also make annual site visits to each borrower.

The PA is also responsible for establishing a "tickler" system to ensure that all documents are submitted in a timely manner and that all UCC-1, insurance and other security instruments and agreements are current and in force.

j. Late Payment Follow-up Procedures

Loans shall be delinquent if not paid in accordance with the loan agreement and note. When a borrower is twenty (20) days late with a payment, the PA will assess a late fee of 5% of the payment amount and send written delinquency notice to the borrower indicating the past due status of their loan. Within seven (7) working days of sending the written notification to the borrower the PA will meet with the borrower to discuss the loan repayment problem and possible remedies. The PA will also refer the borrower to the Small Business Development Center for counseling if appropriate.

The PA shall submit a monthly report to the County on all loans that are delinquent and what action has been taken to remedy the delinquency. The PA will be responsible for initiating the appropriate collection actions regarding loans that are twenty or more day's delinquent.

If a loan remains delinquent for thirty days or more, the PA shall meet with the borrower, report their findings and recommend steps to be taken to the County and file a negative report with the credit reporting agencies. Monthly delinquency notices to the credit agency will continue for as long as the loan remains in default or until a satisfactory agreement is approved and agreed to by the borrower to resolve the default or delinquency.

It is expected that there will be occasional loan defaults. The PA will assign a "risk rating" to each delinquent or defaulted loan as follows:

- Satisfactory - Acceptable management expertise, capital support, adequate primary and secondary sources of repayment, primarily "as agreed"
- Watch - Evidence of weakness of a temporary nature
- Sub-standard - Low repayment capacity and inadequately protected by collateral and the current net worth. The possibility of partial or full loss is high
- Loss - Uncollectible and inadequate collateral. Probability of any recovery are long term and highly doubtful

3. Procedures for Handling Loans over 120 days in arrears

The PA may continue to work with borrowers during the first 120 days a loan is delinquent, unless the PA determines as a prudent lender that the interests of the RLF are best served by taking other actions to protect the RLF's assets. After 120 days the PA will present the loan to the Loan Committee with a recommendation to continue working with the borrower or to declare the loan in default. A loan may be declared in default if the borrower refuses to work with the PA to develop a repayment plan and there is little likelihood that the outstanding principal will be recovered through the liquidation of collateral. Loans in default will be referred to the County Office of Economic Development with a recommendation for further action.

In all cases the County retains the right to initiate civil litigation collection proceedings to obtain a judgment against a borrower and/or initiate foreclosure proceedings in accordance with Title 5, Chapter 5.16, Section 5.16.030 [PROCEDURE FOR COLLECTION, COMPROMISE, AND WRITE-OFF OF CLAIMS OF THE COUNTY AGAINST OTHERS] of the Monterey County Code.

For County claims which do not exceed the Small Claims Jurisdiction limit of \$5,000.00:

In accordance with the Monterey County Board of Supervisors' authorization and approval of this Administrative Plan, as reflected in Monterey County Board of Supervisors' Resolution No. 02-340 for the collection of County Claims which do not exceed the Small Claims Court jurisdictional limit of \$5,000.00, the Principal Administrative Analyst – Office of Economic Development (PAA-OED) may elect to enter into and execute a separate agreement with the PA to implement the PA's recovery recommendations, including authorization for the PA to obtain outside legal counsel to initiate civil litigation collection and/or foreclosure proceedings on behalf of the County in accordance with MCC Section 5.16.030.A [Procedures by the County Administrative Officer], if there is a reasonable expectation of a recovery of RLF assets as determined by the PA in consultation with the PAA-OED. Any separate agreement for additional collection services and/or legal costs executed by the PAA-OED on behalf of the County, between the County and the PA, shall be in writing and shall indicate that costs for additional collection services and/or civil litigation costs, including attorney's fees, filing fees,

costs, and any overhead, shall not exceed the sum of \$1,000.00, without further Monterey County Board of Supervisors' authorization.

If the County PAA-OED enters into a separate agreement with the PA to implement the PA's recovery recommendations, the PAA-OED may authorize the PA to take any of the following steps:

- Initiate civil litigation proceedings on behalf of the County
- Initiate foreclosure proceedings on behalf of the County
- Initiate other legal remedies as necessary or appropriate on behalf of the County

For County claims which exceed the \$5,000.00 Small Claims Jurisdictional limit which are within the Superior Court Jurisdictional limit of \$25,000.00:

In accordance with the Monterey County Board of Supervisors' authorization and approval of this Administrative Plan, as reflected in Monterey County Board of Supervisors' Resolution No. 02-340 for the collection of County Claims which exceed the Small Claims Court jurisdictional limit of \$5,000.00 which are within the Superior Court jurisdictional limit of \$25,000.00, the Principal Administrative Analyst – Office of Economic Development (PAA-OED) shall simultaneously refer the matter to both the Office of the County Counsel and to the Treasurer-Tax Collector, Revenue Division, with a recommendation for additional collection services and or assignment by the Office of the County Counsel to an outside collection agency in accordance with the provisions of MCC Section 5.16.030.B.

Upon consultation, review and approval by the Office of the County Counsel and the Treasurer-Tax Collector, Revenue Division, the PAA-OED may elect to enter into and execute a separate agreement with the PA to implement the PA's recovery recommendations, on behalf of the County in accordance with MCC Section 5.16.030.B [Procedures by County Counsel] if there is a reasonable expectation of a recovery of RLF assets as determined by the PA in consultation with the PAA-OED. Any separate agreement (for the collection of County claims between \$5,000.00 and \$25,000.00) between the County and the PA for additional collection services, which may include the assignment of the County's claim to an outside collection agency, shall be subject to review and approval by the Office of the County Counsel consistent with MCC Section 5.16.030.B. Said agreements shall be in writing and shall be executed by the PAA-OED and by the Office of the County Counsel. Costs for additional collection services and/or assignment of County claims to outside collection agencies, (which may include but are not limited to civil litigation costs incurred by the PA, which shall at all times act as an "outside collection agency" within the meaning of MCC Section MCC 5.16.030.B, including attorney's fees, filing and service fees, other court related costs, and any overhead costs incurred by the PA) shall not exceed the sum of \$4,000.00, without further Monterey County Board of Supervisors' authorization.

For County claims between \$5,000.00 and \$25,000.00 and consistent with the provisions of the MCC Section 5.16.030 for County claims between \$5,000.00 and \$25,000.00, if the County PAA-OED enters into a separate agreement with the PA to implement the PA's recovery recommendations, the PAA-OED and the Office of the County Counsel may authorize the PA, which shall at all times act as an "outside collection agency" on behalf of the County, within the

meaning of MCC Section 5.16.030, to take any of the following steps, subject to the \$4,000.00 cost limitation set forth above:

- Initiate civil litigation proceedings on behalf of the County
- Initiate foreclosure proceedings on behalf of the County
- Initiate other legal remedies as necessary or appropriate on behalf of the County

For County claims which exceed the Superior Court Jurisdictional limit of \$25,000.00:

For the collection of County Claims which exceed the Superior Court jurisdictional limit of \$25,000.00, the matter shall be referred to the Office of the County Counsel and the Treasurer-Tax Collector, Revenue Division for collection in accordance with the provisions of the Monterey County Code, Title 5, Chapter 5.16, Section 5.16.030.B [Procedure by County Counsel].

If the County PAA-OED recommends assignment of the County's Claim to the PA, who shall at all times act as an "outside collection agency" on behalf of the County, such recommendation shall be considered by the Office of the County Counsel and the Treasurer-Tax Collector and shall be forwarded to the Board of Supervisors for approval of said assignment of the County's claim, which may include a recommendation for the retention of outside counsel by the PA, for civil litigation collection proceedings, including foreclosure proceedings and other legal remedies as may be necessary or appropriate.

4. Write Off Procedures

Appropriate Authority: In all cases, write offs of defaulted RLF loans, shall be made in accordance with the provisions of the Monterey County Code, Title 5, Chapter 5.16, Section 5.16.030. Final determinations concerning write-offs shall be made by the Appropriate Authority in accordance with the applicable provisions of the Monterey County Code.

There are two situations where a loan will be considered for write-off:

- A loan is 120 days delinquent, the Loan Committee declares the loan in default and the Loan Committee determines that there is little likelihood of repayment.
- A borrower has declared bankruptcy and the courts have discharged all debts.

When a loan is to be considered for write-off, the PA will refer the loan back to the County for follow up review and action. The referral should include a range of possible alternatives. The PAA-OED will review the loan's history and reasons for writing-off the loan to make a final determination or recommendation in accordance with Section 5.16.030 of the Monterey County Code, to write-off a loan. For write-off of County Claims up to the Small Claims jurisdictional amount of \$5,000.00, County OED staff may seek additional guidance from the Office of the County Counsel, the County Treasurer-Tax Collector, Revenue Division and/or members of the Overall Economic Development Commission with commercial lending experience to determine if a loan should be written-off.

For write-offs of County claims up to the Superior Court Limit of \$25,000.00, County OED staff shall refer the matter to the Office of the County Counsel with the Loan Committee Recommendation and/or a summary of the reasons which would support a recommended for write-off by the appropriate authority in accordance with Section 5.16.030 of the Monterey County Code.

For write-offs of County claims which exceed the Superior Court Limit of \$25,000.00, County OED Staff shall refer the matter to the Office of the County Counsel with a summary of the reasons which would support a recommendation for write-off by the Monterey County Board of Supervisors. .

When a borrower declares bankruptcy the County will ensure that all required filings are made to ensure the maximum recovery possible. County OED staff shall provide timely and simultaneous notice and documentation of bankruptcy proceedings to both the Treasurer-Tax Collector, Revenue Division and to the Office of the County Counsel to ensure that both County Offices are afforded a timely opportunity to respond to and timely file Court papers or claims in bankruptcy proceedings. A loan will not be written-off until the bankruptcy court has made all payments required under the repayment plan.

When the County claim or write-off does not exceed the Small Claims jurisdictional limit of \$5,000.00, the County Administrative Officer may accept a compromise settlement and write-off the balance, file a small claims action and write off any amount in excess of the Small Claims Court jurisdictional limit or, write off the claim in full where the amount does not exceed the Small Claims jurisdictional amount (MCC Section 5.16.030.A). In cases in which the County claim or write-off does not exceed the Small Claims jurisdictional limit of \$5,000.00, County OED staff will direct the County Auditor-Controller to write-off the loan.

When directing the Auditor-Controller to write-off a loan, staff will supply the following information:

- The name of the borrower
- The amount being written-off
- The funding source for the loan
- A copy of the Loan Committee recommendation

When the County claim or write-off exceeds the Small Claims jurisdictional limit of \$5,000.00 and is within the Superior Court jurisdictional limit of \$25,000.00, the Office of the County Counsel may authorize the County Administrative Officer and or the Auditor Controller to write off the loan in accordance with MCC Section 5.16.030.B.

In such cases, County OED staff will supply the following information to the Office of the County Counsel, which shall be forwarded to the Auditor Controller:

- The name of the borrower
- The amount being written-off
- The funding source for the loan
- A copy of the Loan Committee recommendation

When the County claim or write-off exceeds the Superior Court jurisdictional limit of \$25,000.00, the Office of the County Counsel shall the matter to the Board of Supervisors for approval in accordance with MCC Section 5.16.030.B. Upon Board of Supervisors' approval pursuant to MCC Section 5.16.030.B, County staff will supply the following information to the Office of the County Counsel, which shall be forwarded to the Auditor-Controller:

- The name of the borrower
- The amount being written-off
- The funding source for the loan
- A copy of the Board Resolution approving the write off the County claim which exceeds \$25,000.00.

County OED staff will notify the PA within five (5) business days of the decision to write-off a loan. After a loan is written off, collection efforts will continue until such time as County OED staff determines that it is no longer cost effective to continue collection efforts.

E. ADMINISTRATIVE PROCEDURES

1. Procedures for Loan Files & Loan Closing Documentation

The County will be responsible for maintaining the original grant files, copies of all Semi-annual Reports and correspondence. In addition to the files listed above the County will also maintain records of all loan write-ups and written responses to the PA regarding applicant eligibility.

The PA will maintain all original loan files during the term of the loan. The loan files will include at a minimum:

- Loan application, any supporting documentation and a copy of the Loan Committee's terms of approval
- Executed, original, loan documents
- Correspondence

The following documents must be kept in a fireproof safe:

- Original loan agreements and promissory notes
- Collateral security agreements, i.e. recorded UCC-1, deeds of trust, auto title, evidence of insurance coverage, etc
- Updated personal and/or business financial documents, i.e. tax returns, etc
- Any documentation required by the Loan Committee as a condition of the loan

2. Procedures for Complying with EDA Reporting Requirements

The PA will prepare all Semi-Annual reports required for all three-loan programs. The PA will be contractually obligated to provide copies of the reports 10 days before they are due to EDA. The County will review the reports for accuracy and if necessary request back up materials and/or corrections be made to the report. The County will submit all grant reports to EDA.

3. Grantee Control Procedures to Ensure Grant Compliance

The County will monitor the loan portfolio to ensure that it is in compliance with the terms of the grant. The primary method that the County will use to monitor the portfolio is the loan cover sheet that the PA uses to transmit loan packages to the County. This form includes a summary of how the proposed loan will affect the overall portfolio. This includes the projected cost per job, leverage ratios and ratios showing what loan funds are being used for. This information will allow County staff be able to quickly assess the overall portfolio and compliance with the grant terms and RLF objectives.

In addition to the portfolio snap shot that County staff will review when considering a loan application the PA will be contractually bound to adhere to all grant agency requirements. The contract with the PA will specifically incorporate the EDA Revolving Loan Fund Administrative

Manual, Standard Terms and Conditions, Audit Standards and relevant sections of the State of California's, Department of Housing and Community Development, Community Development Block Grant - Grant Management Manual. If necessary, the County will amend the agreement to incorporate any policy or administrative manuals promulgated by the grant agencies in the future. The County will provide updated copies of all grant agency documents and policies to the PA within 30 days of receipt.

Employee Dishonesty – The County will maintain a minimum \$1,000,000 policy for employee dishonesty and crime insurance coverage. Additionally, the County will require the Program Administrator, and Fiscal Agent if different from the Program Administrator, to maintain a minimum \$1,000,000 employee dishonesty and crime policy that lists the County as additional insured. The County will evaluate the adequacy of this policy in the event that grant capitalization, from all sources, exceeds \$3,000,000.

PART III. APPENDIXES

A. LOAN COVER SHEET

Business Name & Location: _____

Name of Applicant: _____

Program loan is proposed for: (circle) Rural County EDA County CDBG Contractor

Total Project Cost: \$ _____ Amount of RLF request: \$ _____

Source & Amount of Leverage

Owner Equity \$ _____

Owner Cash \$ _____

Other Public Loan Programs (combined public participation not to exceed 50% of total project cost) \$ _____

SBA 504 (90% of the guaranteed amount and all of the unguaranteed amount will count as the private leverage part of the RLF loan ratio) \$ _____

Loan Eligibility (Small Business Programs)

(Check all that apply)

Categorical Eligibly Any loan that will create at least one job per \$10,000 loaned) and leverage private sector investment at a minimum ratio of 3.5:1.

If not categorically eligible, Project supports Economic Adjustment Strategy Goal: (check one)

- Businesses in economic sectors targeted by the County's economic development strategy
- Related to the economic revitalization of the former Fort Ord
- Greatest economic multiplier effect, i.e. industrial or commercial activities that add value to a locally produced product and result in additional money flowing into the County
- Provides a good or service that was formerly purchased outside the area.
- Creates a new visitor destination or supports additional travel spending
- Projects with the greatest potential to increase sales and/or property tax receipts

Job Creation or Retention Benefit

Current FT jobs _____ FTE jobs to be created: _____

- For RLF reporting purposes a full time job is defined as 2080 hours annually and a part-time job is defined as a minimum of 1750 hours annually.
- Self-proprietorships and owners/principals of companies are not counted towards the job creation / retention goal.
- If loan will be funded using CDBG \$, describe plan for verifying income eligibility in write up.

Use of Loan Proceeds

▪ Working Capital	\$
▪ Equipment	\$
▪ Tenant Improvements	\$
▪ Refinance of existing debt	\$

Justification for refinancing existing debt (RLF Administrative Plan, Part I, C. 2, Ineligible Uses)

1) Sound economic justification and sufficient documentation in the loan write-up that the RLF is not replacing private capital solely for the purpose of reducing the risk of loss to an existing lender(s) or to lower the cost of financing to a borrower
 2) RLF funds are used to purchase the rights of a prior lien holder during an in-process foreclosure action in order to preclude a significant loss on an RLF loan

Loan Terms

Loan Term: _____ Loan Rate: _____

Impact on Portfolio Standards

Loan \$ per job	_____	Target is \$20,000:1
Private/Public Leverage Ratio:	_____	Target is 2:1
% of portfolio for commercial projects	_____	Should not exceed 70%
% of portfolio for industrial projects	_____	Should not be less than 30%
% of portfolio for working capital	_____	Should not exceed 70%

B. FINANCIAL ACTIVITY POSTING

By the 15th of each month, County staff will prepare a Journal Voucher to post all financial activity to the County's General Ledger system. The JV will be prepared using information and reports supplied by the Program Administrator.

When preparing the JV, the following accounting information should be used:

Fund 014 – Revolving Loan Fund

Budget Unit 576

Org. Code	Program Name	Share of Portfolio Capitalization
5761	Rural RLF	14.8%
5762	Countywide EDA (CWEDA)	57%
5763	Countywide CDBG (CW CDBG)	28.2%

- Use share of portfolio capitalization when it is necessary to distribute pooled funds, e.g. interest earned by money in the County Treasury that is paid to the fund not the program or allocating budget amount for PA administration

Acct Type	Account #	Description
01	1090	Cash with Paying Agent ➤ Use to report when checks are written to County for P.A.
01	1249	Other Accounts Receivable ➤ Use to record suspense items, i.e. when funds are moved into/out of a program (see Choates & Medicine Wheel on March 2004 JV for examples) ➤ Use to record loan write-offs when written off by P.A. pending final write-off authority from County Counsel and/or the Board of Supervisors
01	1740	Long Term Receivable ➤ Record new loans as DEBIT on JV ➤ Record principal payments as CREDIT on JV
03	3299	Other Fund Balance Reserves ➤ If account 1740 credits minus debits on JV is a positive amount, then DEBIT the amount from 3299 ➤ If account 1740 credits minus debits on JV is a negative amount, then CREDIT the amount to 3299
03	3800	Unreserved Fund Balance ➤ Should reverse account 3299 entry
Expenditure Accounts		
22	6469	Other Professional Services ➤ Fees, appraisals, etc. paid using loan proceeds ➤ Requires an offsetting credit from 6996
22	6670	Bad Debt
22	6996	Disbursement of Loans
Revenue Accounts		
31	4313	Interest Earned on Account

31	4319	Interest on Loans
31	4871	State Aid for Economic Development ➤ State grant transfers
31	5099	Other Federal Aids ➤ EDA grant transfers
31	5799	Other User Fees ➤ Loan Application & Origination Fees
31	5899	Other Miscellaneous Fees ➤ Late Charges Paid
31	5915	Principal Repayments ➤ Use for budget purposes ➤ The only time an amount should be entered on a JV is when previously written off principal is repaid ➤ PA records this as a Capital Contribution on their JV

Supporting materials provided by the Program Administrator must include:

- Monthly portfolio report
- Bank statements
- Balance sheets
- Income & Expense Statements
- Journal Entry Reports

RFP #10400
Appendix A1

County of Monterey
Small Business Revolving Loan Fund
Administrative Manual

Working Draft

November 2012

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County of Monterey Development Set Aside Program
City of Greenfield
City of King

This document is the current working draft of the County's SBRLF Administrative Plan and incorporates comments provided by the U.S. Department of Commerce, Economic Development Administration based on deficiencies identified in the Administrative Plan adopted by the Board of Supervisors. This document is being updated to reflect current economic conditions and lending need and should be presented to the Board of Supervisors in August 2013.

**COUNTY OF MONTEREY
 EDA SMALL BUSINESS REVOLVING LOAN FUND
 PROGRAM GUIDELINES**

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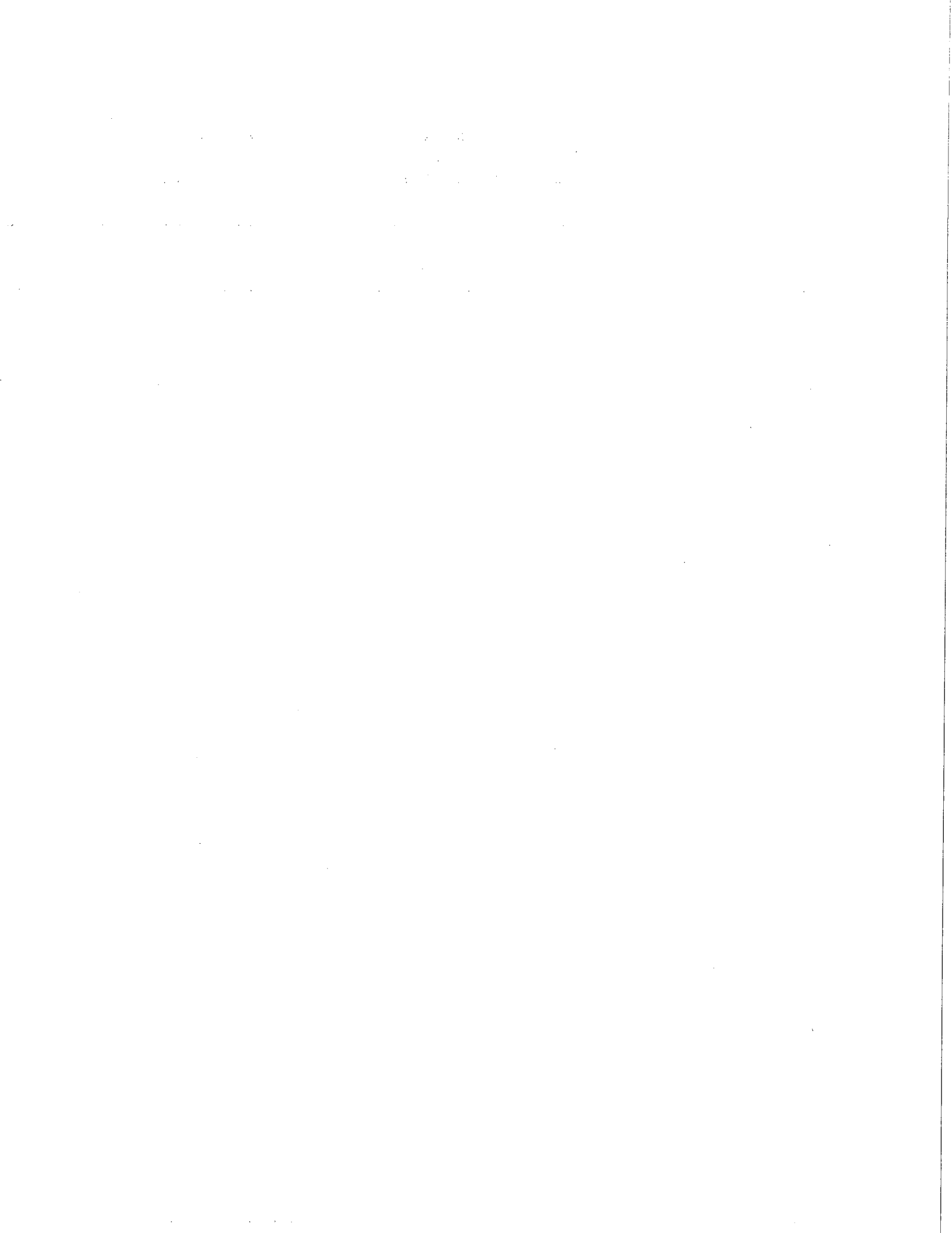
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PART I – REVOLVING LOAN FUND STRATEGY

Part 1 INTRODUCTION

The Monterey County Revolving Loan Fund Program (SBRLF) is a critical component of the Economic Development Strategy for the County of Monterey. It works in concert with the County-wide CDBG Small Business Revolving Loan Fund (CDBG-CWRLF) to provide the critical and necessary capital needs of small businesses in the County of Monterey.

Since 1989 the County of Monterey has received two grants from the U.S. Department of Commerce, Economic Development Administration has awarded Monterey County and two grants from the California State Community Development Block Grant Program to capitalize Small Business Revolving Loan Funds. The SBRLF was also capitalized with local funds and a California Trade and Commerce Agency Defense Adjustment Matching Grant. Each of the SBRLFs had slightly different target areas or beneficiaries. Collectively these grants, State grants, and local funds pledged as local share to the EDA grants are referred to as the Small Business Revolving Loan Fund (SBRLF). The original grants, sources of local match and area of benefit are:

Rural RLF (RRLF [EDA Award #07-39-03105]) This was the County's first RLF grant and was originally targeted for the Salinas Valley south of the City of Salinas and the unincorporated communities of Castroville, Moss Landing and Pajaro. In 2004, the program was expanded Countywide to meet demand for RLF loans in other regions of the County. The \$300,000 loan pool was capitalized using \$200,000 from EDA and local contributions totaling \$100,000.

Countywide RLF (CWRLF [EDA Award #07-49-02640]) This was the County's second RLF grant and was made in response to the economic dislocation associated with the closure of Fort Ord. The \$1,426,500 loan pool was capitalized using \$1,000,000 from EDA and \$416,500 from the Community Development Block Grant (CDBG) program. The CDBG and EDA components serve similar purposes but are administered under separate guidelines and accounted for as separate funds.

Contractors RLF (CRLF [EDA Award #07-49-02640.01]) This grant was to recapitalize the CWRLF and establish a loan pool for contractors competing on projects associated with the conversion and reuse of Fort Ord. This \$695,982 recapitalization included \$350,000 from EDA, \$252,956 from the CDBG program and \$93,026 from the California Defense Adjustment Matching Grant program. The CDBG and EDA components serve similar purposes but are administered under separate guidelines and accounted for as separate funds. The CRLF is now defunct. The fund was rolled into the CWRLF.

In addition to the EDA funded portfolios, the County received \$163,294 from CDBG for RLF activities and subject to CDBG limits on the maximum amount available per job created and administration, but not pledged as local match to the EDA grant awards. These funds are subject to the same terms and conditions contained in this Administrative Plan but, subject to State CDBG requirements, may be allocated to other CDBG eligible activities.

Part 2 Source of RLF Funds

The source of funds for this SBRLF is capital provided to the County by the federal Economic Development Administration as an Economic Adjustment Assistance Grant (CDFA No. 11.307), repayment of loans made from the EDA-RLFP, repayment of loans made through other program funds that are designated to be deposited in the EDA-RLFP, and the balance(s) of other defunct EDA RLF funds.

While the EDA Standard Terms and Conditions require all local share funds to assume the identity of EDA's contribution, the County continues to have an obligation to track CDBG separately to satisfy State grant requirements. In order to accomplish this, the County established separate bank accounts for 1) EDA Award #07-39-03105, 2) EDA Award #07-49-02640 and .01, 3) CDBG pledged as local share to EDA Award #07-49-02640 and .01 and 4) CDBG funds not pledged as local share to an EDA Award. For purposes of reporting for EDA Award #07-49-02640 and .01, the County combines activity in accounts 2 and 3. When completing reports to the State of California for CDBG, the County combines activity in accounts 3 and 4. In some situations the grant requirements of the two programs are not in alignment. In those situations, the County has elected to follow the more restrictive program requirements.

Table 1

<u>Source of Funding</u>	<u>Countywide</u>		
	<u>Contractors</u>	<u>Rural</u>	<u>Total</u>
EDA Grants	\$1,350,000	\$200,000	\$1,550,000
Local Share			
CTA	\$93,026		\$93,026
County		\$34,000	\$34,000
Greenfield		\$33,000	\$33,000
King		\$33,000	\$33,000
CDBG	\$669,456		\$669,456
Total EDA & Pledged Local Share	\$2,112,482	\$300,000	\$2,412,482
CDBG - Non-EDA Local Share	\$7,803		\$7,803
Program Total	\$2,120,285	\$300,000	\$2,420,285

This SBRLF was not funded with Redevelopment Agency funds.

Part 3 Background

A. Nature and Scale of Economic Adjustment Problems

Monterey County continues to experience economic distress as seen in its high annual average unemployment rate. The two basic economic engines in the County, agriculture and tourism,

both employ large, seasonal workforces. Because of the seasonal nature of these industries, the County's unemployment rate is subject to dramatic seasonal variations.

In addition to the chronic high unemployment rate, the County has also experienced a number of natural disasters and military base closures over the last eleven years. These events, including the 1989 Loma Prieta earthquake, the closure of Fort Ord in 1992, flooding in 1995 and 1998, and the closure of the US Army Test and Evaluation Center and realignment of Fort Hunter Liggett in 1998 have also contributed to the County's eligibility for Title IX funding.

The number of jobs in Monterey County totaled 167,400 in 2011, reflecting growth of 0.3% growth since 2001. Agriculture had the biggest numeric growth (9,000) and also represented a larger share of total employment (going from one in five jobs in 2001 to one in four jobs in 2011) during this period. Health and other services also experienced double digit growth rates during this period. The gains in these industries offset job loss in other industries including: construction (-2,800 jobs) manufacturing (-3,700 jobs); financial services (-2,300 jobs); retail trade (-1,300 jobs) and computer services (1,200 jobs).

The economy of Monterey County is based upon agriculture, tourism and an emerging educational/research sector; collectively generating in excess of \$4.0 billion annually. Monterey County is the fourth highest agricultural-producing county in the state. Leading commodities include lettuce, strawberries, grapes, spinach, and broccoli. The economic value of agriculture historically has grown by 1-2% annually and not been subject to the extreme fluctuations seen in other economic sectors.

However, this profile should not obscure the economic problems that currently exist in expansive sub-areas of several cities and unincorporated areas of the Salinas Valley area of the County; specifically the Cities of Gonzales, Greenfield, King City, Salinas, Soledad, portions of the Cities of Marina and Seaside, and the unincorporated areas of: Castroville, Chualar, Las Lomas, Moss Landing, Pajaro, San Ardo and San Lucas, that have already been experiencing economic distress and the resulting effects of high unemployment and low per capita income among most of the population and businesses that had already been impeded by slow economic growth and development.

B. Development of the Economic Development Strategy

In February and March of 1992, the County of Monterey, in conjunction with more than 120 community leaders, went through a strategic planning process to develop a vision for the County. The Vision calls for a life of abundant quality with all the opportunities for individuals to develop their full potential and pursue their dreams. The Vision focuses on protecting and enhancing the County's educational opportunities, the economy and the environment. Based on the County's vision, the Board of Supervisors continued to work with the community and developed a 15- point Economic Development Strategy. The County's Economic Development Strategy was adopted in June 1996. Since the Strategy was adopted in 1996, the Board of Supervisors has sponsored three Economic Strategy Forums to continue the process of refining the County's economic development policies.

The Monterey County Overall Economic Development Commission is charged with preparing the Comprehensive Economic Development Strategy (CEDS). The CEDS is updated as needed to evaluate the County's progress toward implementing the County's Economic Development Strategy and to identify areas of the strategy that need to be amended. The CEDS must be updated at least once every five years in order for a jurisdiction to continue to be eligible to apply for and receive grant funding from EDA. The most recent plan was completed and adopted by the Board of Supervisors on August 27, 2008.

In 2011, the Monterey County Board of Supervisors began a new economic development strategic planning program. This multifaceted effort will include updated basic economic information for the County, identifying the County's key competitive edges, and identifying any financing gaps in the local lending community. This program will provide the basis for future economic development activities in the County and inform the next revision of the SBRLF Administrative Plan.

C. Area Resources/Assets

Industries

Monterey County's economic development strategy supports continued development and diversification of the County's two major industries, agriculture and tourism. With an annual payroll of over \$1.2 billion, agriculture is the mainstay of Monterey County's economy. Uniquely rich soils, mild climate, abundant rainfall and water resources, progressive land use policies, a highly skilled farming community and major food processing plants and facilities which have operated in the area for generations help to form the most important single economic resource in the area. The County is actively working to develop more facilities that add value to the raw agricultural products.

This includes adding new product lines to existing food processors and developing new products. This strategy will create more permanent manufacturing jobs without endangering or ignoring our great natural agricultural strengths. One example of the County's efforts to capitalize on these economic sectors is the current planning effort to develop the marine and agricultural biotechnology industries.

Tourism is the second major component of the Monterey County economy. The spectacular coastline, mild weather, accessible beaches, wooded mountains, historic landmarks and world class hotels, restaurants and wineries, all in close proximity to several northern California metropolitan areas have made Monterey County an important recreational area and vacation destination. The County is working with the industry to develop additional destinations and develop the County's agricultural tourism assets, such as boutique wineries and farm stay opportunities. This industry also offers the opportunity to further diversify the County's economic base by attracting businesses that provide goods and services to them.

Natural resources

Monterey County's two largest industries are agriculture and tourism and exist largely because of the County's natural resources. These industries benefit from the mild climate, dramatic geography and rich soil. The County is currently working to develop policies and programs that will help link these industries together. Examples of these projects include farm stays and

enhancing the tourism aspects of the wine industry. The large amount of produce grown in the County also provides the opportunity for the County to support development of additional value-added processing facilities such as those producing salads in a bag.

Work Force

In 2011, the Monterey County's civilian labor force numbered 222,900. Just over one percent of the State's labor force lives in Monterey County. The Monterey County labor force grew by 8.8% between 2001 and 2011, nearly four times the rate of overall population growth in the County.

Monterey County continues to have a higher than the national average unemployment rate. In 2011, the County had a 12.4% annual unemployment rate, almost one-third higher than the national average. This is largely due to the dominance of agriculture, tourism and education in the local economy. The seasonal nature of these industries also means that there are large fluctuations in the unemployment rate throughout the year.

Other Resources

The Monterey Bay region (Monterey, San Benito and Santa Cruz counties) is home to more than 15 research facilities, community colleges and state universities. The County is actively exploring ways to capitalize on the economic development potential these organizations represent. The County recognizes these institutions represent an excellent source of untapped potential; however the dominant economic sectors, agriculture and visitor servicing businesses do not provide sufficient opportunities or compensation to entice people to stay in the area once they complete their education.

Opportunities to Expand and Strengthen Existing and New Economic Activities

Monterey County has made major strides in establishing goals and developing plans and projects to pursue and accomplish the goals of redevelopment and economic development on land formerly encompassing Fort Ord and in unincorporated areas of Monterey County.

Goals:

- Promote projects that create new jobs to help achieve the jobs/housing policies of the Fort Ord Reuse Plan.
- Enhance revenue potential to help support service requirements of planned housing.
- Support base-wide habitat restoration efforts by promoting eco-tourism activities.
- Complement the re-use efforts of other jurisdictions and agencies through increased collaboration.
- Encourage use of new housing in East Garrison I as work force and affordable housing to support new jobs in Fort Ord.

D. Strategic Adjustment Goals and Objectives

Goals for Economic Development

The Economic Development Goals that follow are drawn from the Monterey County Economic Development Element of the Monterey County General Plan adopted by the Monterey County Board of Supervisors on October 26, 2010. Those goals are as follows:

- Support the development of jobs and business opportunities in Monterey County.

- Develop public/private partnerships between key constituents, County, Cities, business organizations and key industries to support economic growth with each key industry cluster.
- Create and maintain an adaptive/skilled workforce to meet the needs of existing and future businesses.
- Improve the business climate to retain and expand existing businesses, recruit new businesses and support emerging industries.

Vision:

To create a business climate that fosters sustainable economic development that provides employment opportunities, business opportunities and diversifies our economic base.

Objectives:

The following objectives will support and enhance the competitiveness of Monterey County's key industry clusters. It is critical to constantly re-assess the performance of these clusters (as they may change over time) through on-going research and public-private sector dialogue and collaboration.

- **Diversified Employment Opportunities:** Create a wider diversity of employment opportunities so that wealth will be generated within the County.
- **Industry Cluster Development:** Support key industries so that they remain competitive, innovative and profitable while at the same time diversifying the region's job base to promote a wider range of higher-paying job opportunities.
- **Employment Center Economic Development:** Increase the number of career ladder jobs within each of the major employment centers, rural centers and community areas, and sub-regions.
- **Infrastructure Support:** Work to assure that adequate infrastructure is provided to support existing and emerging industries and targeted clusters.

Part 4 Summary of Monterey County Comprehensive Economic Development Strategy

A. Overall County Economic Development Program

The Monterey County Economic Development Department (MCEDD) is responsible for implementing the County Economic Development Program. The MCEDD contracts with a Program Administrator to manage all day-to-day activities for the SBRLF. The MCEDD also provides a variety of business development and retention services including site location assistance, permit assistance and business counseling.

The MCEDD continues to develop programs that will contribute to the overall success of the County's Economic Development Strategy. These programs include enhanced support for business retention, expansion and attraction. The Central Coast Marketing Team (CCMT) is a regional marketing program that represents cities in areas of six Central California counties on the Internet and at trade shows.

The Monterey County Board of Supervisors is responsible for adopting the County's Economic Development Strategy and Policies. The Board has charged the Monterey County Economic Development Committee (MCEDC) with developing economic development strategy and

policy recommendations for the Board's consideration. The MCEDD provides staffing to the MCEDC and is responsible for the day-to-day implementation of the County's Economic Development Strategy and policies.

The MCEDC reviews the County's business development strategy and this SBRLF Administrative Plans as needed to ensure that they remain consistent with amendments to the County's CEDS. The Monterey County Board of Supervisors annually reviews the SBRLF portfolio to ensure that the goals of this SBRLF Administrative Plan are being met.

The MCEDD is the County's lead agency for managing and implementing the County's Comprehensive Economic Development Strategy (CEDS). The MCEDD is responsible for the coordination and management of all economic development grant programs in the County, including the Revolving Loan Funds. The County contracts with a Program Administrator to manage all day-to-day activities for the SBRLF, including marketing, loan packaging and servicing.

MCEDD also works closely with a variety of community and economic development organizations throughout the County to coordinate economic development activities and advocate for policies that support economic development. The public sector agencies that MCEDD works with include the various city and County land use departments, i.e. planning, public works and environmental health, and the economic development coordinators from the twelve cities in the County. MCEDD also works with the Chambers of Commerce and Cabrillo and CSU Monterey Bay Small Business Development Centers to provide direct business assistance.

B. Financing Strategy

The primary objective of the Small Business Revolving Loan Fund (SBRLF) is to diversify and strengthen the economic base of the local area and promote economic diversification by assisting businesses that are unable to secure necessary private financing for start up and expansion projects. The SBRLF will be used to stimulate new investment in plant and equipment purchases and the retention and creation of private sector jobs. Revolving loan funds will be used to provide funding for a variety of small firms that are unable to finance some or all of their start-up or expansion plans through conventional financing resources for a variety of reasons, including a short operating history or inadequate collateral.

Once an SBRLF loan has been repaid, it is expected that the individual business will be eligible for SBA funding or private financing. At that point, the overall goals of increasing access to capital resources will have been accomplished and the funds are available to "revolve" into another business.

C. Business Development Strategy

The County's primary objective is to support the enhancement of the economic base and to promote economic diversification that will utilize the County's available labor force and promote the retraining of workers to meet the needs of a changing economy. The County will focus on business retention, expansion and development of industries that preserve the

environmental quality of the region and have national and global market potential including, but not limited to, agribusiness, tourism, retail trade and education.

Paramount in the consideration and subsequent selection of projects for development and funding will be the extent to which the project has community participation, as demonstrated by its support for the project. Such support and participation must be meaningful in terms of its current and prospective commercial value.

The following describes the criteria used to guide the program and project selection portion of the Comprehensive Economic Development Strategy (CEDS). The County uses these criteria when evaluating potential EDA grant applications. Projects, programs, and applicants for SBRLF loans, will be evaluated based on the extent to which they meet and/or maximize these criteria:

Conform to locally adopted plans or programs, the CEDS, and any relevant state and federal programs, plans and policies:

- Public and private sector cost-effectiveness in terms of cost savings and long-term economic growth potential;
- Compatible with the environment;
- Offers significant employment potential;
- Raises the average income in the municipalities and unincorporated areas of Monterey County, above the state average;
- Potential benefit to the unemployed and underemployed and to distressed communities within the County;
- Contributes to the diversification of the local economy; and
- Project or program can be completed in a reasonable amount of time and within budget.

Other areas of concern with all projects include:

- Cost Effectiveness
- Job Creation
 - Number of Jobs
 - Ratio of Federal Funds to each job created
 - Permanent vs. Part-time
 - Employment or Training Plan for new jobs created
- Living Wage Considerations
- Whether project involves relocation of business.
- Project Feasibility
 - Area Need
 - Market Demand
 - Economic Reasonableness
- Status of Projects & Project Development Schedule
- Project's ability to leverage Federal funding to attract other public/private funds.
- Endorsement from governing municipality where project is located if sponsored by not for-profit organization.

Economic development projects and programs will be located throughout the Monterey County, with particular attention paid to economically distressed areas with high unemployment rates

and low per capita incomes. Projects and programs will be sponsored and administered by the appropriate local government or non-profit agency serving the area.

The SBRLF will stimulate private sector investment by:

- Providing gap financing and accepting subordinate lien positions to leverage conventional financing
- Helping to reduce debt service requirements for small businesses by providing a more affordable means to finance business start-up and expansion than high interest revolving credit

To ensure that the displaced worker and the long-termed unemployed will be linked with the jobs created through the SBRLF, the County will work with the local Workforce Investment Board (WIB) and Department of Social and Employment Services. Companies that receive SBRLF assistance will be encouraged to use these resources to fill new jobs. Large loans, more than \$150,000, will generally be required to enter into a first source hiring agreement with these agencies.

The SBRLF will target permanent full-time jobs in the industrial, commercial, retail and tourism areas. Loans solely for saving of jobs will be approved only when it is clearly evident, and documented, that the jobs will be lost in the imminent future without SBRLF assistance. Firms receiving assistance primarily to save jobs must be integral to the functioning of the local economy.

Part 5 Project Eligibility

A. Eligible Applicants

Eligible applicants include on-going and start-up private, for profit business concerns, corporations, partnerships, sole proprietorships and cooperatives that are incorporated and licensed, and are located in or expanding to the County of Monterey.

SBRLF funds may be used by any business that will create or retain jobs in Monterey County. These are typically businesses that have national and international market potential, including, but not limited to, agribusiness, retail trade, education, manufacturing, visual arts, film making, language arts/publishing, technology and marine science that employ fewer than five people.

B. Ineligible Applicants

In general, SBRLF funds may not be used to assist for the following types of entities:

- **Public/Quasi-Public Organizations:** A public or quasi-public organization is not eligible to receive SBRLF financial assistance unless 1) the activity financed directly benefits or will directly benefit identifiable business concerns, and 2) there is reasonable assurance that the activity financed will result in increased business activity in the near term;
- **Private Developers:** Private developers are not normally eligible for SBRLF assistance unless the activity financed is non-speculative, consistent with the strategic and lending objectives of the SBRLF, and directly benefits or will directly benefit identifiable business concerns.

C. Eligible Projects

Projects must be located in the County of Monterey. Projects must create or retain jobs and must leverage private or equity funds. The project must be commercial or industrial.

Projects must be consistent with; 1) Monterey County's Comprehensive Economic Development Strategy (CEDS), or 2) relevant city economic development policies or strategies.

D. Ineligible Projects

In general, SBRLF funds may not be used for the following types of projects:

- Projects that are residential in nature.
- Projects that will not provide more than temporary alleviation of unemployment or underemployment within the County.
- Projects for which funds are judged to be otherwise available from private lenders;
- Projects that do not have a reasonable assurance of repayment of the proposed loan(s);
- Projects that would create a conflict-of-interest (as defined at 13 CFR 302.17) for any current or former employee or officer of the Program Administrator (P.A.), Program Administrator Board member, Loan Committee member, elected officials from the jurisdiction where the project will be located (or people related to them by blood, marriage or law).

E. Eligible Uses and Costs

In general, CWRLF funds may be used for the following uses and their associated costs.

- **Land & Building Acquisition:** Acquisition and owner-occupied land and facilities for existing businesses including engineering and legal fees, grading, testing, site mapping, and related costs associated with acquisition and preparation of land or construction and rehabilitation of buildings including leasehold improvements. The County will consult 13 CFR 305 and with EDA to determine the applicability of Davis-Bacon prior to approving any loan where the loan proceeds will be used for grading or construction.
- **Acquisition of machinery, equipment, furniture, fixtures and leasehold improvements:** This includes the delivery, installation, engineering, architectural, legal, insurance, and related costs (i.e. sales and use taxes) associated with acquisition and installation of machinery and equipment.
- **Brownfield Recycling:** Other investments, which will accelerate recycling of land and facilities for creating job activity, such as assistance to firms that plan to locate or expand in such facilities.
- **Working capital needs:** This includes financing the non-tangible costs associated with starting and/or expanding a business, such as payroll, inventory, raw materials etc.
- **Economic Development Incentives:** SBRLF financing may also be used as an incentive, through favorable loan terms, to attract new business or a business expansion into an eligible area. The business may be creditworthy but would otherwise not locate to the area without SFRLF financing as an incentive. When SBRLF financing is proposed for this type of project, the Program Administrator (PA) must sufficiently document in the credit memorandum the need for SWRLF assistance and should obtain certification from the company that it would not locate the proposed project at the intended location without SBRLF assistance.

- **Business Acquisition:** SBRLF financing may be used to purchase an existing business if it can be documented that the business will cease to exist without SBRLF assistance. Business acquisitions should be rare and meet the more rigorous tests for repayment ability associated with loans purely for job retention.

F. Ineligible RLF Uses

Restrictions on use of SBRLF Capital (13 CFR 307.17):

- Acquire an equity position in a private business;;
- Subsidize interest payments on an existing SBRLF loan;
- Provide for borrowers' required equity contributions under other Federal Agencies' loan programs;
- Enable borrowers to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the SBRLF;
- Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit or any investment unrelated to the SBRLF; or
- Refinance existing debt, unless:

(i) The SBRLF Recipient sufficiently demonstrates in the loan documentation a “*sound economic justification*” for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification; or

(ii) SBRLF Capital will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an SBRLF loan. SBRLF Capital may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an SBRLF's costs plus a reasonable portion of the outstanding SBRLF loan within eighteen (18) months following the date of refinancing.

- **Compliance and Loan Quality Review.** To ensure that the SBRLF Recipient makes eligible SBRLF loans consistent with its SBRLF Plan or such other purposes approved by EDA, EDA may require an independent third party to conduct a compliance and loan quality review for the RLF Grant every three (3) years. The SBRLF Recipient may undertake this review as an administrative cost associated with the SBRLF's operations provided the requirements set forth in §307.12 are satisfied.
- **Use of In-Kind Contributions.** In-Kind Contributions may satisfy Matching Share requirements when specifically authorized in the terms and conditions of the RLF Grant and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs.

G. Ineligible Costs (2 CFR, Part225)

SBRLF funds are specifically not eligible to defray costs incurred prior to the occurrence of all of the following: EDA grant execution (if relying on new grant funds), submittal of the loan application, and completion of any required environmental review.

SBRLF funds may not be used for costs that are not specifically eligible under Section 5.5 of this Administrative Manual "Eligible Uses and Costs."

The following types of costs are not an allowable use of EDA funds (per OMB Circular A-87):

- Alcoholic beverages;
- Bad debts;
- Contingency provisions/reserves (except for those related to fringe benefits and determined using acceptable actuarial methods);
- Defense of civil or criminal fraud charges;
- Entertainment, which includes tickets to shows, sports events, meals, lodging, rentals, transportation, and gratuities; this has been further defined to include providing coffee at meetings;
- Fund-raising to obtain capital or obtain contributions;
- Goods or services for personal use even if the cost is reported as taxable income for the individual;
- Lobbying;
- Selling and marketing products or services (for economic development activities funded under EDA, the marketing of the product will have to be funded by the business or organization, not by EDA funds).

H. Administrative Costs

EDA does not have a maximum limit on how much RLF Income grantees, including the County, may use to administer the SBRLF. However, the County will work to keep the amount below 18% of total SBRLF loan repayments expended each year may be used for the general administrative expenses of the Fund.

Part 6 Documentation of Jobs Created or Retained

A. General Documentation Requirements

The following documentation, in addition to that specified at 13 CFR 307.15(2), is required of all projects creating or retaining jobs. Refer to Part 2, Section 3 of this Administrative Manual for information on general SBRLF requirements for loan documentation.

All SBRLF loans must include a requirement that businesses benefiting from these loans must agree to provide copies of their Quarterly Wage and Withholding Report and Report of New Employees when they are submitted to the California Employment Development Department (EDD). As of December 2011, these reports are EDD Form DE6 and DE34, which is included as Appendix C.

Employment Agreement

An Employment Agreement must be executed between the County and the assisted business in which that business agrees to keep or create a specific number of jobs and identifies each such job by type and whether the job will be full- or part-time.

Individual Job Creation or Retention

Program records must document which individual jobs were actually created or retained as a result of the SBRLF loan. If the SBRLF loan was financed using CDBG funding the records must also include information on whether each such job was held by, taken by, or made available to a LMI person (as described in the following Section); and the full-time equivalency of each job.

B. Documentation Requirements for Job Creation Activities

Records for jobs created must include the following minimum information.

For Jobs to be Held By LMI persons

- A listing by job title of the specific jobs to be created.
- A listing by job title of the jobs filled.
- The name and income status of the person who filled each position.
- The full-time equivalency status of each job and the number of FTE for all jobs created and filled. If there are multiple part-time positions, the positions must be consolidated into FTE.

For Jobs to be Made Available To LMI Persons

- The title and description of the jobs made available, and the full-time equivalency status of the job at that time.
- The prerequisites for the job; special skills or education required for the job, if any; and the business commitment to provide needed training for such jobs (and the training that the business provided to the LMI person hired, if applicable).
- How first consideration was given to LMI persons for the job, such as:
 - the name(s) of the person(s) interviewed for the job and the date of the interview(s), and
 - the income status of the person(s) interviewed.

C. Documentation Requirements for Job Retention Activities

Records for jobs retained must include the following minimum information.

“Otherwise lost”

The specific evidence that the County relied on in concluding that, in the absence of SBRLF assistance, the jobs would be lost.

For Jobs Held By LMI persons

- A listing by job title of permanent jobs retained, those jobs known to be held by LMI persons at the time EDA assistance was provided, and the full-time equivalency status of each such job.
- Information on the family size and annual income of each such LMI person.

For Jobs Expected to Turn Over to LMI persons

- Identification of any of the retained jobs (other than those known to be held by LMI persons) projected to become available to LMI persons through turnover within two years of the time SBRLF - CDBG assistance was provided.
- The basis upon which the job was determined to be likely to turn over within two years following the SBRLF assistance.
- The date the job actually turned over.
- The name and income status of the person who filled the vacancy.
- If the person who took the job was not LMI but the claim is that the job was nevertheless made available to LMI persons, records equivalent to those described above to substantiate the "available to" claim.
- Information on the family size and annual income of each such LMI person hired.

Part 7 Priority Lending Criteria

The two primary eligibility criteria for the SBRLF loan programs are job creation/saving jobs and stimulating private sector investment. Any loan request that meets both of these criteria will be considered for funding. In the event that there is more demand than available funds, the County will prioritize loans based on those criteria and those described below.

- Businesses in economic sectors targeted by the County's economic development strategy
- Related to the economic revitalization of the former Fort Ord
- Greatest economic multiplier effect, i.e. industrial or commercial activities that add value to a locally produced product and result in additional money flowing into the County
- Provides a good or service that was formerly purchased outside the area.
- Creates a new visitor destination or supports additional travel spending
- Projects with the greatest potential to increase sales and/or property tax receipts

Part 8 Disaster Selection Criteria Considerations:

In the event that Monterey County is impacted by extraordinary natural or man-made disasters, the County may use the SBRLF to support business recovery, and saving of jobs consistent with this approved SBRLF Administrative Plan.

Part 9 Project Underwriting Policies

The loan underwriting policies of the Monterey County Small Business Revolving Loan Fund (SBRLF) are designed to insure the Fund's on-going viability, assist businesses that could not proceed without the SBRLF, and ensure that the SBRLF assistance is "appropriate."

The objectives of the underwriting guidelines are to ensure:

1. that project costs are reasonable;
2. that all sources of project financing are committed;
3. that to the extent practicable, SBRLF funds are not substituted for non-Federal financial support;
4. that the project is financially feasible;
5. that to the extent practicable, the return on the owner's equity investment will not be unreasonable high;
6. that to the extent practicable, SBRLF funds are disbursed on a pro rata basis with other financing provided to the project.

A. Project Costs are Reasonable

All project costs will be reviewed for reasonableness, and to avoid providing either too much or too little SBRLF assistance. The amount of time and resources expended evaluating the reasonableness of a cost element shall be commensurate with its costs. In some instances, it will be necessary to obtain third-party, fair-market price quotations or a cost element. Particular attention will be documenting the cost elements in a non-arms-length transaction.

B. Procedures:

Start with Sources and Uses of Funds.

For each Use of Funds, determine if costs are reasonable:

For construction, machinery, equipment. Determine if the costs are estimated by a third-party (e.g. architect, engineer, equipment supplier, etc.) Determine if the estimates are included in the application. Determine if the contingency is adequate. Determine if the costs include compliance with Davis-Bacon, if required by 13 CFR 305.

For land, determine if the price is based upon fair market value. If not, determine the fair market value and how was price determined. Obtain an appraisal or an opinion of fair market value.

For development costs (building fees, architectural/engineering costs, financing costs, franchise fees, etc.), determine if these costs are itemized and supported by contracts or other documentation.

For working capital, compare the amount of working capital to industry averages, risk, historical needs of the business and the projected need. Analyze business financial statements, projections, operating cycle and financial ratios.

A higher level of review will be required if there are no third party estimates.

Sources of information:

- Sources and Uses of Funds statement
- Financial Statements and Projections
- Industry Averages (Robert Morris)
- Third party costs estimates
- Building Department/Public Works
- Realtors
- Appraisers
- Architects/Engineers
- Contractors
- Equipment Suppliers
- Other similar projects

C. Commitment of All Sources of Project Financing

Prior to the commitment of SBRLF funds to the project, a review shall be conducted to determine if sufficient sources of funds have been identified and committed to the project, and the participating parties have the financial capacity to provide the funds to ascertain if the project is viable and will move ahead in a timely manner. In certain circumstances, the SBRLF may commit its funds in advance of final commitments from other funding sources. However, to conduct the underwriting analysis, the approximate terms and conditions of the other funding

sources should be known. Final commitments from the other funding sources will be required, with the substantially similar terms and conditions as used in the underwriting analysis, will be required prior to any loan closing or disbursement of funds.

Procedures:

Start with Sources and Uses Form.

For all sources of funds, determine if there is evidence verifying commitment or intent to commit.

For debt sources, be in receipt of letters of intent or interest which specify the level of commitment and terms/conditions of the loan. The proposed terms should be reflected in the business projected debt schedule and in the financial projections. Determine if actual loan packages have been submitted to lenders.

For equity sources, determine if the equity injection is verified on the business or personal financial statements. Or if the equity is provided by an investor, obtain evidence of the level and terms of commitment (e.g. letter of intent with accompanying financial statement verifying availability of funds).

Sources of information:

- Sources and Uses of Funds
- Business and Personal Financial Statements
- Letters of intent/interest from lenders, partners and investors

D. Avoid Substitution of EDA Funds for Non-federal Financial Support

The project will be reviewed to ensure that, to the extent practicable, SBRLF funds will not be used to substantially reduce the amount of non-federal financial support for the project to make the most efficient use of the SBRLF funds.

In order to receive SBRLF funds a project must have a "financial gap." This gap must be documented. There are three types of financial gaps, two are discussed below, and the third is discussed under the criteria of "Return on Equity Investment." One project may have two different gaps. The types of gaps are as follows:

Unavailability of Capital: The project can afford the cost of financing, but is unable to obtain the funds from either debt and/or equity sources. In regards to debt, the gap may be a result of a lender's loan to value requirements or the inherent risk of the industry or project. For example, the lender will only loan 70% of the project's cost. In this case, the business may not have the cash to bridge the gap, or if the business bridges the gap, its cash flow may be so restricted as to jeopardize the business. In order to document this gap, several steps need to be undertaken. The lender needs to be contacted to determine if there is any ability to increase the size of their loan. Other lending sources, both public and private, need to be explored. This includes looking at the business owner(s) personal financial statements for potential funds, including home equity loans. Finally, in addition to looking at the business and personal financial statements and tax returns, a pro forma cash flow analysis needs to be prepared and analyzed, with and without SBRLF funds, to demonstrate the gap.

The terms and conditions of a loan under this gap analysis should be comparable to the market.

Cost of Capital: The project cannot support the interest rate, loan term and/or collateral requirements of a lender. In analyzing this gap, discussions with the lender are important to determine any flexibility in terms. A single project may not be able to support the rate, terms and collateral requirements, or may just face a single hurdle. In addition, the gap may only exist in the early years of the project. To determine the gap, business and personal financial statements and tax returns shall be analyzed. Sources of equity shall be explored. Public and private funding sources that would bridge the gap shall be evaluated. Pro forma cash flow analysis shall be developed with and without the SBRLF funds to demonstrate the gap. Depending on the gap, the terms or rate shall be adjusted to a rate that allows the project to proceed but are not too generous. Terms can be adjusted to allow for deferrals of principal and /or interest, or to allow loans to be amortized over a longer period. Interest rates can be adjusted, including increases in the rate over time as cash flow allows.

Procedures:

Review the Sources and Uses to determine if other sources of funds are available (e.g. SBA, business, personal or investor equity, etc.).

If the need for SBRLF funds is based upon a lender's loan-to-value requirements, determine if this requirement is reasonable and based upon the project's risk and location.

If the need is based upon the cost of funds, then conduct a review of the financial information to validate the need for the SBRLF funds:

Review historical and projected financial statements.

Determine if revenues, expenses, debt service, officer's salaries, owner's draw, net operating income are reasonable via a comparison of historical financial information and industry averages (Robert Morris).

Review projections with and without EDA funds. Determine if the project can support more debt within prudent underwriting guidelines. Determine if net operating income, owner's draw, and the degree of equity participation is reasonable.

Sources of information:

- Sources and Uses of Funds
- Financial Statements
- Projections
- Industry Averages (Robert Morris)
- Other Financing Programs
- Lenders

E. Financial Feasibility of the Project

Each project will be examined to determine the financial viability of the project, and thus the reasonable assurance that the public benefit will be realized. The current and past financial statements for both the business and individuals must be analyzed, along with tax returns and projections. The assumptions behind the projections must be critically analyzed. Income and expense costs shall be evaluated and compared historically, where applicable, and compared to

industry averages (using guides such as Robert Morris' Annual Financial Statements). Project costs, including both hard and soft costs, must be determined to be reasonable. Accurate project costs are vital to determining project feasibility.

As part of the financial analysis, the past, current, and projected financial data shall be analyzed to determine if the job estimates are reasonable and supportable. Labor costs shall be looked at the break-even point. In addition, labor costs shall be checked against industry averages. Variations should be explained in the loan analysis.

The terms and conditions of the SBRLF loan must be "appropriate." In general, the interest rate shall be set at a rate where available cash flow is able to meet debt obligations, after other obligations are met, with enough cash flow remaining to operate successfully. The loan term typically is based in the asset being financed. The term should not exceed the economic life of the asset being financed. However, a longer loan amortization schedule, with the loan due at the end of the economic life may be justifiable.

Each loan shall include a written explanation of the "appropriate" analysis that was undertaken, and the reason the terms and conditions of the loan were approved.

Financial Analysis

Historical and projected financial statements will be subject to financial analysis to determine the gap, and structure the terms and conditions of the SBRLF loan, as discussed above, but also to determine that the project is feasible. In addition, use prudent underwriting guidelines, demonstrating that the proposed loan is of sound value, and note how past earnings and future prospects indicate an ability to meet debt obligations out of profit.

Information that will be required to be submitted by the applicant will be dependent on the project, ownership structure and whether it is an on-going or start-up business. In general, the information required is outlined in the SBRLF checklist in the exhibits.

The financial analysis will differ depending on whether the business is a start-up or existing business. The analysis will include, for existing businesses, a spread of the current and financial statements to determine trends. The pro forma statements will then be compared to these past statements. Financial ratios will be analyzed. The statements and ratios will be compared to industry averages. For start-up business the projections will be analyzed and ratios developed, and both compared to industry averages. Ratios that will be analyzed include:

Current Ratio: Current assets/current liabilities. This ratio is a rough indication of a firm's ability to service its current obligations. A ratio of 2:1 is considered secure.

Quick Ratio: Cash & equivalents plus accountants & notes receivable/current liabilities. This ratio is a refinement of the current ratio. A ratio of 1:1 usually indicates ample liquidity.

Cash Flow Coverage: Net profit & depreciation & depletion-amortization expenses/current portion of long term debt. This ratio is a measure of the ability to service long term debt.

Another coverage ratio is: earnings before interest & taxes/annual interest expenses. This ratio is a measure of a firm's ability to meet interest payments. Cash flow coverage of 1.25 debt service shall be used as a guideline.

Debt to Worth: Total liabilities/tangible net worth. This ratio is the relationship between debt and a businesses net worth. A lower ratio is an indication of greater long-term financial safety and greater flexibility to borrow. In general, a debt to worth ratio of higher than 5:1 should not be exceeded as a underwriting policy. There are exceptions when the industry average is high due to its capital intensive nature or when projections show the ratio lowering quickly.

Collateral Coverage: The value of collateral as compared to the amount of the loan. Typical underwriting guidelines suggest that 125% of the loan balance be used. However, this is highly dependent on the quality and security of the collateral. In addition, collateral requirements are a cause of "financial gaps." The SBRLF shall use 125% as a guideline, which shall only be lowered with specific and detailed analysis and explanation.

Break-even Analysis: The analysis of the project's ability to support the projected labor costs and additional debt service at its break-even point (BEP) will be analyzed to determine what proportion of the jobs can be supported at that BEP. This will serve as a worst case look at the business' prospects for success, ability to service new debt, etc.

The financial and ratio analyses must be supported by the business plan. The business plan must provide a clear understanding of the project, competition, market strategy, sales estimates, management capacity and other factors.

Lastly, to ensure project feasibility, an evaluation will be conducted of the experience and capacity of the business principals to manage the business and achieve the projections.

Procedures:

- Perform financial underwriting analysis.
- Spread historical financial statements and projections. Identify any significant differences. Compare to industry averages.
- Review assumptions to projections. Determine if projections are reasonable and supported by market studies, business plan, and historical trends.
- Review financial ratios for project. Compare to industry averages. If significantly different, determine the reasons and impact on feasibility.
- Review cash flow for project. Determine if there is adequate working capital.
- Determine break even point for project, and how much the projections are above the break even point. Determine if the public benefit will be realized at the break even point.
- Review the business plan, market information, historical financial statements, projections, ration analysis, break even analysis, spreadsheet analysis and management capacity to determine the project feasibility.

Sources if information:

- Historical financial statement
- Financial Projections

- Business plan
- Market and industry information
- Industry Averages

F. Return on Equity Investment

The return on equity investment is the amount of cash that the investor/business owner is projected to receive in relation to their initial equity. For a sole proprietor, this equates to salary plus net income. To the extent practicable, the SBRLF should not provide more than a reasonable return on investment to the business owner. This will help ensure that the SBRLF will maximize the use of SBRLF funds and not unduly enrich the business owner(s)/investor(s). However, care shall be taken to ensure that the rate of return will not be too low, so that the business owner's motivation remains high to pursue the business with vigor.

If the project's financial returns are projected to be too low to motivate the business and/or investor to proceed with the project then risks of the project outweigh the returns. An inadequate rate of return, adjusted for industry and locational risks, is a third method to determine the gap appropriate to be funded with SBRLF funds. To analyze this gap, the projected return on investment must be compared to the return on investment on similar projects. If it is shown that a gap does exist, then the SBRLF financing rate and terms must be set at a rate which provides a return equal to the "market rate." Real estate appraisers and lenders are important sources of information on "market rate" returns.

Procedures:

- Review projections.
- Review revenues, expenses (including officers' salary/owners' draw), debt service and net operating income. Compare to historical financial information and to industry averages. Determine if these items are reasonable.
- Review indicators of owners' return on equity, including officers' salary, owners' draw, and net operating income. Given the project's risk and local conditions, determine if the return on equity is reasonable compared to industry averages.
- Review the business and personal obligations. Determine what return on equity is necessary to meet personal and business obligations.
- If return on equity is above industry averages, adjusted for risk and local conditions, take steps to reduce the return to within a reasonable rate by restricting owners' draw/officers' salary, or adjusting the SBRLF loan terms.
- If return is below average, adjust SBRLF subsidy to bring the rate of return closer to the industry average.

Sources of information:

- Financial projections
- Historical financial statements
- Personal financial statements
- Industry averages

G. Disbursement of SBRLF Funds on a Pro Rata Basis

To the extent practicable, SBRLF funds should be disbursed on a pro rata basis with other funding sources to avoid placing SBRLF funds at a greater risk than other funding sources. When it is determined that it is not practicable to disburse SBRLF funds on a pro rata basis, other steps shall be taken to safeguard SBRLF funds in the event of a default.

Procedures:

- Review Sources and Uses of Funds. Determine when SBRLF funds will be expended as compared to other funds.
- Determine other funding sources' policies towards expenditure of funds. These policies may require the use of SBRLF funds first. If so, may need to negotiate with other funding sources.
- If SBRLF funds are to be expended first, consider actions to safeguard SBRLF funds (e.g. performance or completion bonds).

Sources of information:

- Sources and Uses of Funds
- Construction Contracts
- Lender Requirements/Policies

Part 10 Portfolio Standards

A. Small/Large Businesses

At least eighty-five percent (85%) of total SBRLF loan funds are targeted for small businesses, as defined by the US Small Business Administration. The SBA small business definition is based on the North American Industry Code System (NAICS) and either annual sales or number of employees and is available on-line at www.sba.gov/size.

Fifteen percent (15%) of the SBRLF may be used to assist large businesses (as defined by the SBA for the type of business), eligible for SBRLF funds.

B. Commercial/Industrial:

Seventy percent (70%) of all SBRLF loan funds are targeted for commercial projects and thirty-percent (30%) targeted to support industrial projects. Commercial projects must meet one of the following standards:

- Must have significant job creation potential, i.e. significantly less than the portfolio standard (\$20,000:1)
- Offer services that are underserved or not currently offered in the community
- Have a significant potential for stimulating other economic development activity
- Provide vitally needed services

Because Monterey County is predominately an agricultural and visitor serving economy, there may be insufficient demand for industrial/manufacturing loans to meet this target. In order to continue supporting business and job development the County may use more than 70% of the funds for commercial projects. In the event that the County needs to reduce the industrial portion of the portfolio below 30%, the County's first priority will be to target loans for businesses that provide services that support the agricultural or visitor-serving industries but are

not currently available locally. The County will then consider other commercial projects that have significant potential to increase employment or contribute to the tax base.

C. New Business

It is anticipated that 60% of the portfolio will be made to start-up businesses.

D. Business Expansion

It is anticipated that 25% of the loans will be made to support the expansion of existing businesses.

E. Business Retention

It is anticipated that 15% of loans will be made to support business retention, to save jobs that would be lost without SBRLF financing.

Loans for this purpose will require extensive review to ensure that the business will remain viable as a result of SBRLF financing and to maximize likelihood of repayment.

F. Anticipated Percentage of RLF Portfolio for Specific Uses:

In general, the portfolio will be managed so that no more than 85% of the portfolio is for working capital. The balance of the portfolio will be targeted to loans for purchasing fixed assets. It is not anticipated that a significant percentage of the portfolio will be used to purchase real property since conventional financing will fund this activity or make tenant improvements because of the added cost of complying with prevailing wage requirements.

G. Private Investment Leveraging Ratio for Portfolio

The private sector leveraging ratio is defined as the amount of private dollars proposed as part of the finance package divided by the amount of the proposed SBRLF loan. The portfolio standard leverage ratio is established at two private dollars to every one SBRLF dollar. This ratio may vary in individual cases, so long as the loan portfolio as a whole achieves a standard ratio of 2:1 private to public dollars.

If other public lending sources are involved in the loan package, the maximum public participation in such a package may not normally exceed fifty percent (50%) of the total project. The SBRLF will attempt to maximize private sector involvement in each project in order to leverage its funds and diversify risk.

Private leverage for SBRLF funds may consist of financing from conventional lenders and/or other private sources including new cash investments made by the owners and stockholders of the business.

Private leveraging (iii) "The non guaranteed portions and ninety (90) percent of the guaranteed portions of the U.S. Small Business Administration's 7(A) loans and 504 debenture loans", is allowable to be considered private (13 CFR 307.15 (d)).

H. Cost per Job for Portfolio

In general, the portfolios will have a ratio of \$20,000 per job-created or saved.

Individual loans may have job cost ratios that exceed \$20,000 per job. (This is a Monterey County goal, not an EDA directive).

No loan funded using EDA may have a cost per job that exceeds \$35,000.

Part 11 Lending Policies

A. General Lending Policy

The terms of the program are intended to be flexible enough to provide borrowers with terms that will allow them to become stable business ventures. These programs will help entrepreneurs take advantage of start-up and/or expansion opportunities by minimizing monthly debt service requirements during the initial start-up or expansion phase when the potential return on investment is smallest.

To accomplish this goal, loan terms will be determined on a case-by-case basis to balance the goal of supporting the small business creation and growth while maximizing the rate at which funds revolve.

Terms may include longer repayment periods, stepped payments and the use of balloon payments.

In general, loan terms will not exceed the useful life of the equipment financed or five (5) years in the case of working capital loans.

B. Minimum and Maximum Loan Sizes for RLF Program

The minimum loan amount will generally be \$10,000. The maximum loan size will generally be \$250,000. The Loan Committee may approve loans that are within 2.0% (two percent) of these limits without seeking additional approval from the Board of Supervisors.

C. Loan Application and Origination Fees

Applicants will be charged a \$200 application fee and a loan origination fee equal to 2% of the loan amount.

The borrower shall pay any direct costs incurred in loan processing and closing.

When deemed appropriate by the PA and the Loan Committee, the loan origination fees may be deducted from the loan amount.

The PA, with the County's approval, may waive any or all fees.

D. Range of Allowable Interest Rates

Whereby "the interest rate an SBRLF Recipient may charge cannot be less than the lower of four (4) percent or 75 percent of the prime interest rate listed in the *Wall Street Journal*." However, should the prime interest rate listed in the *Wall Street Journal* exceed fourteen (14) percent, the minimum SBRLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of the SBRLF Recipient to implement its financing strategy.

All loan terms require prior approval by Monterey County as described in Section 13. The utilization of sub-prime or adjustable interest rates will be based on the following criteria:

- Linking interest rates to job creation - the more jobs the business says states they are going to create the lower the rate. The interest rate should be reviewed annually to ensure that the anticipated job creation actually takes place and if it does not the rate could go up.
- Capital improvement projects may be offered a lower rate to offset the increased cost of compliance with prevailing wage requirements
- Higher rates for working capital
- Lower rates for business sectors targeted by the County's Comprehensive Economic Development Strategy

E. Borrower Equity and/or Cash Injection

In general the County would like to see evidence that the borrower is committed to the project. Generally this will be demonstrated by a personal financial interest in the business venture that will be financed. The amount or percentage of capital or lien free assets that will be added to the project from borrower or investor sources (equity) will be determined by the proposed use of SBRLF funds and the business' operating history.

- Fixed asset loans, the standard equity requirement will normally be twenty percent (20%) of the total project cost
- Working capital loans, the standard equity requirement will be twenty percent (20%) of the total project cost
- New companies, those with less than two (2) years of operating history, the equity requirement is 20%

The County may consider deviations from these general guidelines if the proposed project is in an area that has been targeted by the County's business development strategy, there is evidence of excess security and/or the borrower has a proven history of operating successful businesses.

For each individual loan the equity requirement will generally be twenty percent of the total project cost. It is the County's general philosophy that existing equity or existing cash injection into the business indicates a reasonable level of commitment to the business; therefore, consideration will be given to existing equity in determining new equity required as a result of the project being financed.

Exceptions may be made on a case-by-case basis depending upon the particular project and how it helps accomplish the County's business development strategy.

A financial statement not more than 120 days old will be used to determine existing equity. Working capital loans may satisfy the equity requirement by demonstrating an equivalent amount of net working capital.

F. Repayment Terms

In general, loan terms will be based on the useful life of the assets being financed and the cash flow of the borrower. The following guidelines will be used to establish maximum loan terms:

- Real property loans will not exceed 20 years

- Machinery and equipment loans will be for the useful life of the machinery and/or equipment financed and generally will not exceed 10 years
- Working capital loans will not exceed seven (7) years

Within these general guidelines, the portfolio will place an emphasis on making shorter-term loans to accelerate the reuse of the SBRLF dollars, to other borrowers.

Repayment will normally be accomplished in equal monthly installments, including principal and interest over the life of the loan. SBRLF loan terms will normally equal the loan term of the participating private lender, but may extend beyond that of the private lender if necessary.

In certain situations the SBRLF can be used as a tool to meet a short-term financing gap. The SBRLF may also employ the use of balloon loans, i.e. the loan may have a shorter-term call period, but be amortized over a longer period (not to exceed the weighted average useful life of the fixed assets or five years in the case of working capital loans.)

A moratorium on principal payments providing for interest only payments for up to six months will be allowed if found necessary to assist a borrower with temporary cash flow problems.

G. Collateral Requirements

The SBRLF will generally seek to fully collateralize (i.e. book value) all small business loans and to obtain the maximum amount of collateral available to minimize losses in event of liquidation. In order to better protect the SBRLF, the County may take a superior position on selective collateral or attempt to enter into co-lender agreements with private lenders in order to share collateral and provide a pro-rata distribution formula for disposing of assets in the event a loan defaults. However, the SBRLF may accept a subordinate collateral position or accept less than full collateralization in order to further the economic development objectives of the SBRLF.

The SBRLF may negotiate with private lenders to enter into a co-lender agreement that will spell out rights and duties of all parties, their interest in business assets and how business assets will be disposed of in the event of default. This arrangement will be used whenever possible.

The County will generally secure its loans to the maximum extent possible to ensure an adequate secondary source of repayment. The following types of collateral will generally be sought to secure SBRLF loans:

- Business assets
- If insurance is required, (i.e. business asset, flood), the County must be named as the loss payee and/or mortgagee.
- Adequate liability and hazard insurance may be required, as appropriate.
- A landlord's consent or similar document will normally be obtained where a borrower leases its facility in order to ensure adequate access to inventory and equipment collateral.
- Real property will require a Deed of Trust and Title Insurance.
- Fixed asset loans will generally require UCC-1 on all assets financed by the loan as collateral plus existing and assets acquired with SBRLF assistance, as applicable

- Working capital loans will generally require UCC-1 on all accounts receivable, inventory and available fixed assets.
- Any other assets of the business and/or owner/investor(s), (i.e. personal residences), necessary to adequately collateralize the loan.
- Generally, personal guarantees will be required for all owner or affiliates controlling 20% or more of the business to fully collateralize the loan. Personal guarantees may be secured by appropriate liens on personal assets, (i.e. personal residences).

Collateral pledged for each loan will depend upon the SBRLF loan amount, the overall risk of the credit, and the availability of personal and business assets to be pledged as collateral. Personal guarantees of all 20% or more owners and affiliate companies will be required for each loan unless there is a sound justification given which is included in the loan write-up and thereby approved by the Loan Committee.

Security will be required, as necessary, to adequately collateralize SBRLF loans, and serve as a secondary source of payment. In the case of fixed asset loans, security will usually be, at a minimum, liens on the assets financed in addition to other assets of the business or owner/investor(s). Working capital loans will normally be secured by receivables, inventory and fixed assets. A landlord's consent or similar document will normally be obtained where a borrower leases its facility in order to ensure access to inventory and equipment collateral. It will also be the general policy to require personal guarantees by the applicant's principals that may be secured, as appropriate, by liens on personal assets. Adequate insurance coverage on the business assets, required where fixed assets are primary security for the SBRLF loan. Flood insurance is required if applicable.

In general, the County's collateral position within a given transaction will be determined on a case-by-case basis. The one exception will be if the loan is part of a financing package that includes funds that are controlled or managed by the PA and the PA has a potential risk of loss, either from a loan or from compensation. In this case, the County SBRLF must have a superior or equal collateral position to the PA or the loan funded with funds controlled or managed by the PA. This provision is intended to avoid the appearance that the PA has a potential conflict of interest.

H. Private Investment Leveraging Ratio for Loans

The private sector leveraging ratio is defined as the amount of private dollars proposed as part of the finance package divided by the amount of the proposed SBRLF loan. This ratio may vary in individual cases, so long as the loan portfolio as a whole achieves a standard ratio of 2:1 private to public dollars.

If other public lending sources are involved in the loan package, the maximum public participation in such a package may not normally exceed fifty percent (50%) of the total project.

When the SBRLF is used in conjunction with an SBA 504 loan program, 90% of the guaranteed amount and the entire un-guaranteed amount will count as the private leverage part of the SBRLF loan ratio.

Private leverage for SBRLF funds may consist of financing from conventional lenders and/or other private sources including new cash investments made by the owners and stockholders of the business.

I. Cost Per Job for Loans

No loan funded using EDA may have a cost per job that exceeds \$35,000.

J. Hiring of Displaced Workers

Firms that receive SBRLF assistance will be encouraged to work with the local Workforce Investment Board (WIB) and Department of Social and Employment Services to link displaced workers with jobs created as the result of SBRLF assistance. Firms receiving assistance in the amount of \$150,000 or more will generally be required to enter into a first source hiring agreement with the WIB and Dept. Social and Employment Services.

K. Key Factors to Determine When Deviations will be Employed

In general, deviations from these policies will be considered only if it significantly improves the likelihood of the loan being brought current or to minimize the potential loss to the SBRLF. The County retains the authority to determine when a deviation should be considered. The PA shall exercise due diligence when recommending that the County consider a deviation from these policies.

Part 12 Loan Committee

A. Role of Loan Committee

The Loan Committee shall be responsible for approving all loan requests and loan modifications.

A quorum of the Loan Committee must be present to take action. A quorum is defined as 50% plus one, including at least one member with lending experience.

The Loan Committee will review the loan request or loan modification request and forward its recommendation to the County. The County will review the Loan Committee recommendation. If the PA recommendation is to fund the credit request using CDBG derived funds and the County concurs with a Loan Committee recommendation to approve the credit request, the PA will forward the loan application to the State for review and approval prior to notifying the applicant that the credit has been approved. The State may deny the credit application or request additional information before granting authority to fund the credit. If the County does not concur, it will return the matter to the Loan Committee for further consideration.

The Loan Committee, through the PA, may make loan policy recommendations to the MCEDD for referral to the MCEDDC. The MCEDDC will consider loan policy recommendations and forward them to the Monterey County Board of Supervisors for final approval.

The Loan Committee may not initiate foreclosure actions without approval of the Monterey County Board of Supervisors. The Monterey County Board of Supervisors is the only body authorized to initiate foreclosure actions.

B. Loan Committee Composition

The Monterey County Board of Supervisors will appoint a five member Loan Committee that represents the ethnic and geographic diversity of the Monterey County community. A majority of the Loan Committee must be experienced in banking and lending operations similar to those assisted by this fund.

If the PA has a standing business Loan Committee that meets the above requirements, then that Loan Committee may act as the Loan Committee for the purposes of this fund as described by these guidelines. The award of contract to the PA will specifically delegate that authority to the PA's Loan Committee and designate it as such.

C. Loan Committee Policy

All members of the Loan Committee will receive a copy of this Administrative Plan and use it to determine whether a credit request meets the requirements of the SBRLF program.

Loan Committee and Board of Director deliberations for loan approval will adhere to the Conflict of Interest requirements contained in these guidelines.

Members of the Loan Committee and Board of Directors must recuse themselves from deliberation process for loan approval where they have a professional interest. This would not normally apply if the banking relationship were limited to normal checking and/or savings accounts.

PART II – OPERATIONAL PROCEDURES

Loan application and review

D. Standard Loan Application Requirements

At a minimum the following information, as required by 13 CFR 307.15(2), will be collected for each loan application:

- Identifying information of the business including:
 - principal or corporate address
 - principal owners and officers
 - DUNS number
- A brief history of the business
- Management resume for the borrower
- Credit report
- Two (2) years of business tax returns (if loan is to an operating business)
- Debt amortization schedule
- Business organization documents, i.e. articles of incorporation, bylaws, certificate of good standing, fictitious name statements, partnership agreements, etc.
- Personal financial statements for anyone who owns 20% more of the business operation
- Three (3) years of personal tax returns for all borrowers completing the personal financial statements
- Interim business financial statement dated within 90 days of the loan application
- Year-end business balance sheet and income statements
- Financial projections for the next three (3) years
- Project description including how loan proceeds will be used and sources of funding
- Copies of any permits or licenses associated with the opening and/or operation of the business
- Copy of any contracts, i.e. purchase contract, if the loan will be used to buy a business
- Signed bank turn-down letter or other documentation demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. Other documentation may include:
 - Credit offers for shorter terms that are available through the SBRLF;
 - Credit offers with interest rates more than 5% greater than the interest rate available through the SBRLF;
 - Credit that is insufficient to implement the entire business plan as proposed.

The PA will use the Business Loan Checklist to ensure all required documents are submitted. The PA may request additional documentation to complete a loan application as needed.

E. Use of Credit Reports

The PA is responsible for obtaining and reviewing credit reports for all loan applicants. In general, a negative credit history is not a basis for denying a loan request to the SBRLF, but it will be considered when evaluating loan approvals and collateral requirements.

F. Use of Appraisal Reports

The value of pledged collateral must be verified through a market analysis, appraisal or other means that are deemed appropriate for the particular project. Appraisals must be performed by qualified personal and should include a review of prior uses to determine the potential for environmental contamination.

G. Loan Write-Up

The Loan Write-Up is the document that credit decisions will be based on. The Loan Write-Up must contain sufficient information for the Loan Committee to determine the credit worthiness of applicants and determine the potential impact on the overall SBRLF portfolio goals described in Section 10 of this Administrative Plan if the loan is approved.

At a minimum, the Loan Write-Up must include the following:

- A summary of how the proposed project meets the objectives of the County's business development strategy and impacts the overall SBRLF portfolio, (i.e. cost per job, leverage, etc.)
- The loan program, that will be used to fund the loan if it is approved
- Evidence that the SBRLF is not being used in-lieu of available private sector financing. The primary support for this will be a statement of justification, prepared and signed by the PA. The secondary support may be a decline letter from a bank or a letter stating that a bank is unable to loan the full amount requested.
- An overview of the firm including history and management
- A description of any required licenses and permits and whether or not the applicant has applied for or received the license/permit
- Any environmental issues identified during the permitting process should be addressed in this section
- Products or services the firm will provide
- Marketing strategy and conditions
- Project financing
- How the project addresses the SBRLF objectives listed in **Section 4** of this Plan
- An analysis of the borrower's ability to repay the loan and meet other financial obligations
- Collateral recommendations presented in a table format that lists the lender and the assigned collateral and the value of the assigned collateral. The filing position and collateral value should be listed below the appropriate financing source.
- Business assets that are being used to secure a loan will include an estimate of the market value and estimated liquidation value of the assets.
- If business assets will be shared among the lenders (e.g. SBRLF and SBA loans), the assets must be individually listed with their market and resale values below the financing source they will secure.
- Loan terms including the interest rate, scheduled payment amount and all loan covenants
- Balance of the Fund before and after the requested loan(s)

H. Loan Review

The PA's staff will review loan applications for completeness, program compliance and regulatory compliance. This will include:

- A review of completed environmental review documents to ensure that the project meets federal and local environmental regulations.
- Acceptance of loan application by a staff representative of the PA
- Detailed review and final written recommendation to Loan Committee by PA's staff, based on loan criteria, strength of business and principals and all other factors.
- An analysis of the loan's impact on the overall SBRLF loan portfolio.

No loan will be recommended for approval without the determination that there is a reasonable assurance of repayment and the applicant meets the program requirements. The recommendation will include the loan terms and conditions.

Prior to any loan being submitted to the Loan Committee for consideration, the County must first review the proposal and notify the PA in writing that the loan meets the objectives of the SBRLF program. The PA will provide a copy of the loan write up and Loan Cover Sheet to the County to make this determination. (Please see Appendix "B.")

After the County has notified the PA that the proposed loan is eligible for the program, the PA may present the loan request to the Loan Committee.

Loan Committee will decide whether to approve or decline the loan request and what terms and conditions will apply. Loans will be approved by majority approval.

The PA will maintain minutes of all Loan Committee and Board of Director's meetings where loans through the County's SBRLF is considered, and provide the County with copies.

The PA will notify applicant in writing of the Loan Committee decision within 72 hours of the decision.

If the request is approved, the notification will include the loan terms and any special conditions that must be satisfied prior to loan closing.

If the request is declined the notification will include reasons for denial.

Loan Closing and Disbursement

I. General Loan Closing Requirements

Upon Loan Committee approval the PA will:

- Prepare loan-closing documents, with attorney review as necessary
- Request Uniform Commercial Codes (UCC) searches for existing liens
- Request preliminary title search, if appropriate
- Disburse proceeds according to Loan Committee instructions or terms of loan
- Complete any remaining legal, regulatory or other housekeeping matters

The PA will use all due diligence to ensure that approved loans are closed within 30 days of approval.

J. Loan Closing Documentation Requirements

Prior to disbursing any loan, the PA is responsible for ensuring that all necessary security instruments and related documents are filed and copies placed in the borrower's file. These security instruments and/or agreements may include, but are not limited to:

- Loan Agreement
- Promissory Note
- Personal Guaranty
- Recorded UCC-1, UCC Search
- Deed of Trust
- Policy of Title Insurance
- Landlord's Consent
- Agreement of prior lien holder, as appropriate
- Evidence that the borrower has applied for or obtained all insurance required as a condition of the loan. A cancelled check for the first premium payment will be sufficient evidence that the borrower has met this requirement or Certificate of Insurance

Because SBRLF loans will frequently provide gap financing for other programs, it may be necessary for collateral to be pledged to the various participating programs. In these cases an Intercreditor Agreement that details how the assets are split and the rights and duties of each lien holder will also be required. If possible, separate UCC-1s that specifically list the assets that will secure each loan should be prepared and recorded.

K. Loan Disbursement Requirements

The PA will make all disbursements in accordance with the Loan Committee conditions. These may include, but are not limited to:

- Requiring direct payment to vendors for equipment purchased
- Phased disbursement for working capital
- Evidence that contracts with vendors have been executed and require pre-payment

The PA is authorized to disburse loans from the appropriate SBRLF account in accordance with the loan conditions approved by the Loan Committee. All loan disbursement checks require two (2) signatures.

L. Loan File Closing and Documentation

The County will be responsible for maintaining the original grant files, copies of all reports and correspondence. In addition to the files listed above the County will also maintain records of all loan write-ups and written responses to the PA regarding applicant eligibility.

The PA will maintain all original loan files during the term of the loan. The loan files will include at a minimum:

- Loan application, any supporting documentation and a copy of the Loan Committee's terms of approval
- Executed, original, loan documents
- A copy of the loan committee meeting minutes where the loan was approved
- Correspondence

The following documents must be kept in a fireproof safe:

- Original loan agreements and promissory notes
- Collateral security agreements, i.e. recorded UCC-1, deeds of trust, auto title, evidence of insurance coverage, etc
- Updated personal and/or business financial documents, i.e. tax returns, etc
- Any documentation required by the Loan Committee as a condition of the loan

M. Appeal of Loan Committee Action

The applicant must file an appeal within 30 days from the date the applicant received notification of the Loan Committee's action. The time limit may be extended on a case-by-case basis, for good cause. The Loan Committee shall have an appeal determination issued within six (6) weeks of the date of appeal.

Applicants may appeal decisions made by the Loan Committee to the Director of Economic Development. Appeals to the Director of Economic Development must be in writing. Appeals will only be considered where there exists a legitimate interpretation issue over the program guidelines or when it is unclear whether the spirit and intent of these guidelines cover a given applicant's business circumstance. Appeals that do not clearly state the basis for appeal that are defamatory or specious may be denied consideration. After consideration, the Director of Economic Development may decide to deny the appeal and let the Loan Committee's action stand, or to direct the Loan Committee to reconsider the application. The decision of the Director of Economic Development is final.

administration of the RLF

N. General Administrative Guidelines

The Monterey County SBRLF will be managed in accordance with all applicable laws, regulations, and guidelines that apply to any source of grant funding or program income derived from grants that capitalized the SBRLF. In all cases where multiple grant sources have different requirements regarding a specific topic, the County will use the more restrictive requirements. These requirements include evaluating environmental impacts and determining applicability of Davis-Bacon (13 CFR 305) for all projects.

O. Use of Contract Program Administrator

The County will contract with a Program Administrator (PA) to handle the day-to-day operation of the SBRLF including: marketing, preparing loan write-ups, presenting credit requests to a Loan Committee, loan documentation and loan payment processing, loan disbursements and collections.

The County will use a competitive Request for Proposals process to select the firm that will provide these services. The County will issue a SB RFP not less frequently than every three years. The firm selected to administer the County's SBRLF programs must meet all County requirements for insurance including employee dishonesty, automobile liability and general liability. Currently, the County requires contractors to provide evidence of General Liability and Automobile Liability insurance of \$1,000,000, to include endorsement documents naming the County of Monterey as additionally insured, and state that the contractor's insurance is "primary" and the County of Monterey is "non-contributory".

P. General Responsibilities of the Program Administrator

In general, the Program Administrator is responsible for:

- Marketing
- Working with applicants to complete loan applications
- Preparing loan write-ups and presenting them to the Loan Committee
- Preparing loan documents for approved loans
- Recording all security instruments, i.e. UCC-1, Deeds of Trust
- Disbursing loans to borrowers in accordance with the Loan Committee direction.
- Preparing monthly invoices for borrowers.
- Receiving and posting payments
- Preparing monthly account reconciliation's and drafting required grant reports.
- Working with delinquent borrowers for the first 120 days.
- Preparing and submitting all required reports.

The specific duties and how they will be carried out will be enumerated in the County's contract with the PA.

Q. Responsibilities of County staff

In general, County staff is responsible for:

- Ensuring that all grant requirements are met and being EDA's point of contact on issues related to management of the RLFP
- General oversight of the program
- Competitive selection of the PA
- Review all loan write-ups for consistency with Administrative Plan before loans are presented to the Loan Committee
- Review and approve loan terms and conditions before they are submitted to the loan committee
- Final approval for all foreclosure actions
- County approval authority rests with the Intergovernmental and Legislative Affairs Director for Economic Development or their designee.

R. Marketing

The PA shall be responsible for marketing the County's Revolving Loan Funds. The PA will promote the program using a variety of means. First, there will be media coverage of the SBRLF. Second, area bankers and the Small Business Development Centers will be made aware of the loan program so that they can recommend it to their clients when appropriate. Third, PA staff will make public appearances to inform local chambers of commerce, downtown business groups and other business development organizations of the availability and extent of the program.

Furthermore, specific efforts will be undertaken to inform the minority community of the SBRLF program. The primary method will be via the U.S. Commerce Department's Minority Business Development Center serving Monterey County. Outreach will be coordinated with Spanish language television, radio and print media.

The SBRLF programs will be advertised at least annually through a public notice in the newspaper or distribution of flyers provided there are funds available for lending.

S. Technical Assistance

The PA will provide direct technical assistance to applicant as well as coordinate the provision of technical assistance from a variety of programs including the Small Business Administration, Service Core of Retired Executives and the Small Business Development Centers located at Cabrillo Community College and CSU Monterey Bay. These organizations are available for consultation not only on available financing but also on business plan development, marketing and other key business areas. Referrals will also be made to other agencies as deemed appropriate.

The Cabrillo and CSU Monterey Bay Small Business Development Centers offer regular small business management courses, individual consultations with business faculty and technical assistance with business planning. The Cabrillo and CSU Monterey Bay SBDC services are available at a very low cost to any business located in Monterey County.

T. Fiscal Management and Reporting

In general, the PA will be responsible for overseeing the day-to-day management of the SBRLF program. These duties include, but are not be limited to the following.

- Marketing the availability of SBRLF program.
- Following up with delinquent borrowers funds for the first 120 days.
- Processing loan applications.
- Preparing monthly financial reports, i.e. balance sheets and all required grant approved loans reports.
- Document and disburse loans.
- Preparing monthly invoices for borrowers.
- Preparing credit analysis and loan write-ups and recommendations for the Loan Committee.
- Receiving and posting borrower payments.

U. Reporting Requirements

All SBRLF Recipients must complete and submit a semi-annual report (Form ED-209, or any successor form) in electronic format, unless EDA approves an electronic Time Extension request via RLFMS.

- Semi-annual reports are due October 31 for the period ending September 30th and April 30th for the period ending March 31st.
- If reports are > 60 days late, RLF suspended;
- If reports are > 90 days late, EDA will begin termination for cause, unless the grantee has already requested a termination for convenience or the Regional Director has approved an extension request;
- A recipient using 50% or more of RLF income (or >\$100K) for administrative expenses during the reporting period must submit an Income and Expense Statement (ED-209I, or any successor form).

RLF Recipients must certify as part of the semi-annual report to EDA that the RLF is operating in accordance with the applicable RLF Plan.

V. Loan Servicing

The Monterey County Small Business RLF Loan Servicing Policies and Procedures are described in Appendix B.

W. Effective Utilization of Revolving Loan Funds.

1. Capital Utilization Standard.

- a. During the "Revolving Phase" (defined at 13 C.F.R. § 307.8 as the stage of the RLF's business lending activities that commences immediately after all grant funds have been disbursed to the Recipient), the Recipient must manage its repayment and lending schedules to provide that at all times at least seventy-five (75) percent of the RLF Capital is loaned or committed. RLF Income earned during a reporting period is not included as RLF Capital when calculating the capital utilization percentage. The following exceptions apply:
- (i) A Recipient that anticipates making large loans relative to the size of its RLF Capital base may propose an RLF Plan that provides for maintaining a capital utilization percentage greater than twenty-five (25) percent; and
 - (ii) EDA may require a Recipient with an RLF Capital base in excess of \$4 million to adopt a Plan that maintains a proportionately higher percentage of its funds loaned.
- In the event that EDA sets a higher capital utilization rate, the Recipient shall have ninety (90) days to amend its RLF Plan accordingly.
- b. When the percentage of loaned RLF Capital falls below the applicable capital utilization percentage, the dollar amount of the RLF funds equivalent to the difference between the actual percentages of RLF Capital loaned out and the applicable capital utilization percentage is referred to as "excess funds." (See 13 C.F.R. § 307.16(c).)

2. Sequestration of Excess Funds.

- a. *Sequestration Required.* If the Recipient fails to satisfy the applicable capital utilization percentage requirement for two (2) consecutive reporting intervals, EDA will require the Recipient to deposit the excess funds in an interest-bearing account separate from the EDA funds account. If EDA requires sequestration, the Recipient must submit to EDA:
- (i) A letter certifying that a separate, interest-bearing account has been set up for the purposes of sequestering excess funds; specifying the applicable EDA award number(s), the amount deposited, the account number, and the name, address and telephone number of the bank; and certifying that the Recipient will remit quarterly any interest payments to EDA; and
 - (ii) A copy of the deposit receipt evidencing that a separate, interest-bearing account was set up for the amount certified in the letter.

This documentation is required regardless of whether the Recipient is establishing the account for the first time or depositing additional grant funds. The Recipient must obtain EDA's written authorization to withdraw any sequestered funds. (See 13 C.F.R. § 307.16(c)(2)(i).)

The County may request a time extension to delay sequestration of funds, if loan applications are pending Loan Committee approval after the due date of reports (refer to 13 CRF 307.16 for more information).

b. *Sequestration Not Required.* EDA will not require sequestration of excess funds if:

- (i) The amount to be sequestered is less than \$5,000.00; or
- (ii) The Recipient provides written documentation of the extenuating circumstances precipitating the excess cash situation, as well as a written plan, signed by the Recipient's authorized representative, describing specific actions the Recipient will take to achieve compliance within the next six (6) months, and the Grants Officer signs and approves this plan. Six-month compliance extensions are solely at the Grant Officer's discretion.

X. Monitoring of High Loan Defaults (13 CFR §307.16)

EDA will monitor the RLF Recipient's loan default rate to ensure proper protection of the Federal Share of the RLF property, and may request information from the RLF Recipient as necessary to determine whether it is collecting loan repayments and complying with the financial obligations under the RLF Grant. If the RLF Recipient fails to provide the information requested and to take steps to protect the Federal Share, the RLF Recipient may be subject to enforcement action under Section 307.21 and the terms and conditions of the Grant.

Y. Priority of Payments on Defaulted RLF Loans

When a Recipient receives proceeds on a defaulted RLF loan that is not subject to liquidation pursuant to 13 C.F.R. § 307.20, such proceeds shall be applied in the following order of priority:

- a. First, towards any costs of collection;
- b. Second, towards outstanding penalties and fees;
- c. Third, towards any accrued interest to the extent due and payable; and
- d. Fourth, towards any outstanding principal balance.

(See 13 C.F.R. § 307.12(c).)

The Recipient is expected to add RLF Income to the RLF Capital base where practicable. To determine the appropriate amount of RLF Income to return to the RLF Capital base, RLF operators must consider the costs necessary to operate the RLF program, the availability of other monetary resources, the portfolio risk level and projected capital erosions from loan losses and inflation, the community's (or region's) commitment to the RLF and the anticipated demand for RLF loans.

Z. Customer Satisfaction

The County will send out customer satisfaction surveys to all applicants.

The results of these surveys will be discussed with the Program Administrator quarterly and be considered when negotiating new agreements.

The County may contact the Program Administrator immediately to resolve significant customer service problems.

AA. Oversight

The Monterey County MCEDD will provide general oversight for the PA. Within the MCEDD, the Management Analyst III will be responsible for providing this oversight. At a minimum the County will provide the following oversight activities to ensure that the program operates in accordance with the grant terms and conditions:

- Review and approve each loan write-up to ensure that the loan requests are consistent with this Administrative Plan and grant requirements before the loan is presented to the Loan Committee.
- Acting on loans that are more than 120 days delinquent, up to and including foreclosure if appropriate
- Reviewing the PA's monthly financial reports
- Reviewing and transmitting all required grant reports to appropriate grant agency

BB. Monitoring

The County will monitor the loan portfolio to ensure that it is in compliance with the terms of the grant. The primary method that the County will use to monitor the portfolio is the loan cover sheet that the PA uses to transmit loan packages to the County. This form includes a summary of how the proposed loan will affect the overall portfolio. This includes the projected cost per job, leverage ratios and ratios showing what loan funds are being used for. This information will allow County staff be able to quickly assess the overall portfolio and compliance with the grant terms and RLF objectives.

In addition to the portfolio snapshot that County staff will review when considering a loan application the PA will be contractually bound to adhere to all grant agency requirements. The contract with the PA will specifically incorporate the EDA Revolving Loan Fund Guidelines, Standard Terms and Conditions, and Audit Standards. If necessary, the County will amend the agreement to incorporate any policy or administrative manuals promulgated by granting agencies in the future. The County will provide updated copies of all grant agency documents and policies to the PA within 30 days of receipt.

CC. Environmental Review

The County is responsible for ensuring that all federal, state and local environmental regulations are complied with when making loans through the SBRLF program.

DD. The following environmental review requirements apply:

All projects must comply with the National Environmental Policy Act (NEPA), laws and related authorities and the California Environmental Quality Act (CEQA).

Construction or rehabilitation projects must comply with the California Environmental Quality Act (CEQA), PRC Section 21000, et. seq. as amended, as well as Davis Bacon requirements and requirements found at 13 CFR 302.13 and 42 USC 3212.

Projects locating within the boundaries of Fort Ord must meet the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Community Environmental Response Facilitation Act of 1992 (CERFLA) prior to receiving SBRLF assistance.

All applicants must:

- Complete an environmental/hazardous waste questionnaire.
- Cooperate with the County, PA or other party to complete the Environmental Review Record.
- If deemed necessary by the PA or appropriate regulatory agency, permit a Phase I or Phase II Environmental Site Assessment.
- Obtain all required permits and licenses and submit those with the loan request.
- Agree to comply with any and all mitigation measures identified in the environmental review as a condition of assistance.

The County will not commit SBRLF funds prior to the completion of the environmental review process. Funds may be committed conditioned on complying with mitigation measures or the completion of a tiered review.

In general, the environmental review must include a determination of the level of review appropriate to the activity, completion of a review at that level, documentation of findings, discussion of alternatives, discussion of mitigation measures if required, publication of findings and related discussion.

The Program Administrator will be responsible for seeing that the environmental review is completed by a qualified firm or person if not the Program Administrator itself. The PA will submit all required documents to the County with instructions for publication, review, or filing. The PA will retain copies of all documentation related to the environmental review.

Depending on the level of review required, the type of assistance being requested, and the capacity of the applicant, the applicant may be requested to bear all or part of the costs of environmental review.

EE. Segregation of Funds

The County has established separate, interest earning, bank accounts for each program and funding source. The use of separate accounts allows the County to segregate the different funds and ensure that they are used for the purposes that they were awarded. If the County receives additional grants, from any source, to recapitalize the SBRLF pool, additional accounts will be established.

FF. Conflict of Interest

No employee, agent, consultant, officer, or elected or appointed official of the County of Monterey who is in a position to participate in a decision-making process or gain inside information with regard to activities funded by the County or the EDA shall directly or indirectly be eligible for SBRLF assistance. This ineligibility extends to those with business or immediate family ties or to any individual previously described, and shall continue for one (1) year after an individual's relationship with the County ends. In addition, "Immediate Family" includes a person's "significant other" or partner in a domestic relationship with an "Interested Party".

Except for eligible administrative or personnel costs, no employee, agent, consultant, officer, or elected official or appointed official of the County of Monterey, or of any designated public agencies, or sub recipients which are receiving EDA funds from the County of Monterey who exercise or have exercised any functions or responsibilities with respect to activities assisted with EDA funds granted to the County or on behalf of the County 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 the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

GG. Employee Dishonesty

The County will maintain a minimum \$1,000,000 policy for employee dishonesty and crime insurance coverage. Additionally, the County will require the Program Administrator, and Fiscal Agent if different from the Program Administrator, to maintain a minimum \$1,000,000 employee dishonesty and crime policy that lists the County as additional insured. The County will evaluate the adequacy of this policy in the event that grant capitalization, from all sources, exceeds \$3,000,000.

HH. Treatment of Proprietary Information

The County, Loan Committee and PA will make every attempt to limit the circulation of proprietary business information provided as part of the application. Nevertheless the County, members of the Loan Committee and the PA make no assurances of confidentiality.

Applicants will be informed that unless the County's Counsel specifically assures the applicant in writing that information provided or correspondence will be held in confidence, all information provided is public record and subject to requests from the public under the Public Records Act.

II. Equal Opportunity/Affirmative Action Policy.

The SBRLF will be administered in a manner that complies with the equal opportunity and affirmative action requirements of the EDA program and the County's equal opportunity, affirmative action and Minority Business Enterprise / Women Business Enterprise goals of the County.

JJ. County's Counsel Review of all Contracts and Legal Forms.

Prior to execution, all contracts or forms of agreement that may bind the County will be reviewed by the County's Counsel. Any contract or other form of agreement not reviewed and approved by the County's Counsel shall not be binding on the County.

KK. General Requirements and Responsibilities

The SBRLF will be managed in accordance with the most current US Department of Commerce, Economic Development Administration RLF *Standard Terms and Conditions*, or as amended in the future, and as listed in applicable EDA's laws, regulations and policies.

APPENDIX A

COUNTY OF MONTEREY
SMALL BUSINESS REVOLVING LOAN FUND PROGRAM

LOAN COVER SHEET

Business Name & Location: _____

Name of Applicant: _____

Program loan is proposed for: (circle) Rural County EDA County CDBG Contractor

Total Project Cost: _____ Amount of RLF request: _____

Source & amount of leverage: _____

Area of Economic Benefit:	Job Creation / Retention	Business Retention	Increased Tax Base
---------------------------	-----------------------------	-----------------------	--------------------

Use of loan proceeds:

- Working Capital \$ _____
- Equipment \$ _____
- Tenant Improvements \$ _____
- Refinance of existing debt \$ _____

Justification for refinancing existing debt

Current FT jobs _____ FTE jobs to be created: _____

For RLF reporting purposes a full time job is defined as 2080 hours annually and a part-time job is defined as a minimum of 1750 hours annually.

Loan Term: _____ Loan Rate: _____

If this loan is approved, what will the effect on the overall loan portfolio be?

Loan \$ per job _____ Target is \$20,000:1

Public/Private Leverage Ratio: _____ Target is 1:1

% of portfolio for commercial projects _____ Should not exceed 70%

% of portfolio for industrial projects _____ Should not be less than 30%

% of portfolio for working capital _____ Should not exceed 70%

APPENDIX B

EDA SMALL BUSINESS REVOLVING LOAN FUND LOAN SERVICING POLICIES AND PROCEDURES

I. LOAN SERVICING POLICIES AND PROCEDURES

Part 13 Loan Payment & Collection Procedures

The PA is responsible for ensuring that borrowers meet their repayment obligations. The PA will take the following steps to ensure that borrowers are aware of their obligations:

- Prepare and mail monthly invoices to all borrowers. The invoice will indicate the amount and date that the next payment is due and late penalties that will be assessed if the payment is received after the due date.
- The County will allow borrowers a five-day grace period between the payment due date and the date late penalties will be applied.
- The PA may use a coupon books instead of monthly invoices but must be vigilant to ensure that borrowers are reminded of late or missed payments in a timely manner.
- Posting payments to the borrowers account on the day the payment was received and adjusting the outstanding principal balance accordingly.
- The PA will deposit all loan payments into bank accounts owned by the County within 72 hours of receiving the payment.

Idle loan funds will be held in federally insured, interest-bearing accounts. The interest earned on these accounts may be used to pay for administrative expenses in the year it is earned up to the maximum allowed (currently \$100 per year).

Part 14 Loan Monitoring Procedures

All loans will require borrowers to submit copies of the following documents:

- Quarterly DE-6 filings, the California payroll tax report that lists earnings and taxes by employee SSN
- Annual business and personal financial statements
- Business and personal tax returns

Depending on the credit risk of the business and the use of funds, the borrower may be required to submit monthly, quarterly or semi-annual financial statements. Loans for working capital may also require accounts receivable and payable aging reports. In addition to documentary monitoring, the PA will also make annual site visits to each borrower.

The PA is also responsible for establishing a "tickler" system to ensure that all documents are submitted in a timely manner and that all UCC-1, insurance and other security instruments and agreements are current and in force.

Part 15 Delinquency

A. General Policy

In general, loan payments are considered to delinquent when payment is not received in the full amount on or prior to the end of business of the day due. The precise terms of loan payment are stated in the loan agreement and promissory note which evidence the loan.

B. Twenty Days Delinquent

When a borrower is twenty (20) days late with a payment, the PA will assess a late fee of 5% of the payment amount and send a written notice of delinquency to the borrower indicating the past due status of their loan.

Within seven (7) working days of sending a written notice of delinquency to the borrower, the PA will meet with the borrower to discuss the loan re-payment problem and possible remedies. The PA will also refer the borrower to the Small Business Development Center for counseling if appropriate.

C. Thirty Days Delinquent

If a loan remains delinquent for thirty days or more, the PA will meet with the borrower, report their findings and recommend steps to be taken to the County and file a negative report with the credit reporting agencies.

Monthly delinquency notices to the credit agency will continue for as long as the loan remains in default or until a satisfactory agreement is approved and agreed to by the borrower to resolve the default or delinquency.

D. 120 Days Delinquent

The PA may continue to work with borrowers during the first 120 days a loan is delinquent, unless the PA determines as a prudent lender that the interests of the SBRLF are best served by taking other actions to protect the SBRLF's assets.

Within five working days after a loan becomes 120 days delinquent, the PA will send a written report to the Monterey County Economic Development Department (MCEDD) with a recommendation to continue working with the borrower or to declare the loan in default.

A loan may be declared in default if the borrower refuses to work with the PA to develop a repayment plan and there is little likelihood that the outstanding principal will be recovered through the liquidation of collateral.

Loans in default will be referred to the MCEDD with a recommendation for further action.

Part 16 Collection

In all cases of loan default, the County retains the right to initiate civil litigation collection proceedings to obtain a judgment against a borrower and/or initiate foreclosure proceedings in accordance with Title 5, Chapter 5.16, Section 5.16.030 [PROCEDURE FOR COLLECTION, COMPROMISE, AND WRITE-OFF OF CLAIMS OF THE COUNTY AGAINST OTHERS] of the Monterey County Code.

Claims of the County against other persons or entities shall be handled according to the procedures designated in this Section.

A. Procedures by the County Administrative Officer. The County Administrative Officer is authorized to pursue collection of any claims of the County against others. The County Administrative Officer may, in furtherance of such claims collection, accept a promissory note to repay the claim over a period of time, file a small claims court action to secure a judgment, when the amount of the claim does not exceed the small claims court jurisdictional limit, or assign the claim, promissory note, or judgment to a collection agency. When the County Administrative Officer determines it is in the best interest of the County to do so, considering the cost of collection and the merits of the claim, the County Administrative Officer may:

1. Accept a compromise settlement and write off the balance of the claim as uncollectible, where the amount of the write off does not exceed the small claims court jurisdictional limit;
2. File an action in small claims court and write off any amount in excess of such court's jurisdiction, where the amount of the write off does not exceed the small claims court jurisdictional limit; or
3. Write off the claim in full where the amount of the write off does not exceed the small claims court jurisdictional limit.

Any claim which cannot be collected in full or disposed of in accordance with this Subsection shall be sent to the County Counsel's Office for collection.

B. Procedure by County Counsel. The County Counsel shall pursue collection and may, in furtherance of such collection, accept a promissory note to repay the claim over a period of time, file an action in the appropriate court to secure a judgment, or assign the claim, promissory note, or judgment to a collection agency. When the County Counsel determines it is in the best interest of the County to do so, considering the cost of collection and the merits of the claim, the County Counsel may:

1. Authorize the County Administrative Officer to accept a compromise settlement and write off the balance of the claim as uncollectible where the amount of the write off does not exceed the municipal court jurisdictional limit; or
2. Authorize the County Administrative Officer to file an action in small claims court and write off any amount in excess of such court's jurisdiction, where the amount of the write off does not exceed the municipal court jurisdictional limit; or
3. Authorize the Controller to write off the claim in full where the amount of the write off does not exceed the municipal court jurisdictional limit.

When the County Counsel determines it is in the best interest of the County to accept a compromise settlement of the claim and write off the balance as uncollectible, or to write off the

claim in full as uncollectible, the County Counsel shall submit the matter to the Board of Supervisors for approval where the amount of the write off exceeds the municipal court jurisdictional limit.

Part 17 Priority of Payments

When the County receives proceeds on a defaulted SBRLF loan that is not subject to liquidation pursuant to 13CFR307.20, such proceeds shall be applied in the following order of priority:

- First, towards any costs of collection;
- Second, towards outstanding penalties and fees;
- Third, towards any accrued interest to the extent due and payable; and
- Fourth, towards any outstanding principal balance.

Part 18 Write-off Procedures

Appropriate Authority: In all cases, write offs of defaulted SBRLF loans, will be made in accordance with the provisions of the Monterey County Code, Title 5, Chapter 5.16, Section 5.16.030. Final determinations concerning write-offs will be made by the Appropriate Authority in accordance with the applicable provisions of the Monterey County Code.

There are two situations where a loan will be considered for write-off:

- A loan is 120 days delinquent, the Loan Committee declares the loan in default and the Loan Committee determines that there is little likelihood of repayment.
- A borrower has declared bankruptcy and the courts have discharged all debts.

When a loan is to be considered for write-off, the PA will refer the loan back to the County for follow up review and action. The referral should include a range of possible alternatives. The MCEDD will review the loan's history and reasons for writing-off the loan to make a final determination or recommendation in accordance with Section 5.16.030 of the Monterey County Code, to write-off a loan. For write-off of County Claims up to the Small Claims jurisdictional amount of \$5,000.00, MCEDD may seek additional guidance from the Office of the County Counsel, the County Treasurer-Tax Collector, Revenue Division and/or members of the Overall Economic Development Commission with commercial lending experience to determine if a loan should be written-off.

For write-offs of County claims up to the Superior Court Limit of \$25,000.00, MCEDD will refer the matter to the Office of the County Counsel with the Loan Committee Recommendation and/or a summary of the reasons which would support a recommended for write-off by the appropriate authority in accordance with Section 5.16.030 of the Monterey County Code.

For write-offs of County claims which exceed the Superior Court Limit of \$25,000.00, MCEDD will refer the matter to the Office of the County Counsel with a summary of the reasons which would support a recommendation for write-off by the Monterey County Board of Supervisors.

When a borrower declares bankruptcy the County will ensure that all required filings are made to ensure the maximum recovery possible. MCEDD will provide timely and simultaneous notice and documentation of bankruptcy proceedings to both the Treasurer-Tax Collector, Revenue

Division and to the Office of the County Counsel to ensure that both County Offices are afforded a timely opportunity to respond to and timely file Court papers or claims in bankruptcy proceedings. A loan will not be written-off until the bankruptcy trustee has distributed all payments required under the repayment plan.

When the County claim or write-off does not exceed the Small Claims jurisdictional limit of \$5,000.00, the County Administrative Officer may accept a compromise settlement and write-off the balance, file a small claims action and write off any amount in excess of the Small Claims Court jurisdictional limit or, write off the claim in full where the amount does not exceed the Small Claims jurisdictional amount (MCC Section 5.16.030.A). In cases in which the County claim or write-off does not exceed the Small Claims jurisdictional limit of \$5,000.00, MCEDD will direct the County Auditor-Controller to write-off the loan.

When directing the Auditor-Controller to write-off a loan, staff will supply the following information:

- The name of the borrower
- The amount being written-off
- The funding source for the loan
- A copy of the Loan Committee recommendation

When the County claim or write-off exceeds the Small Claims jurisdictional limit of \$5,000.00 and is within the Superior Court jurisdictional limit of \$25,000.00, the Office of the County Counsel may authorize the County Administrative Officer and or the Auditor Controller to write off the loan in accordance with MCC Section 5.16.030.B.

In such cases, MCEDD will supply the following information to the Office of the County Counsel, which will be forwarded to the Auditor Controller:

- The name of the borrower
- The amount being written-off
- The funding source for the loan
- A copy of the Loan Committee recommendation

When the County claim or write-off exceeds the Superior Court jurisdictional limit of \$25,000.00, the Office of the County Counsel will the matter to the Board of Supervisors for approval in accordance with MCC Section 5.16.030.B. Upon Board of Supervisors' approval pursuant to MCC Section 5.16.030.B, County staff will supply the following information to the Office of the County Counsel, which will be forwarded to the Auditor-Controller:

- The name of the borrower
- The amount being written-off
- The funding source for the loan
- A copy of the Board Resolution approving the write off the County claim which exceeds \$25,000.00.

MCEDD will notify the PA within five (5) business days of the decision to write-off a loan. After a loan is written off, collection efforts will continue until such time as MCEDD determines that it is no longer cost effective to continue collection efforts.

Part 19 Reporting of Delinquencies

The PA will submit a monthly report to the County on all loans that are delinquent and what action has been taken to remedy the delinquency. The PA will be responsible for initiating the appropriate collection actions regarding loans that are twenty or more day's delinquent.

Part 20 Risk Ratings

It is expected that there will be occasional loan defaults. The PA will assign a "risk rating" to each delinquent or defaulted loan as follows:

- Satisfactory - Acceptable management expertise, capital support, adequate primary and secondary sources of repayment, primarily "as agreed"
- Watch -Evidence of weakness of a temporary nature
- Sub-standard - Low repayment capacity and inadequately protected by collateral and the current net worth. The possibility of partial or full loss is high.
- Loss - Uncollectible and inadequate collateral. Probability of any recovery are long term and highly doubtful

APPENDIX C
EDD FORMS DE6 AND DE34

**QUARTERLY WAGE
AND WITHHOLDING REPORT**
PLEASE TYPE THIS FORM PER INSTRUCTIONS ON REVERSE
You must FILE this report even if you had no payroll. If you had no payroll, complete
Items C or D and F.



00060198

Page number _____ of _____

QUARTER
ENDED

DUE

DELINQUENT IF
NOT POSTMARKED
OR RECEIVED BY

YR	QTR

EMPLOYER ACCOUNT NO.

--	--	--	--	--	--	--	--	--	--

DO NOT ALTER THIS AREA

P1 C T S W A

EFFECTIVE DATE
Mo. Day Yr. WIC

--	--	--	--	--	--	--	--	--	--

A. EMPLOYEES full-time and part-time who worked during
or received pay subject to UI for the payroll period which
includes the 12th of the month.

1st Mo. 2nd Mo. 3rd Mo.

--	--	--	--	--	--	--	--	--	--

B. Check this box if you are reporting ONLY Voluntary Plan DI wages on this page.
Report PIT Wages and PIT Withheld, if appropriate. (See instructions for Item B.)

C. NO PAYROLL

D. OUT OF BUSINESS/FINAL REPORT

Date _____

E. SOCIAL SECURITY NUMBER	F. EMPLOYEE NAME (FIRST NAME)	(M.I.) (LAST NAME)

G. TOTAL SUBJECT WAGES	H. PIT WAGES	I. PIT WITHHELD

E. SOCIAL SECURITY NUMBER	F. EMPLOYEE NAME (FIRST NAME)	(M.I.) (LAST NAME)

G. TOTAL SUBJECT WAGES	H. PIT WAGES	I. PIT WITHHELD

E. SOCIAL SECURITY NUMBER	F. EMPLOYEE NAME (FIRST NAME)	(M.I.) (LAST NAME)

G. TOTAL SUBJECT WAGES	H. PIT WAGES	I. PIT WITHHELD

E. SOCIAL SECURITY NUMBER	F. EMPLOYEE NAME (FIRST NAME)	(M.I.) (LAST NAME)

G. TOTAL SUBJECT WAGES	H. PIT WAGES	I. PIT WITHHELD

E. SOCIAL SECURITY NUMBER	F. EMPLOYEE NAME (FIRST NAME)	(M.I.) (LAST NAME)

G. TOTAL SUBJECT WAGES	H. PIT WAGES	I. PIT WITHHELD

E. SOCIAL SECURITY NUMBER	F. EMPLOYEE NAME (FIRST NAME)	(M.I.) (LAST NAME)

G. TOTAL SUBJECT WAGES	H. PIT WAGES	I. PIT WITHHELD

E. SOCIAL SECURITY NUMBER	F. EMPLOYEE NAME (FIRST NAME)	(M.I.) (LAST NAME)

G. TOTAL SUBJECT WAGES	H. PIT WAGES	I. PIT WITHHELD

J. TOTAL SUBJECT WAGES THIS PAGE	K. TOTAL PIT WAGES THIS PAGE	L. TOTAL PIT WITHHELD THIS PAGE

M. GRAND TOTAL SUBJECT WAGES	N. GRAND TOTAL PIT WAGES	O. GRAND TOTAL PIT WITHHELD

F. I declare that the information herein is true and correct to the best of my knowledge and belief.

Preparer's
Signature _____ Title _____ Phone () _____ Date _____
(Owner, Accountant, Preparer, etc.)





INSTRUCTIONS FOR COMPLETING QUARTERLY WAGE AND WITHHOLDING REPORT
PLEASE TYPE ALL INFORMATION - TYPE DOUBLE SPACE ONLY - DO NOT SINGLE SPACE

For a faster, easier, and more convenient method of reporting your DE 6 information, visit our Web site at www.edd.ca.gov. Contact our Taxpayer Assistance Center at 1-888-745-3886 voice or TTY 1-800-547-9565 for additional forms or inquiries regarding reporting wages or the subject status of employees. You may also refer to the *California Employer's Guide* (DE 44) for additional information.

Please record information in the spaces provided. If you use a typewriter or printer, ignore the boxes and type in UPPER CASE as shown. **When reporting dollar amounts, use DOLLARS AND CENTS. Do not use dashes or slashes.**

EMPLOYEE FIRST NAME	M.I.	EMPLOYEE LAST NAME	TOTAL SUBJECT WAGES
I M O G E N E	A	S A M P L E	1 2 3 4 5 6 7

If you must hand write this form, print each letter or number in a separate box as shown. Do not write commas or decimal points.

EMPLOYEE FIRST NAME	M.I.	EMPLOYEE LAST NAME	TOTAL SUBJECT WAGES
I M O G E N E	A	S A M P L E	1 2 3 4 5 0 0

IF YOU STILL OWE TAXES when preparing this report, submit a Payroll Tax Deposit (DE 88) with your payment to the address on the DE 88.

Retain a copy of the DE 6(s) for your records. If you have more than seven employees, use additional pages or a format approved by the Department. If using more than one page, number the pages consecutively at the top of the form. If the form is not preprinted, enter your account number, business name and address, the year, and quarter the report is for. For information, specifications and approvals of alternate forms, contact the Alternate Forms Coordinator at (916) 255-0649.

ITEM A. NUMBER OF EMPLOYEES: **Page 1 only:** Enter the number of full-time and part-time workers who worked during or received pay subject to Unemployment Insurance for the payroll period which includes the 12th of the month. **Please provide a count for each of the three months.** Blank fields will be identified as missing data.

ITEM B. Check this box **ONLY** if the employees reported are covered by an employer sponsored Voluntary Plan for the payment of disability benefits. If you also have employees covered under the State Plan for disability benefits, report their wages and withholdings separately on another page of the DE 6.

WAGES AND WITHHOLDINGS TO REPORT ON A SEPARATE DE 6

Prepare a DE 6 to report the types of exemptions listed below. All three exemptions can be reported on one DE 6. Write the exemption title(s) at the top of the form (e.g., SOLE SHAREHOLDER), and report only those individuals under these categories. **Report all other employees or individuals without exemptions on a separate DE 6.**

- **Religious Exemption:** Employees who file and are approved by the Department for an exemption from SDI taxes under Section 2902 of the California Unemployment Insurance Code (CUIC).
- **Sole Shareholder:** An individual who elects and is approved by the Department to be excluded from SDI coverage for benefits and taxes under Section 637.1 of the CUIC.
- **Third Party Sick Pay:** Recipients exempt from SDI taxes under Section 931.5 of the CUIC. Refer to the Employer's Guide for detailed instructions on how to report.

ITEM C. NO PAYROLL: Check this box if you had no payroll this quarter. Enter zeroes in each box in Item A and in Items M, N, and O.

ITEM D. OUT OF BUSINESS/FINAL REPORT: Check this box if this is your final report and you will not be reporting wages in any subsequent quarter. You must also complete an Annual Reconciliation Statement (DE 7) and pay any amounts due with a Payroll Tax Deposit (DE 88), within 10 days of quitting business to avoid penalty and interest charges. In the date line, please indicate the date your business closed.

ITEM E. SOCIAL SECURITY NUMBER (SSN): Enter the SSN of each employee or individual to whom you paid wages in subject employment, paid PIT wages, and/or from whom you withheld state income taxes during the quarter. If someone does not have an SSN, report their name, wages and/or withholdings without the SSN and TAKE IMMEDIATE STEPS TO SECURE ONE. Report the correct SSN to EDD as soon as possible on a Tax and Wage Adjustment Form (DE 678).

ITEM F. EMPLOYEE NAME: Enter the name of each employee or individual to whom you paid wages in subject employment, paid PIT wages, and/or from whom you withheld state income taxes during the quarter.

ITEM G. TOTAL SUBJECT WAGES: Enter the total subject wages paid (including cents) to each employee during the quarter. Generally, most wages are considered "subject" wages. For special classes of employment and payments considered subject wages, refer to the California Employer's Guide Appendix under "Types of Employment" and "Types of Payments."

ITEM H. PIT WAGES: Enter the amount of wages paid (including cents) that are subject to California state income taxes, even if you do not withhold PIT from the wages. You must enter PIT wages even if they are the same as total subject wages. For additional information regarding PIT wages, refer to the Information Sheet: Personal Income Tax Wages Reported on the Quarterly Wage and Withholding Report (DE 231PIT).

ITEM I. PIT WITHHELD: Enter the amount of PIT withheld from each individual during the quarter.

ITEM J. Enter the total subject wages paid (Item G) for each separate page. Do not carry this total forward from page to page.

ITEM K. Enter the total amount of PIT wages (Item H) for each separate page. Do not carry this total forward from page to page.

ITEM L. Enter the total PIT withheld (Item I) for each separate page. Do not carry this total forward from page to page.

ITEM M. ON PAGE 1 or the last page, enter the grand total of total subject wages paid (Item J) for all pages for the quarter.*

ITEM N. ON PAGE 1 or the last page, enter the grand total of PIT wages (Item K) for all pages for the quarter.*

ITEM O. ON PAGE 1 or the last page, enter the grand total of PIT withheld from all the employees (Item L) for all pages for the quarter.*

*NOTE: Provide separate grand totals for Voluntary Plan DI reporting and special exemption reporting (Religious Exemption, Sole Shareholder, Third Party Sick Pay). Combine all other wage and withholding reports to arrive at the grand totals for Items M, N, and O.

ITEM P. ON PAGE 1 ONLY, please sign, state your title, enter your telephone number, and date the form.

REPORT OF NEW EMPLOYEE(S)

NOTE: Failure to provide all of the information below may result in this form being rejected and/or a penalty being assessed.



00340600



DATE MMDDYY	CA EMPLOYER ACCOUNT NUMBER	BRANCH CODE	FEDERAL ID NUMBER
----------------	----------------------------	-------------	-------------------

BUSINESS NAME	CONTACT PERSON	PHONE NUMBER
---------------	----------------	--------------

ADDRESS	STREET	CITY	STATE	ZIP CODE
---------	--------	------	-------	----------

EMPLOYEE FIRST NAME	MI	EMPLOYEE LAST NAME	UNIT/APT
SOCIAL SECURITY NUMBER	STREET NUMBER	STREET NAME	START-OF-WORK DATE MMDDYY
CITY	STATE	ZIP CODE	

EMPLOYEE FIRST NAME	MI	EMPLOYEE LAST NAME	UNIT/APT
SOCIAL SECURITY NUMBER	STREET NUMBER	STREET NAME	START-OF-WORK DATE MMDDYY
CITY	STATE	ZIP CODE	

EMPLOYEE FIRST NAME	MI	EMPLOYEE LAST NAME	UNIT/APT
SOCIAL SECURITY NUMBER	STREET NUMBER	STREET NAME	START-OF-WORK DATE MMDDYY
CITY	STATE	ZIP CODE	

EMPLOYEE FIRST NAME	MI	EMPLOYEE LAST NAME	UNIT/APT
SOCIAL SECURITY NUMBER	STREET NUMBER	STREET NAME	START-OF-WORK DATE MMDDYY
CITY	STATE	ZIP CODE	

EMPLOYEE FIRST NAME	MI	EMPLOYEE LAST NAME	UNIT/APT
SOCIAL SECURITY NUMBER	STREET NUMBER	STREET NAME	START-OF-WORK DATE MMDDYY
CITY	STATE	ZIP CODE	

EMPLOYEE FIRST NAME	MI	EMPLOYEE LAST NAME	UNIT/APT
SOCIAL SECURITY NUMBER	STREET NUMBER	STREET NAME	START-OF-WORK DATE MMDDYY
CITY	STATE	ZIP CODE	

INSTRUCTIONS FOR COMPLETING ALL OF THE ELEMENTS ON THE REPORT OF NEW EMPLOYEE(S) FORM

REQUIREMENTS:

Federal law requires all employers to report all newly hired employees, who work in California, to the Employment Development Department (EDD) within 20 days of their start-of-work date, which is the first day of work. In addition, any employee who is rehired after a separation of at least sixty (60) consecutive days must also be reported within the 20 days. State and county agencies use this information to assist them in locating parents who are delinquent in their child support obligations.

PENALTIES:

Employers who fail to report the hiring or rehiring of an employee, as required and within the time frame required, may be assessed a penalty of \$24 for each failure to report or \$490 if the failure to report is an intentional agreement between the employer and employee to not supply the required information or to supply a false or incomplete report.

WHAT MUST BE REPORTED ON THIS FORM:

Employer's:

- California Employer Account Number
on each form completed.
- Branch Code - Complete only if employer was assigned a Branch Code number.
- Federal Employer Identification Number.
- Business name and address.
- Contact person and phone number.

Employee's:

- First name, middle initial, and last name.
- Social Security Number.
- Home address.
- Start-of-work date.

HOW TO COMPLETE THIS FORM:

Please complete the following information in the spaces provided. If you type the information, ignore the boxes and type in UPPER CASE as shown. Do not use dashes, slashes, commas, or periods.

EMPLOYEE FIRST NAME IMOGENE			MI A	EMPLOYEE LAST NAME SAMPLE		
SOCIAL SECURITY NUMBER 00000000		STREET NUMBER 1234	STREET NAME ANY STREET			UNIT/APT 312

If handwritten, use CAPITAL LETTERS and print each letter or number in a separate box as shown. Do not use dashes, slashes, commas, or periods.

EMPLOYEE FIRST NAME I M O G E N E			MI A	EMPLOYEE LAST NAME S A M P L E		
SOCIAL SECURITY NUMBER 0 0 0 0 0 0 0 0 0		STREET NUMBER 1 2 3 4	STREET NAME A N Y S T R E E T			UNIT/APT 3 1 2

ADDITIONAL INFORMATION:

If you have any questions concerning the new employee reporting requirement, you may visit our website at www.edd.ca.gov/Payroll_Taxes/New_Hire_Reporting.htm, call the New Employee Registry and Independent Contractor Reporting at 916-657-0529, call the Taxpayer Assistance Center at 888-745-3886, or visit your local Employment Tax Office, which is listed in the *California Employer's Guide* (DE 44) and on our website at www.edd.ca.gov/Office_Locator/.

To obtain additional DE 34 forms:

- Visit our website at www.edd.ca.gov/Payroll_Taxes/Forms_and_Publications.htm.
- For 25 or more forms, call 916-322-2835.
- For less than 25 forms, call 916-657-0529 or call 888-745-3886.

HOW TO REPORT:



For a faster, easier, and more convenient way of reporting your new employee information, you are encouraged to report electronically by accessing the EDD's e-Services for Business website at <https://eddservices.edd.ca.gov> to select the option that is best for you.

To file a paper DE 34 form, complete all of the information on the reverse side of this form and fax it to 916-319-4400 or mail it to:

EMPLOYMENT DEVELOPMENT DEPARTMENT
Document Management Group, MIC 96
P.O. Box 997016
West Sacramento, CA 95799-7016

CHAPTER 2

PROGRAM OPERATORS

I. INTRODUCTION

This chapter discusses the use of contractors, subrecipients and other governmental entities to carry out your CDBG activities, such as programs or multiple projects, and to administer your grant. This chapter may not apply to you if you are administering your grant directly and your activity is limited to direct assistance for a project. If you have questions about this chapter's applicability to your situation, please contact your CDBG or EDBG Representative.

II. GRANTEE RESPONSIBILITIES

Grantees are ultimately responsible for managing/implementing the funded CDBG activities, even if they hire program operators to assist or manage day-to-day operations.

A. Who Will Administer the Activities?

1. Grantee Chooses Who Administers or Implements:

Grantees must make choices about who will administer and implement CDBG-funded activities. Options include:

- Grantee staff (Does Grantee have, or can it obtain, the staff capacity?);
- Contractors;
- Subrecipients;
- Other Governmental Entities (OGEs); or
- Some combination of the above.

2. Factors in Choosing Who Will Manage or Implement: Factors which tend to affect the degree to which grantee staff are relied upon more heavily for all CDBG functions include:

- Size of the community and of the CDBG grant amount;
- Types of programs undertaken;
- Local politics;
- Capacity of in-house staff; and
- Capacity and availability of potential program operators.

Based upon the Grantee's analysis of staffing capacities and upon programmatic needs, the Grantee must determine whether and/or to what extent it will work with contractors, subrecipients, and other governmental entities.

B. Using Contractors

1. Contractor Defined: Contractors are program operators who are procured competitively. For-profit entities are competitively procured and considered to be contractors. Under limited circumstances, private for-profits may be selected as subrecipients for certain activities. See "Subrecipients Defined" on next page. Typically, grantees use a contractor when:

- The activity is a project with a discrete activity and does not involve program management or administration.
- There is a specific activity under the contract with a clearly defined beginning and end date.

The specific activity undertaken by a contractor may be a physical project (like a multi-family rehabilitation) or a social service activity (like running a day care center or a housing rehabilitation program.)

2. Contractor Procurement: Contractors must be procured competitively (See Chapter 8) according to Federal Office of Management and Budget (OMB) rules.
3. Agreements with Contractors: Grantees must enter into agreements with contractors. In order to meet HUD and State CDBG Program requirements, agreements with contractors must address the following:
 - Scope of services to be provided, consistent with the State contract.
 - Identification of intended beneficiaries, if applicable.
 - Schedule for work completion.
 - Budget and payment schedule.
 - Provisions for termination for nonperformance or poor performance.
 - Other provisions required regarding:
 - Equal opportunity (see Contract Att. B.7; GMM, Chapter 4)
 - Nondiscrimination (see Contract Att. A.2; GMM, Chapter 4)

- Labor standards (see Contract Att. B.9; GMM, Chapter 5)
 - Anti-lobbying (see Contract Att. B.1)
 - Conflict of interest (see Contract Att. B.5)
- Provisions for maintenance of workers' compensation insurance (see Contract Paragraph 18 (b) (3)).
 - Provisions for maintenance of unemployment disability and liability insurance, as required (see Contract Paragraph. 18(b)(4)).
 - Provisions for records retention (min. 4 yrs. from submittal of final expenditure report or conclusion of any audit or litigation) (Contract Paragraph 18(b)(5)).
 - Provision permitting monitoring/auditing (Contract Paragraph 18(b)(6)).
 - Provision that grantee will monitor for conformity with its State contract.
4. Term of Contract: The term of contracts cannot exceed three years according to federal procurement rules.

C. Using Subrecipients

1. Subrecipients Defined: A subrecipient is a public or private non-profit agency or organization receiving CDBG funds from a grantee or another subrecipient to undertake eligible activities. Another way to say this is that subrecipients (sometimes referred to as "subgrantees") are organizations that are **provided** CDBG funds by a grantee **for their use** in carrying out agreed-upon, eligible activities. There are three basic kinds of subrecipients:
- a. Governmental non-profits (GNP's) are public agencies, commissions, or authorities that are **independent** of the grantee government (for example, a public housing authority, or a district water commission).
 - b. Private non-profits are usually, but not always, corporations, associations, agencies, or religious organizations with nonprofit status under the Internal Revenue Code (Section 501(c)(3)), usually with a board of directors and an executive director in charge of daily administration. Examples of private non-profits include private social service agencies (such as job training, counseling, or day care providers), community development corporations, church-related housing development groups, and operators of homeless shelters. Community-Based Development Organizations (CBDO's) are not

considered subrecipients unless the grantee specifically designates these organizations as such.

- c. **Private for-profits:** A limited number of private for-profits can qualify as subrecipients under Section 570.204, to carry out special activities such as economic development or housing new construction, provided that the purpose, function, and scope of those activities meet all of the requirements of that section. Essentially, these for-profit subrecipients are limited to Small Business Investment Companies (SBICs) organized pursuant to Section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)).
2. When to Use Subrecipients: Subrecipients commonly operate programs such as public services, housing rehabilitation, public works, and community facilities. These programs may be funded by specific grant agreements with HCD, program income, or both. Certain circumstances may require the use of a subrecipient, for example:
 - If a non-profit organization desiring to operate a program offers to contribute funds to a proposed program, this would be a conflict of interest under a competitive procurement. To avoid this conflict, the jurisdiction must select this non-profit as a subrecipient.
 - If the jurisdiction decided not to competitively procure its program operator, then it could either select the organization to be its subrecipient (must meet subrecipient definition), or choose to operate the program itself.
 3. How Do Subrecipients Differ From The Grantee's Own Employees? A grantee's "employees" refer to persons working for the unit of general local government that receives the CDBG funds directly from the State. For a city or county participating in the State CDBG Program, this would mean all employees of that City or County, so that even if the components of the local CDBG program were "farmed out" to many different city or county departments, the State CDBG Program considers all these departments and their staff to be "employees" of the grantee. **However, if the city or county chooses to run its CDBG housing rehabilitation program through its independent redevelopment agency, for purposes of the CDBG program, the redevelopment agency would be considered a subrecipient.**

Neither procurement contracts nor Subrecipient Agreements are required when CDBG activities are carried out by various departments or other organizational units **within** the grantee government itself. However, inter-agency or inter-departmental agreements are strongly encouraged as a mechanism for managing CDBG funds.

4. How Do Subrecipients Differ From Contractors? A contractor can be either a for-profit or a non-profit entity that is **paid** CDBG funds by the grantee (or subrecipient) in return for specific services, where payment is made to the contractor as **compensation**. While a subrecipient can be **designated** by the grantee, contractors must be selected through a **competitive procurement process**. However, other than rules relating to bonding, insurance, prevailing wages and other provisions, most of the standard federal administrative and monitoring requirements (described in 24 CFR Part 85 and OMB Circular A-110) do **not** apply to contractors, once the procurement process is complete. These OMB circulars and regulations must be followed by all subrecipients.

Under most circumstances, the distinction between a contractor and a subrecipient is clear. A development firm hired to build a new senior center is a contractor. A community development corporation running senior service programs is a subrecipient. However, there can be some tricky cases. For example, if a nonprofit day care provider is **hired** by a grantee (after a procurement process) to provide day care services to a lower income neighborhood, the nonprofit is a **contractor** in this instance, even though the grantee could have chosen to designate the nonprofit as a subrecipient to carry out the very same activity. The difference lies in the procurement process and in the administrative and monitoring requirements for subrecipients.

5. Selecting Subrecipients: Grantees should have procedures for assessing subrecipient organizations. Factors that should be considered in selecting an entity to administer a CDBG-funded activity include:
- **The proposed plan for carrying out the activity or activities:**
 - Have all the tasks been identified?
 - Has a realistic schedule been developed?
 - Has an estimate of necessary resources been compiled into a realistic budget?
 - Is the budget separate from other activities carried out by the organization?
 - **The organization's capacity to do the work:**
 - Has the organization performed the proposed activity before?
 - Does the organization have the experience with CDBG?
 - Does the organization have an appreciation for and realistic picture of the requirements and responsibilities associated with CDBG funds?

- Is the organization familiar with the other federal requirements that must be adhered to?
- What is the organization's track record?
- Does the organization have adequate administrative and financial systems in place to deal with the program requirements?
- Does the organization have qualified staff for all the functions and is there adequate staff time available for implementation and administration?
- **The possibility of any potential conflicts of interest (does not relate to board members who do not have financial interests):**
 - Have any staff members, agents, officers or members of their families participated in or gained inside information on the CDBG award decision-making process?
 - Do any staff members, agents or members of their families stand to gain, financially or otherwise, from an award of CDBG funds to the organization?

D. Subrecipient Agreements

1. Before Disbursing Funds: Before disbursing funds to any organization that is carrying out CDBG activities on behalf of the grantee, a written agreement must be executed. Such agreements must include the items listed below under "Required Contents of Subrecipient Agreements," and should also include the items listed under "Agreements With Contractors," which is found several pages further into this chapter.
2. Purposes of Subrecipient Agreements: Subrecipient agreements are a crucial element of CDBG program administration. Properly written and executed, written agreements can be used to serve three main purposes:
 - To meet the minimum HUD requirements.
 - To provide a tool for managing CDBG activities.
 - To serve as a training tool.
3. Required Contents of Subrecipient Agreements: The CDBG Regulations stipulate that certain requirements be included in all written agreements with subrecipients. At a minimum, subrecipient agreements must include the following provisions:

- **Statement of work:** A description of the work to be provided, including:
 - Schedule and Budget;
 - The purpose and nature of the services to be provided, including where they will be offered;
 - The specific tasks to be performed (e.g., job training services, application intake for rehab loans);
 - The specific quantifiable level of service that will be provided for each activity (e.g., 25 job training participants each month, 15 rehab loan applications per month); and
 - The schedule for the performance of work with target levels of service indicated at specific points in time (such as the milestone dates found in your CDBG standard agreement).

- **Records and Reports:** The specific records which must be maintained and reporting requirements.

- **Program Income:** Whether program income received is to be returned to the recipient or retained by the subrecipient. If the income will be retained, the specific activities for which the funds shall be undertaken. Also, subrecipients must reduce requests to the grantee for new CDBG funds by the amount of program income on hand.

- **Uniform Administrative Requirements:** Compliance with all applicable uniform administrative requirements, as described in §570.502.

- **Other Program Requirements:** Compliance with all applicable "other federal" requirements (e.g., Davis-bacon, NEPA environmental review, flood insurance, procurement, relocation, etc.).

- **Conditions for Religious Organizations:** If applicable, the conditions governing the use of funds by religious organizations found in §570.200(j) and 570.503(b)(6).

- **Suspension and Termination:** Suspension or termination may occur if the subrecipient fails to comply with any term of the agreement, and that the agreement may be terminated for convenience.

- **Reversion of Assets:** Upon expiration of the agreement, any CDBG funds on hand as well as any accounts receivable attributable to the CDBG funds must be transferred to the grantee. The agreement

must also include the requirements covering the use of real property acquired with CDBG funds.

- **Other Required Provisions:** All additional contract requirements found in Chapter 12 - Monitoring, 1. General Compliance Checklist.

4. Term of Subrecipient Agreements: Written agreements must remain in effect for the length of time that the subrecipient has control over any CDBG funds, including program income. However, it is good practice to update subrecipient agreements annually to ensure the agreements are current with regulations and requirements. This process also allows an opportunity to revisit and clarify problem areas or issues

E. Training of Subrecipients

1. Introduction: In order to avoid future problems with subrecipients, it is the responsibility of grantees to provide up front and ongoing training and technical assistance to subrecipients. There are three basic approaches, that together, focus on enhancing performance and reducing common problems among subrecipients. The next three sections describe these approaches
2. Orientation Sessions:
 - Typically held at the beginning of a funding cycle, or prior to application to the State.
 - Provides a forum for discussing basic requirements and procedures, and to discuss expectations about performance
3. Training:
 - Training is typically aimed at larger audiences.
 - This type of workshop focuses on specific issues, and provides sufficient technical detail necessary for subrecipients to understand and implement program.
 - Training should be held throughout the year, and should enhance performance and long-term capacity of subrecipients.
4. Technical Assistance:
 - Typically provided in a one-on-one or small group setting on site.

- Technical assistance should be designed to correct a specific weakness, or to improve the quality or performance of a specific program or project already underway.

F. Monitoring of Subrecipients

1. Grantee Monitoring of Subrecipient Performance: If CDBG funds are allocated to subrecipients to carry out activities, grantees are responsible for:

- Ensuring that subrecipients comply with all regulations and requirements governing their administrative, financial and programmatic operations.
- Ensuring that subrecipients achieve their performance objectives within schedule and budget
- Taking appropriate actions when performance problems arise.
- Monitoring should not be a one-time event. To be an effective tool for avoiding problems and improving performance, monitoring must be an ongoing process of planning, implementation and follow-up.

2. Steps in the Monitoring Process:

- Developing a monitoring plan - Grantees should develop a monitoring plan at the beginning of each program year (or grant cycle) in order to match available resources with the needs and capacity of funded subrecipients.
- Standardizing monitoring procedures - To ensure consistency and thoroughness in monitoring reviews, grantees should use standardized monitoring checklists or guidebooks. Monitoring procedures should also specify the steps to be followed for monitoring visits. You may want to refer to the State CDBG Program's monitoring checklists located in Chapter 12 of the Grant Management Manual.
- Identifying "risky" subrecipients - Grantees should perform a risk assessment to identify which subrecipients require comprehensive monitoring. High risk subrecipients might include:
 - Subrecipients new to the CDBG program;
 - Subrecipients that have experienced turnover in key staff positions;
 - Subrecipients with past compliance or performance problems;

- Subrecipients carrying out high risk activities such as acquisition, housing, and economic development; and
 - Subrecipients undertaking multiple CDBG-funded activities for the first time.
- For experienced subrecipients that are successfully carrying out activities, planning a more narrowly focused monitoring that would examine areas where the regulations have changed, new activities being undertaken or aspects of the subrecipients' programs that led to problems in the past.

Note: Comprehensive monitoring reviews should be conducted periodically even for subrecipients with strong past performance. Even the most effective and efficient subrecipients can neglect their responsibilities if grantees do not hold them accountable

3. Establish a Monitoring Schedule: Once the risk assessment has been conducted, grantees should establish a schedule that identifies when subrecipients will be monitored by grantee staff. HCD requires Grantees to monitor subrecipients once per 30-month CDBG grant agreement, or if the work transcends specific grant agreements, once per year. Grantees should allow ample notice to subrecipients of planned monitoring visits.
4. Prepare for the Monitoring Visit: Before beginning the monitoring visit, grantees should ensure that their staff are adequately trained for the task. Staff should be thoroughly familiar with the applicable program rules and the established monitoring protocol. In addition, staff persons assigned to monitor a particular subrecipient should review the following types of in-house data prior to the visit:
 - The CDBG funding application;
 - Written Agreement;
 - Progress Reports;
 - Draw-down Requests;
 - Correspondence;
 - Previous Monitoring Reviews; and
 - Copies of Audits
5. Conduct the Monitoring Visit: There are five basic steps to any monitoring visit.
 - **Notification Letter:** Grantees should begin the monitoring process by calling subrecipients to explain the purpose of the visit and to agree upon dates for the visit. A formal notification letter should follow at least several weeks before the planned visit and should include:

- Confirmation of the dates for the review;
 - Scope of the monitoring;
 - Information needed for review during the visit; and
 - Staff persons needed for interviews or assistance during the review.
- **Entrance Conference:** Entrance conferences are held at the beginning of monitoring visits, usually with the executive director or other top official of the organization, to make sure the subrecipient has a clear understanding of the purpose, scope and schedule for the monitoring.
 - **Documentation and Data Gathering and Analysis:** Grantees should keep a clear record of information reviewed and conversations held with subrecipient staff during the monitoring visit. The most efficient and effective way to review all the necessary documentation and data is to utilize a checklist. The information reviewed and obtained will serve as the basis for conclusions drawn from the visit. Subrecipients may request that sources be identified if any of the conclusions are disputed.
 - **Exit Conference:** At the end of the monitoring visit, the reviewers should meet again with key representatives of the subrecipient organization to:
 - Present preliminary results of the monitoring;
 - Provide an opportunity for the subrecipient to correct any misconceptions or misunderstandings;
 - Secure additional information to clarify or support their position; and
 - If applicable, provide an opportunity for the subrecipient to report on steps the organization may already be taking to address areas of noncompliance or nonperformance.
 - **Follow-up Letter:** At the end of the process, the grantee should provide the subrecipient with formal written notification of the results of the monitoring review. The purpose of this letter should not only be to point out problem areas, but also to recognize successes. In addition, the monitoring letter creates a permanent written record of what was found during the review. The letter should outline concerns and findings as well as deadlines for a written response and corrective actions. Standardized language set forth in the monitoring procedures often helps grantees to develop monitoring letters in a reasonable time frame and with consistency from subrecipient to subrecipient.

6. Follow-up to Ensure Problems are Addressed: Grantees are responsible for ensuring that subrecipients correct problems found as a result of monitoring. Effective follow-up procedures adhere to four basic principles:
 - The accountability of subrecipients to the grantee.
 - The clarity and consistency of performance standards and corrective actions.
 - The continuous provision of feedback by the grantee to the subrecipient.
 - Timely communications with subrecipients.
7. Intervention and Sanctions: There are basically three increasingly serious stages grantees should utilize for addressing subrecipient problem areas:
 - **Stage 1 - Early Intervention:**
 - Plan a strategy with the subrecipient that includes additional training or technical assistance;
 - Require more frequent or more thorough reporting by the subrecipient; or
 - Conduct more frequent monitoring reviews of the subrecipient.
 - **Stage 2 - Intervention for More Serious or Persistent Problems:**
 - Restrict the sub recipient's payment requests;
 - Disallow subrecipient expenses (or require payment); or
 - Impose probationary status.
 - **Stage 3 - Sanctions:**
 - Temporarily suspend the subrecipient;
 - Do not renew the subrecipient the next program year;
 - Terminate the subrecipient's activity for the current program year; or
 - Initiate legal action.

G. Using Other Governmental Entities (OGE's)

1. OGE's Defined: A jurisdiction may choose to work with an OGE to operate a program. The term "OGE" means another jurisdiction (city or county). For example, a city agrees to use a county housing department to administer its CDBG housing rehabilitation program. The term "OGE" does

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does not include independent governmental non-profits (GNPs), as defined earlier in this chapter under "Using Subrecipients".

2. Selecting OGE's: OGEs may be selected without following Federal procurement rules.
3. Agreements with OGE's: Grantees must enter into Memoranda Of Understanding (MOU) or Joint Powers Agreements (JPA) with selected OGEs. Such agreements should meet the same requirements as an agreement with a subrecipient (i.e., the applicable provisions set forth in 570.503). The CDBG Grantee remains responsible for adherence to program requirements.

III. REFERENCES

- A Guidebook for Grantees on Subrecipient Oversight (HUD, 1993)
- Basically CDBG (Handbook) sponsored by HUD, training presented by ICF Kaiser Inc., March 1998)
- CFR 570.204(c) Special activities by Community Based Development Organizations (CBDO's), Eligible CBDO's
- CFR 570.501(b) Responsibility for Grant Administration
- CFR 570.502 Applicability of Uniform Administrative Requirements
- CFR 570.503 Agreements with Subrecipients
- Also see Chapter 12, Monitoring, General Compliance Checklist for list of provisions required to be in contracts

IV. SUPPORTING MATERIAL

- Subrecipient Agreement Checklist
- Sample Subrecipient Agreement (non-governmental subrecipient)
- Sample Scope of Services for Public Services
- Sample Scope of Services/Schedule for Payment for Housing Rehabilitation Activities
- Sample Scope of Services for Special Economic Development Job Creation Activities

V. ACKNOWLEDGEMENTS

Parts of this chapter have been excerpted from, Basically CDBG, February 1998, used by permission from ICF Kaiser Incorporated, and A Guidebook for Grantees on Subrecipient Oversight, Managing CDBG, March 2005, U.S. Department of Housing and Urban Development.

SUBRECIPIENT AGREEMENT CHECKLIST

Jurisdiction: _____
 Subrecipient: _____
 Agreement Date: _____
 Grant Year -STBG- or PI RLA _____

The CDBG regulations stipulate that certain requirements be included in all written agreements with subrecipients. At a minimum, subrecipient agreements must include the following provisions:	YES	NO	(IF NO, PLEASE EXPLAIN)
Statement of Work: A description of the work to be provided, including a schedule and budget. Recommended provisions include:			
The purpose and nature of the services to be provided, including where they will be offered;			
The specific tasks to be performed (e.g., job training services, application intake for rehab loans);			
The specific quantifiable level of service that will be provided for each activity (e.g., 25 job training participants each month, 15 rehab loan applications per month); and			
The schedule for the performance of work with target levels of service indicated at specific points in time.			
Records and Reports - the specific records which must be maintained and reporting requirements.			
Program Income - whether program income received is to be returned to the recipient or retained by the subrecipient. If the income will be retained, the specific activities for which the funds shall be undertaken. Also, subrecipients must reduce requests for new CDBG funds by the amount of program income on hand.			
Uniform Administrative Requirements - compliance with all applicable uniform administrative requirements under 24 CFR § 570.502 and 24 CFR § Part 84, and/or Part 85, as applicable.			
Other Program Requirements - compliance with all applicable "other federal" requirements (e.g., Davis-Bacon, Flood Insurance, etc.).			
Conditions for Religious Organizations - If applicable, the conditions governing the use of funds by religious organizations.			
Suspension and Termination - Suspension or termination may occur if the subrecipient fails to comply with any term of the agreement, and that the agreement may be terminated for convenience.			
Reversion of Assets - Upon expiration of the agreement, any CDBG funds on hand as well as any accounts receivable attributable to CDBG funds must be transferred to the grantee. The agreement must also include the requirements covering the use of real property acquired with CDBG funds.			
Other Required Provisions - All additional contract requirements found in Chapter 12 - Monitoring, 1. General Compliance Checklist.			

SUBRECIPIENT AGREEMENT

(Adapted from A Guidebook for CDBG Grantees on Subrecipient Oversight)
SAMPLE FORM ONLY, NOT TO BE USED AS A LEGAL CONTRACT

**AGREEMENT BETWEEN [Grantee]
AND
[Non-Governmental Subrecipient]
FOR
[NAME OF CDBG PROGRAM]**

THIS AGREEMENT, entered this _____ day of _____, 20____ by and between the _____ (herein called the "Grantee") and _____ (herein called the "Subrecipient").

WHEREAS, the Grantee has applied for and received funds from the State of California, Department of Housing and Community Development, State Community Development Block Grant Program ("the Department") originating from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that;

I. SCOPE OF SERVICE

A. Activities

The Subrecipient will be responsible for administering a (specify) CDBG Grant _____ - STBG/EDBG/PTAA- _____ or Program Income Revolving Loan Account. [Name of Program] in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

Program Delivery

Activity #1 *[Complete description of activity to be undertaken including what products or services are to be performed, where they are to be provided, for whom they are to be provided, how they are to be provided]*

Activity #2 *[Same description as above]*

Activity #3 *[Same description as above]*

General Administration

[Add description of general administrative services to be performed in support of activities noted above]

B. National Objectives

All activities funded with CDGB funds must meet one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The Subrecipient certifies that the activity (ies) carried out under this Agreement will meet (indicate which National Objective). Briefly describe how this National Objective will be met.

C. Levels of Accomplishment – Goals and Performance Measures

The levels of accomplishment may include such measures as units rehabbed, persons or households assisted, or meals served, and should also include time frames for performance.

The Subrecipient agrees to provide the following levels of program services:

<u>Activity</u>	<u>Units per Month</u>	<u>Total Units/Year</u>
Activity #1	<i>[# of Units]</i>	<i>[# of Units]</i>
Activity #2	<i>[# of Units]</i>	<i>[# of Units]</i>
Activity #3	<i>[# of Units]</i>	<i>[# of Units]</i>
<i>[Add other activities as necessary]</i>		

[NOTE: Provide definition of Units of Service here.]

D. Staffing

[Provide list of staff and time commitments to be allocated to each activity specified in I.A. above.]

A Grantee might include the following provision if it felt among the Subrecipient's staff only certain personnel had the requisite experience to implement the activity, or if the Subrecipient had a history of reassigning responsibilities that tended to create problems.

"Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee."

E. Performance Monitoring

The Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the ____ day of _____, 20__ and end on the ____ day of _____ of 20__. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other CDBG assets, including program income.

II. BUDGET

<u>Line Item</u>	<u>Amount:</u>
Salaries	\$ _____
Fringe	_____
Office Space (Program only)	_____
Utilities	_____
Communications	_____
Reproduction/Printing	_____
Supplies and Materials	_____
Mileage	_____
Audit	_____
Other (Specify)	_____
Indirect Costs (Specify)	_____
TOTAL	\$ _____

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed \$_____. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Expenses for general administration shall also be paid against the line item budgets specified in Paragraph III and in accordance with performance.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

V. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

<u>Grantee</u>	<u>Subrecipient</u>
_____	_____, Manager
_____, Exec. Director	
Grantee _____	Subrecipient _____
[Address] _____	[Address] _____
[City, State, ZIP] _____	[City, State, ZIP] _____
[Telephone] _____	[Telephone] _____
[Fax Number] _____	[Fax Number] _____

VI. SPECIAL CONDITIONS

[This section of the Agreement can be used by Grantee to include special conditions specific to the particular activity or individual Subrecipient.]

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds

agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

F. Grantee Recognition

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate

this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

H. Suspension or Termination

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR 84.21–28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a) Records providing a full description of each activity undertaken;
- b) Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c) Records required to determine the eligibility of activities;
- d) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e) Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f) Financial records as required by 24 CFR 570.502, and 24 CFR 84.21-28; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited by the [insert applicable State or Federal law] unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Closeouts

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

6. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning subrecipient audits and OMB Circular A-133.

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report [insert frequency of reports, e.g., "monthly"] all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving

revolving fund account is not program income and shall be remitted promptly to the Grantee.

2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

3. Payment Procedures

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

D. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40-48.

3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Agreement.

E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement [or such longer period of time as the Grantee deems appropriate]. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period [or such longer period of time as the Grantee deems appropriate].
3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. [The Grantee may preempt the optional policies.] The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation,

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demolition or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.

X. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with [fill in local and state civil rights ordinances here] and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the

Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer. Additional State of California Requirements regarding the State Equal Opportunity provisions are contained in Attachment A.

6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all

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full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

"Section 3" Clause

- a) Compliance: Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is

located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

- b) Notifications: The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- c) Subcontracts: The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

- a) Approvals: The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.
- b) Monitoring: The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.
- c) Content: The Subrecipient shall cause all of the provisions of this contract

contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

- d) Selection Process: The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a) The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b) No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c) No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, 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 in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

5. Lobbying

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The Subrecipient hereby certifies that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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 the awarding of any Federal contract, the making of any Federal grant, 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;
- b) If any funds other than Federal 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c) It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:
- d) Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

XI. ENVIRONMENTAL CONDITIONS

A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C. , 7401, *et seq.*;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

XII. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

XIII. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XIV. WAIVER

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XV. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

[NOTE: For the above sections, if the Subrecipient is a governmental or quasi-governmental agency, the applicable sections of 24 CFR Part 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and OMB Circular A-87 would apply.]

Date _____

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

[Grantee]

[Subrecipient]

By _____ By _____
Chief Elected Official or Executive Officer

Title _____

Attest _____
ASSISTANT [CITY/COUNTY] CLERK

Countersigned: _____ By _____
FINANCE OFFICER

Title _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Fed. I. D. # _____

ASSISTANT [CITY/COUNTY] ATTORNEY

AFFIRMATIVE ACTION APPROVAL

CONTRACT COMPLIANCE SUPERVISOR

Example #1: Sample Scope of Services for PUBLIC SERVICE ACTIVITIES

This is an example of a Scope of Services for a non-profit subrecipient that is providing center-based day care services [under 24 CFR 570.201(e)] for children aged 14 months to 5 years. The public service is structured as a limited clientele activity that will principally benefit low- and moderate-income persons.

Please keep in mind that the following example is only one of the ways of structuring a Scope of Services and Method of Compensation for a public services provider being assisted through the CDBG program. In this example, the CDBG assistance comes in the form of a subsidy paid to the provider on behalf of the children from low- and moderate-income families enrolled in day care. However, the option is also available to assist the day care center provider's overall operations with CDBG funds, which could also meet the National Objective of principal benefit to low- and moderate-income persons as long as a majority of the children served by the center are from low- and moderate-income families.

SCOPE OF SERVICES

A. Principal Tasks

The Subrecipient will be responsible for providing day care and related services to eligible children over the period of _____ to _____. With funding from the Year _____ CDBG program of the [name of Grantee], the Subrecipient will make available the equivalent of 10 full-time day care slots during this period. The day care services will be provided at the Subrecipient's main day care center at [address of facility]. The Subrecipient will administer all tasks in the provision of the aforementioned public services in compliance with all applicable Federal, state, and local rules and regulations governing these funds, and in a manner satisfactory to the Grantee.

Changes in the scope of services, budget, or method of compensation contained in this Agreement, unless otherwise noted, may only be made through a written amendment to this Agreement, executed by the Subrecipient and Grantee.

The major tasks that the Subrecipient will perform in connection with the provision of the eligible day care services include, but are not limited to, the following:

- 1) Maintain facilities at all times in conformance with all applicable codes, licensing, and other requirements for the operation of a day care center. This will include all requirements for lead-based paint testing and abatement, as necessary. The facilities must also be handicapped accessible, and organized into separate areas appropriate for each of the age groupings being served (toddler, 14 months to 2.5 years; pre-school, 2.5 to 4 years; and pre-kindergarten, 4 to 5 years).

- 2) Conduct outreach through flyers, public service announcements, networking with local agencies, scheduling of open houses and other means to inform the low- and moderate-income community of the availability of the fully-subsidized day care slots available, and to ensure sufficient demand to maintain enrollment. All descriptions of the program will emphasize that the center is handicapped-accessible. [Depending on the demographics

of the community, a Grantee may want to specify that outreach materials also be produced in Spanish, French, Cambodian, etc.)

3) Accept applications and perform eligibility determinations. Only children aged 14 months to 5 years from families in [name of town/city/county] with incomes that do not exceed the low- and moderate-income limits of the CDBG program, by family size, will be eligible for enrollment in the subsidized day care slots.

4) Offer day care services from 8:00 a. m. to 6:00 p. m. Monday through Friday to approved eligible families. Families should be provided the option of enrolling their children in either part-time or full-time day care slots, provided that children from eligible low- to moderate-income families occupy 10 of the 40 "full-time equivalent" slots available at the day care center. [If services are not expected to be provided on some or all holidays, they should be specified in the scope.]

5) Ensure that the numbers, background and qualifications of the Subrecipient's staff providing the on-site day care and any related services at all times are appropriate for the enrolled child population at the center and meet at least the minimum standards established by the pertinent licensing bodies.

6) Provide two nutritionally balanced snacks and a warm lunch every day for children participating full time.

7) Provide transportation services for children requiring transport to and from their home.

8) As part of the day care services, provide a range of structured social, educational, and cultural enrichment activities appropriate to the age groups being served.

9) Maintain program and financial records documenting the eligibility, attendance, provision of services, and Subrecipient expenses relative to the children receiving day care services as a result of assistance provided through the CDBG program.

B. Budget and Method of Compensation

With the submission of original monthly bills together with proper support documentation, for the services described in Section A. of this Agreement, the Subrecipient will be reimbursed on a monthly basis according to the following schedule:

For day care services: A *pro rata* share of the Subrecipient's allowable monthly expenses for the provision of day care services as supported by a cost allocation plan prepared in accordance with OMB Circular A-122 and the Department of Health and Human Services Publication OASMB-5. FTE day-care slots may be used as the allocation basis for the plan if it can be shown that this basis provides for an equitable distribution of the indirect costs. Aggregate monthly billings are limited to \$7,500.00.

For transportation services: The actual direct costs and any allocable indirect costs incurred by the Subrecipient for the provision of day care-related transportation for authorized, enrolled children from low- and moderate-income families during the month in question, up to an aggregate limit of \$500.00 per month.

It is also important to note two special requirements for support of public services under the CDBG program. First, to be initially eligible for CDBG funding, the public service must be either a new service or a quantifiable increase in the level of service provided or assisted by the local government with state or local funds during the prior year. This requirement does not prevent refunding the CDBG-assisted public service at the same level in a subsequent year, however.

Second, under most circumstances the amount of CDBG funds obligated within a program year to support public service activities must not exceed 15 percent of the total grant awarded to the grantee for that year, together with 15 percent of the program income received by the grantee and its subrecipients for the preceding year. The grantee may want to include explicit language in the Subrecipient Agreement acknowledging these conditions for the eligibility of the public services expenses.

The grantee may also want to place special emphasis on the antidiscrimination language in the Subrecipient Agreement in order to ensure that individuals with disabilities or other special populations receive equitable access to the CDBG-assisted services.

Example #2: Sample Scope of Services/Schedule of Payment for

HOUSING REHABILITATION ACTIVITIES

In this example, the housing rehabilitation effort is aimed primarily at owner-occupied properties. The Subrecipient administers the activity, but the actual rehabilitation work is conducted by private contractors. (Other likely scenarios include a local rehabilitation program where the Subrecipient's own staff perform some or all of the rehabilitation, and/or where the Subrecipient itself owns the property; in such cases, the specifics of the Scope of Services would need to be changed accordingly.)

The illustrative Scope of Services and Schedule of Payment that follow could be used along with the overall "boilerplate" agreement language found earlier in this Appendix to create a complete Subrecipient Agreement for housing rehabilitation activities.

In reviewing the following, however, keep in mind that this is only one of the many acceptable ways a Scope of Services could be structured for such work, and the particular language and level of detail contained in this example are not mandatory. Essentially, a grantee should develop a Scope of Services that is sufficient to provide clarity about all the activities that the Subrecipient is expected to carry out, with explicit review and approval mechanisms that are adequate to permit the grantee to exercise its oversight responsibilities.

SCOPE OF SERVICES

A. Principal Tasks

The Subrecipient will be responsible for administering a CDBG Year____ housing rehabilitation program, also referred to as (specific name of program), for the city/county of (name of Grantee), hereinafter referred to as "the Grantee." The Subrecipient will administer all tasks in connection with the aforesaid program in compliance with all applicable Federal, state, and local rules and regulations governing these funds, and in a manner satisfactory to the Grantee.

The major goal of the Subrecipient's efforts under this Agreement will be the completion of rehabilitation of thirty-five (35) eligible housing units, per the Subrecipient's proposal of [date], as amended and approved by the Grantee on [date]. Changes to the program goals, scope of services, schedule or budget, unless otherwise noted, may only be made through a written amendment to this Agreement, executed by the Subrecipient and Grantee. Toward the goal of the completion of rehabilitation for 35 eligible units, the major tasks that the Subrecipient will perform include, but are not necessarily limited to, the following:

- 1) Refinement of housing rehabilitation program plans, procedures and forms:** subject to review and approval by the Grantee, the Subrecipient will establish, or make any necessary revisions to, the housing rehabilitation program design and procedures (including but not limited to the priorities among applicants and among rehabilitation measures, the limits and structure of financial assistance,

and the recapture and affordability policies), as well as any other necessary forms, documents or sample contracts.

2) Outreach: the Subrecipient will conduct sufficient advertisement of the housing rehabilitation program and other forms of outreach to ensure that enough eligible applicants from the designated target neighborhood(s) of [names of neighborhoods] participate in the program to meet the CDBG Year ____ housing rehabilitation goal of 35 completed units.

3) Intake/assessment of eligibility: the Subrecipient will assist property owners and residents in the designated neighborhoods in the completion of applications to permit eligibility determinations for rehabilitation assistance. The Subrecipient will make provision for translation services to meet the needs of non-English-speaking applicants. In the event of applicants who have impaired mobility or other disabilities, the Subrecipient will make provisions for completing the application at the applicant's residence or other acceptable procedures for ensuring equal access to services.

Initial eligibility determination of households/structures will be made by the Subrecipient on the basis of satisfaction of income requirements (single-unit structures must be occupied by a low- and moderate-income household; if a two-unit structure, at least one must be so occupied; and if three or more units in a structure, at least 51 percent of the units must be occupied by low- and moderate-income households [at affordable rents, where applicable] according to the most current income limits established by HUD), the apparent need for rehabilitation measures to correct relevant housing code or Housing Quality Standard (HQS) deficiencies, and any other pertinent criteria set forth in the approved program design.

4) Work write-ups: for each eligible unit to be assisted, the Subrecipient will complete a detailed work write-up of the rehabilitation to be performed, including estimated costs of each activity, materials to be used, and industry or regulatory standards to be met. This write-up will be initialed and dated by the homeowner.

5) Bank financing: for those applicants who will be securing some of the financing for the rehabilitation work through private loans from a bank or other type of private financial institution, the Subrecipient will provide assistance to applicants when applying for such complementary financing upon request.

6) Solicitation and selection of contractors: the Subrecipient will assist approved applicants in the identification, proper solicitation, and selection of contractors qualified to perform the authorized rehabilitation of eligible housing units. The Subrecipient will provide forms and sample contract formats for the applicants to use in contracting with the contractors and will assist the applicant in ensuring that the description of the work contained in any contracts with contractors is accurate and complete.

7) Periodic and final inspections: the Subrecipient will perform periodic site visits to ascertain that approved and contracted rehabilitation work is proceeding properly and satisfactorily, will authorize (with the owner's written approval, including signature and date) appropriate change orders, and will mediate in the event of owner dissatisfaction with the work done by the contractor.

8) Approval of contractor payments: as rehabilitation progresses and as invoices are submitted by contractors, the Subrecipient will verify that the expenses are reasonable and the work has been completed properly (including a sign-off by the owner), and will authorize drawdown of funds from the Grantee, and disbursement to the contractors.

9) Maintenance of case files and other records: for each applicant, the Subrecipient will maintain case files, including application and documentation of eligibility, work write-ups, the assistance agreement between the property owner and Subrecipient (along with repayment/ recapture provisions), documentation of liens and any other forms of security, contractor selection criteria, copy of contract between owner and contractors), documentation on all necessary licenses and permits, site visit/inspection reports (including final inspection), change orders, and approved contractor invoices for payment (with owner sign-off). The Subrecipient will also maintain appropriate information on persons residing in the property, including a list or lists identifying persons in a project immediately before the project, after project completion, and those moving in during the project, as well as information on those displaced or temporarily relocated (per 24 CFR 570.606 and 24 CFR part 24). The Subrecipient will maintain these and other program and financial records in accordance with the general requirements for record keeping specified in Section ___ of this Agreement.

B. Staffing

The Subrecipient shall assign the following staff as Key Personnel to the CDBG Year ____ housing rehabilitation program:

Staff Member Title	General Program Duties	Time Allocation
Jane Smith, Program Manager	General program oversight and administration; revision of forms and procedures; approval of contractor selection; submission of approved contractor invoices	10 hours/week
John Doe, Asst. Program Manager	Assist with revision of forms and procedures; outreach; intake and eligibility determinations; solicitation of contractors; supervision of Rehabilitation Specialist; maintenance of program records	30 hours/week
Harold Baker, Rehabilitation Specialist	Work write-ups; inspections	25 hours/week
Alice Glass, Bookkeeper	Financial Records	5 hours/week

Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee.

C. Project Schedule

Unless amended by mutual written agreement by the Subrecipient and the Grantee, (Subrecipient's name) will perform the described housing rehabilitation tasks and complete the rehabilitation of eligible units in conformance with the schedule attached as Exhibit 1.

D. Line Item Budget

The following is the budget for the CDBG FY____ housing rehabilitation program to be administered by (name of Subrecipient). Unless otherwise noted, this budget may only be modified through a formal written amendment approved by the Grantee.

Rehabilitation Loans and Grants		\$310,000. 00
Relocation Assistance		20,000. 00
Operations and Administration		83,804. 00
Salaries	50,860. 00	
Fringe @ 40%	20,344. 00	
Office space (program only)	4,800. 00	
Communications	440. 00	
Reproduction/printing	600. 00	
Supplies and materials	660. 00	
Mileage	1,200. 00	
Audit	3,000. 00	
TOTAL		<u>\$413,804. 00</u>

METHOD OF COMPENSATION/SCHEDULE OF PAYMENTS

A. Direct Rehabilitation Expenses

The Subrecipient may draw down funds (against the "Rehabilitation Loans and Grants" budget line item) to establish escrow accounts for individual participating property owners to finance payments to contractors for the rehabilitation of eligible property. The loan agreement with the homeowner must specify that an escrow account will be used. Drawdowns for such escrow accounts may be initiated at the time that the assistance agreement between the Subrecipient and property owner is executed, but any funds drawn for such escrow accounts must be limited to the amount expected to be disbursed within 10 working days from the date of drawdown, must be placed in one interest-bearing account, and must be disbursed to contractors within 10 days of receipt by the Subrecipient. Payments to contractors from such escrow accounts should be made on the basis of work completed, with a set-off of at least 10 percent until final inspection and sign-off of the completed rehabilitation by the Subrecipient's staff and property owner.

Exhibit 1

**Housing Rehabilitation Program
Work Schedule – CDBG YEAR _____**

Tasks/Program Goals	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12
1. Refinement of Forms and Procedures	_____											
2. Outreach/Intake	----- (as needed) -----											
3. Number of Applicants Determined Eligible (cumulative)	-----											
4. Number of Work Write-ups Completed (cumulative)	0	5	15	25	35+							
5. Number of Eligible Units Out-to-Bid (cumulative)	0	3	12	22	32	35+						
6. Number of Eligible Units Where Rehab Started (cumulative)	0	1	10	18	28	35						
7. Number of Eligible Units Where Rehab 50% Complete (cumulative)	0	1	5	13	21	29	35					
8. Number of Eligible Units Where Rehab/Final Inspection Completed (cumulative)	0	0	1	5	13	21	29	35				
9. Submission of Quarterly Reports	0	0	0	2	4	8	16	24	32	35		
			X			X			X			

B. Relocation Assistance

The Subrecipient may draw down funds as Relocation Assistance expenses are incurred, up to the approved line item budget level. Relocation Assistance must be provided in accordance with 24 CFR 570.606 and 49 CFR part 24.

C. Operations/Administrative Expenses

During start-up of the CDBG FY ____ housing rehabilitation program (Months 1–3), the Subrecipient may draw down on a monthly basis up to one-twelfth of the budgeted amount for Operations and Administration, to cover expenses actually incurred. After Month 3, drawdowns against the balance of budgeted funds for Operations and Administration must be based on costs actually incurred, and proportional to the percentage of the total authorized amount for Rehabilitation Loan/Grant funds and Relocation Assistance that have been expended.

[NOTE: A grantee might structure compensation for operations/administrative expenses in this way to allow for start-up costs, and to ensure that the subrecipient does not exhaust its CDBG operations budget before the rehabilitation of all the assisted units is completed.

Alternatively, a grantee could choose to reimburse the subrecipient simply on the basis of operations/administrative expenses incurred, or at a fixed rate per unit completed (in this case, \$2,394.40 per unit based on a budget for operations and administration of \$83,804 and a volume of 35 units). This latter approach may only be used if it is supported by a cost allocation plan to ensure that the reimbursement is tied to the actual cost of services.]

In addition to the provisions outlined above, it is especially important that a grantee should ensure that a Subrecipient Agreement for the operation of a housing rehabilitation program also includes citations relative to the following program requirements:

- **Affordability provisions [24 CFR 570. 208(a)(3)]:** for activities benefiting low- and moderate-income persons, the subrecipient must adopt and make public the grantee's standards for determining that for rental housing assisted under the program, the rents of units occupied by low- and moderate-income persons are "affordable."
- **Davis-Bacon requirements and other Labor Standards [24 CFR 570.603]:** these statutes require the payment of prevailing wages for CDBG-assisted construction work, including construction or rehabilitation of residential property containing eight units or more, in excess of \$2000. The Contract Work Hours and Safety Standards Act also applies to such activities.
- **Historic Preservation [16 U.S.C. 470 et seq. and 36 CFR Part 800]:** these requirements mandate (a) consultation with specified agencies having responsibility for historic preservation to identify properties listed (or eligible for inclusion) in the National Register of Historic Places that may be subject to adverse effects by the

proposed CDBG activities, and (b) compliance with procedures or other requirements to avoid or mitigate such adverse effects.

- **National Flood Insurance Program [24 CFR 570.605]:** if a community has had notice for more than a year that an area has been identified by FEMA as having special flood hazards, CDBG funds cannot be spent for acquisition or construction purposes within that area unless the community is participating in the National Flood Insurance Program and such insurance has been purchased for the properties in question.
- **Relocation, Real Property Acquisition, and One-For-One Housing Replacement [24 CFR 570.606]:** The acquisition of real property for a CDBG-assisted project and the displacement of any person (family, individual, business, non-profit organization or farm) as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project must comply with 24 CFR 670.606 and 49 CFR part 24. The Subrecipient must also conduct its CDBG activities so as to minimize displacement, and if displacement occurs, the displaced persons or entities must be provided assistance consistent with the Uniform Relocation Act, as amended, or Section 104(d), as applicable. In addition, there must be a one-for-one replacement of any occupied (or vacant, occupiable) low- and moderate-income dwelling that is demolished or converted to another use in connection with a CDBG-funded activity.
- **Lead-based Paint [24 CFR 570.608 and 24 CFR Part 35]:** There is a general prohibition against the use of any lead-based paint in connection with any CDBG activity involving the construction or rehabilitation of residential structures. If the structure was constructed prior to 1978, the tenants or purchasers must be notified of the hazards of lead-based paint poisoning; and, depending on the level of Federal assistance made available to the structure, paint inspection, risk assessment, treatment and/or abatement must be provided.
- **Program Income [24 CFR 570.500; 570.503(a), (b)(3) and (b)(7); and 570.504]:** A grantee must approve (a) whether a Subrecipient will be allowed to retain and use program income, and (b) for what activities the program income may be used. The use of such program income must be in compliance with all other applicable program requirements and, upon the expiration of the Subrecipient Agreement, any program income on hand or subsequently received by the Subrecipient must be returned to the grantee.

Examples of language that can be incorporated into a Subrecipient Agreement for most of these additional requirements can be found in the sample "boilerplate" Agreement in the preceding section of this Appendix.

**Example #3: Sample Scope of Services for
SPECIAL ECONOMIC DEVELOPMENT JOB CREATION ACTIVITIES**

*This is an example of a Scope of Services for a subrecipient that is providing low-interest loans to private for-profit businesses (per **24 CFR 570.203(b)**) as a means of creating jobs for low- and moderate-income persons. With such "special economic development activities" documentation that the loan program constitutes an **eligible activity** and meets a **National Objective** is crucial, and therefore is given particular attention in this illustrative Scope of Services.*

*As mentioned in the preceding section that focused on housing rehabilitation, there are a variety of acceptable ways to structure the scope and compensation schedule for any particular activity being undertaken by a Subrecipient. Therefore, the example that follows **should not be viewed as required contract language**, but rather as one approach for structuring the Scope of Services in a S Agreement.*

SCOPE OF SERVICES

A. Principal Tasks

The Subrecipient will be responsible for administering a CDBG Year ____ economic development loan program, also referred to as (specific name of program), for the city/county of (name of Grantee) hereinafter referred to as "the Grantee." The Subrecipient will administer all tasks in connection with the aforesaid program in compliance with all applicable Federal, state, and local rules and regulations governing these funds, and in a manner satisfactory to the Grantee.

Changes to the program focus and objectives, scope of services, schedule, or budget contained in this Agreement, unless otherwise noted, may only be made through a written amendment to this Agreement, executed by both the Subrecipient and Grantee.

The focus of the Subrecipient's efforts under this Agreement will be the provision of low-interest loans to private for-profit businesses located in the city/county of (name of grantee) that will result in the creation of jobs at those businesses primarily for low- and moderate-income individuals. The principal objective of the CDBG Year ____ economic development loan program will be the creation of 25 jobs through the provision of up to ten (10) loans. The major tasks that the Subrecipient will perform in connection with the (specific name of program) include, but are not limited to, the following:

- 1) Refinement of economic development loan program procedures and forms:** subject to the review and approval by the Grantee, the Subrecipient will establish, or make any necessary revisions to, the economic development loan program design, procedures, and forms (including but not limited to the underwriting criteria, collateral/loan security requirements, standards for loan value-to-job creation ratio(s), repayment terms, loan review procedures, standard application forms and loan documents, loan servicing terms and procedures, and loan re-negotiation, default and/or foreclosure policies).

2) Outreach: the Subrecipient will advertise the CDBG FY_____ economic development loan program and conduct other forms of outreach. The Subrecipient's outreach efforts will be sufficient to generate enough demand to be able to close loans that produce 25 jobs, the majority of which will be for low- and moderate-income persons.

3) Completion of loan applications; underwriting assessment: the Subrecipient will assist for-profit businesses in completing loan applications, and will perform an assessment of each loan request to: (a) determine the CDBG eligibility of the loan, (b) evaluate the loan's job creation potential relative to meeting the National Objective and Public Benefit standards, and (c) ascertain that the loan will minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods. The Subrecipient will perform a front-end assessment to determine whether each loan and the financing terms associated with it are appropriate, and as part of this assessment will consider the business' need for financial assistance, the feasibility of the proposed venture or business activity, the past business experience of the applicant, the reasonableness of the proposed costs and return to the applicant, the commitment of other sources of funds, and the ratio of the loan amount to the full-time equivalent jobs expected to be created.

4) Obtain loan collateral: the Subrecipient will identify and obtain loan collateral, or other appropriate forms of loan security, sufficient to reduce the financial risk associated with each CDBG-funded loan, consistent with the program intent of providing financing in situations where adequate conventional financing is not available.

5) Loan Review Committee: the Subrecipient will establish and maintain a Loan Review Committee, consisting of a representative of the Subrecipient, a representative of the Grantee, and three representatives of local financial institutions familiar with business loans. The Loan Review Committee will review all loan recommendations forwarded to it by the economic development program staff of the Subrecipient. No loan will be made under the economic development loan program without the approval of a majority of the members of the Loan Review Committee.

6) Loan closing: with the authorization of the economic development loan program's Loan Review Committee, the Subrecipient will execute all necessary documents and will draw down funds as necessary to cover the expenses of approved applicants for activities authorized by executed loan agreements. The loan documents executed with applicants will include explicit provisions describing (a) the records that loan recipients must maintain to demonstrate the eligibility of the CDBG expenditures and the satisfaction of the CDBG National Objective, and (b) the conditions and procedures under which late payment penalties, default and/or foreclosure will occur.

7) Loan servicing/loan portfolio management: the Subrecipient will establish and maintain a consistent method for recording monthly payments, with up-to-date ledgers and timely reconciliations (at least quarterly). The Subrecipient will also

establish a system to monitor the financial health of the ventures funded, in order to anticipate repayment problems. The Subrecipient will apply its policies and procedures regarding late payments, defaults, loan re-negotiation, and foreclosure in a timely and consistent manner.

8) Monitoring of job creation: the Subrecipient will monitor loan recipients on at least a quarterly basis to assess their progress in creating jobs for low- and moderate-income persons, and will institute default and foreclosure of the loan (with penalties if appropriate) in instances where the loan recipient fails to take sufficient action to satisfy the CDBG National Objective requirement.

9) Management of program income: any program income generated in connection with the economic development loan program, including loan repayments, late payment penalties, recaptures, or proceeds from foreclosure, will be utilized consistent with the provisions of 24 CFR 570.500(a), 570.503(a) and (b)(3), and 570.504, and all other applicable CDBG program requirements. The Subrecipient shall apply this program income toward additional loans under the economic development loan program through the use of a revolving fund pursuant to 24 CFR 570.500(b).

10) Maintenance of records: in addition to the financial records regarding loan repayment cited in Paragraph A.6 above, the Subrecipient will maintain sufficient records to fully document (a) the loan application and underwriting review, including the front end assessment of CDBG eligibility and appropriateness of the loan, (b) the final terms and conditions of the loan, including collateral or other forms of loan security involved, (c) satisfaction of the CDBG National Objective, and Public Benefit requirements consistent with the requirements of 24 CFR 570.208(a)(4) and 570.209, and (d) proper utilization of program income received. All such records will be maintained according to the general requirements of 24 CFR 570.506 and those specified in the section of this Agreement on retention of records [Grantee to add specific reference here].

Along with this Scope of Services, the grantee should develop Agreement language regarding Key Personnel and should include a Project Schedule and a Line Item Budget comparable to those found in the preceding example for housing rehabilitation activities. The Project Schedule may be more difficult to develop in the instance of this special economic development activity, however, because it probably will be harder to predict when individual loans might be closed. Nevertheless, in the Project Schedule the grantee should at least identify the discrete tasks and make every effort to frame measurable milestones and/or levels of accomplishment over time.

For the Method of Compensation/Payment Procedures section, the Subrecipient's draw down of funds to finance the loans themselves should be predicated on the amount needed to cover the actual expenses of approved applicants relative to activities authorized by executed loan agreements. The somewhat uncertain schedule for loan closings also might make it difficult to structure compensation for the Subrecipient's operational/administrative expenses on a "performance basis;" that is, payment to the Subrecipient for operational/administrative expenses based on the number of loans closed or jobs created, etc. An alternative method is to reimburse

reimburse the Subrecipient for operational and administrative costs simply on the basis of expenses incurred.

These sections on Scope, Project Schedule, Budget, and Method of Compensation/ Payment Procedures can be added to the general Agreement "boilerplate" language to form a complete Subrecipient Agreement.

CHAPTER 3

ENVIRONMENTAL REVIEW REQUIREMENTS

Introduction

The purpose of the environmental review process is to analyze the effect the proposed project will have on the people and the natural environmental components within the project area.

Units of local government who are grantees of CDBG funds must complete an environmental review of all project activities prior to obligating CDBG funds. This requirement also applies to projects funded with CDBG-generated Program Income (PI).

This chapter will cover the environmental regulations that must be followed on all CDBG funded projects. Definitions, forms and step-by-step instructions on how to complete the environmental reviews are provided within this chapter. Environmental forms and additional resources are provided as separate attachments to this chapter.

Section 1 - Background and Responsibilities

Applicable Regulations

The rules and regulations that govern the environmental review process can be found under 24 CFR Part 58, Subparts A-H. For a quick reference:

- Subpart A: Defines the purpose of an environmental review and the legalities associated with its completion.
- Subpart B: Specifies the roles and responsibilities of those performing the review and the State's oversight responsibilities.
- Subpart C: Identifies limitations on obligating project funds prior to completion of the environmental review process.
- Subpart D: Requires aggregation of related activities and classifies project activities into four levels of review.
- Subpart E: Explains the steps involved with the preparation of the environmental assessment and circumstances requiring re-evaluation of the original environmental findings.
- Subpart F: Deals with the use of existing environmental impact statements for a proposed action.
- Subpart G: Explains the process associated with the preparation of the environmental impact statement.
- Subpart H: Explains the steps associated with securing a release of funds, and the oversight responsibilities of the State and grantees of HUD assistance.

Responsible Party

- Grantee: The unit of local government that is a recipient of CDBG grant funds or that administers CDBG PI.

In order to carry out its environmental review responsibilities, the grantee should designate two responsible parties:

- Certifying Officer: The responsible entity (i.e., CDBG grantee) must designate a certifying officer---the "responsible federal official"---to ensure compliance with the National Environmental Policy Act (NEPA) and the federal laws and authorities cited at Part 58.5 has been achieved. This person is the chief elected official, chief executive official, or other official designated by formal resolution of the governing body. The certifying officer must have the authority to assume legal responsibility for certifying that all environmental requirements have been followed. This function may not be assumed by administering agencies or consultants.
- Environmental Officer: The funding grantee should designate an Environmental Officer. This person is the grant administrator or the consulting engineer. This person would sign all NEPA documents as the "Preparer". The Environmental Officer will be responsible for writing project narrative, obtaining maps of the project area, soliciting comments from appropriate local, state and federal agencies, and facilitating responses to comments received on the environmental findings. However, the grantee is responsible for:

CDBG funds may not be obligated for construction activities prior to receiving approval from the State. Grantees and participants in the development process who fail to adhere to environmental requirements may have all project costs disallowed. Grantees may be required to reimburse the State for any CDBG funds expended.

1. Ensuring compliance with NEPA and the federal laws and authorities has been achieved;
2. Issuing the public notification;
3. Submitting the request for release of funds, when required; and,
4. Ensuring the Environmental Review Record (ERR) is complete.

Common Acronyms

CEQA	California Environmental Quality Act
CFR	Code of federal Regulations
EA	Environmental Assessment
EFF	Environmental Finding Form
EIS	Environmental Impact Statement
EO	Executive Order
ERR	Environmental Review Record
FOSI	Finding of Significant Impact
FONSI	Finding of No Significant Impact
NEPA	National Environmental Policy Act
MOU	Memorandum of Understanding
NOI/RROF	Notice of Intent to Request Release of Funds
OHP	Office of Historic Preservation
PA	Programmatic Agreement
PI	Program Income
RE	Responsible Entity
RER	Rehabilitation Environmental Review
RROF	Request for Release of Funds
SHPO	State Historic Preservation Officer

Environmental Review Record

Each CDBG grantee must prepare and maintain a written record of the environmental review undertaken for each project, including exempt activities such as administrative costs and tenant-based rental assistance. This written record or file is called the Environmental Review Record (ERR) and must be available for public review. Environmental Review Records maintained electronically must be in compliance with the requirements of 24 CFR Part 58.38 which states: "*The responsible entity must maintain a written record of the environmental review undertaken... for each project. This document will be designated the 'Environmental Review Record' (ERR)...*" Electronically maintained ERRs must remain available for public review and monitoring in accordance with 24 CFR Part 58.35 (i.e., an individual, organization or HUD monitor wishing to review an ERR cannot be denied access to an ERR because it is stored on an employee's computer or a private network). However, CDBG staff still require a hard copy to be submitted for review.

The ERR must contain the following documents and parts:

- Description of the project and each of the activities comprising the project, regardless of individual activity funding source. To the extent

A preliminary environmental review including source documentation must be conducted prior to contacting applicable agencies for comment. Agencies must be provided sufficient project information, maps, and source documentation to make a determination of compliance with applicable laws.

feasible, grantees are encouraged to conduct and neighborhoods rather than limiting the environmental assessment to just the activity being proposed or to the streets being addressed within a neighborhood. The review should include all potential activities and phases of investment planned in the future. The ERR must also contain written determinations and other review findings (e.g., exempt and categorically excluded determinations, findings of no significant impact), and public notices, when required. The ERR shall also contain documentation that verifies compliance with NEPA and the federal laws and authorities cited in compliance checklists, Environmental Assessments (EA) and Environmental Impact Statements (EIS);

- Documentation of compliance with federal laws and authorities;
- Documentation of compliance with the NEPA, when applicable;
- Notices, when applicable; and,
- Public comments received.

Public comments, concerns and appropriate resolution by the grantee must be completed prior to requesting release of funds from the State, and must be fully documented in the ERR.

The ERR will vary in length and content depending upon the level of review required (based upon the types of project activities).

Keep in mind that, on the average, an EA for a project usually takes at least 90 days to complete.

Grantees must carry out and document completion of the prescribed procedures for compliance with NEPA. Depending on the complexity of the project, these procedures can be time-consuming. Jurisdictions might consider the option of hiring (through proper procurement methods) a consultant or consulting firm that specializes in environmental reviews.

Incurring Costs

Expenditures for activities that are exempt from NEPA per Part 58.34 (i.e., general administration, environmental review, planning, engineering and design work, etc.) may be incurred after the date of the grant award letter. The exempt activities must be documented as such in the environmental review record. Grantees must submit a letter to the State requesting approval to begin incurring such expenses prior to executing the Standard Agreement. Upon receiving State approval, grantees may begin incurring costs for these activities. ***However, grantees should be aware that they are proceeding at their own risk, and that CDBG expenditures will not be reimbursed until after the CDBG Standard Agreement has been executed and all special conditions have been cleared.***



Grantees must use the most recent HUD NEPA forms for submittal of all environmental reviews. These forms are posted as separate links on the home page for this Chapter. If you submit documentation on NEPA forms from any other agency besides HUD, you will not be in compliance with CDBG regulations and will have to re-submit all documentation on the proper forms, and also complete additional environmental reviews which could set your schedule back a considerable amount of

time, or cause the rejection of your entire project! Likewise, CEQA forms are also unacceptable since CDBG does not monitor for CEQA compliance.

Environmental review requirements apply to all CDBG funded activities, including "10 percent Set-Aside" activities and projects funded with PI.

Section 2 - Actions Triggering Environmental Review, Limitations Pending Clearance and Project Aggregation

Actions Triggering the Requirements at 24 CFR Part 58

Once a grantee has submitted an application for CDBG funds to the State, Part 58 requirements are applicable to the project. At this point, the grantee (and any other project participants) must cease all project activity until the environmental review (ER) has been completed. Part 58 prohibits further project activities and actions from being undertaken prior to completion of the review and the determination of environmental clearance.

Where a grantee (or other project participant) has begun a project in good faith as a private project, the State is not precluded from considering a later application for federal assistance for the project, but the third party must cease further actions on the project until the environmental review process is completed. Grantees may proceed with the project upon receiving approval from the State, after the environmental review process has been completed for the project.

There are certain kinds of activities that may be undertaken without risking a violation of requirements of Part 58, such as hiring a consultant to prepare a Phase I Environmental Site Assessment (an investigative study for environmental hazards), or hiring a consultant to complete an engineering design study or plan, or a study of soil and geological conditions. If you have any question as to whether a specific activity may be permitted without risking a violation, consult with your CDBG Representative.

Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken, even with the project participant's own funds or any source of funds, prior to obtaining environmental clearance to use CDBG funds. If prohibited activities are undertaken prior to receiving approval from the State, the applicant is at risk for the denial of CDBG assistance. These actions interfere with the State's ability to comply with NEPA and Part 58. If prohibited actions are taken prior to environmental clearance, then environmental impacts may have occurred in violation of the federal laws and authorities and the standard review procedures that ensure compliance.

Limitations Pending Environmental Clearance/Choice-Limiting Actions

According to the NEPA (40 CFR 1500-1508) and Part 58, the State is required to ensure that environmental information is available before decisions are made and before actions are taken. Grantees may not commit or expend resources, either public or private funds (CDBG, other federal or non-federal funds), or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until environmental clearance has been

achieved. In other words, grantees must avoid any and all actions that would preclude the selection of alternative choices before a final decision is made---that decision being based upon an understanding of the environmental consequences, and actions that can protect, restore and enhance the human environment (i.e., the natural, physical, social and economic environment).

In order to achieve this objective, Part 58 prohibits the commitment of CDBG funds by the State or its grantees until the environmental review process has been completed and CDBG staff release of funds approval has been received, when required. Moreover, until the grantee has completed the environmental review process (and until receipt of CDBG clearance), neither the grantee nor project participant may commit non-HUD funds or undertake an activity if that action would have an adverse environmental impact or limit the choice of reasonable alternatives.

For the purposes of the environmental review process, “**commitment of funds**” includes:

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

Project Aggregation

The environmental review must identify and address the physical, social and economic impacts of the entire proposed activity. The environmental review process must consider the ultimate effect of a proposed project, including the potential effects of all aspects of the development, whether funded through CDBG or through other funding sources. For example, if CDBG funds are being used to extend a water line to a site for a new residential development or manufacturing plant, then the ultimate effect of the project is not only the new water line, but also the new residential development or plant. Therefore, the environmental review must address the impacts of both the CDBG-funded water line, as well as the development of the new residential units or plant. The scope of an environmental review encompasses this definition of a project.

While the definition of activity under the CDBG program refers only to the project costs paid for by grant funds, the definition of activity under NEPA refers to the entire scope of onsite and offsite development as a result of CDBG involvement, irrespective of the source of funding.

Section 3 – Classifying the Activity and Conducting the Appropriate Level of Review

To begin the Environmental Review process, funding grantees, including grantees using CDBG PI, must first determine the environmental classification of each activity of the project. The term “project” can be defined as an activity or group of activities geographically, functionally, or integrally related, regardless of funding source, to be undertaken by the CDBG grantee, subgrantee or a public or private entity in whole or in part to accomplish a specific objective. If the various activities have different classifications, the grantee must follow the review steps required for the most stringent classification. This chapter will focus upon the four environmental classifications that are recognized under the CDBG program:

- Exempt Activities;
- Categorically Excluded Activities;
- Activities Requiring an Environment Assessment; or,
- Activities Requiring an Environmental Impact Statement.

Determining the classification is the responsibility of the CDBG grantee. To do this, the Environmental Officer must list all of the activities associated with the project, review the information contained within this chapter and match each activity to the appropriate classification.

Occasionally, projects funded under the CDBG program entail more than one activity. For example, a new wastewater treatment plant project would have both administrative and construction related activities. The administrative activities would be considered exempt, where as the construction related activities would require an EA or possibly an EIS.

Regardless of the number of activities associated with a project, a single environmental review is required. Aggregating related activities ensures the grantee adequately addresses and analyzes the separate and combined impacts of a proposed project.

The following table has been developed to assist with the classification of activities. However, the funding grantee is advised to read the regulations listed under the exempt, categorically excluded (“subject to” or “not subject to” Part 58.5) and EA activity sections of this chapter for more detail.

<i>Activity</i>	<i>Classification</i>
Acquisition/Disposition	Categorically Excluded Subject to Part 58.5
Clearance (Demolition)	Categorically Excluded Subject to Part 58.5 or EA
Water and Sewer Improvements	Categorically Excluded Subject to Part 58.5 or EA

<i>Activity</i>	<i>Classification</i>
Supplemental Assistance to a Previously Approved Project	Categorical Excluded Not Subject to Part 58.5
Flood and Drainage Facilities Improvements	Categorically Excluded Subject to Part 58.5 or EA
Street Improvements	Categorically Excluded Subject to Part 58.5 or EA
Parks, Playground and Other Recreational Facilities--Improvements	Categorically Excluded Subject to Part 58.5 or EA
Public Facility Rehabilitation	Categorically Excluded Subject to Part 58.5 or EA
Public Facility New Construction	EA
Relocation Payments and Assistance	Exempt
Rehabilitation – Residential	Categorically Excluded Subject to Part 58.5 or EA
Rehabilitation – Commercial	Categorically Excluded Subject to Part 58.5 or EA
Planning and Technical Assistance	Exempt
General Administration	Exempt
Economic Development Assistance to Non-Profit Entities (activities not associated with construction or expansion)	Categorically Excluded Not Subject to Part 58.5
Economic Development Assistance to For-Profit Entities (activities not associated with construction or expansion)	Categorically Excluded Not Subject to Part 58.5
Single Family Housing Construction	Categorically Excluded Subject to Part 58.5 (under certain conditions) or EA

Exempt Activities

For the activities listed below, NEPA requirements and related federal laws and authorities under Part 58.5 are not applicable, because they do not directly affect any actual environmental conditions, and are therefore exempt. However, **requirements under Part 58.6 are applicable** as they pertain to the Flood Disaster Protection Act, the Coastal Barrier Resources Act, and the Airport Runway Clear Zones and Clear Zones Disclosures.

Activities considered **Exempt** are:

- Environmental and planning *studies*.
- General *administrative* costs.
- *Payment of costs for eligible public services that will not have a physical impact or result in any physical changes*, including but not limited to services addressing employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs.
- *Inspections and testing of properties for hazards and defects*.
- *Preliminary and final engineering and design costs* incurred for an eligible State CDBG program activity.
- *Technical assistance and training*.
- *Assistance for temporary or permanent improvements* that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary *only to control or arrest the effects from disasters or imminent threats to public safety* including those resulting from physical deterioration.
- Activities that are Categorical Excluded and subject to Part 58.5, but have converted to Exempt. (i.e., activities that had no secondary findings for any review factor on the Statutory Worksheet).

Environmental Forms Required for Submittal to CDBG for Review for Approval of Exempt Activities:

- A completed *Level of Environmental Review Form*, indicating "Exempt".

Categorically Excluded from NEPA and Not Subject to Part 58.5

For the activities listed below, NEPA requirements and related federal authorities under Part 58.5 **are not applicable** (i.e., **categorically excluded**) because the activities would not alter any conditions that would require a review or compliance determination under the federal laws and authorities cited in Part 58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the grantee does not have to submit a RROF to the State. The exception is when the responsible entity determines that an activity or project identified in Paragraph (a) or (b) of Part 58.5, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect.

Again, **requirements under Part 58.6 are applicable** as they pertain to the Flood Disaster Protection Act, the Coastal Barrier Resources Act, and the Airport Runway Clear Zones and Clear Zones Disclosures.

Activities considered Categorically Excluded Not Subject to Part 58.5 are:

- Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating costs and similar costs *not associated with construction or expansion* of existing operations.
- Payment of CDBG eligible operating costs, including maintenance, furnishings, security, equipment, operation, supplies, utilities, staff training and recruitment.
- Payment of CDBG eligible supportive service costs, including but not limited to, health care, housing services, permanent housing placement, day care and nutritional services.
- Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction where the foundation is already in place at the time the buyer applies for assistance, including closing costs and down payment assistance, interest buy-downs, and similar activities that result only in the transfer of title.
- Affordable housing predevelopment costs.

Environmental Forms Required for Submittal to CDBG for Review for Approval of Categorically Excluded/ Not Subject To:

An activity determined to be categorically excluded and not subject to Part 58.5 must be documented as such and *does not convert to exempt, but remains excluded*. Prepare and/or keep in your files a copy of each of the following:

- A completed *Level of Environmental Review Form* indicating "Categorically Excluded Not Subject to Part 58.5".

Payment of Assessment Fees for TIG Households

Assessment Fees are a tool used to recover the costs of certain capital improvements, such as the upgrading of a water quality or a sewage treatment facility. The payment of assessment fees for TIG households is a CDBG eligible activity that represents an indirect way of paying for these capital improvements.



However, please note: this activity is still considered as public improvements for NEPA purposes and its NEPA level of review must be based on the type of public improvement being undertaken. **NOTE:** Assessment Fees are never an Exempt or Categorically Excluded Not Subject to 58.5 activity, even if the project will proceed without the use of CDBG funds. Furthermore, NEPA clearance must be obtained from the Department before any work on the project can begin.

Categorically Excluded from NEPA Subject to Part 58.5

Categorical exclusion refers to a category of activities for which no EIS or EA under NEPA is required, except in extraordinary circumstances (see Part 58.2(a)(3)) in which a normally excluded activity may have a significant impact. Even though **NEPA requirements are not applicable, the requirements of 24 CFR Part 58.5 are applicable** to projects in this category. For example, although the project is excluded from a full review under NEPA, it may be located in a floodplain and trigger a floodplain and wetlands assessment (see "Flood Insurance Requirements and 8-Step Process" in the attachments to this chapter). Or a project may involve rehabilitating homes or disturbing the ground and, therefore, be subject to historic preservation requirements.

Requirements under 24 CFR Part 58.6 are also applicable as they pertain to the Flood Disaster Protection Act, the Coastal Barrier Resources Act, and the Airport Runway Clear Zones and Clear Zones Disclosures.

Activities considered Categorically Excluded Subject to Part 58.5 are:

- The acquisition, reconstruction, rehabilitation or installation of CDBG eligible public works and improvements when the facilities and improvements are in place and will be retained in the same use *with less than a 20% change in size or capacity* (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
- Special projects directed to the *removal of material and architectural barriers that restrict mobility* of and *accessibility* to elderly and handicapped persons.
- The rehabilitation of buildings and improvements when the following conditions are met:
 - For a residential building with one to four units:
 - The density is not increased beyond four units;
 - The land use is not changed; and,
 - The footprint of the building is not increased in a floodplain or in a wetland.
 - For multifamily residential buildings (5 or more units):
 - Unit density is not changed more than 20 percent;
 - There are no changes in land use from residential to non-residential; and,
 - The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
 - For non-residential structures:
 - The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and,
 - The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

- An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between (This does not apply to the rehabilitation of a building for residential use with one to four units).
- An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.
- Acquisition of an existing structure provided that the structure acquired will be *retained for the same use*.
- Combinations of the above activities.

Environmental Procedures

Grantees must document compliance with Part 58.5, either by completing a **“Statutory Worksheet” on an individual project** or a **“Rehabilitation Environmental Review” (RER)** form for rehabilitation of existing residential structures. These forms contain a listing of all the applicable environmental provisions, including a brief description of the procedures required for compliance and the appropriate federal and /or State agency(s) that should be contacted regarding these procedures.

If you are administering a residential or commercial rehabilitation program, you must write to the State Historic Preservation Officer (SHPO) describing the program and how you will evaluate each unit for historic or archaeological status. Keep your letter and SHPO's response in your environmental review file.



Please note that the **RER Form is for a tiered review**, in which all potential housing rehabilitation projects within the target area are the focus for the environmental clearance. Appendix A of the RER is then completed for each rehabilitation project within that target area as units are identified. It cannot be used for activities involving changes of use, demolition, new construction “reconstruction”, or for the rehabilitation of or acquisition of entire multi-family residential structures.

Reconstructions of Housing Units:

Reconstructions of housing units, even if they are part of the grantee's Housing Rehabilitation Program, are treated as separate projects and cannot be a part of the tiered review. As such, they require the completion of a *Statutory Worksheet*, and cannot be reviewed using the RER/Appendix A protocol (tiered review).

If you choose to use the Statutory Worksheet and you have no secondary findings (no B's checked), you may convert the project to exempt status pursuant to 24 CFR Part 58.34 (a)(12):

Environmental Forms Required for Submittal to CDBG for Review for Approval of Conversion to Exempt Status:

1. A completed *Level of Environmental Review Form*, indicating *Categorically Excluded, per Part 58.35(a)* and *conversion to Exempt*.
2. A completed and documented *Statutory Worksheet* with primary findings only.
3. A copy of *supporting documentation*, including SHPO correspondence where applicable.

If you have any secondary findings (B Status) on the Statutory Worksheet;

OR

If you use the RER for rehabilitation:

Environmental Forms Required for Submittal to CDBG for Review for Approval of Categorical Exclusion:

1. A completed *Level of Environmental Review Form* indicating a "*Finding of Categorical Exclusion*". **Note that this form is not required for tiered review (RER Form) for rehabilitation activities.**
2. A completed and documented *RER* or *Statutory Worksheet identifying secondary findings*. (Please refer to the Supplemental Guide on Environmental Review Documentation in the attachments to this chapter.)
3. A copy of SHPO correspondence.
4. Proof of *publication* of the *NOI/RROF* notice in a local newspaper of general circulation. If the notice is not published, then it must be prominently displayed in the local post office and in other public buildings as established by the citizen participation process (not recommended when there is not a site specific project). Provide for 7 calendar days after the date of publication of the notice for public comment or 10 calendar days if the notice was not published, but mailed and posted instead.
5. Comments received during the 7-day comment period for newspaper publications or 10-day period for mailed/posted notifications and responses.
6. A completed "*Request for Release of Funds and Certification*" form.

Environmental Assessment (EA) - Part 58.36

If your project is not found to be exempt or categorically excluded from NEPA, an EA will be required. This document is used to evaluate the environmental ramifications of proposed CDBG-funded and related program activities. Depending upon the magnitude and complexity of the proposed project, the EA can lead to two types of clearances or findings. These include a Finding of No Significant Impact (FONSI) or a Notice of Intent to Prepare an EIS, which is further described in the next section.

The preparation of an EA, which leads to a FONSI, will be typical for projects that are not exempt or categorically excluded.

Activities which fall under this category include the following:

- New construction or rehabilitation of public facilities or improvements involving a new facility or system, or increasing the size or capacity of an existing facility or system by more than 20 percent.
- Infrastructure activities in support of a new construction project.
- An individual action (new construction, demolition or acquisition) on a project of 5 or more units when the units are located within 2,000 feet of each other.

Environmental Procedures

Prepare an EA in accordance with 24 CFR Part 58, Subpart E, using the EA to include the grantee name and address, a description of the project and location map, a determination of existing conditions, identification of project impacts with data sources and explanation, a discussion of project alternatives, a discussion of any measures that will be implemented to mitigate project impacts and a discussion of any irreversible project impacts. In addition, the grantee must address, through a narrative description, all the review factors and applicable laws and authorities listed on the EA form.

The EA will result in either a: 1) FONSI; or, 2) Finding of Significant Impact (FOSI) requiring preparation of an EIS.

Finding of No Significant Impact (FONSI):

Most CDBG projects will result in a FONSI as they do not usually constitute major federal actions, or they comprise part of a larger project that has already completed an environmental study.

Environmental Forms Required for Submittal to CDBG for Approval of the EA:

1. A completed and documented *Environmental Assessment*.
2. SHPO correspondence.
3. Proof of publication of a combined "*Notice of FONSI and Notice of Intent to Request Release of Funds*". In addition, for all project-specific activities, copies of the FONSI should be sent to adjacent land owners, organizations, and to individuals and groups known to be interested in the activities, the appropriate State, federal and local agencies, the headquarters and appropriate regional office of the Environmental Protection Agency (EPA) and the Department. Submit to the Department the list of parties that received a copy of the FONSI.
4. Comments received during the 15-day comment period for newspaper publications or 18-day period for mailed/posted notifications and responses (or a signed

statement indicating that no comments were received within the prescribed period).

5. A completed "Request for Release of Funds and Certification" Form.

Submit a copy of each form to the Department for review and approval. After receiving the Request for Release of Funds (RROF) and Certification form, **the State must allow an additional 15 days to accept any objections to its release of funds and the grantee's certification** prior to releasing the Authority to Use Grant Funds. The 15-day period begins on the date that the Department receives the RROF or the date identified in the combined Notice, whichever is later. File all documents, including the Authority to Use Grant Funds (once received), in the ERR.


Finding of Significant Impact (FOSI):

If you determine that the CDBG project will have a potentially significant impact on the human environment, then an EIS must be prepared. Please consult with your CDBG representative before proceeding.

Environmental Impact Statement - Part 58.37

If the EA results in a finding that an activity will have "potentially significant" impact on the human environment, the grantee must publish a notice of intent to prepare an EIS. "Potentially significant" incorporates significant development, regional impact, long-term effects on the environment, violation of existing laws and authorities, or highly controversial development where, in each case, procedural resolution is not feasible.

24 CFR Part 58.37 describes certain types of projects that require an EIS because of their size or nature. For example, the construction, substantial rehabilitation, conversion or demolition of 2,500 housing units requires an EIS; or a water or sewer project with the capacity to support 2,500 new units also requires an EIS.

 Projects funded under the State CDBG Program rarely require an EIS since State CDBG activities usually do not constitute a "major federal action" or they are a small part of a large project for which a full environmental review has already been completed. However, if your project meets the thresholds for EIS or your EA results in a FOSI, consult with your CDBG representative regarding the preparation of an EIS.

Section 4 – Five-Year NEPA Clearance for Housing Programs

When completing the tiered review process (such as housing rehabilitation activities), grantees may request a clearance for **5-years** – the maximum allowable period according to HUD. However, for this clearance to be obtained from the state CDBG Program, the following items are required:

1. The ERR must clearly show a consistent statement within all documents that the Grantee will be operating the program for a 5-year period. This information must be included in the Public Notice and be stated in all the other NEPA forms (RER and the RROF and Certification).
2. The Notice of Intent to Request Release of Funds (NOI/RROF) should address all CDBG funds that could be expended during that 5-year period. The grantee must make a reasonable approximation of any potential CDBG grants (for the activity in question) and/or CDBG PI (for the activity in question) that might be received within the 5-year period.
3. The NOI/RROF and the RER forms should include the maximum number of units to be assisted during the 5-year period.
4. The grantee should not take any action that could be determined to be a Choice Limiting Action until they have received the “Authority to Use Grant Funds” form (HUD-7015.16) signed by either the State CDBG Section Chief or Program Manager. *Reference: 24 CFR Part 58.22 (a) and (b).*
5. For any future grant applications that the grantee applies for under this activity, the grantee will need to submit the “Authority to Use Grant Funds” form as evidence that they have the appropriate environmental clearance.

Section 5 – Consultation with the State Historic Preservation Officer (SHPO)

The historic preservation review of a proposed activity is known as the **Section 106** process as part of the National Historic Preservation Act. The federal Regulations on protection of historic properties can be found at 36 CFR Part 800. American history, architecture, archeology, engineering and culture are embodied in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association; and either of the following:

- That are associated with events that have made a significant contribution to the broad patterns of our history;
- That are associated with the lives of persons significant in our past;
- That display the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or,


- That have yielded, or may be likely to yield, information important in prehistory or history.

All of the above are reasons that a specific site may have development restrictions placed on it by the SHPO, and close attention must be paid to the Section 106 process.

Grantees must consult with SHPO if there are potentially any historical properties (including archaeological and cultural resources) on the project site or if the project could have an effect on historical properties, including possible historic or archaeological properties not yet identified.

Public involvement is a primary ingredient in successful Section 106 compliance. It is imperative that all affected parties be invited to comment early in the review process and that all historical information from interested sources be documented to determine the reasonable, good faith effort on the part of the Certifying Officer preparing the determination.

For rehabilitation activities, the grantee must evaluate whether the proposed activity will affect a property on or eligible for the National Register of Historic Buildings, and must consult with SHPO prior to making a finding regardless of whether the Rehabilitation Environmental Review Forms or Statutory Worksheet are used.

 For vacant sites, the California Historical Resources Information System (CHRIS) is the primary source of information regarding cultural resources that may be located in the soils. The website is www.chris.ca.gov. The CHRIS system will perform a records search of the area surrounding the subject property and advise on the "likelihood" of the presence of cultural or historic resources on the site.

The Advisory Council on Historic Preservation has formalized the review period. Requests for comment to the SHPO must receive a response within 30 days of receipt of the request. Requests for comment should be sent certified mail. If the SHPO fails to respond to an "adequately documented finding" within that review period, compliance with Section 106 is complete. ***An adequately documented finding is one for which the grantee has completed the research necessary to make a determination prior to formally consulting with the SHPO.*** If the information is inadequately documented, SHPO is allowed an additional 30 days to respond to a re-submittal. Grantees are strongly advised to become familiar with SHPO procedures and requirements, and carefully follow the documentation standards in 36 CFR Part 800.

Descriptions and photographs of structures to be affected by rehabilitation should be submitted to the SHPO for review as part of the environmental review procedures. Consultation with the SHPO can be made during preparation of the Statutory Worksheet or RER; however, each structure must be evaluated on a case-by-case basis using the Appendix A protocol.

Information on documentation of properties and use of the Criteria for Evaluation may be obtained by writing: National Register of Historic Places, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240, or accessing the Advisory Council on Historic Preservation at www.achp.gov which includes the Section 106 Users Guide.

Programmatic Agreements

Per 36 CFR Part 800.14, (4) (b), SHPO and the grantee may negotiate a Programmatic Agreement to govern the implementation of a particular program or the resolution of adverse effects from multiple undertakings. This type of agreement is common and recommended for Housing Rehabilitation Programs where, due to the tiered review process, the potential effect on historic properties cannot be determined at the onset of the program.

When to Consult SHPO for Housing Programs:

With Letter of Understanding or Programmatic Agreement with SHPO attached		
Age	Exterior work	Consult?
50+ years	Yes	Yes
50+ years	No	No
Under 50 years	Yes	No
Under 50 years	No	No
Without Letter of Understanding or Programmatic Agreement with SHPO attached		
Age	Exterior work	Consult?
50+ years	Yes	Yes
50+ Years	No	Yes
Under 50 years	Yes	Yes
Under 50 years	No	No
Note: "Consult" means Grantee writes a letter to SHPO and either attach the approval or state that there was no response within 30 days and thus approval is presumed.		

Section 6 – Floodplain Management

If any activity is proposed to take place in a 100-year floodplain (either designated by FEMA or identified using best available information) or construction in a designated wetland is proposed, the implementation of a specific decision-making process is required for compliance with Executive Orders 11988 and 11990. This procedure is commonly referred to as the "8-Step Process." A flow chart depicting the decision making process can be found in the attachments to this chapter. The 8-Step Process must be dated prior to the RROF, and the 8-Step documentation must be submitted to the Department along with all other NEPA review documents.

8-Step Process

Step 1: Determine if the Project is in a Floodplain or Wetland

The first step is to determine if the project is located in the base (100 year) floodplain/wetland.

- If the community has been identified as flood-prone by Federal Emergency Management Agency (FEMA), a copy of the community's most recently published map (including any letters of map amendments or revisions) should be obtained. The map will identify the community's special flood hazard areas.
- The maps identified below are published by FEMA. Check the following maps to determine if the project is located within a floodplain:
 - Flood Hazard Boundary Map; and/or,
 - Flood Insurance Rate Map.

If the FEMA maps are not available, a determination of whether the project is located in a floodplain may be made by consulting other sources, such as:

- U. S. Army Corps of Engineers - Hydrology, Hydraulics, and Coastal Team
- Local Soil Conservation Service District;
- Floodplain Information Reports;
- USGS Flood-Prone Area;
- Topographic quadrangle maps; or,
- State and local maps and records of flooding.

For wetlands, determine the presence or absence of wetlands, including non-jurisdictional wetlands, in accordance with the 1987 *US Army Corps of Engineers (USACE) Wetlands Delineation Manual* (1987 Manual).

Funding grantees should request developers to provide an evaluation by an engineer or hydrologist for areas which are not covered by FEMA or these other sources.

Step 2: Engage Public Comment

After a grantee determines the project is located in a floodplain/wetland, the second step is to involve the public in the decision-making process by publishing a notice in the local newspaper informing the public of the proposal and inviting comments.

- Executive Order (EO) 11988 and 11990 includes requirements that the public be provided adequate information, opportunity for review and comment, and an accounting of the rationale for the proposed action affecting the floodplain/wetland.
- An acceptable format for the 1st Notice is provided as a separate link under *Additional Resources*. It provides a description of the proposed action with time for meaningful input from the public.

Step 3: Identification and Evaluation of Alternative Locations

The third step involves identification and evaluation of the *practicable alternatives* to locating in the floodplain and/or wetlands. This determination requires the grantee to consider whether the floodplain can be avoided to minimize harm to or within the floodplain by:

- Adoption of an alternative project site;
- Other means which accomplish the same purposes as the proposed project but would minimize harm to or within the floodplain or wetland; or,
- Taking no action.

Step 4: Identify Impacts of Proposed Project

Identify the impacts of the proposed project, including actions occurring outside the floodplain, that will affect the floodplain or wetland. In other words, if the project directly or indirectly includes floodplain development and/or has additional impacts, these additional impacts need to be identified also.

- If negative impacts are identified, methods must be developed to preserve the wetlands environment and reduce or avoid potential harm, as discussed in Step 5. The term harm, as used in this context, applies to lives, property, natural and beneficial floodplain values.

Step 5: Minimize Potential Impacts and Identify Methods to Restore and Preserve Beneficial Values

If the proposed project has identifiable impacts (as identified in step 4), the natural wetlands environment must be restored and preserved.

- The concept of minimization applies to harm.
- The concept of restoration and preservation applies only in floodplain/wetland values.
- Methods to be used to perform these actions are discussed in Step 6.

Step 6: Re-Evaluate Project, Implement Actions to Minimize Impacts

At this stage, the proposed project needs to be re-evaluated in relationship to alternatives identified in Step 3, taking into account the identified impacts, the steps necessary to minimize these impacts and the opportunities to restore and preserve floodplain values.

- As a "rule of thumb," if the proposed project is determined to be no longer feasible, you should consider limiting the project to make non-floodplain or non-wetland sites practicable.

- If neither is acceptable, the alternative is no action (that is, the project does not go forward).
- If the proposed project is outside the floodplain or wetland but has impacts that cannot be minimized, the grantee should consider whether the project can be modified or relocated in order to eliminate or reduce the identified impacts or, again, take no action.
- The re-evaluation should also include a provision for comparison of the relative adverse impacts associated with the proposed project located both in and out of the floodplain or wetland. The comparison should emphasize floodplain/wetland values; and a site out of the floodplain/wetland should not be chosen if the overall harm is significantly greater than that associated with the floodplain or wetland site.

If the grantee determines that the original *Finding of No Significant Impact* is no longer valid, the grantee must notify the CDBG Rep and prepare a new Environmental Assessment according to the procedures specified in Section 3.

Step 7: Publish Statement of Findings and Public Explanation

- If the re-evaluation results in the determination that the only practicable alternative is to locate the project in the floodplain or wetland, a 2nd Notice (*Statement of Findings and Public Explanation*) must be published in a local newspaper.
- A sample of this second notice is provided as a separate link under *Additional Resources*.
- The grantee may not post the two public notices. These notices are required to be published.
- For Step 7, it is permissible to publish 2nd Notice concurrently with the *Notice of Intent to Request Release of Funds* (related to categorical exclusions that cannot convert to exempt) or Combined Notice of *Finding of No Significant Impact (FONSI)* and *Notice of Intent to Request Release of Funds* (related to an EA). However, it should be made clear that the notices serve different purposes.
- For projects in a floodplain, a copy of the 2nd Notice must be forwarded to the FEMA Regional Environmental Officer for comment and documented in the ERR.

Step 8: Implement the Proposed Project

Once the proper documentation has been reviewed and published, the project may continue.


- Compliance with EO 11988 and/or 11990 has been achieved through documentation of the "8-Step Process", and implementation of the conditions for approving the project in the floodplain or wetland. Therefore, this documentation should be placed in the project ERR.

Section 7 – Re-Evaluation of Review Findings

If the size or scope of the CDBG project changes significantly or if the location changes, the grantee must reassess the project's environmental impact and update the ERR. The purpose of the re-evaluation is to determine if the original environmental finding is still valid.

The grantee must re-evaluate its assessment findings in any of the following situations:

- There is change of location or a substantial change or amendment in the nature, magnitude, or extent of a project, including adding new activities not covered in the original project scope.
- There are new circumstances and conditions that may affect the project or have a bearing on its impact on the environment.
- The grantee selects an alternative approach not considered in the original assessment.

 If the findings of the *Statutory Worksheet* (categorically excluded) or the FONSI determination is still valid but data or conditions upon which it was based have changed, the grantee must amend its original review and update its ERR by including the re-evaluation and determination based on its findings:

- The narrative or a memorandum to ERR should clearly describe the project and indicate what changes are being made. Include narrative and maps identifying the original and revised project, as applicable.
- Provide the date the original review was completed and whether it converted to exempt or the date of release of funds.
- Identify and discuss the environmental compliance issues (including other requirements at Part 58.6) being affected by the changes and the findings and conclusions reached, with documentation that supports the findings/conclusions. This is best documented via the Statutory Checklist or Worksheet, depending on the level of review.
- Identify any necessary mitigation measures and how they will be incorporated into the project.

- Document whether the original findings are still valid. If they are not, contact CDBG staff.

Copies of all documentation generated through the re-evaluation process must be submitted to CDBG staff. Funds cannot be released unless the new decision is appropriately documented and reported.

Section 8 – Urgent Need

An activity designed to alleviate an existing condition of particular urgency may warrant a modified review process. The condition must pose a serious and immediate threat to the health or welfare of the community, must have occurred or become urgent within the last 18 months, and the grantee must document that it has been unable to finance the activity because the community's other resources have been depleted by the emergency and other federal programs are not sufficient to cover all the costs. Grantees are encouraged to consult with the Department prior to using the Urgent Need provision. The Department's formal approval is required for Urgent Need.

Records must include:

1. A description of the condition, documenting both the timing and the nature and degree of seriousness of the threat;
2. Local certification that the CDBG activity was designed to address the urgent need (i.e., a resolution); and,
3. Evidence that other financial resources are unavailable to alleviate the need.

Certain Categorically Excluded activities may be deemed exempt in emergency situations under Part 58.34(a)(10). Specifically, this clearance level addresses, "*Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.*" They will follow the recordkeeping requirements for exempt projects as outlined earlier in the chapter and for emergency projects as documented above.

For an activity that, under non-emergency circumstances, would typically require noticing, Part 58.33 applies. If funds are needed on an emergency basis and when adherence to separate comment periods would prevent the giving of assistance, the combined Notice of FONSI and the NOI/RROF may be disseminated and/or published simultaneously with the submission of the RROF. The combined NOI/RROF shall state that the funds are needed on an immediate emergency basis and that the comment periods have been combined. The notice shall also invite citizens to submit their comments to both HCD and the responsible issuing entity (grantee) to assure that these comments will receive full consideration. However, if the activity will have a significant environmental impact, the grantee must immediately consult with the Department, which will in turn consult with HUD and make alternative arrangements.

Section 9 - Department's Role and Common Problems

Department's Role

The Department is responsible for ensuring that grantees comply with the provisions of NEPA and the related federal laws. To fulfill its responsibilities, the Department will consider any objection to the grantee's RROF and Certification received within 15 days from the day the Department received the RROF. The Department can only deny the RROF based on the following reasons:

- The grantee's Certifying Officer did not execute the RROF and Certification.
- The grantee has failed to make a finding regarding significant impacts of the proposed activity or has failed to make a written determination as required by Part 58.
- The grantee has omitted one or more of the steps set forth for the preparation, publication and completion of the NEPA review.
- **The grantee or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by Part 58, or before receiving an Authority to Use Grant Funds or a clearance letter from the State.**

If the activity involves an effect on a property on, or eligible for, the National Register of Historic Places and the grantee has failed to inform the Advisory Council on Historic Preservation of the effects the activity will have on this property, the Grantee will *not* have met its environmental clearance requirements as required in Part 58 noted above.

The Department's approval of the RROF and Certification satisfies the responsibilities of the Secretary of Housing and Urban Development under NEPA and the related provisions of federal law (24 CFR Part 58.5), and once approved, funds will be released. The grantee's State CDBG representative will be responsible for processing the RROF and Certification and drafting each environmental clearance letter.

For activities that require a formal Request for Release of Funds, the Department will issue an Authority to Use Grant Funds (HUD Form 7015.16) upon clearance of all NEPA requirements.

The Department will monitor the grantee's environmental review procedures to meet the following objectives:

1. To ascertain whether the grantee has complied with all of the procedures of 24 CFR Part 58, the related statutes, executive orders and regulations to determine their applicability to specific projects, and that the environmental review record includes adequate written evidence (documentation) of consultation with and determination by other agencies, as appropriate.

2. To ensure that the grantee has considered the environmental quality of the project and its surroundings in its decision-making and has adequately assessed the project's impacts on the environment and the environment's impact on the project.
3. To ensure that funds have not been expended or committed prematurely.
4. To provide assistance to the grantee in order to remedy any deficiencies in the grantee's environmental review compliance procedures.

By complying with Part 58, the grantee will have complied with the procedural aspects of NEPA, Historic Preservation and all of the related laws, regulations and executive orders as set forth in 24 CFR Part 58.5 and Part 58.6. When the review of procedural compliance and environmental quality indicates deficiencies in the grantee's program, State CDBG staff will work with the grantee to remedy the problem and reduce or eliminate the incidence of such problems in the future. The Department may take formal corrective action as provided for in the State or federal CDBG regulations, which may result in a return of funds.

Common Problems

- Environmental clearance prepared only for the portion of the project paid for with CDBG funds, as opposed to the onsite and offsite work made possible by injection of CDBG funds.
- Site work funded through other sources is performed prior to environmental clearance, resulting in a choice-limiting action which disallows participation with CDBG funds.
- Project funds are obligated or expended prior to receiving environmental clearance from HCD.
- Project is not reviewed at the correct level of clearance.
- The NEPA process is not completed in the correct order.
- Project or program information is not consistent on all NEPA documents/forms.
- Public notices do not contain all required information, or dates for submitting comments/objections are incorrect, or notices have not been disseminated as required in 24 CFR Part 58.43.
- An Environmental Review Record was not established or lacked source documentation.
- Timing of public notices and/or RROF and Certification is incorrect.
- Grantee delays or fails to consult with the State Historic Preservation Officer.
- Someone other than the Certifying Officer signs forms requiring the Certifying Officer's signature.

REFERENCES

- NEPA: 40 CFR Parts 1500-1508
24 CFR Part 58 (Environmental Review Procedures for Title I CDBG Programs)
HCD Act of 1974, Section 104(h)
- Related federal laws and authorities, 24 CFR Part 58.5:
 - (a) Historic Properties:
 - (1) The National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 et seq.); particularly Section 106 and 110 (16 U.S.C. 470 and 470h-2).
 - (2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921); 3 CFR 1971-1975 Comp. p.559, particularly Section 2(c).
 - (3) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.), particularly Section 3 (16 U.S.C. 469a-1).
 - (b) Floodplain Management and Wetland Protection:
 - (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951); 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly Section 2(a) of the order.
 - (2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p.121, particularly Sections 2 and 5.
 - (c) Coastal Zone Management: The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) as amended; particularly Section 307(c) and (d) (16 U.S.C.1456(c) and (d)).
 - (d) Sole Source Aquifers:
 - (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349) as amended; particularly Section 1424(e) (42 U.S.C. 300h-3(e)).
 - (2) Sole Source Aquifers (Environmental Protection Agency - 40 CFR part 149).
 - (e) Endangered Species: The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended, particularly Section 7 (16 U.S.C. 1536).

- (f) Wild and Scenic Rivers: The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) as amended, particularly Section 7(b) and (c) (16 U.S.C 1278(b) and (c)).
- (g) Air Quality:
 - (1) The Clean Air Act (42 U.S.C. 7401 et seq.) as amended; particularly Section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).
 - (2) Determining Conformity of federal Actions to State or federal Implementation Plans (Environmental Protection Agency – 40 CFR parts 6, 51, and 93).
- (h) Farmlands Protection:
 - (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) particularly Sections 1540(b) and 1541 (7 U.S.C. 4201 (b) and 4202).
 - (2) Farmland Protection Policy (Department of Agriculture – 7 CFR part 658).
- (i) HUD Environmental Standards: (24 CFR Part 51) (other than the runway clear zone and clear zone notification requirement in 24 CRE 51.303 (a)(3) and HUD Notice 79-33, Policy guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979).
- (j) Environmental Justice: Executive Order 12898 – federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.
- Other requirements, 24 CFR Part 58.6:
 - (a) Flood Insurance: Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128).
 - (b) Coastal Barrier Resources System: Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501).
 - (c) Runway Clear Zone or Clear Zone: 24 CFR part 51.
- Title 25 CCR § 7082.
- California Department of Housing and Community Development – CDBG Management Memo 12-04.

CHAPTER 4

EQUAL OPPORTUNITY AND FAIR HOUSING

I. INTRODUCTION

Providing equal opportunities to all persons without regard to race, color, religion, age, ancestry, marital status, physical disability, national origin, sex, or any other arbitrary basis is an important part of CDBG administration. This chapter discusses how you must provide equal opportunities as you complete your CDBG activities and how to comply with fair housing laws as part of providing equal opportunities to all persons.

II. GRANTEE RESPONSIBILITIES

All CDBG grantees must provide equal opportunities in the areas of (a) housing programs and projects (b) contracts for services and construction; (c) provision of public services, public facilities, and local improvements; (d) CDBG-related employment. Regulations regarding physical accessibility for person with disabilities (Section 504 and ADA) and hiring low-income persons and businesses (Section 3) require specific actions when triggered by certain programs and projects. Certain minimum requirements apply in each of these areas; it is incumbent upon the grantee to fulfill the responsibilities agreed upon in your contract and the application's assurances. This chapter covers the following topics:

- A. Housing Programs and Projects
 - 1. Required actions
 - 2. Required record keeping and file
 - 3. Suggested actions
 - 4. Reporting

- B. Contracts for Services and Construction
 - 1. Required actions
 - 2. Required record keeping and files
 - 3. Reporting

- C. Provision of Public Services, Public Facilities, and Local Improvements
 - 1. Required actions
 - 2. Required record keeping and files
 - 3. Suggested actions
 - 4. Reporting

- D. Employment
 - 1. Required actions
 - 2. Required record keeping and files
 - 3. Suggested actions

4. Reporting

E. Section 3 Compliance

1. Definitions
2. Required actions
3. Reporting and record keeping
4. Complaint Process and Resolution

F. Accessibility for Persons with Disabilities (including Section 504 compliance)

1. Communications
2. Employment
3. Program accessibility
4. Housing accessibility
5. Enforcement

A. Housing Programs and Projects (Fair Housing)

1. Required actions: You must not discriminate in the administration of CDBG housing-related programs based on race, color, religion, age, ancestry, marital status, physical disability, national origin, or sex. Administration includes advertising, making loans, real estate services, site selection, rentals, and sales. If there have been past discriminatory actions by the grantee which have been found as a result of a compliance review or court action, affirmative actions to overcome the effects of past discrimination must be taken.

Minimum requirement for all grantees: Every grant must be administered in a manner, which affirmatively promotes fair housing. *Therefore, at a minimum, you must establish an administrative procedure for receiving and referring complaints of housing discrimination to the Federal Department of Housing and Urban Development (HUD) and State Department of Fair Employment and Housing (DFEH). Other affirmative programs may be substituted for the minimum requirement. **See Section VII, Supporting Materials, for a listing of sample Fair Housing documents to meet these requirements and a list of DFEH district offices.**

*All grantees will be monitored on this minimum requirement.

All grantees are strongly encouraged to analyze impediments to fair housing choice in their jurisdiction. Jurisdictions wishing to do this analysis may contact the State CDBG Program for assistance.

Planning and technical assistance grants can be used to pay for these studies and their supporting documents.

2. Required record keeping and files. Each housing program or project should have a marketing file with documentation of outreach efforts showing that all local persons have the opportunity to participate in the CDBG funded activity. *In order to determine if programs and projects are being implemented in such a way as to not exclude protected groups, documentation must be kept in your files regarding the location of housing-related activities, demographic characteristics of applicants and actual beneficiaries of those activities, the efforts utilized to inform and recruit potential participants, and the criteria for selecting participants. Actions which affirmatively promote fair housing and which establish an administrative procedure for handling housing discrimination complaints must also be documented in the files.

*All grantees will be monitored for compliance with the requirement to provide demographic data comparing local residents to program applicants/participants using 2000 census data. This information should be updated annually as part of preparation of annual grantee performance reports.

Jurisdictions are reminded that California housing element law (Article 10.6 of the Government Code) requires each jurisdiction to have a fair housing program as part of its housing program (Government Code Section 65583(c) (1-5). To fully implement a fair housing program, localities should have an information dissemination component to advise potential complainants of the existence of the program. Localities typically post notices advertising the fair housing program in public buildings (City Hall, community center, senior center, court house, library, etc.) likely to accommodate a diverse clientele. The California Department of Fair Employment and Housing has posters and literature available on its web site www.dfeh.ca.gov and look under publications for this purpose.

3. Suggested actions: Grantees are encouraged to actively support local fair housing counseling and education efforts through direct financial support for a government agency or a nonprofit organization engaged in such activities, or through the distribution of printed or audio-visual material. You are encouraged to establish April of each year as Fair Housing Month as a means of publicizing the importance of and the jurisdiction's commitment to fair housing practices. Place the Fair Housing logo on all marketing materials and post Fair Housing posters at program offices and projects.
4. Reporting: Grantees must use the annual Grantee Performance Report (GPR) to report your actions to assure non-discrimination and to promote fair housing.

B. Contracts for Services and Construction

1. Required actions. All grantees are required to include federal language into their contracts and agreements for services and construction. The required language varies depending on the activity and the agencies under the agreement. **See the Document Matrix in Chapter 5 and the Procurement Monitoring Checklist in Chapter 12 to identify what language needs to be in the specific contract you are preparing.**

Housing rehabilitation and other construction contracts:

- a. You must include standard nondiscrimination language in all contracts and subcontracts. **See section VII. Supporting Materials for required language.** This includes rehabilitation contracts between homeowners and contractors.
- b. In addition to the requirements of paragraph a. above, all solicitations for bids and (sub)contracts issued for CDBG-funded construction activities in excess of \$10,000 must include the following **See Section VII, Supporting Materials, for sample language needed for the regulations listed below.**
 - 1) The Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (solicitation for bid only). The blanks on this page must be filled in using the appropriate numbers found in "The Goals and Timetables for Female and Minority Employment". (41CFR60-4.2)
 - 2) The Equal Opportunity Clause (both solicitation for bid and contract/subcontract). (41CFR60-4.3(a)).
 - 3) The Standard Federal Equal Employment Opportunity Construction Contract Specifications (both solicitation for bid and (sub)contract). (41CFR60-1.4(b)).
 - 4) Section 3 regulations require that all bid documents and construction contracts and subcontracts which are \$100,000 or more contain the proper Section 3 language. See the section VII. Supporting Materials for required language.

Information on the recommended pre-construction conference to familiarize contractors with these and other requirements is found in Chapter 5 of this manual.

If the (sub)contract is for housing rehabilitation costing more than \$10,000 and is between a property owner and a contractor, the above documents need only be referenced by inserting the following phrase: "The contractor hereby agrees to abide by the requirements

of Executive Order 11246 and all implementing regulations of the Department of Labor."

- c. You must take affirmative actions to assure that small, women, and minority businesses are utilized when possible as contractors for supplies, equipment, construction, and services, regardless of dollar amount. Affirmative actions shall include the following: **(41CFR-60-4)**
- 1) Placing qualified small, women, and minority businesses on solicitation lists. **See section VII. Supporting Materials for resources to contact to order women's and minority business lists.** You should develop your own list for your local area.
 - 2) Assuring that small, women, and minority businesses are solicited whenever they are potential contractors, before the contract is awarded.
 - 3) Where possible, if purchases can be made economically, dividing total requirements into small units to encourage small, women, and minority business participation.
 - 4) Establishing delivery schedules which will encourage participation by small, women, and minority businesses.
 - 5) Using the services and assistance of the federal Small Business Administration, the Office of Minority Business Enterprise of the federal Department of Commerce, and other applicable State and federal agencies.
 - 6) If any subcontracts are let, requiring the prime contractor to take the affirmative steps listed in items 1) through 5) above then the necessary bid language must also go into the agreement between the subcontractor and the prime contractor.
 - 7) You must secure a written affirmative action program from all contractors (construction and non-construction) if the contract is for at least \$50,000 and the contractor employs at least 50 people. The programs must include separate goals and timetables for minorities and for women based on information on the contractor's labor area as provided by the Department of Labor. **See section VII. Supporting Materials for a listing of Department of Labor area offices.**
- d. You must take affirmative actions to assure that employment and

training opportunities created by construction contracts and subcontracts at or above \$100,000 are marketed to local Section 3 residents. Furthermore, any other contracting or subcontracting opportunities that are required for the project should be marketed to local Section 3 businesses (for example hiring a local architect or engineer for the project). All construction contracts and subcontractors contracts at or above \$100,000 must contain all the necessary documents to show that any job or employment opportunities created by the project were marketed to Section 3 individuals and businesses. Part E of this chapter has details of what Section 3 regulations are in place and how to comply. In addition, **see Section VII, Supporting Materials, for sample documents needed for the compliance with Section 3 regulations.**

2. Required record keeping and files: You must keep in your files copies of all solicitations for bids, contracts, women and minority business lists, solicitation lists, documentation of affirmative actions taken, and copies of any forms submitted pursuant to the reporting requirements below. Grantees must also keep documentation of checking contractors against federal debarred list.
3. Reporting requirements:
 - a. All contractors **must** be checked against the federal list of debarred contractors prior to executing their contracts, to ensure that the proposed contractors are not in violation of equal opportunity laws. We strongly encourage grantees with Internet access to make their own debarment checks at <http://epls.arnet.gov>. If this is not possible you must inform the Department by phone or mail of the names of all proposed contractors prior to contract execution, and we will inform you of the results of our debarment search. **If you need assistance in accessing the federal debarred Internet site, please contact your assigned CDBG representative by phone or by e-mail.**
 - b. For all construction contracts, within 10 days of contract execution, contractors must submit to the applicable area office of the U.S. Department of Labor (DOL), Office of Federal Contract Compliance Programs, a list of all construction subcontractors over \$10,000. **See Section VII, Supporting Materials, for sample reporting chart.**
 - c. For construction contracts of "mega-projects" as defined by DOL and where there have been compliance problems, the Monthly Employment Utilization Report (DOL Form CC-257) is required. If you are required to submit this form, contact a DOL area office to obtain a copy. **See Section VI, Supporting Materials, for a listing of DOL area offices.**

- d. For all open grant contracts, the annual Grantee Performance Report, Section 3 Report, and the Contract and Subcontract Activity Report (**See Chapter 10**) will be used to report all actions taken to award contracts to small, minority and women businesses, and businesses located in or owned in substantial part by Section 3 (low income) residents of the unit of local government. Section 3 is discussed in greater detail later in this chapter.

C. Provision of Public Services, Public Facilities, and Improvements.

1. Required actions: All CDBG-funded activities must be carried out in a way that does not discriminate against persons on the basis of race, color, religion, age, ancestry, marital status, physical disability, national origin, or sex. If there have been past discriminatory actions by your jurisdiction which have been found as a result of a compliance review or court action, affirmative actions to overcome the effects of past discrimination must be taken.

Any public services or public facilities must be, to the greatest degree possible, made accessible to disabled individuals. If services or public facilities cannot be made accessible then other measures must be taken to ensure that persons with disabilities may utilize and benefit from the CDBG funded services and facilities.

2. Required record keeping and files: You must keep accurate, up-to-date records (updated annually when the grantee performance reports are done) based on census data, applications for rehabilitation assistance or applications for public services, surveys or other appropriate sources of the race, ethnicity, gender, disability, and age of the program's target area residents (**using 2000 census data**), applicants for direct assistance, and actual beneficiaries. Also included must be data on the entire jurisdiction's residents. **You will be monitored on this comparison so be sure to include a copy of this comparison in your general administration's Equal Opportunity file for review by state staff at monitoring.**

Documentation of affirmative actions, such as targeted outreach efforts, must be included in the files of those grantees in jurisdictions where past discriminatory actions have been found through a compliance review or court action.

3. Suggested actions: You are encouraged to ensure equal opportunity to all by providing, for example, targeted outreach and publicity, counseling services, and translators at public meetings. Check the physical location of public service providers and public facilities being funded with CDBG funds to ensure they are accessible to persons with disabilities, and if not then work with program operators to ensure persons with disabilities can be served and utilize the facility.

4. Reporting: Use the annual Grantee Performance Report (GPR) (see Chapter 10) to report affirmative actions taken and the characteristics of beneficiaries.

D. Employment

1. Required actions: You must not deny the opportunity for employment in any CDBG program or activity on the basis of race, color, religion, age, ancestry, marital status, physical disability, national origin, sex, medical condition, or any arbitrary basis. Where discriminatory actions have been found as a result of a compliance review or court action, affirmative action must be taken to overcome the effects of that discrimination.

To the greatest extent feasible, you are required to provide facilities such that persons with disabilities can have the opportunity to apply for training and employment arising out of the CDBG programs. **See Section F. 2a and b of this Chapter for specific requirements.**

You must have a formal policy concerning nondiscrimination in employment and should designate a person to oversee compliance.

For Section 3 employment opportunities: Grantees with open grant awards or program income that are \$200,000 or more must take affirmative actions to assure that full time (permanent or temporary or seasonal) employment and training opportunities created by in house administration of these grants are marketed to local Section 3 residents. The grantee must use the necessary documents to show that any full time training or employment opportunities created within the grantee staff, paid for with CDBG funds, were marketed to Section 3 individuals, the number of Section 3 persons who benefited, and if no Section 3 beneficiaries then explain why. For grants which involve housing construction, rehabilitation or public construction where contracts are \$100,000 or more, Grantees must make sure Section 3 outreach is done for all contracts awarded under the grant activity (including activity delivery consultants, engineers and architects). This does not apply to the purchase of materials only. Part E of this chapter has details of what Section 3 regulations are in place and how to comply. **See section VII. Supporting Materials, for sample documents needed for the grantee to comply with Section 3 regulations.**

2. Required record keeping and files: You must keep for at least four (4) years after the final grant report is submitted. Typical records include, grant general administration file, program participant or project activity file, audits and litigation, copies of all plans, documents, brochures, announcements, and actions related to the recruitment, employment, lay-off, termination, training, upgrading, demotion, transfer, rates of pay and demographic

characteristics of employees paid with CDBG funds. Information on the race, ethnicity, gender, age, and physical disability of applicants and interviewees must be requested but cannot be required as part of an application for employment. All information obtained must be kept on file.

All documentation of employment and contracting opportunities generated and the good faith efforts to train and/or hire low-income residents of your jurisdiction must also be included in the files. If goals and timetables have been imposed because of past discrimination, documentation of progress related to those goals must be included in the files.

3. Suggested actions: You are encouraged to undertake special recruitment and training efforts to encourage racial and ethnic minorities, the physically disabled, women, and Section 3 (low-income) residents of your jurisdiction to apply for and/or be promoted into CDBG-funded positions. Such efforts may include, but not be limited to, advertising in media which target those communities, retrofitting workspace to ensure wheelchair access, and offering job preparation classes.
4. Reporting: Use the annual GPR and Section 3 report to report on the status of CDBG-funded employees and related information.

E. Section 3 Compliance

Grantees should know when Section 3 regulations apply and be aware of the thresholds which trigger compliance. Grantees should also know how to document compliance with Section 3 regulations and be able to set up the proper procedures and policies and filing system. In establishing the CDBG program, Congress extended Section 3 regulations to the program with the intent that lower-income persons (at or below 80 percent of the area median income, adjusted for household size) derive a portion of the employment benefits from the expenditure of CDBG dollars. For employment purposes lower-income persons are called Section 3 residents.

1. Definitions:

Section 3 regulations are applied to the following HUD assistance:

- Public and Indian housing assistance; or
- Housing and Community Development assistance; including
- Housing rehabilitation (including lead hazard reduction)
- Housing construction; and
- Other public construction.

A "Section 3 resident" is defined as:

- A public housing resident; or

- An individual who resides in the metropolitan area or non-metropolitan county in which the Section 3 covered assistance is expended, and who is a low income or very low income person (i.e., individuals or families) whose incomes does not exceed 80% of the median income for the county.

A "Section 3 business concern" is defined as a business concern:

- With a 51 percent or more ownership by Section 3 residents; or
- Whose permanent, full-time employees include persons at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
- That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "Section 3 business concern."

A "Service area" is defined as the geographical area in which the persons benefiting from the Section 3 covered project reside. The service area shall not extend beyond the unit of general local government in which the Section 3 covered assistance is expended.

A "Neighborhood" is defined as:

- A geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, specific plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation; or
- The entire jurisdiction of a unit of general local government which is under 25,000 population; or
- A neighborhood, village, or similar geographical designation in a New Community as defined in 24 CFR 570.403 (a) (1).

"New hires" are full-time employees for permanent, temporary or seasonal employment opportunities.

2. Required actions: Section 3 requires that, to the greatest extent feasible, employment and other economic opportunities generated by certain HUD-financed activities be directed to low and very low income persons, particularly those who are recipients of government assistance for housing,

and to business concerns which provide economic opportunities to low and very low income persons.

Section 3 applies to you, the grantee, if:

- The grant award exceeds \$200,000; and
- The grant funds are used for housing rehabilitation, housing construction, or other public construction projects.

If the grant award is \$200,000 or more but there are no housing or public construction contracts for prime or subcontractors which exceed \$100,000 then the Section 3 requirements only apply to the grantee and its staff. If the grant award is \$200,000 and there are construction contracts for rehab and public projects above \$100,000 then Section 3 applies to all procurement done for that activity. So, in addition to the grantee having to comply with Section 3, and all prime and subcontractors doing construction work, all other consultants working on the project must also comply, i.e. engineer or architect or labor standards coordinator, or program operator.

Section 3 applies to contractors and subcontractors performing work on Section 3 covered projects if:

- The grantee's award exceeds \$200,000; and
- The contract amount exceeds \$100,000.

Section 3 does not apply to contracts for the purchase of supplies and materials if no installation is involved.

It is your responsibility to:

- Establish and implement procedures to comply with Section 3.
- Facilitate the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns.
- Give preferences to Section 3 business concerns when you procure a service or construction contract for a Section 3-covered project.
- Ensure that your contractors and subcontractors comply with Section 3.
- Proactively implement procedures to notify Section 3 residents regarding training and employment opportunities generated by Section 3 covered activities.
- Notify Section 3 business concerns regarding contracting opportunities generated by Section 3 covered activities.

- Notify potential contractors of Section 3 requirements.

At the grantee level, Section 3 requirements apply to hires made for the city or county's CDBG workforce. Thus, if CDBG funds are not used for new hires by the grantee, Section 3 would not apply to those new employees. For Section 3 purposes, a new hire means a full-time employee for a new permanent, temporary or seasonal position that is generated from the expenditure of Section 3-covered assistance.

a. Training and employment opportunities for Section 3 Residents. CDBG grantees, contractors, and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 residents in the order of priority listed below:

- 1) Section 3 residents residing in the service area or neighborhood in which the Section 3 covered project is located.
- 2) Participants in HUD Youth Build programs (category 2 residents).
- 3) Where the Section 3 project is assisted under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.), homeless persons residing in the service area or neighborhood in which the Section 3 covered project is located shall be given the highest priority.
- 4) Other Section 3 residents: You may, at your discretion, give priority to recipients of government assistance for housing, including recipients within the service area or neighborhood where the Section 3 project is located who hold certificates or vouchers under the Section 8 housing assistance program. For example, you may give priority within preference category 1, above, to a Section 8 certificate holder who lives in the neighborhood.

A Section 3 resident seeking preference in training and employment shall certify, or submit evidence of qualifying to the grantee, contractor, or subcontractor if requested. **See the Section VII, Supporting Materials, for a sample Section 3 Resident Eligibility Certification form.** An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.

b. Contracting opportunities. Grantees, contractors, and subcontractors shall direct their efforts to award Section 3 covered contracts, to the

greatest extent feasible, to Section 3 business concerns in the order of priority listed below:

- 1) Section 3 business concerns that provide economic opportunities for Section 3 residents in the service area or neighborhood in which the Section 3 covered project is located.
- 2) Applicants selected to carry out HUD Youth Build programs.
- 3) Other Section 3 business concerns.

A business concern seeking to qualify for a Section 3 contracting preference shall:

- Certify or submit evidence of qualifying, if requested. **See section VII. Supporting Materials for a sample forms to be completed by prospective contractors and subcontractors.**
- Submit evidence to the recipient, contractor, or subcontractor, if requested, sufficient to demonstrate to the satisfaction of the party awarding the contract that the business concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed contract. In selecting a contractor you must consider the potential contractor's record in complying with public policy requirements, including Section 3 compliance.

Section 3 solicitations and contracts must contain the "Section 3 Clause" **See section VII. Supporting Materials for required language.**

- c. Numerical goals. Section 3 is result oriented and does not prescribe the procedures to be followed. There are no quotas, but instead **minimum** numerical goals/targets to be met by Section 3 recipients. The numerical goals are as follows:

- 1) The Target for New Hires Training and Employment Opportunities is 30% of the aggregate number of new hires.
- 2) Targets for Contracts with Section 3 Business Concerns:

Construction 10% of the total dollar amount of all Section 3 covered contracts.

All Other 3% of the total dollar amount of all other Section 3 covered contracts.

Grantees that meet the minimum numerical goals will be considered to have complied with Section 3 preference requirements. **If a grantee or their contractors are not able to meet the stated goals then a written explanation of why the goals were not met must be put into the Section 3 general administration file.**

3. Reporting and record keeping. If Section 3 applies to your jurisdiction (a grant amount of \$200,000 or more), you only need to complete one Section 3 report and one Contract and Subcontract Activity Report each year, regardless of how many open CDBG grants you have (**See Chapter 10 for report forms**). Please note, however, that a separate Section 3 report must be completed for each HUD-awarded program (If you have a Section 3 covered project funded by the HOME program, then you must complete a separate Section 3 report for the HOME program.). A Section 3 report **must** be completed even if there were no new hires or training opportunities during the reporting period.

Your Section 3 report will be a compilation of the Section 3 data maintained by your jurisdiction and the Section 3 data that you have collected from contractors and subcontractors with a contract exceeding \$100,000. You must document your jurisdiction's efforts to comply with Section 3 requirements, the results of your efforts and impediments, if any. You may want to require contractors and subcontractors to submit their Section 3 reports with their payment requests.

Part of the Section 3 documentation you collect for employment opportunities will be the "Section 3 Resident Eligibility Certification" forms completed by individuals applying for jobs in connection with Section 3 covered projects. These forms should be kept as documentation for how preferences were given and for completing the annual report. **See Section VII, Supporting Materials, for sample forms and documents.**

Contractors and subcontractors performing work on Section 3 covered projects must maintain records sufficient to document compliance with Section 3 requirements by completing the Section 3 report and the Contract and Subcontract Activity Report which will be submitted to the grantee. **See Section 3 Report and Contract and Subcontract Activity Report forms in Chapter 10.**

4. Section 3 complaint process and resolution.

Step One: Complaint: Complaints may be filed by any Section 3 resident on behalf of himself or herself, or as a representative of Section 3 residents, or by any Section 3 business concern on behalf of itself, or as a representative of Section 3 business concerns.

The complaint should be:

- Filed with the Assistant Secretary for Fair Housing and Equal Opportunity Department of Housing and Urban Development, Washington, D.C., 20410.
- Received no later than 180 days from the date of the action or omission upon which the complaint is based.
- In writing, signed by the complainant, and include the complainant's name and address, the name and address of the respondent, and a description of the act or omission by the respondent.

Step Two: HUD Review: Within 10 days of timely filing of a complaint with complete information, the Assistant Secretary shall determine whether the allegation, if proven, qualifies as noncompliance with Section 3. If so, the complaint will be sent to the respondent for resolution.

Step Three: Response: If the respondent believes that the complaint lacks merit, the respondent must notify the Assistant Secretary in writing of this recommendation with supporting reasons within 30 days of the date of receipt of the complaint. The Assistant Secretary will make the final determination.

If the respondent determines that there is merit to the complaint, the respondent will have 60 days from the date of receipt of the complaint to resolve the matter with the complainant. At the expiration of the 60-day period, the respondent must notify the Assistant Secretary in writing of the terms of the resolution reached between the two parties. Both the respondent and the complainant must sign this notification.

If requesting an extension of the 60-day period, the respondent must submit the request in writing and include a statement explaining the need for the extension.

If the complaint is not resolved within the 60-day period (or more if extended), the complaint will be referred to the Assistant Secretary for resolution.

Step Four: HUD Review: Upon receipt of the respondent's written recommendation that there is no merit to the complaint, or upon failure of the respondent and complainant to reach resolution, the Assistant Secretary at HUD shall review the complaint. Where the complaint fails to present a valid allegation of noncompliance with Section 3, the Assistant Secretary will dismiss the complaint and notify the complainant of the reasons for the dismissal.

Where there is a valid allegation of noncompliance with Section 3, the Assistant Secretary will attempt, through informal methods, to obtain a voluntary and just resolution of the complaint. If informal resolution fails, then the Assistant Secretary will impose a resolution and or sanctions on the respondent and complainant. The imposed resolution will become effective 15 days following notification to the respondent and complainant. A written appeal, describing the basis for the appeal, may be submitted to the Assistant Secretary prior to the expiration of the 15 days.

Sanctions that may be imposed on respondents found to be in noncompliance with Section 3 include debarment, suspension, and limited denial of participation in HUD programs.

F. Accessibility for Persons with Disabilities

As noted above, grantees cannot discriminate in housing or employment against those with physical disabilities. **See 1.a Housing and 1.d Employment, above.** In addition, CDBG regulations mandate that grantees follow the regulations of two pieces of federal legislation which govern the accessibility of federally-assisted buildings and facilities, the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157) and the Americans with Disabilities Act (ADA) (42 U.S.C. 12131; 47 U.S.C. 155,201,218 and 225).

In general, the Architectural Barriers Act requires that federally-funded buildings are designed, built or changed to insure the accessibility and use of the structures by the type of disability. Buildings or facilities allocated or reallocated CDBG moneys after December 11, 1995, meeting the definition of a "residential structure" (defined in 24 CFR 40.2) or the definition of "building" [defined in 41 CFR 101-19.602(a)] must conform to the Architectural Barriers Act and with the Uniform Federal Accessibility Standards. The applicable Uniform Standards can be obtained at the following web site:

http://www.hudclips.org/sub_nonhud/cgi/pdfforms/UFAS.pdf

The ADA extends civil rights to those with disabilities in the following areas: employment, public accommodations, state and local government services, and telecommunications. Discrimination could occur if facilities are designed or constructed (built for initial occupancy after January 26, 1993) and are not accessible or usable by those with disabilities. The ADA also mandates that structurally-based architectural and communications barriers be removed, provided that the removal be readily achievable, easily accomplished and capable of being accomplished with little difficulty or expense.

Section 504 compliance addresses non-discrimination and affirmative action efforts as applied to persons with disabilities. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination in federally-assisted programs based upon an

individual's disability. This applies to direct and indirect recipients of funding under Title I of the Housing and Community Development Block Grant Act of 1974. For recipients or subrecipients principally involved in housing or social services, Section 504 applies to all of the agency's activities, not just those directly receiving federal assistance. Section 504 only applies to contractors and vendors when they do work on the behalf of recipients and subrecipients.

Any housing project that requires compliance with Section 504 must have a certificate of compliance with the above referenced codes and standards before any CDBG funds are released for the project. **See section VII Supporting Materials for sample certification form.**

In addition to the non-discriminatory and affirmative action activities discussed elsewhere in this chapter, grant recipients must undertake several activities to be in minimal compliance with Section 504:

1. Communications:

- a. Grantees must take appropriate steps to ensure effective communication with applicants, beneficiaries and members of the public. In determining which auxiliary aids are necessary for persons with disabilities (e.g. telecommunication devices for deaf persons (TDD's) the grantee must give primary consideration to the requests of the persons with disabilities. For example, where a grantee communicates with applicants by telephone, TDD's or equally effective communications systems should be used.
- b. The recipient shall adopt and implement procedures to ensure that interested persons (including persons with impaired vision or hearing) can obtain information concerning the existence and location of accessible services, activities and facilities.
- c. This section does not require a grantee to take any action that the jurisdiction can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. The grantee must nonetheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity receiving HUD assistance.

2. Employment: In addition to the general prohibitions against discrimination discussed elsewhere in this chapter, CDBG recipients must ensure the following:

- a. A grantee must make reasonable accommodations for known physical and mental limitations of an otherwise qualified applicant with disabilities or an employee with disabilities, unless the recipient can

demonstrate that the accommodation would impose an undue hardship on the operation of its program.

- b. A grantee may not use any employment test or other selection criteria that screens out or tends to screen out persons with disabilities or any class of individuals with disabilities. Pre-employment inquiries may not be made to determine whether the applicant is an individual with disabilities or the nature or severity of a disability except as directly related to an applicant's ability to perform job-related functions.
3. **Program accessibility:** Except as otherwise provided, no qualified person with disabilities shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance.

Recipients using CDBG funds for the construction or alteration of public facilities should comply with the applicable Uniform Standards at the following web site:

http://www.hudclips.org/sub_nonhud/cgi/pdfforms/UFAS.pdf

The CDBG staff will require a certificate from the project's architect certifying that it complies with the above guidelines. **See Section VII Supporting Materials for sample certification form.**

4. **Housing Accessibility:** Requirements must also be met by multi-family housing constructed in whole or in part by HUD funds:

In new construction multifamily rental developments:

- Five percent of the units in the project must be accessible to those with mobility impairments, and
- An additional two percent of the units must be accessible to those with hearing or vision impairments.

In substantially rehabilitated multifamily rental projects (projects with 15 or more units in which the rehabilitation costs will equal at least 75 percent of the replacement costs):

- Five percent of the units in the project must be accessible to those with mobility impairments, and
- An additional two percent of the units must be accessible to those with hearing or vision impairments.

In multifamily rental developments where the rehabilitation is not as extensive as substantial rehabilitation:

- Every alteration of every unit must make the unit accessible to the maximum extent feasible until five percent of the units are fully accessible to people with mobility impairment.
- Alterations to common areas in these projects must always make the project accessible to the maximum extent feasible.
- Accessible units must be equipped with visual and sensory smoke detectors.
- Structures not being altered do not need to be made accessible if the project can be made accessible through another approach.

In for-sale units:

- The buyer of a for-sale unit can determine their own accessibility requirements.
- Alteration costs for accessibility are considered an eligible program expense. The costs of the accessibility alteration may be included in the mortgage amount and any costs above the limit may be passed on to the buyer.
- Units must be made accessible if the expected occupant's disability requires alterations. The buyer may be permitted to depart from applicable accessibility standards to accommodate the specific disability.

5. Enforcement of Section 504

- a. Assurances: All applicant jurisdictions to the State CDBG program are required to submit along with each application a signed Statement of Assurances which states, in part, that the applicant will comply with Section 504 of the Rehabilitation Act of 1973, as amended and implementing regulations.
- b. Covenants: Where property is purchased or improved with Federal financial assistance or where federal financial assistance is provided in the form of real property or interest in the property, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period in which the real property is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

- c. Section 504 Self-Evaluation: Each grantee shall meet and go over the self evaluation form in consultation with interested persons, including individuals with disabilities or organizations representing persons with disabilities in the local community. **See section VII Supporting Materials for 504 Self-Evaluation Form.** The following steps should be followed as part of the meeting:

- 1) Evaluate its current policies and practices to determine whether, in whole or in part, they do or do not meet the requirements of Section 504.
- 2) Modify any policies or procedures that do not meet the requirements of Section 504.
- 3) Take appropriate corrective steps to remedy the discrimination revealed by the self-evaluation.

A grantee that employs 15 or more persons shall, for at least three years following the completion of the evaluation, maintain on file, make available for public inspection, and provide to the responsible civil rights official, upon request: 1) a list of interested persons consulted; 2) a description of the areas examined and any problems identified; and 3) a description of any modifications made and of any remedial steps taken.

- d. Designation of responsible employee and adoption of grievance procedures: A grantee that employs 15 or more persons shall designate at least one person to coordinate its efforts to comply with Section 504 implementing regulations. Grantees, which employ 15 or more persons, must also adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 and related implementing regulations.

- e. Notice: A grantee that employs 15 or more persons shall:

- 1) Take appropriate initial and continuing steps to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the grantee that it does not discriminate on the basis of disability in violation of Section 504. The notification shall state, where appropriate, that the grantee does not discriminate in admission to, access to, or treatment or employment in its federally-assisted programs and activities. The notification shall

also include an identification of the designated responsible employee. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in grantee's publications, and distribution of memoranda or other written communications.

- 2) Include in recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants or employees, a statement of policy described in paragraph 1).
- 3) Ensure that members of the population eligible or likely to be affected directly by a federally-assisted program who have visual or hearing impairments are provided with the information necessary to understand and participate in the program. Methods for ensuring participation include, but are not limited to, qualified sign language and oral interpreters, readers, or use of taped and Braille materials.

III. COMMON PROBLEMS FOUND AT MONITORINGS

- Under fair housing, grantees do not have a fair housing referral process for complaints and do not conduct activities to affirmatively further fair housing.
- Under Equal Opportunity, a separate Equal Opportunity Compliance file is not maintained which shows a comparison of local demographics to those of program recipients.
- Under contracting for services and construction, the necessary equal opportunity language provisions are not included in bid specifications and/or contracts.
- Grantees do not solicit women and minority contractors on published lists.
- Under Section 3, grantees hiring staff to work on their program do not provide outreach and training to low-income and minority residents of the jurisdiction for suitable CDBG-funded jobs.
- Grantees and/or contractors fail to ask prospective employees to fill out the Section 3 Resident Eligibility Certification form.
- Under Section 3, Grantees fail to keep accurate records regarding the characteristics of job applicants, persons interviewed, and persons hired for CDBG funded positions. Grantees also do not collect the proper Section 3 information from contractors in regard to recruiting and hiring Section 3 persons and subcontractors.

- Under Section 504, grantees do not conduct the proper evaluation of the community and identify what special efforts or changes they need to make in order to ensure persons with disabilities have access to CDBG funded programs and local public facilities.
- Under Section 504, grantees are not aware of requirements that certain percentages of housing units developed with CDBG funds must be fitted for persons with mobility impairments and visual impairments. For community facilities, they must be, to the greatest degree possible made accessible for persons with disabilities.

IV. DEPARTMENT'S ROLE.

The Department's CDBG staff is committed to assisting you in meeting the basic equal opportunity requirements and more importantly, in developing and implementing equal opportunity programs.

The Department's CDBG program's equal opportunity staff is available to assist you in setting up and/or maintaining a comprehensive equal opportunity program in all relevant areas. Such assistance is available on how to do a needs assessment, how to use available census data, components of a successful employment program, contract compliance procedures, setting up fair housing programs, and referral training. The Department of Fair Employment and Housing is also available for technical assistance. **See section VII. Supporting Materials for list of Fair Housing Offices throughout the state.**

HUD has retained equal opportunity compliance responsibility. To assist you in complying, the Department (HCD) will monitor your performance and record keeping in the following areas:

1. Fair housing actions
2. Equal opportunity benefits to minorities, women, and persons with disabilities
3. Contract language compliance
4. Section 504 compliance actions
5. Section 3 residents training, employment, and contracting opportunities for Section 3 businesses
6. Minority and women business utilization

In addition, the Department will monitor your citizen participation efforts to ensure that the State's regulations regarding accommodation of non English-speaking concentrations (Section 7080) have been complied with. If a grantee has over 25% of its community or target areas are non English speaking population, for example Spanish speaking, then you must provide public notices in Spanish and English and if needed provide translators. In addition, if a person with disabilities wishes to attend a hearing then the grantee must provide services for that individual so they can participate in the hearing discussion.

Where problems or potential problems exist in complying with equal opportunity provisions, the Department will inform HUD as soon as possible and work closely with you to resolve the problem. HUD will take formal corrective action only after all informal efforts have been attempted.

V. REFERENCES

- Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C.2000d et seq.) prohibits discrimination on the basis of race, color or national origin in programs and activities receiving Federal financial assistance. The implementing regulations for HUD programs may be found at 28 CFR Part 1.
- Title VIII of the Civil Rights Act of 1968, commonly known as the Fair Housing Act, as amended, (42 U.S.C. 3601-3620) prohibits discrimination in the sale or rental housing on the basis of race, color, religion, sex, disability, national origin or familial status, and requires HUD to administer its programs in a manner that affirmatively promotes fair housing.
- Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (24 CFR 570.602) provides that no person shall be excluded from participation or employment, or be denied benefits, or be subjected to discrimination on the basis of race, color, national origin, or sex, under any program or activity funded in whole or in part under the CDBG Program.
- Section 3 of the Housing and Urban Development Act of 1968, as amended, provides that, to the greatest extent feasible, opportunities for training and employment that arise through CDBG-financed projects shall be given to lower-income residents of the project area, and that contracts awarded in connection with such projects be awarded to small businesses located in the project area or small businesses owned, in substantial part, by residents of the project area.
- 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 phase of employment during the performance of federal or federally-assisted construction contracts in excess of \$10,000.
- Executive Order 11063 (as amended by Executive Order 12259) provides that no person shall be discriminated against in the sale, rental, leasing or other disposition of housing on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with federal assistance; and in lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.
- Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794) provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program

benefits, or subjected to discrimination under any program or activity receiving federal funds.

- The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157) requires that federally-funded buildings are designed, built or changed to insure the accessibility and use of the structures by individuals with disabilities.
- The Americans with Disabilities Act (ADA) (42 U.S.C. 12131; 47 U.S.C. 155,201,218 and 225) extends civil rights to those with disabilities in the following areas: employment, public accommodations, state and local government services, and telecommunications.
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101) provides that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal funds. Its implementing regulations may be found at 24 CFR 1146.
- Office of Management and Budget Circular A-102 includes requirements for use of small, minority, and women contractors.

VI. SUGGESTED WEB SITES TO VISIT

- Code of Federal Regulations:
<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>
- The Uniform Federal Accessibility Standards (UFAS):
http://www.hudclips.org/sub_nonhud/cgi/pdfforms/UFAS.pdf
- Joint Reporting Committee EEO-1 Report (Standard Form 100):
<http://www.mimdms.com/jrc.html>
- EEO-1 Report (Standard Form 100) Instruction Booklet:
<http://www.eeoc.gov/stats/jobpat/e1instruct.html>
- Fair Housing Act Information:
www.hud.gov
- Section 504 Information:
www.hud.gov
www.hud.gov
- Helpful HUD CPD Notices:
www.hud.gov

- Fair Housing Compliance Publications (Dept. of Fair Employment and Housing)
www.dfeh.ca.gov

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SAMPLE FAIR HOUSING COMPLAINT REFERRAL BROCHURE

(SEE ADOBE FILE IN THIS CHAPTER'S SUBDIRECTORY)

(SAMPLE)

SAMPLE PROCLAMATION TO DESIGNATE APRIL AS FAIR HOUSING MONTH

PROCLAMATION
DECLARING THE MONTH OF APRIL
FAIR HOUSING MONTH IN THE CITY/COUNTY OF _____

WHEREAS, the City/County of _____ is joining with the United States Department of Housing and Urban Development (HUD) and other housing agencies in celebrating the anniversary of the National Fair Housing Law, Title VII of the Civil Rights Act of 1968.

WHEREAS, the City/County of _____ encourages fair housing through the sales and rentals, as well as, through its housing rehabilitation and first time homebuyer programs.

WHEREAS, discrimination in housing is against the law. No person shall be discriminated against because of race, color, religion, sex, disability, familial status, or national origin in the sale, rental, or advertising of dwelling, in the provisions of brokerages services, or in the availability of residential real estate related transactions.

WHEREAS, if any City/County resident believes he or she has been discriminated against, the resident should contact the City/County's Fair Housing Coordinator, _____ at () 555-1212, ext 911. The City/County will provide information, counseling, and referral to the appropriate agency if formal complaint needs to be filed.

WHEREAS, in addition to the City/County's efforts, there is a Fair Housing Information Office in the office of the _____ Housing Authority, (000) 555-1212. Information is also available at the California Rural Legal Assistance (CRLA) office (000) 555-1212. The Fair Housing Information Office helps to ensure that all residents City/ County of _____ and the surrounding communities are treated fairly and that all the property owners and landlords abide by the letter and spirit of the Fair Housing Law.

WHEREAS, the City/County of _____, the State of California, HUD and various local agencies are working together to ensure equal treatment of all citizens. We urge everyone to practice the Fair Housing Law.

NOW, THEREFORE, BE IT RESOLVED, that I, Mayor/Chair _____ and the City Council/Board of Supervisors of the City/County of _____, declare the month of April as Fair Housing Month in the City/County of _____.



IQUALDAD DE OPORTUNIDAD
EN LA VIVIENDA

Conducimos nuestros negocios de acuerdo a la Ley Federal de Vivienda Justa

(Acta de enmiendas de 1988 de la Ley Federal de Vivienda Justa)

**Es ilegal discriminar contra cualquier persona
Por razón de su raza, color, religión,
Sexo, incapacidad física o mental, la presencia
De niños menores de 18 años o de mujer
embarazada en su familia o su origen nacional**

- En la venta o renta de vivienda y terrenos residenciales
- En los servicios de corretaje que prestan vendedores de vivienda
- En los anuncios de venta o renta de vivienda
- En la valoración de vivienda
- En la financiación de vivienda
- También es ilegal forzarle a vender o rentar su vivienda diciéndole que gente de otra raza, religión o grupo étnico se están mudando en su vecindario
- Amenazar o interferir con la persona para que no registre su queja

Cualquier persona que sienta que fué discriminada debe de enviar su queja de Discriminación
1-800-669-9777 (Llamada gratis)
1-800-927-9275 (TDD llamada gratis)

**U.S. Department of Housing and
Urban Development
Assistant Secretary for Fair Housing and
Equal Opportunity
Washington, D.C. 20410**



**EQUAL HOUSING
OPPORTUNITY**

We Do Business in Accordance With the Federal Fair
Housing Law
(The Fair Housing Amendments Act of 1988)

**It is Illegal to Discriminate Against Any Person
Because of Race, Color, Religion, Sex,
Disability, Familial Status, or National Origin**

- In the sale or rental of housing or residential lots
- In advertising the sale or rental of housing
- In the financing of housing
- In the provision of real estate brokerage services
- In the appraisal of housing
- Blockbusting is also illegal

Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination:

1-800-669-9777 (Toll Free)
1-800-927-9275 (TDD)

**U.S. Department of Housing and
Urban Development
Assistant Secretary for Fair Housing and
Equal Opportunity
Washington, D.C. 20410**

EQUAL OPPORTUNITY
STANDARD CONTRACT LANGUAGE:
ALL CONTRACTS AND SUBCONTRACTS

A. The Civil Rights, HCD, and Age Discrimination Acts Assurances:

During the performance of this Agreement, the Grantee assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or disability, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, and the Age Discrimination Act of 1975, and all implementing regulations.

B. The Training, Employment, and Contracting Opportunities for Business and Lower Income Persons Assurance of Compliance:

1. The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area and contracts for Work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
2. The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
3. The Grantee will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advertising the said labor organization or worker's representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
4. The Grantee will include these Section 3 clauses in every contract and subcontract for work in connection with the project and will, at the direction of the State, take appropriate action pursuant to the contract upon a finding that the Grantee or any contractor or subcontractor is in violation of regulations

issued by the Secretary of Housing and Urban Development, 24 CFR Part 135 and, will not let any contract unless the Grantee or contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of the Agreement shall be a condition of the Federal financial assistance provided to the project, binding upon the Grantee, its successors, and assigns. Failure to fulfill these requirements shall subject the Grantee, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

C. State Nondiscrimination Clause:

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7258.0 et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
2. This contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

"The Contractor hereby agrees to abide by the requirement of executive order 11246 and all implement regulations of the Department of Labor."

EQUAL OPPORTUNITY
STANDARD SOLICITATION FOR BID AND CONTRACT LANGUAGE -
CONSTRUCTION OVER \$10,000

A. Equal Opportunity Clause:

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The contractor will send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the contractor's noncompliance with the discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or

Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 504 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in Federally assisted construction work; provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and Federally assisted construction contracts, pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program

with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

B. Federal Equal Employment Opportunity Construction Contract Specifications:

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted.
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.
 - c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin).
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race).
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, southeast Asia, the Indian subcontinent or the Pacific Islands).
 - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all

work in the plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the plan's goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7.a. through 7.p. of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or Federally-assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7.b. above.
- f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy

on bulletin boards accessible to all employees at each location where construction work is performed.

- g. Review at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after-school summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60.3.
- l. Conduct at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7.a. through 7.p.). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7.a. through 7.p. of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is under-utilized).
10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.
11. The contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company's EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee the name, address, telephone number, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area resident (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
16. By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he/she does not maintain or provide for his/her employees any segregated facility at any of his/her establishments, and that he/she does not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause of this contract. As used in this certification, the term "segregated facilities" means any

waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas,* transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, habits, local custom, or otherwise. He/she further agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

_*Parking lots, drinking fountains, recreation or entertainment areas.

MBE/WBE STANDARD
BID DOCUMENT LANGUAGE FOR
CONSTRUCTION CONTRACTS OVER \$10,000

(The following notice shall be included in and shall be a part of all solicitations for offers and bids on all Federal and Federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the Secretary of Labor.)

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The offeror or bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered areas are as follows:

GOALS FOR MINORITY

GOALS FOR FEMALE

PARTICIPATION IN
TIMETABLES

PARTICIPATION IN
EACH TRADE

EACH TRADE

These goals are applicable to all contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its Federally involved and non-Federally involved construction.

The contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform through the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or

from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs, U.S. Department of Labor, within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county, and city, if any).

MBE/WBE
STANDARD CONTRACT LANGUAGE -
CONSTRUCTION OVER \$10,000

FEMALE AND MINORITY GOALS AND TIMETABLES

The following goals and timetables for female utilization shall be included in all Federal and Federally-assisted construction contracts and subcontracts in excess of \$10,000. The goals are applicable to the contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a Federal or Federally-assisted construction contract or subcontract.

AREA COVERED
(Goals for females apply nationwide)

<u>Timetable</u>	<u>Goal</u>
From April 1, 1981, until further notice	6.9%

Until further notice, the following goals for minority utilization in each construction craft and trade shall be included in all Federal or Federally-assisted construction contracts and subcontracts in excess of \$10,000 to be performed in the respective geographical areas. The goals are applicable to each nonexempt contractor's total on-site construction workforce, regardless of whether or not part of that workforce is performing work on a Federal, Federally-assisted, or non-Federally related project, contract, or subcontract.

Construction contractors participating in an approved Hometown Plan (see 41 CFR 60-4.5) are required to comply with the goals of the Hometown Plan with regard to construction work they perform in the area covered by the Hometown Plan. With regard to all their other covered construction work, such contractors are required to comply with the applicable SMSA or EA goal contained in this appendix.

ECONOMIC AREAS

<u>Area Covered</u>	<u>Goal Percent</u>
Redding Economic Area Lassen County, Modoc County, Plumas County, Shasta County, Siskiyou County, Tehama County	6.8%
Eureka Economic Area Del Norte County, Humboldt County, Trinity County	6.8%

San Francisco-Oakland-San Jose Economic Area	
Monterey County	28.9%
Alameda County, Contra Costa County, Marin County, San Francisco County, San Mateo County	25.6%
Santa Clara County	19.6%
Santa Cruz County	14.9%
Sonoma County	9.1%
Napa County, Solano County	17.1%
Lake County, Mendocino County, San Benito County	23.2%
Mono County	24.6%
 Sacramento Economic Area	
Placer County, Sacramento County, Yolo County	16.1%
Butte County, Colusa County, El Dorado County, Glenn County, Nevada County, Sierra County, Sutter County, Yuba County	14.3%
 Stockton-Modesto Economic Area	
Stanislaus County	12.3%
San Joaquin County	24.3%
Alpine County, Amador County, Calaveras County, Mariposa County, Merced County, Tuolumne County	19.8%
 Fresno-Bakersfield Economic Area	
Kern County	19.1%
Fresno County	26.1%
Kings County, Madera County, Tulare County	23.6%
 Los Angeles Economic Area	
Inyo County, San Luis Obispo County	24.6%
Los Angeles County	28.3%
Orange County	11.9%
San Bernardino County	19.9%
Santa Barbara County	19.7%
Ventura County	21.5%
 San Diego Economic Area	
Imperial County	18.2%
Riverside County	19.0%
San Diego County	16.9%

**MBE/WBE SUGGESTED
 BID DOCUMENT LANGUAGE FOR
 MINORITY/WOMEN'S BUSINESS ENTERPRISE CONSTRUCTION PROJECTS**

- (a) It is the policy of the _____ to take positive steps to maximize the utilization of minority and women's business enterprises in all contract activity administered by the _____.
- (b) The contractor will utilize his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority or women's business enterprise" means a business, at least 50% of which is owned by minority group members or women or, in the case of publicly-owned businesses, at least 51% of the stock is owned by minority group members or women. For the purpose of this definition, minority group members are Black, Hispanics, Asians, Native Americans, Alaskans or Pacific Islanders.
- (c) The contractor will submit the following statement as part of his/her sealed bid:

I have taken affirmative action to seek out and consider minority and women's business enterprises for the portions of work to be subcontracted. Such actions are fully documented in my records and available upon request. Results are as follows:

<u>Name and Address of Minority/ Women's Firms Contractor Anticipates Utilizing*</u>	<u>Category of Work</u>	<u>Dollar Value of Participation</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Total Bid _____ Total Subcontract Amount

Minority/Women's Enterprise Total of Subcontract Amount

*Indicate whether business is owned by a minority or a woman.

OBTAINING LISTS OF MINORITY AND WOMEN CONTRACTORS

Caltrans is an excellent source of information regarding minority and women contractors. A complete copy of the statewide listing may be obtained by calling the Caltrans Publications Distribution Unit at (916) 445-3520.

Other sources of information are:

Caltrans Civil Rights Program
Business Enterprise Program
(916) 324-1700 or toll free at 1-866-810-6346
Civil Rights Website: <http://www.dot.ca.gov/hq/bep>

National Economic Development Association at (916) 649-2551.

PRACTICAL GUIDANCE FOR COMPLYING WITH SECTION 3 REGULATIONS

For Jurisdictions using CDBG funds to pay local staff to implement CDBG programs and projects:

If you receive a grant or have program income in excess of \$200,000 per year and are using it to do housing rehabilitation, housing construction, or public construction projects, and you are paying some of your local full time staff to run the CDBG programs, then you are responsible for doing Section 3 outreach and reporting. This means that your personnel policies should include language about outreach (notices using standard Section 3 contract language) and preferences which are set up for hiring Section 3 eligible persons to fill those full time (permanent, temporary, seasonal) positions when they become vacant. You will need to keep a Section 3 file and, when a CDBG funded position becomes available, then you must document your Section 3 outreach efforts and who submitted applications. Use the sample forms in this section of the chapter to document compliance. If you were not able to hire a Section 3 person then you must document why. You will also report those hires on your annual Section 3 report.

For Jurisdictions using CDBG funds to pay contractors and/or subcontractors on housing and public construction projects over \$100,000:

If you have a construction project which requires over \$200,000 in CDBG funds and has prime and subcontractor construction contracts which are at or above \$100,000, then you must include the standard Section 3 language in the contract of each prime and subcontractor. Use forms in this section to document compliance.

Grantees will require prime contractors must do outreach to and when possible give preference to local subcontractor who meets the Section 3 business definition. They must document those efforts and report how many Section 3 subcontractors/businesses they were able to hire. The grantee will then report those hires on their annual Section 3 report.

Grantee will require prime contractors and those subcontractors with contracts above \$100,000 to certify that they will or will not be hiring any new full time staff (permanent, temporary, seasonal) as part of completing the construction work. They shall also certify that they will or will not be providing training opportunities as part of completing the project. If the prime contractor and subcontractors certify that they will not be doing any new hires or providing any employment training opportunities as part of the project then no further action is needed. If they certify that there will be new full time hires and/or employment training opportunities, then the grantee shall require the prime and subcontractor(s) to provide documentation of outreach efforts, preferences given, and number of new hires which qualify as Section 3 residents. If they were not able to meet the Section 3 goals then they should document why those goals were not met.

When this highest level of Section 3 compliance is triggered then the grantee must also document that any other non-construction contracts awarded under the grant activity were done in compliance with Section 3 regulations. Thus, if the grantee hired a labor standards coordinator to over see the wage compliance on the construction project, then the grantee should do Section 3 outreach as part of it procurement and document if the consultant hired for labor standards monitoring was a Section 3 business and report that information on the annual Section 3 report.

State Department of General Services, Office of Small and Minority Business, (916) 322-5060 or
National Economic Development Association, (916) 649-2551.

SECTION 3 CLAUSE
FOR CONSTRUCTION CONTRACTS AND SUBCONTRACTS
AT OR ABOVE \$100,000

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidence by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

Section 3 Numerical Goals/Targets:

- A. The Target for New Hires & Training Opportunities is 30% of the aggregate # of new hires.
- B. Targets for Contracts with Section 3 Business Concerns is, Construction 10% of the total dollar amount. All Other contracts, 3% of the total dollar amount of all other Section 3 covered contracts.

SECTION 3 ASSURANCES

[FORM MUST BE COMPLETED AND SUBMITTED PRIOR TO AWARD]

1. I/We, the undersigned _____ (representative), as official representative of _____ (contractor) agree to comply with Section 3 requirements for the _____ (project). It is understood that failure to comply may result in the following sanctions: cancellation, termination, or suspension in whole or in part of this contract. A copy of this executed form and the charts for hires and contractors will be provided to the city/county along with any back up documentation requested prior to execution of contract.

2. Complete for Staffing:

A. How many **new full time** (permanent, temporary, seasonal) positions will be needed on this project? _____

B. How many new employment training positions will be created? _____

C. If New Hires and Employment Training will take place, how many positions are projected to be filled by local low income area residents? _____ (see goal below).

If new hires or employment training are anticipated then contractor must provide copies of outreach efforts, any preferences given, and any actual Section 3 hires completed. If there were no Section 3 residents hired or the goals were not met, then an explanation of why this happened will be provided.

D. If new hires or training were made available, did contractor reach 30% Section 3 goal/target? _____

SEE ATTACHED CHART WITH LIST OF ALL NEW HIRES/TRANIEES FOR THIS PROJECT

3. Complete for construction subcontractors and non construction contracts:

A. How many construction subcontractors will be utilized for this project? _____

B. Of these subcontractors, how many are Section 3 subcontractors? _____

1) Was the Section 3 Goal/target of 10% of project dollar amount reached? _____

C. How many non-construction contracts will be utilized? _____

D. Of these, how many are Section 3 businesses? _____

1) Was the Section 3 Goal/target of 3% of project dollar amount reached? _____

SEE ATTACHED CHART WITH LIST OF ALL CONTRACTORS HIRED FOR THIS PROJECT

Authorized Signature _____ Date: _____

SECTION 3 AFFIRMATIVE ACTION PLAN

[FORM MUST BE COMPLETED AND SUBMITTED ONLY IF NEW HIRES OR TRAINING POSITIONS ARE ANTICIPATED]

In accordance with the Housing and Urban Development Act of 1968, as amended, and the regulations pursuant to that Act.

(Contractor)

Agrees to comply with Section 3 of that Act by assuring that to the greatest extent feasible:

1. Training and employment opportunities will be given to lower income residents of the project; and
2. Contracts in connection with the project will be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.

_____ will initiate the following actions to insure utilization of lower income project residents as employees or trainees and to incorporate project area small businesses as subcontractors and suppliers.

1. The Contractor will establish and maintain a directory of service organization, job referral agencies and manpower training programs operating within, or servicing, project area residents.
2. The Contractor will submit prior to the award of a contract, a signed assurance that it will comply with Section 3 regulations and requirements.
3. The Contractor will provide, prior to the signing of a contract, a statement of work force needs, including trainee positions.
4. The Contractor will notify community-based organizations of available employment opportunities, and shall maintain records of response from such organizations.
5. The Contractor will make continuing personal recruitment efforts directed to such service organizations and to schools with lower income resident training programs with which he is familiar.
6. The Contractor will maintain a file of the names and addresses of each low-income resident workers referred to him and that action was taken with respect to each such referred worker and , if the worker was not employed, the reasons therefore (attached).
7. The Contractor will include the Section 3 clause in every subcontract for work in connection with HUD-assisted projects (attached).

8. For each subcontract, the Prime Contractor will submit, prior to contract award, the Section 3 Affirmative Action Plans of its subcontractors.
9. The Contractor will not attempt to circumvent Section 3 provisions.
10. The Contractor will, to the greatest extent feasible, attempt to employ or fill training positions with lower income project area residents; it will, as a minimum, provide evidence of the following:
 - a. Attempts to recruit from the project area through local advertising media, community organizations, public and private agencies operating within or serving the project area, such as the State Employment Department, and the Private Industry Council.
 - b. Maintain a list of all lower income area residents who have applied either on their own or on referral from any source, and that he has employed such persons if otherwise qualified and if an opening exists.
11. The Contractor will, to the greatest extent feasible, attempt to incorporate project area businesses as subcontractors and suppliers.
12. The Contractor will provide the Section 3 workforce and business utilization reports required under this contract.

_____ fully realizes failure or refusal to comply and give satisfactory assurances of future compliance with the requirements of this Affirmative Action Plan shall be proper basis for any and all of the following actions: cancellation, termination or suspension in whole or in part of the contract; a determination of ineligibility or debarment from any further contracts under any Federal program with respect to which the failure or future occurred until satisfactory assurances of future compliance have been received.

Authorized Signature _____ Date: _____

Section 3 Resident Eligibility Certification

The U.S. Department of Housing and Urban Development (HUD) monitors our hiring practices on Section 3-funded projects. It is important, therefore that the information below be provided. Please be aware that your response, though needed, is voluntary and has no affect on your employment status.

Because these questions are personal in nature, your answers will be treated with confidentiality. Thank you for assisting us.

Sincerely,

[Name of agency/department
of _____ City/County

1. Name: _____

Address: _____

2. Number of individuals living in your household (include yourself): _____

3. Total annual household income (please check one):

[Complete this using current HUD income limits for your county]

_____ Less than \$ _____ _____ Between \$ _____ - \$ _____

_____ Between \$ _____ - \$ _____ _____ Between \$ _____ - \$ _____

_____ Between \$ _____ - \$ _____ _____ Between \$ _____ - \$ _____

_____ Between \$ _____ - \$ _____ _____ Between \$ _____ - \$ _____

_____ Above \$ _____

4. Are you currently employed? _____ Yes _____ No

I certify that the statements made on this sheet are true, complete and correct to be best of my knowledge and belief, and made in good faith.

Date: _____

Signature: _____

Section 3 Business Eligibility Certification

The U.S. Department of Housing and Urban Development (HUD) monitors our hiring practices on Section 3-covered projects. It is important, therefore that the information below be provided. Please be aware that your response, though needed, is voluntary and has no affect on your contracting.

Your answers will be treated with confidentiality. Thank you for assisting us.

Sincerely,

[Name of agency/department
of _____ City/County

Business Name: _____

Address: _____

1. Are 51% of the business owners qualified Section 3 Residents? _____ If **YES** stop, if **NO** proceed.
2. Are at least 30% of the employees Section 3 Residents (or were they when they started less three years ago)? _____ If **YES** then stop, if **NO** then proceed.
3. Will the business subcontract more than 25% of the proposed work under the contract to business concerns that meet the qualification set forth in number 1 & 2 above? _____ If **YES** stop, if **NO** proceed.

We currently do not qualify as a Section 3 business _____

I certify that the statements made on this sheet are true, complete and correct to be best of my knowledge and belief, and made in good faith.

Date: _____

Signature: _____

SECTION 3 PROJECT WORK FORCE BREAKDOWN

Job Category	Total Positions Needed for Project	No. Positions Occupied by Permanent Employees	Number of Positions not Occupied	Number of Positions filled with Section 3 residents
Supervisor				
Professional				
Technical				
Office/Cleric.				
Others				
TRADE:				
Journeyman				
Apprentices				
Trainees				
Others				
TRADE:				
Journeyman				
Apprentices				
Trainees				
Others				

Section 3 Resident:

Individual residing within the Section 3 Area whose family income does not exceed 80% of the median income in the Metropolitan Statistical Area or the county if not within a MSA in which the Section 3-covered project is located. See attached income schedule.

Company

Project

Project Number

NOTE: This document must be submitted with bid documents.

Person Completing Form: _____

Date: _____

SECTION 3 CONTRACTS/SUBCONTRACTS BREAKDOWN

Type of Contract (Business or Profession)	Total Number	Total Approx. Dollar Amount	Estimated No. of Contracts to Section 3 Businesses	Estimated Dollar Amount to Sec. 3 Businesses

NOTE:

This document is to be submitted by
the contractor with bid documents.

Company

Project

CDBG Grant Number

Person Completing Form: _____

Date: _____

SECTION 3 BUSINESS UTILIZATION REPORT

Project No. _____ Total Dollar Amount of Contract _____ Federal ID No. _____
 Name of Prime Contractor _____
 Address _____

Name of Subcontractor	Sec 3*	Address/Telephone	Trade/Service or Supply	Contract Amount	Award Date	Competitive or Negotiated Bid	Federal Identification No.

*Check if Section 3

Total Dollar Amount Awarded to Section 3 Businesses \$ _____
 Company _____
 Project _____
 Project Number _____
 Person Completing Form _____
 Date _____

NOTE: This report must be completed and submitted by the Contractor (monthly) with each payment request.

OBTAINING LISTS OF SECTION 3 CONTRACTORS

Caltrans Civil Rights Program
Business Enterprise Program
(916) 324-1700 or toll free at 1-866-810-6346

Civil Rights Website: <http://www.dot.ca.gov/hq/bep>

Contact your local Small Business Administration (SBA) Office

Contact your local public housing authority

SECTION 504 SELF-EVALUATION

State of California / Department of Housing & Community Development

Grantee: _____

Grant #: _____

Date: _____

AREAS DISCUSSED	PROBLEMS IDENTIFIED	MODIFICATIONS MADE
<p><u>COMMUNICATIONS: Program Publicity</u></p> <p>Public Notices and ads in newspaper? yes / no</p> <p>Public Service Announcements? yes / no</p> <p>Posters or fliers? yes / no</p> <p>Letters to homeowners in area? yes / no</p> <p>Informational public meetings? yes / no</p> <p>Interpreters, readers, or TDD's available upon request? yes / no</p> <p>Equal Opportunity statement in ads, fliers, letters? yes / no</p>		
<p><u>EMPLOYMENT:</u></p> <p>Does the City make reasonable accommodation to known Physical or mental limitations of qualified applicants or employers with disabilities? yes / no</p> <p>Pre-employment inquiries and tests do not screen out persons with disabilities? yes / no</p>		
<p><u>PROGRAM ACCESSIBILITY:</u></p> <p>Are City/County facilities accessible to and usable by individuals with disabilities (for example: ramps, space at meetings)? yes / no</p> <p>Are modifications for individual with disabilities offered in rehabilitation programs? yes / no</p> <p>Disabled individuals with limited mobility assisted with applications at their homes? yes / no</p>		
<p><u>ENFORCEMENT - Evaluate how policies meet 504 requirements:</u></p> <p>Statement of Assurances in grant applications? yes / no</p> <p>Non-discrimination clause in deed of trust? yes / no</p> <p>Names of Advisors on Disability issues:</p> <p>_____</p> <p>_____</p> <p>Does the City/County have procedures for complaints? yes / no</p> <p>Is log maintained of any complaints? yes / no</p>		

NAME OF SECTION 504 COORDINATOR: _____

Form #: EO-1

ARCHITECT'S COMPLETION CERTIFICATE
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) HOUSING PROJECT
FOR COMPLIANCE WITH SECTION 504 ACCESSABILITY REGULATIONS

PROJECT NAME: _____

CDBG Contract No, _____

DATE CONSTRUCTION COMPLETED: _____

1. Based upon the inspections of the architect done in accordance with customary standards of a prudent architect, the construction of the Project has been performed in substantial accordance with the plans showing accessibility in conformance with federal regulations Section 504. A previously submitted Section 504 certification of compliance with Section 504 accessibility standards was reviewed and accepted by HCD. The Project is complete (except for minor punch list items specifically described in such certificate with estimated costs) so that tenants may occupy and the Borrower may operate and use the Project for the purposes for which it was intended;
2. The Project has all utility connections necessary for its intended use;
3. All permits, licenses and governmental approvals necessary for occupancy, operation and use of the Project have been obtained;
4. The Project, as constructed, complies with all applicable statues, codes, zoning ordinances and regulations, including, but not limited to, accessibility standards for persons with disabilities as mandated by federal, state and local law;
5. Adequate ingress and egress to and from the Project is available over public streets, rights of way and easements; and
6. The California Department of Housing and Community Development (HCD) is entitled to rely on such certificate.

Architect: _____

By: _____

Name: _____

Title: _____

Registration: _____

Date: _____

U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP)

Regional Director
Regional Office, OFCCP
U.S. Department of Labor
71 Stevenson Street, Suite 1700
San Francisco, CA 94105
Phone (415) 975-4720 Fax (415) 975-4723

DISTRICT OFFICES

OFCCP District Director
U.S. Department of Labor
11000 Wilshire Blvd., Suite 8103
Los Angeles, CA 90024
Phone (310) 235-6800/Fax (310) 235-6833

OFCCP District Director
U.S. Department of Labor
1301 Clay St., Suite 1080-N
Oakland, CA 94612
Phone (510) 637-2938/Fax (510) 637-2946

OFCCP District Director
U.S. Department of Labor
5675 Ruffin Rd, Suite 320
San Diego, CA 92123-5378
Phone (619) 557-6489/Fax (619) 557-6609

OFCCP District Director
U.S. Department of Labor
60 S. Market St., Suite 410
San Jose, CA 95113-2328
Phone (408) 291-7384/Fax (408) 291-7559

OFCCP District Director
U.S. Department of Labor
34 Civic Center Plaza, Suite 712
Santa Ana, CA 92712-2800
Phone (714) 836-2784/Fax (714) 836-2781

COUNTIES SERVED BY DISTRICT OFFICE

Inyo, Kern, Los Angeles, San Luis Obispo,
Santa Barbara, Tulare, Ventura

Alameda, Amador, Butte, Colusa, Contra
Costa, Del Norte, El Dorado, Glenn,
Humboldt, Lake, Lassen, Marin, Mendocino,
Modoc, Napa, Nevada, Placer, Plumas,
Sacramento, San Francisco, San Joaquin
San Mateo, Shasta, Sierra, Siskiyou,, Solano
Sonoma, Sutter, Tehama, Trinity, Yolo, Yuba

Imperial, San Diego

Alpine, Calaveras, Fresno, Kings, Madera
Mariposa, Merced, Mono, Monterey,
San Benito, Santa Clara, Santa Cruz,
Stanislaus, Tuolumne

Orange, Riverside, San Bernardino

CHAPTER 5

LABOR STANDARDS: PREVAILING WAGE MONITORING OF CONSTRUCTION CONTRACTS

I. INTRODUCTION.

If Community Development Block Grant (CDBG) funds are paying for any construction costs then federal statutes and regulations require payment of prevailing wages on the whole project. Congress specifically required this provision with the creation of the CDBG program. Many other federal or state programs may not require payment of prevailing wages and monitoring for labor standards compliance, but it is a requirement of CDBG regulations when funding is used to pay for a construction activity. Thus, if you have one CDBG dollar paying construction costs for a contract of two thousand dollars (\$2,000) or more, then prevailing wage compliance would apply to that construction contract.

Prevailing wage compliance takes place in the context of procurement of construction contract services, so this Chapter is closely tied to Chapter 8 Procurement and Chapter 4 Equal Opportunity. These supporting Chapters are referenced throughout this Chapter and should be reviewed and properly incorporated into the construction project's labor standards monitoring. In addition, prevailing wage monitoring is guided by a number of different federal laws as listed under Section VI of this Chapter, making CDBG monitoring more complex. The supporting materials in this Chapter should be used to ensure all the different laws are covered. Department staff should be consulted with early and often for technical assistance and to help facilitate the process.

Please note that the first topic in this Chapter is a discussion of exemptions from prevailing wage monitoring. Programmatic exemptions, like the exemption for small residential rehabilitation program construction projects, are straightforward. However, exemptions for specific projects must be approved in writing by Department staff.

If Grantees do not wish to pay prevailing wages then projects should be designed from the beginning, at application stage, such that CDBG funds are not used for construction funding. If CDBG funds must be used to pay for construction costs, then grantees must plan how to comply with labor standards monitoring from the start by using a professional labor standards compliance officer from start of construction contractor procurement through project's construction completion.

The State of California also has prevailing wage monitoring laws with compliance requirements. Department staff do not monitor for state labor standards compliance. Federal regulations do require that CDBG funded construction projects pay construction trade workers the higher of state or federal wage rates. In most cases the state wage rate will be higher. As part of conducting a project's pre construction conference, a comparison of the state and federal wage rates must be done to determine which of the

determine which of the two is higher. This should be done with payroll staff. In some cases projects funded with CDBG monies may not trigger federal prevailing wage compliance but will trigger state prevailing wage compliance. In these circumstances, the grantee must consult with their legal counsel and/or contact the State Department of Industrial Relations (DRI) legal staff to confirm if state prevailing wage law applies and if so, then the state labor standards compliance must be followed.

The Grantee receiving CDBG funds has specific language in the Department's contract requiring compliance with federal and state labor standard requirements. The **Federal** labor requirements for which the Department monitors are detailed in this chapter:

II. CHAPTER OVERVIEW.

The topics covered in this section are:

- A. Exemptions from prevailing wage provisions (Davis-Bacon and related acts)
- B. Overview of labor standards monitoring process
 - 1. Hiring a labor standards coordinator
 - 2. Developing proper bid package with CDBG language
 - 3. Contractor eligibility and bid award
 - 4. Pre-construction conference and meeting with all payroll staff
 - 5. Monitoring weekly payrolls and on site interviews
 - 6. Dealing with payment issues
- C. Bid package preparation and requesting wage decisions
 - 1. Requesting federal wage determinations from Department
 - 2. Obtaining and using state wage determinations
 - 3. Processing a request for additional wage classifications
 - 4. Finalizing bid package
- D. Awarding contract and monitoring contractor's compliance
 - 1. Verifying contractor eligibility
 - 2. Notice of contract award and pre-con meeting (send to Department)
 - 3. Signing contract(s) and CDBG certifications for prime and subs
 - 4. Pre-construction conference/meeting with payroll staff
- E. On-site monitoring and payroll reviews
 - 1. Procedures
 - 2. Employee interviews & Questionnaires

3. Weekly payroll review

F. Identification of problems

H. Correcting violations

1. Withheld funds
2. Payment of wage restitution
3. Procedure for disbursement of wages due
4. Unfound workers
5. Disputes over findings
6. Overtime violations and liquidated damages
7. Suspensions or withholding of insured draws and advances

III. PRE-BID COMPLIANCE WITH FEDERAL LABOR STANDARDS

A. Exemptions from prevailing wage provisions (Davis-Bacon and related acts "DBRA").

The prevailing wage laws provisions do not apply to all projects involving construction. The following activities are exempt from Davis-Bacon and related acts:

- If CDBG funds are paying for residential rehabilitation programs with small projects, specifically projects with fewer than eight units, (Note: the HOME program is different)
- If CDBG funds only pay for real property acquisition, like for acquisition only homebuyer assistance programs (construction/rehabilitation may be financed with other funding)
- If CDBG funds only pay for engineering design and construction management costs (no construction contract/ trades involved)
- If CDBG funds only pay for purchase of equipment with no installation costs
- If CDBG funds pay for equipment and installation when the cost of installation is less than 13% of the equipment (equipment cannot be broken out of a larger construction contract just to avoid prevailing wage)
- Apprentices employed in a bona-fide state approved apprenticeship program

- Trainees employed in a Department of Labor approved program
- Volunteers where there is no conflict of interest (volunteer is not also a contractor or employee of contractor hired for the job, etc)
- Fabrication of building materials or components by a manufacturer **off site** (manufactured housing or community facilities or modular components of a building). However, all **on site** preparation and installation of manufactured unit or modular components does require prevailing wage monitoring for that portion of the work.
- Force account - work carried out by city or county employees. The use of force account on "public projects" is subject to the provisions of Sections 20160 et seq. of the California Public Contract Code. Complete checklist and get Departmental approval.

These are the most common exemptions. For additional exempt activities, see list of exemptions under number one of Supporting Materials

B. Overview of proper labor standards monitoring

1. Before putting the project's bid package together, **hire a professional labor standards coordinator.** Most staff at small cities and counties do not have this experience nor do they have hours to learn and manage this complicated process. Hiring a qualified coordinator prior to putting the project's bid package together is the first step in successful labor standards compliance. The coordinator will become part of the project's development team, working with the architect and engineer to put the bid package together and ensure proper CDBG language (labor standards, procurement, equal opportunity) is included.
The coordinator will also set up the proper labor standards monitoring files for the project (See sample project file table of contents in number two of Supporting Materials).
2. The coordinator will use the most recent monitoring checklists in Chapter 12 to ensure the proper procurement process is followed and all proper language is in the bid document. **The labor standards coordinator will request the proper federal wage determination from Department's Labor Standards Specialist, listed below, and include this determination in the bid document prior to release.** The coordinator will attend the pre-bid conference and answer any questions regarding the CDBG procurement process or the additional CDBG language in the bid document. If there is a unknown trade that needs a determination then the coordinator will do the formal request for a special determination and distribute it to the bidders. Ten days prior to bid opening the coordinator will request the necessary ten day

request the necessary ten day federal wage update and distribute it to the bidders as well.

3. Once the bids have been opened and the contractor has been formally approved, then the coordinator and the development team will schedule a pre-construction conference meeting. The labor standards coordinator will submit a Notice of Contract Award and Pre construction Meeting to the Department's Labor Standards Specialist listed below. Department staff may attend this meeting to help explain how the CDBG funding and compliance process works. As part of having the construction contract signed, the labor standards coordinator ensures that the contractor signs and understands all the CDBG certifications and documents. The contractor must provide a list of all sub-contractors to be used on the job so they can be checked for license and federal debarred status. Copies of the subcontractor's contracts will be requested as well to ensure proper CDBG language is passed on from the prime contractor to the subcontractors.
4. The coordinator should meet with the payroll staff of the contractor and sub-contractors to ensure that proper weekly payroll certification forms are used and completed fully and accurately, a proper comparison of state and federal wage rates has been done to document the higher of the two wages is paid, that proper fringe payment certifications are in place and to explain how to document apprentices, wage garnishments and other details of the monitoring process. Using this information will give the coordinator an idea of how many trades are involved so how many interviews on site need to be done and how many apprentices will be working on the site.
5. The coordinator obtains the on site project manager's contact information from the contractor. The labor standards coordinator arranges to call the project manager each week to check on what trades will be on site for work that week and then the coordinator can decide when to do interviews of employees at the site. Each week the coordinator will receive and review the weekly certified payrolls from the prime and each sub. If no work was done then a no work certification is submitted. Weekly payrolls are checked for completeness and accuracy against the wage determination. Confidential information for employees only needs to appear of the first payroll submitted by a sub or the contractor. After that only the name needs to be shown the other information can be blacked out. **Note: Labor standards coordinator and the grantee are responsible by law for keeping employee and contractor personal information private and in a secure locked storage device to prevent identify theft.**
6. If there are underpayments to employees or other mistakes on the payrolls then the coordinator has the authority to withhold payment until corrections

are made and/or restitution payments are made.

C. Bid Package Preparation and Requesting Wage decisions

Federal wage rate decisions must be requested from the Department. State wage rates can be taken off the internet web site of Department of Industrial Relations. Prior to start of construction the two wage rates for each trade working on the project must be compared to ensure the higher of the two wage rates is paid in each instance.

1. Federal wage determinations. Federal prevailing wage determination must be obtained from the Department. Submit the request to the State CDBG Program using the proper Wage Decision Request Form in this chapter. Be sure to completely fill out the form and indicate either the grant number or program income funding or both, and leave an e-mail address. Department staff prefers to have electronic copies of the request form submitted by e-mail to Jon Diedesch at: jdiedesch@hcd.ca.gov.

Requests can also be submitted by mail to:
Department of Housing and Community Development
State Community Development Block Grant Program
ATTN: Jon Diedesch
1800 Third Street, Room 330
Sacramento, California 95811

or

By Fax: 916-319-8488 or 916-327-8823- Attn. Jon Diedesch

Note: **Ten days before bids are opened**, the grantee shall contact the State CDBG Program and DIR to assure that wage decisions previously sent are still current. If modifications have been published, you must secure the modifications and mail them out to bidders so they can update their bids prior to opening and include the modified rates in the contract documents. This is critical because the grantee will be required to make up any differential where a modification has been issued but employees were paid at a lower rate.

Wage rate modifications published later than 10 days before bid opening will not be effective unless there is reasonable time in which to notify bidders. A copy of the complete current federal wage decision must be physically included in all bid specifications and every subsequent contract and sub-contract. **NOTE: A full set of the federal wage rate must be included in the bid package.**

2. State wage determinations. To obtain state prevailing wage rates use the

internet web site of Department of Industrial Relations www.ca.dir.gov. A full set of the state wage determination does not need to be included in the bid package but if a copy is not provided then there needs to an easy reference so the bidders can go and print out a copy for themselves.

3. Processing a request for additional wage classifications. Following receipt of the State and Federal wage decisions, your labor standards coordinator shall review the decisions and determine if any additional job classifications are required. If, after receipt of a wage determination, it is found that any class of laborers or mechanics not listed in the Federal wage determination is to be employed on the project, request an additional determination from the State CDBG Office. Use the HUD Report of Additional Classification and Rate see form in supporting materials section of this chapter. This form will be used to notify the Department of Labor which reserves final judgment on any grantee request to classify or reclassify a laborer or mechanic to conform to the wage determination.
4. Finalizing the bid package. Besides the federal and state wage determinations, there are a number of other documents/required federal and state language from Chapter 5 and Chapter 4 and Chapter 8. The Sample Project File Table of Contents will list out these required documents and language as will the Matrix of Required Language for Bid and Construction Doc. The labor standards coordinator may also wish to compare the bid package language to the labor standards and procurement monitoring checklists in Chapter 12.

Given the specific nature of the language and forms being required for labor standards monitoring, it is recommended that a separate section of the bid document be designated for this special language and the required forms and certifications. This will also make it easy for Department staff to monitor once the project is underway.

D. Project's contract award and implementation of labor standards monitoring.

1. Verifying contractor eligibility. Prior to awarding a contract you must verify that the successful bidder and all prime contractors are not on the Federal list of ineligible contractors and that they possess a State license that is current, active and in good standing. To verify Federal eligibility, you can send or fax a written request to your CDBG representative OR access the list directly on the internet at <http://epls.arnet.gov> In order to verify a contractor's license and required insurance status, contact the State Contractor's Licensing Board at <http://www.cslb.ca.gov/consumers/default.asp> and keep a record of your findings on the same verification form.

2. Notice of contract award. After the contractor's eligibility has been established the formal approval process may take place and contracts can be signed. Send a completed "Notice of Contract Award/Pre-construction Conference/Start of Construction" form to the Department's specialist, Jon Diedesch at: jdiedesch@hcd.ca.gov within **10 working days** of award of contract. This notice provides, along with other information, the name of the person responsible for labor standards compliance.
3. Signing contract: As part of signing the construction contract, all contractors and subcontractors shall submit the proper CDBG certification forms as included in the bid package. The construction contract will typically include the bid package and all plans and specifications in total for the prime. However this must be passed on from the prime to the subcontractors as well.
4. Pre-construction conference. After giving notice of award but prior to giving notice to proceed, hold a pre-construction conference that should be attended by the prime contractor, the foreman or construction superintendent, and the person on staff who will be preparing payrolls, as well as all identified subcontractors. Invite your CDBG rep, who can answer questions as they arise. The pre-construction conference is the greatest opportunity you have to ensure labor standards compliance by:
 - a. Clearly and completely informing project employers of what their individual responsibilities are. The pre-construction conference minutes format (a sample can be found in this manual as an attachment) should be used when conducting a pre-construction conference for any construction project funded in whole or in part by State CDBG funds to ensure all necessary topics are covered, including commonly asked questions concerning equal opportunity requirements.
 - b. Advising the contractors that funds will be withheld from project advances to achieve compliance.
 - c. Informing the contractors that they should call the grantee for assistance as soon as labor standards questions surface.
 - d. Reviewing all items listed in the pre-construction conference minutes for contractors and subcontractors.
 - e. Correcting any deficiencies that have developed, making sure the

certification has been signed, and ensuring that all contractors and subcontractors are eligible.

E. On-Site monitoring and payroll reviews.

Once the project is under construction, you must monitor compliance through review of weekly payrolls and on-site monitoring including worker interviews. Payrolls must include all the information required of the Payroll Form WH-347. The person designated on the Certification of Understanding and Authorization will be charged with reviewing the payroll to ensure compliance, and will be signing the reverse of Payroll Form WH-347 or, if another form is being used, the weekly Statement of Compliance, and will submit the Certified Payroll to the Grantee within 10 (ten) days of issuance. Certified Payrolls must be completed and signed in ink, be free of white out and strikethroughs, and must show an original signature to be deemed acceptable.

1. Procedures. You should establish a standard procedure for conducting compliance reviews, including:
 - a. Check for posted wage rate determinations and the Davis-Bacon poster;
 - b. Obtain copies of weekly payrolls from the general contractor and any subcontractor along with Statements of Compliance signed by the officer of the company authorized on the Certification of Authorization and Understanding, and promptly check the payrolls against the wage decisions, and examine for non-permissible deductions;
 - c. Verify wages through worker interviews, using the Record of Employee Interview Form first, then check the payroll for that worker, date and wage rate. When these don't match, discuss with the contractor. A federal labor standards questionnaire (HUD Form 4730) may be mailed out to the workers in question, along with a self-addressed stamped envelope. Confirm delivery. Additionally, workers may complete the questionnaire online using HUD Form 4730-E which can be downloaded at the HUD website (www.hud.gov) and is attached at the end of this section. Complaints shall be recorded on the HUD Complaint Intake Form which also can be found at the end of this section.
 - d. Review use of apprentices (helpers are not eligible) for compliance with apprenticeship agreements, including required journeymen ratios;
 - e. Review overtime procedures and payrolls for compliance with

overtime and hours requirements.

1. Employee interviews and questionnaires. On-site employee interviews (see sample with instructions attached at the end of this chapter) must include a sufficient sample of job classifications represented on the job to allow for a reasonable judgment as to compliance. Every effort shall be made to interview 10 percent of the workers in each classification. The on-site interview shall be compared against applicable payrolls for wage rate compliance. The employee shall be informed that the information given is confidential, and that his/her identity will be disclosed to the employer only with the employee's written permission, and he/she is being interviewed by an employee of the grantee. Disclosure of employee statements are governed by the provisions of the Freedom of Information Act and the Privacy Act of 1974.

- a. Place of Interview. Employees currently employed may be interviewed during working hours on the job, provided that the interview can be properly and privately conducted on the premises without disruption. In cases of possible falsification of records, fear of reprisals, or intimidation, it may be more advisable to conduct the interview elsewhere, such as in the employee's home, at the agency's office, or another suitable place.
- b. Initiating the Interview. The labor standards coordinator shall begin the interview by identifying himself/herself to the worker. He/she shall confirm identity by showing the worker his/her credentials. He/she shall explain that the project is being constructed with funding from the State CDBG Program, that payment of prevailing wages on construction projects with CDBG funding is required by law, and that the purpose of the interview is to obtain information for use in determining whether the required wages are being paid. He/she shall inform the worker of the specific location at which the applicable wage determination decision is posted at the project site.
- c. Interview Time. If the interview is conducted on the job site, it shall be arranged causing the least inconvenience to the employer and employee.
- d. Oral Interview Statements. An employee interview need not be recorded in a signed statement when it serves merely to confirm what the records reveal, and is not otherwise indicative of a violation, assuming no violation has been alleged and the records are adequate. For compliance review purposes, however, the number of such interviews should be recorded. As stated earlier, complaints shall be recorded on the HUD Complaint Intake Form,

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which can be found at the end of this section.

- e. Interview Form. Employee interviews should be recorded on Form HUD-11, Record of Employee Interview or a comparable form recording the same information. A sample with instructions may be found at the end of this section.
 - f. Mail Interviews. Employees and former employees may be interviewed by mail and the questionnaires may be mailed. Lack of response from a worker interviewed or mailed a questionnaire by mail does not meet the requirement.
3. Weekly payroll review. The labor standards coordinator should review weekly payrolls and other basic records during routine compliance enforcement activity on every construction project. Submitted payrolls shall be examined to assure compliance with labor standards. In examining payrolls, verify that only classifications appearing on the wage determination are used and check for disproportionate employment of laborers, apprentices or trainees. Such payrolls and statements shall be produced at any time during the normal four-year term in which records must be maintained. When reviewing payrolls, monitor the following items:
- a. Payroll Forms. Contractors may use Department of Labor Form WH-347 for Certified Payroll. The text of the "Weekly Statement with Respect to the Payment of Wages," which is required by regulations of the Secretary of Labor, appears on the reverse side of this payroll form. A contractor may use an appropriate payroll form of his/her own choice, but must report all required items of information and must also submit a copy of the weekly statement, using either Department of Labor Form WH-348, Statement of Compliance, which contains the weekly statement and related instructions, or any form containing the identical wording contained in these forms.
 - b. Fringe Benefits. The required weekly Statement of Compliance, Form WH-348, includes statements concerning the payment of fringe benefits in addition to statements concerning the payment of the basic hourly wage rates. Where contractors and subcontractors make fringe payments directly to plans, a fringe benefit statement must accompany the Certified Payroll.
 - c. Payrolls Must Be Obtained and Examined Promptly - Payroll Retention. The labor standards coordinator shall insist upon prompt, submission of all payrolls within 10 (ten) days. You shall withhold funds from the contractor if excessively delinquent in

submitting payrolls. Payrolls may be date stamped upon receipt and also dated and initialed upon review. The payrolls shall be examined upon receipt so that any necessary corrective action may be immediately initiated, and may be accomplished while the workers are still available. The coordinator should give special attention to each project during the early stages of construction to determine whether the prime contractor is meeting his/her responsibilities regarding payrolls. Spot checking of payrolls is permissible if a review of four or five weeks of payrolls reveals no significant problems. You must retain payrolls for four years following the expiration of the grant agreement funding the project, and then you may destroy them unless an investigation, disputed compliance action, or appeal remains outstanding. Contractors and subcontractors must retain their basic payroll records (payroll register, individual earning cards, etc.) as well as all contracts and subcontracts for the same four-year period.

- d. Addresses and Social Security Numbers. Each worker's address and social security number must be reported on the first payroll on which his/her name appears. It is permissible for the contractor to omit the worker's social security number on subsequent payrolls if the contractor reports the worker's name on all payrolls in the identical form in which it was reported on the first payroll, and the contractor has no other worker with the same name. It is permissible for the contractor to omit the worker's address on subsequent payrolls if the contractor will report the worker's new address if and when an address change occurs.

- e. Incomplete Payrolls. Payrolls shall be examined to determine if they include all of the required items of information. Except where falsification is suspected, an incomplete payroll shall be returned to the prime contractor for completion. In most cases, it will be better to request the prime contractor to supply the missing information by means of a new or supplemental payroll or a supplemental statement. If a payroll is false, it shall not be returned to the contractor, and a report of such finding shall be referred to the Department.

- f. Classification and Wage Rates. To determine if the rate reported on the payroll is at least equal to the rate required by the wage rate decision, compare the classification and wage rates on the payroll with the corresponding items on the applicable wage determination. If a lesser wage rate is found, request in writing the contractor to begin paying the required wage rate immediately and to make restitution to workers for past underpayments.

- g. Computations. Payroll computations shall be spot-checked to determine whether the payrolls are accurate. Scattered minor errors may be ignored. If such errors are numerous, however, the contractor should be requested in writing to exercise more care in preparing the payrolls.
- h. Deductions. Deductions shall be reviewed for any non-permissible items. Permissible deductions include medical or hospital care, pensions or retirement, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, or accident insurance, vacation or holiday pay, defraying costs of apprenticeship or similar programs. Questions concerning permissibility of fringe benefits and "other" deductions must be referred to the Department for determination.
- i. Signature. The statement of compliance for the payroll must be signed by the owner, officer, or designated employee of the contractor, matching the signature in the submitted Certification of Authorization and Understanding. Additional written authority must be furnished by the owner or officer of the contractor where another designated employee signs the payrolls, in order for the payrolls to be deemed Certified.
- j. Requests by Outside Parties for Payrolls. To protect the personal privacy interests of employees, copies of weekly payrolls containing the individual's salary, work hours, claimed exemptions and tax status, address and social security number shall not be released to outside parties and may be withheld under Exemption 6 of the Freedom of Information Act unless any identifiers are first deleted. When payrolls are in the possession of a State or local government, then the applicable State law will govern the release of payroll information.

F. Identification of problems.

You should contact your State CDBG area representative for assistance whenever you are unable to resolve a labor standards monitoring or enforcement problem. Examples of where apparent violations of labor standards provisions would trigger a request for assistance from your State CDBG area representative would include:

- Complaints alleging violations of labor standards that are received from employees, unions, competing employers, their representatives or other interested persons where the grantee's labor standards compliance person views these complaints as being valid. The grantee shall complete the Federal Labor Standards Complaint Intake Form (HUD 4731) and submit a

copy to the Department when submitting the Semi-Annual Wage Compliance Reports.

- Habitual and persistent violations of other requirements of the contract indicating a general carelessness on the part of the contractor with respect to his contractual and statutory responsibilities.
- When the data on the certified payroll does not match the record of employee interview form, and the required HUD 4730 questionnaire is mailed out, but not completed or returned.
- Contractor delays in furnishing the required payrolls, certifications, or statements, if satisfactory explanations are not furnished or other suspicious circumstances exist.
- Discrepancies (other than routine errors) are discovered.
- The discovery of falsification in the time sheets and payroll records, or reasonable cause to believe such a situation exists, should prompt an immediate call for assistance.
- Apparent violations of the Copeland "Anti-Kickback" Act and/or the Contract Work Hours and Safety Standards Act.

G. Correcting violations.

When any violation of labor standards requirements results in an underpayment of wages to a worker on the project, grantees must take the necessary action. For example, where wage adjustments become necessary, the labor standards coordinator shall notify the prime contractor (who is responsible for the correction of all violations) in writing to make such adjustments. Contractor confirmation of wage restitution amounting to less than \$10 per worker is not required however restitution to the worker is still required. Amounts in excess of \$10 per worker require copies of signed statements by employees and corrected payrolls to be supplied to the compliance officer by the contractor as confirmation of payment to all affected employees. Should the violation not be corrected within thirty (30) calendar days of notification, the compliance officer upon written notice to the contractor may withhold or cause to be withheld amounts due the contractor considered necessary to ensure payment of laborers and mechanics the pay rates which should have been received by the laborers and mechanics and to cover liquidated damages under the Contract Work Hours and Safety Standards Act (CWHSSA), if any and if applicable. Only an amount necessary to ensure payment of back wages and/or liquidated damages shall be withheld. If it is necessary to estimate such an amount, every action shall be taken to promptly determine an exact amount and to return any excess to the contractor.

1. Withheld Funds. Establish, where applicable, a special account for depositing funds withheld for wage restitution.

2. Payment of Wage Restitution Where Funds Have Been Withheld. The coordinator shall provide in the written notice to the prime contractor information specifying the reasons for the withholding or suspension or intended withholding or suspension of contract payments. That information may include the failure to submit weekly payrolls promptly, the identity of underpaid workers, their correct classifications and wage rates, and the amounts of underpayments which have been computed. The contractor will then proceed to comply and to make the required payments and compute taxes owed, fringe benefits, and overtime accordingly. The contractor will supply the labor standards compliance person with signed employee statements as confirmation of payment as well as corrected payrolls. Should the contractor refuse to make such restitution as requested, the coordinator may disburse or cause to be disbursed out of withheld funds for and on account of the contractor moneys to the respective employees. Should the contractor dispute the basis of the findings, see section 5 below. Such funds should not be disbursed whenever the contractor is appealing the restitution or during the time allowed for instituting an appeal.

3. Procedure for Disbursement of Wages Due By A Grantee. In order to avoid drawing a check to a worker only to find that it cannot be delivered, the labor standards coordinator shall address a letter to each worker at his/her last known address and ask the worker to give a current address and Social Security number so arrangements may be made for the payment of additional wages found due. Upon receipt of a reply, the Social Security number must be checked with one on file (payrolls if available in order to avoid delivery of a check to a false claimant). The net amount of wages found due shall be computed. The net amount is the gross amount minus deductions for the Federal Income Withholding Tax along with the employee's share of the Social Security (FICA) Tax. Other itemized deductions that may be applicable (State and/or City) shall also be computed prior to determining the net due and remitted to such agencies. Prepare a Form W-2 for the employees. The checks shall be mailed to the employees, together with the employee's copy of the Form W-2, registered or certified mail, return receipt requested.

Upon receiving receipts, a check payable to the Internal Revenue Service for the total of the amount of the wages withheld from the employees who have received payment shall be prepared. A tax return, Form 941, Employer's Quarterly Federal Tax Return, shall be prepared and forwarded with the check. The "taxpayer" shall be identified on the return as:

(Appropriate local agency), Agent for _____ Contractor on
Project
(describe name and location of project)
Note On Return: "One - Time Return"

In the transmittal letter to Internal Revenue Service, the following statement may be helpful:

"This return covers only the taxes withheld from wages due employees engaged in the construction of (identify project). The wages were paid out of funds withheld from the contractor to assure payment of the wages. This return does not include the employer portion of FICA tax."

Note: Davis-Bacon Act Wage Restitution Disbursal. The Comptroller General reserves the right to disburse withheld funds to workers where violations of the Davis-Bacon Act occur and the contractor refuses to make payment.

4. Unfound Workers. If all workers cannot be located and restitution made either by the contractor directly or through the use of withheld funds, sufficient funds shall be reserved in the account described in subparagraph "1" above for subject employees. Efforts should continue to be made to locate the workers. Should the workers not be located within three years from the date of creation of the account, the funds shall be forwarded to HUD and credited to the appropriate U.S. Government account.
5. Disputes Over Findings. Should the contractor dispute the findings, the situation shall be reported promptly to your CDBG representative, and the HCD Labor Standards Coordinator for consideration and appropriate action. Should the Department be unable to resolve the situation, the contractor shall be advised of his/her right to appeal to the Department of Labor under 29 CFR Section 5.11(a).
6. Overtime Violations and Liquidated Damages
 - a. The prime contractor is responsible for proper overtime payment to all laborers and mechanics (and watchmen and guards employed or under a subcontract) employed on the project. The construction contract requires all subcontracts to contain clauses imposing the statutory overtime requirements. Where the required provisions do not appear in the subcontract, the prime contractor alone is responsible for any underpayments and liquidated damages.

- b. Contractors violating the Contract Work Hours and Safety Standards Act are liable to the United States for liquidated damages. Prime contractors may be liable for subcontractor's liquidated damages violations. Whenever the labor standards coordinator believes that overtime underpayments have occurred, he/she shall compute the overtime wages due.
- c. Computation of liquidated damages is at the rate of \$10 for each calendar day the individual was required or permitted to work in excess of forty hours within a work week without payment of the required overtime rates. For example, the day an individual works the forty-first (41st) hour within a work week and any subsequent day in that week, liquidated damages are assessed \$10 per day. In every case where it is necessary to compute liquidated damages, the contractor shall be notified in writing of the amount and the basis for the computations. This written notice of intent to assess liquidated damages shall be sent by the Department upon receipt of a report from the grantee. The report shall contain a recommendation as to whether to assess or seek waiver or reduction. Funds may be withheld to cover the computed amount of liquidated damages pending a decision.
- d. The contractor shall have 30 days to respond to the notice of computation and intent to assess. Should the contractor seek a reduction in whole (waiver) or in part of the liquidated damages, the contractor's explanation of the violations shall substantiate why such action should be considered. In all appealed cases, the Department will prepare its recommendations for submission to the HUD Office of Labor Relations. HUD will issue a final decision in cases involving \$500 or less. In cases involving more than \$500, HUD will transmit its recommendation to the Department of Labor for its final decision. Should a reduction in whole or in part be approved by the Department of Labor or HUD, respectively, any excess funds withheld shall be released to the contractor as is appropriate.
- e. Should the contractor not respond in the prescribed period, or HUD or DOL does not approve a waiver or reduction, liquidated damages shall be assessed by the Department and collected and paid to the appropriate U.S. Government account of the U.S. Treasury.
- f. The contractor may appeal a final decision to assess by HUD to the U.S. Claims Court within sixty days of receipt date of a certified letter assessing liquidated damages.

7. Suspension or Withholding of Insured Draws and Advances. The grantee may recommend to the Department withholding of funds during the course of construction where the contractor has failed to comply with labor standards provisions within a 30-day period. The grantee's recommendation to the Department shall contain a narrative justification. Withholding from a draw or advance should not exceed sufficient amounts to cover actual or estimated wage underpayment. Suspension of a draw or advance is a drastic action taken only when a contractor continues to violate labor standards provisions (e.g., continues to underpay employees) after notification to desist. The suspension of an entire draw or advance shall not take place because one or more subcontractors have failed to comply. If there is sufficient cause, payments of line items attributed to the work of the subcontractors in violation should be deleted from the advance, and if the sum is sufficient to cover the estimated wage underpayments, an additional amount may be withheld. Suspension or withholding may also be requested by the Department of Labor. The failure of the contractor to submit weekly payrolls over a substantial period of time is particularly serious.

IV. COMMON PROBLEMS

- CDBG labor standards, procurement, equal opportunity, language is not included in bid packages and contract documents
- Inclusion of incorrect or modified or superseded wage decision in bid and contract documents
- Absence of contractor's and especially subcontractor's signed CDBG required certifications for labor standards and prevailing wage compliance
- Absence of verification of contractor eligibility
- Pre-construction conference not held and payroll staff do not know what CDBG requirements are for weekly certified
- On-site employee interviews not held
- On-site employee interviews not checked against payroll
- Weekly payroll information incomplete or undocumented with holdings
- Restitution or liquidated damages not secured for contractor violations

- Final compliance report not prepared
- Record keeping is inadequate and kept in unsecured location
- Use of state wage classification in lieu of federal classification

V. DEPARTMENT'S ROLE.

Department staff will provide technical assistance to ensure that grantees are aware of the labor standards regulations and requirements and that grantees have developed procedures for monitoring and ensuring compliance with labor standards and have established files to document all labor standards activities.

The Department will monitor grantee's compliance only with Federal labor standards; the Department of Industrial Relations monitors compliance with State labor standards. Monitoring activities will include checking for: wage rate determinations; contractual/sub-contractual provisions and certifications; verification of bidder eligibility; grantee monitoring and enforcement of labor standards compliance; and actions taken by grantees to investigate and follow-up on violations.

The Department will also provide guidance in determining when Davis-Bacon prevailing wage rates apply. If there is any question as to the applicability of Davis-Bacon requirements, the CDBG area representative should be contacted as early as possible.

VI. REFERENCES

- Section 110, Title I, Housing and Community Development Act of 1974, as amended (42 USC 5301) provides that: "All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with grants received under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 USC 276a et seq.): Provided that this section shall apply to the rehabilitation of residential property only if such property contains not less than eight (8) units" (emphasis added).
- Davis-Bacon Act (40 USC 276a - 276a-5) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Department of Labor and are issued in the form of Federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2,000. (Residential rehabilitation contracts involving structures designed for fewer than eight units are exempt.)
- Copeland "Anti-Kickback" Act (47 USC 276(c)) requires that workers be paid at least

once a week without any deductions or rebates except permissible deductions. Permissible deductions include taxes, deductions the worker authorizes in writing, and deductions required by court processes. The Act also requires contractors to submit payroll records weekly along with Statements of Compliance to the contracting agency. The Copeland Act applies to all contracts covered by Davis-Bacon.

- Contract Work Hours and Safety Standards Act - CWHSSA (40 USC 327 - 333) requires that workers receive "overtime" compensation at a rate of 1-1/2 times their regular hourly wage for any time worked after 40 hours in one week. This provision applies to all construction contracts using State CDBG funds.
- Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.
- Section 1720 et seq. of the California Labor Code requires that where State prevailing wage rates are higher than Federal wage rates, the State wage rates shall prevail whenever Federally funded or assisted projects are controlled or carried out by California public entities of any sort.
- Sections 1810-1815 of the California Labor Code determine the maximum calendar workday for a worker employed on a public works project to be 8 hours, and 40 hours for a calendar week. Contractors forfeit \$25 for each calendar day during which such worker is required or permitted to work more than 8 hours per day or more than 40 hours in any one calendar week and is not paid overtime (Sections 1810-1814). Section 1815 provides that, notwithstanding the provisions of Sections 1810-1814, employees who work in excess of 8 hours per day or 40 hours per week shall be compensated at a rate not less than 1-1/2 times the basic rate of pay.
- Section 7028 of the California Business and Professional Code requires that any person engaging in the business or acting in the capacity of a contractor within California must have a license.
- Labor Standards Administration and Enforcement Guidelines contain policies and procedures to be used by grantees, contractors and subcontractors who are recipients of Community Development Block Grant funds to ensure compliance with applicable Federal labor standards, statutes and regulations and outlines enforcement actions to be taken when necessary. Available at <http://www.hud.gov/offices/olr/>
- A Contractors Guide to Davis-Bacon Wage Requirements & Certified Payrolls An explanation in simple non-bureaucratic terms what is required of contractors and sub-contractors working on construction projects covered by DBRA prevailing wage and reporting requirements. Available at <http://www.hud.gov>

- A Practical Guide to the Davis-Bacon Act, 9/95, available from Federal Publications, Inc., Washington, D.C. (202) 337-7000.
- Public Contracting in California, 4/95, available from Federal Publications, Inc., Washington, D.C. (202) 337-7000.

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DAVIS-BACON COVERAGE CHART FOR CDBG ACTIVITIES

<u>Financed Activity</u>	<u>Activity Covered?</u>	<u>Related Private Construction Covered?</u>	<u>Authority</u>
Land Acquisition	N/A	No	Justice Opinion pp. 9-11, 14
Demolition (no construction on-site contemplated)	No	N/A	HUD Handbook 1344.1, Rev-1, Sec. 7-5
Demolition (to be followed by site construction)	Yes	<u>No</u> , if demolition done by grantee or its contractor before transfer of land to developer <u>Yes</u> , if demolition contracted for by same entity doing private construction and will be carried out while contracting entity controls site.	Willits Opinion (by analogy to on-Site improvements; '78 UDAG Opinion, p. 2, item 2
Off-site Improvements (street work, storm sewers, utility construction, etc.)	Yes	No	'78 UDAG Opinion, p.2, Items 1,2 and 3
On-site Improvements (excavation/grading, storm drainage, utility or sewer work, Paving/walks/stripping, site lighting, landscaping, etc.	Yes	<u>No</u> , if done by grantee or its contractor before transfer of land to developer. <u>Yes</u> , if improvements are designed and intended to serve building on the site, will be contracted for by same entity having building constructed; and will be carried out while contracting entity controls the site.	Willits Opinion

<u>Financed Activity</u>	<u>Covered?</u>	<u>Activity Construction Covered?</u>	<u>Related Private Authority</u>
Cleaning during construction	Yes	Yes	HUD Handbook 1344.1, Rev-1, Sec. 7-4
Cleaning after construction to prepare for Occupancy (separate from construction contract)	No	No	HUD Handbook 1344.1, Rev-1, Sec. 7-4
Materials Purchase	N/A		
Equipment, Machinery, and Fixtures Purchase (as opposed to installation)	N/A	No	Justice Opinion, pp. 9-11, 13-14;
Equipment, Machinery, and Fixtures Installation (as opposed to, or in addition to, purchase)	<u>Yes</u> , if more than incidental amount of construction work involved. **	<u>Yes</u> , if more than an incidental amount of construction work involved in the installation. **	Justice Opinion, pp. 13-14; Logsdon-Selig Letter
Legal Fees/Accounting Fees	N/A	No	Justice Opinion, pp. 9-11, 14
Architectural and Engineering Fees	N/A	No	Justice Opinion, pp. 9-10, 14
Construction Management	N/A	No	Justice Opinion, pp. 9-11, 14
Tenant allowances, for non-construction expenses (furniture, business, licenses, etc.)	N/A	No	Justice Opinion, pp. 9-11, 14

** Construction work involving installation is incidental if it is 13% or less of the total cost of the CDBG/UDAG financed equipment; if it is more, a 4-part test applies. (See Logsdon-Selig letter.)

FORCE ACCOUNT CHECKLIST

PROJECT INFORMATION

Date: _____

Project Name and Location: _____

CDBG Grant # _____

Jurisdiction/Grantee: _____

Grantee Contact: _____

Contact Phone: _____

CDBG Rep: _____

Rep Phone: _____

Type of Project: ED _____ General _____ Native American _____ Colonias _____

Instructions: Complete the checklist below and submit to your State CDBG Program representative. If a section is not applicable to your project write in N/A. If additional space is required attach to checklist. Contact your CDBG representative if you are unclear about the applicability of State and Federal labor standards.

1. Name and engineering qualifications of personnel performing the work and their capabilities for design, supervision, planning, inspection, testing, etc., as applicable.

2. Details of experience with projects of like or similar nature.

3. Information on workload as it may affect capacity to do the work within the time frame or work schedule.

4. Justification for doing the work by force account rather than by contract.

5. A complete breakdown showing: (a) the number of work hours and cost per hour for each category of labor, and (b) a list of non-salary costs such as materials, supplies, equipment, etc. (Attach)

Completed by

Name

Title

Date

CDBG/GMM 04/08

1. Grantee: _____
2. State Contract No. _____ Program Income: Yes __ No __
3. Name of Project: _____
4. Labor Standards Coordinator: _____ Proposed Bid Opening: _____

TABLE OF CONTENTS

List of Documents In Bid Package File

- 01 Scope of Work
- 02 Copy of Proper Federal Wage Determination (received from HCD)
- 03 State Wage Determination (or language on where it can be accessed on Web)
- 04 Copy of Construction Contract (one or two page document)
- 05 Federal Labor Standards Provisions
- 06 State Labor Standards Provisions
- 07 Contractor's/Subcontractors' Cert State Labor Standards
- 08 Payroll Form WH-347 or Equivalent
- 09 CDBG Standard Contract Language
- 10 CDBG Standard Solicitation Bid Language Const over \$10,000
- 11 CDBG Standard EO Language Const Contracts over \$10,000
- 12 CDBG Suggested Minority/Women's Bus Enterprise Clauses
- 13 CDBG Section 3 Certification Forms and Language
- 14 Language on Minimum Bonding Requirements
- 15 Language on Minimum Insurance Requirements
- 16 Language on Federal Debarment and State License Status

Documentation of Bidding Process File

- 01 Request for Federal Wage Decisions from CDBG Staff
- 02 (If Applicable) Request for Wage Classification Modification
- 03 Request for 10-Day Federal Wage Determination Update from CDBG Staff
- 04 Proof of Bid Advertising in Publication of General Circulation
- 05 Minutes of Pre-bid Meeting
- 06 In House or Engineering/Architectural Cost Estimate

Documentation of Contract Award File

- 01 List of Bidders and Bid Amounts with Documentation of Low Bidder/ Selection Criteria
- 02 (If Applicable) Request and Approval for Sole Source Procurement From CDBG Staff
- 03 Notice of Contract Award & Pre-Construction Meeting Sent to HCD on _____.
- 04 Pre-construction Meeting Notes
- 05 List of All Subcontractors and Proposed Dates to be Working on Project Site
- 06 List of WBE/ MBE Contractors on the Job
- 07 Signed General and Sub Contractor Construction Contracts (with CDBG Bid Language)

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- 08 Verification of General and Sub Contractor's Eligibility (insurance, licenses, no federal debarred)
- 09 Copies of Performance & Payment Bonds for General Contractor
- 10 Copy of Notice to Proceed

Documentation of Federal Wage Monitoring Files

(Complete one Federal Wage Monitoring file for the general contractor and each subcontractor)

- 01 Copy of Wage Comparison Table Showing Highest Wage for Each Trade
- 02 Signed Contractor's Certification for Paying Prevailing Wage
- 03 Signed Authorization to Execute Weekly Statement of Compliance
- 04 Signed Section 3 Certifications and, if applicable, Hiring Plans
- 05 Documentation of contractor's WBE/MBE Status (if applicable)
- 06 Signed Benefit Statement Certification Showing What Benefits Employees Receive
- 07 Weekly Payrolls, WH-347 or Equivalent with Signed Statements of Compliance
(Must be properly numbered & completed & verified by labor standards monitoring staff.)
- 08 Signed Employee Interview Records (10% of Each Trade)
- 09 Apprentice Program Certification/Registration (For Each Apprentice Trade being used)
- 10 Letters Authorizing any special Payroll Deductions
(For Employees with child support or tax liens, etc.)
- 11 Correspondence Related to Violations & Wage Restitution Reimbursements
- 12 Copies of all Wage Restitution Reimbursement Checks

Construction Monitoring File

- 01 Change Orders As Approved
- 02 Final Inspections
- 03 Notice of Completion and Lien Releases
- 04 Relate Memos and Correspondence

CDBG Reporting File

- 01 Copies of Annual Section 3 Reports
- 02 Copies of Semi Annual Labor Compliance Reports (starting at execution of contract through completion)
- 03 Copy of Final Wage Compliance Report Including any violation reports

DOCUMENT MATRIX

Document and Location	Consultant RFP	Consultant Contract	Construction Bid Documents	Prime Construction Contract	Subcontractor's Contracts
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MATRIX OF REQUIRED CONTRACT LANGUAGE

Document and Location	Construction Bid Documents	Prime Construction Contract	Subcontractor's Contracts
Federal Wage Decision lfitzger@hcd.ca.gov	X	X	X
State Wage Decision www.ca.dir.gov	X	X	X
Federal Labor Provisions (pg.5-45)	X	X	X
State Labor Provisions (pg.5-48)	X	X	X
Contractor's/ Subcontractor's Certification Concerning State Labor Standards (pg.5-17)	X	X	X
Payroll Form WH-347, available on the web at www.hudclips.org/sub_nonhud/html/forms.htm	X	X	X
Suggested Minority/ Women's Business Enterprise Clauses for Bid Documents / Optional (Ch. 4, Section VII. b) 5.)	X		
Female and Minority Goals and Timetables, Standard Contract Language over \$10,000 (Ch. 4 Section VII. b) 4.)	X	X	X
Standard Contract Language: All Contracts and Subcontracts (Ch. 4 Section VII. b) 1.)	X	X	X
Standard Solicitation for Bid <u>and</u> Contract Language – Construction over \$10,000. (Ch. 4 Section VII. b) 2.)	X	X	X
Standard Solicitation for Bid Language- Construction over \$10,000 (Ch. 4 Section VII. b) 3.)	X	X	X
Schedule for work completion.	X	X	X
Scope of Work including work as shown in the State contract.	X	X	X

Document and Location	Construction Bid Documents	Prime Construction Contract	Subcontractor's Contracts
Budget and Payment Schedule	X	X	X
Provisions for termination for non or poor performance.	X	X	X
Nondiscrimination Clause (Grant Agreement)	X	X	X
Anti-lobbying certification (Grant Agreement)	X	X	X
Conflict of interest provisions. (Grant Agreement)	X	X	X
Equal Opportunity Clause (Grant Agreement)	X	X	X
Provisions for maintenance of workers' comp. insurance (Grant Agreement)	X	X	X
Provisions for maintenance of unemployment, disability, and liability insurance as required (Grant Agreement)	X	X	X
Section 3 Clause, Certification of new hires, & back up docs (Ch. 4 Section VII. b) 7. to 13.)	X	X	X
Provisions for records retention. (Grant Agreement)	X	X	X
Provisions permitting monitoring/auditing. (Grant Agreement)		X	X
Provision that grantee will monitor for conformity with its State contract		X	X

PREVIOUS EDITION IS OBSOLETE

form HUD-4731 (6/2004)

CDBG/GMM 04/08

**U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION**

**REQUEST FOR DETERMINATION AND RESPONSE TO REQUEST
(Davis-Bacon Act as Amended and Related Statutes)**

Response to Request
Type of Work:
 Residential
 Highway
 Other _____
(well drilling, dredging, etc.)

Mail Your Request To:
Department of Housing and Community Development
Community Development Block Grant Program
1800 Third Street, Room 330
Sacramento, CA 95811
Attn: Jon Diedesch
Or VIA FAX (916) 319-8488
Or VIA E-Mail: jdiedesch@hcd.ca.gov

PROJECT INFORMATION
Project Name: _____
If Housing # of Units:
of Stories: _____
of Dwellings: _____

Requesting Officer: _____
Phone: _____

USE AREA DETERMINATION ISSUED FOR
THIS AREA

CDBG grant # _____
or
Program Income ? Yes ___ No ___

Date of Request:	Est. Advertising Date:	Est. Bid Opening:
Prior Decision Number (if any)	Est. Contract Value \$ _____	No Comp Bidding Award Date: _____
10 Day Update? Yes ___ No ___		

Approved:
Name: Jon Diedesch (916) 319-8474
Position: HCDR II
Title: Labor Standards Specialist

Location of Project:
City: _____
County: California
State: _____

Description of Work:
(Be Specific)

Address to which wage determination should be e-mailed.

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
REPORT OF ADDITIONAL CLASSIFICATION AND RATE**

HUD FORM 4230A

OMB Approval Number 2501-0011
(Exp. 09/30/2006)

1. FROM (name and address of requesting agency)	2. PROJECT NAME AND NUMBER
	3. LOCATION OF PROJECT (City, County and State)

4. BRIEF DESCRIPTION OF PROJECT	5. CHARACTER OF CONSTRUCTION <input type="checkbox"/> Building <input type="checkbox"/> Residential <input type="checkbox"/> Heavy <input type="checkbox"/> Other (specify) <input type="checkbox"/> Highway
---------------------------------	---

6. WAGE DECISION NO. (include modification number, if any) <input type="checkbox"/> COPY ATTACHED	7. WAGE DECISION EFFECTIVE DATE
--	---------------------------------

8. WORK CLASSIFICATION(S)	HOURLY WAGE RATES	
	BASIC WAGE	FRINGE BENEFIT(S) (if any)

9. PRIME CONTRACTOR (name, address)	10. SUBCONTRACTOR/EMPLOYER, IF APPLICABLE (name, address)
-------------------------------------	---

Check All That Apply:

- The work to be performed by the additional classification(s) is not performed by a classification in the applicable wage decision.
- The proposed classification is utilized in the area by the construction industry.
- The proposed wage rate(s), including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage decision.
- The interested parties, including the employees or their authorized representatives, agree on the classification(s) and wage rate(s).
- Supporting documentation attached, including applicable wage decision.

Check One:

- Approved, meets all criteria. DOL confirmation requested.
- One or more classifications fail to meet all criteria as explained in agency referral. DOL decision requested.

Agency Representative
(Typed name and signature)

Date

FOR HUD USE ONLY
LR2000:

Log in:

Log out:

Report of Additional Classification and Wage Rate	U.S. Department of Housing and Urban Development Office of Labor Relations	OMB Approval No. 2501-0011 (Exp. 09/30/2006)
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Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The information is considered non-sensitive and does not require special protection. This information is required to obtain benefits. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Employers engaged on HUD-assisted construction projects subject to Davis-Bacon wage requirements must pay no less than the wages determined to be prevailing by the Secretary of Labor to all laborers and mechanics engaged on the construction work. On occasion, the applicable Davis-Bacon wage decision does not contain all of the work classifications and wage rates needed to complete the construction work. This information collection facilitates the addition of needed work classifications and wage rates for the construction work involved. This form is used by HUD and local agencies administering HUD programs to report employer request(s) for additional classification and wage rates so that an appropriate wage rate can be approved by the Department of Labor for the construction work. This information collection is required by Department of Labor regulations at 29 CFR 5.5. While no assurances of confidentiality are pledged to respondents, HUD generally discloses these data only in response to a Freedom of Information request.

Instructions

General:

Contractors/Employers: Do not need to complete this form. Submit a written, signed request to the responsible contracting agency naming the work classifications and the wage rates, including any fringe benefits, that are proposed.

Local Agency Staff: Complete items 2 through 10. Submit one copy of this form to the responsible HUD Labor Relations Office with a copy of the applicable Davis-Bacon wage decision and the written request from the employer naming the work classifications and wage rates that are proposed. (The employer's request must be made in writing and must be signed.)

1. For HUD or State CDBG Office use. Enter the name and address of HUD Office (or State CDBG office) submitting the report and to which the DOL reply should be sent.
2. Enter the name and number of the project or contract involved.
3. Enter the location of the project involved: city, county and state.
4. Describe the construction involved, e.g., new construction or rehabilitation, number and type of buildings, number of stories, number of units (as applicable). For example, New construction: 3 – 4-story buildings; 120 units.
5. Enter the character of construction as defined by DOL for Davis-Bacon prevailing wage rate purposes.
6. Enter the number of the Davis-Bacon wage decision applicable to the construction work. Include the number of wage decision modifications (if any) applicable to the work.
7. Enter the effective date of the wage decision for the project. (See DOL regulations at 29 CFR 1.6.)
8. Enter the work classifications and corresponding hourly basic wage rates and fringe benefit rates (if any) requested.
9. Self-explanatory.
10. If the requesting employer is not the prime contractor, enter the name and address of the subcontractor/employer making the request.

Remainder of Form: HUD Labor Relations/State CDBG use.

HUD Labor Relations/State CDBG Staff: Evaluate the employer's request against the criteria for approval (see DOL Regulations, 29 CFR Part 5, and related contract labor standards provisions). The criteria are reflected in "checklist" form to ensure that each factor is considered and to ensure that supporting documentation, including a copy of the applicable wage decision, is attached. Check the box next to each criterion that is met; do not check

the box next to any criterion that is not met.

If the request meets all criteria, check the appropriate box, enter the name and telephone number of the HUD/State CDBG agency representative, and sign and date the form. Submit one copy of the completed form to the DOL with a copy of the applicable Davis-Bacon wage decision and the written request from the employer involved.

If the request fails to pass all criteria, check the appropriate box, enter agency contact information, and sign and date the form. Submit one copy of the completed form to the DOL with a copy of the applicable Davis-Bacon wage decision, the written request from the employer involved, *and* a cover letter explaining how the employer's request failed to meet one or more of the criteria.

Submission of Report

Completed forms shall be sent to: Branch of Construction Wage Determinations, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S-3014, Washington, DC 20210.

HUD-4230A (8-03) PREVIOUS EDITION IS OBSOLETE

CERTIFIED WEEKLY PAYROLL FORM WH-347

**NOTE: THIS IS INCLUDED AS A PDF FILE IN CHAPTER'S
SUBDIRECTORY**

WAGE PAYMENTS - STATEMENT OF COMPLIANCE

Note: Each Weekly Certified Payroll must include a signed copy of the Wage Payments Statement of Compliance.

Date _____

I, (name of signatory party), (title), do hereby state:

(1) That I pay or supervise the payment of the persons employed by (contractor or subcontractor) on the (building or work); that during the payroll period commencing on the ___ day of _____, 20___, and ending the ___ day of _____, 20___, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said (contractor or subcontractor) from the full weekly wages earned by any person, and that no deduction has been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948.63, Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a state, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

(i) In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

(ii) Each laborer or mechanic listed in the above reference payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS (Craft) and Explanation for each:

REMARKS:

Name and title (same as on Authorization)

Signature

Date

The willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

INSTRUCTIONS FOR COMPLETING PAYROLL FORM, WH-347

U.S. DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

General: The use of WH-347, payroll form, is not mandatory. This form has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 CFR, Subtitle A), as to payrolls submitted in connection with contracts subject to Davis-Bacon and related Acts. This form meets need resulting from the amendment of the Davis-Bacon Act to include fringe benefits provisions. Under this amended law, the contractor is required to pay not less than fringe benefits as predetermined by the Department of Labor, in addition to payment of not less than the predetermined rates. The contractor's obligation to pay fringe benefits may be met either by payment of the fringes to the various plans, funds, or programs, or by making these payments to the employees as cash in lieu of fringes. This payroll provides for the contractor's showing on the face of the payroll all monies paid to the employees, whether as basic rates or as cash in lieu of fringes and provides for the contractor's representation in the statement of compliance on the rear of the payroll that he is paying to others fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions concerning the preparation of the payroll follow:

Contractor or Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

Column 1. Name, Address, and Social Security Number of Employee: The employee's full name must be shown on each weekly payroll submitted. The employee's address must also be shown on the payroll covering the first week in which the employee works on the project. The address need not be shown on subsequent weekly payrolls unless his address changes. Although not required by Regulations, Parts 3 and 5, space is available in the name and address section so that social security numbers may be listed.

Column 2. Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Parts 3 and 5.

Column 3. Work Classifications: List classification descriptive of work actually performed by employees. Consult are deemed necessary, see contracting officer or agency representative. The employee may be shown as having worked in more than one classification, provided accurate breakdown of hours so worked is maintained and shown on submitted payroll by use of separate line entries.

Column 4. Hours Worked: On all contracts subject to the Contract Work Hours Standards Act, enter as overtime hours all hours worked in excess 40 hours a week.

Column 5. Total: Self-explanatory.

Column 6. Rate of Pay, including Fringe Benefits: In straight time box, list actual hourly rate paid the employee for straight time worked plus any cash in lieu of fringes paid the employee. When recording the straight time hourly rate, any cash paid in lieu of fringes may be shown separately from the basic rate. This is of assistance in correctly computing overtime (see "Fringe Benefits" below). In the overtime box, show overtime hourly rate paid, plus any cash in lieu of fringes paid the employee (see "Fringe Benefits" below). Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standards Act of 1962. In addition to paying not less than the predetermined rate for the classification in which the employee works, the contractor shall pay to approved plans, funds, or programs or shall pay as cash in lieu of fringes, amounts predetermined as fringe benefits in the wage decision made part of the contract (see "Fringe Benefits" below).

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FRINGE BENEFITS - Contractors Who Pay All Required Fringe Benefits: A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor shall continue to show on the face of the payroll the basic cash hourly rate and overtime rate paid to his employees just as he has always done. Such a contractor shall check paragraph 4(a) of the statement on the reverse of the payroll to indicate that he is also paying to approved plans, funds, or programs not less than the amount predetermined as fringe benefits for each craft. Any exceptions shall be noted in Section 4(c).

Contractors Who Pay No Fringe Benefits: A contractor who pays no fringe benefits shall pay to the employee, and insert in the straight time hourly rate column of the payroll, an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half-time premium on basic or regular rate, plus the required cash in lieu of fringes at the straight time rate. In addition, the contractor shall check paragraph 4(b) of the statement on the reverse of the payroll to indicate that he is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in Section 4(c).

Use of Section 4(c), Exceptions: Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination required, is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the contractor may check, shall be entered in Section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employee as cash in lieu of fringes and the hourly amount paid to plans, funds, or programs as fringes. The contractor shall pay and shall show that he is paying to each such employee for all hours (unless otherwise provided by applicable determination) worked on a Federal or Federally assisted project, an amount not less than the predetermined rate plus cash in lieu of fringes as shown in Section 4(c). The rate paid and amount of cash paid in lieu of fringe benefits per hours should be entered in column 6 on the payroll. See paragraph on "Contractors Who Pay No Fringe Benefits" for computation of overtime rate.

Column 7. Gross Amount Earned: Enter the gross amount earned on this project. If part of the employee's weekly wage was earned on projects other than the project described on this payroll, enter in column 7 the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus \$63.00/120.00.

Column 8. Deductions: Five columns are provided for showing deductions made. If more than five deductions should be involved, use the first four columns; show the balance of deductions under "Other" column; show actual total under "Total Deductions" column; and in the attachment to the payroll, describe the deductions contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 CFR Part 3. If the employee worked on other jobs in addition to this project, show actual deductions from this weekly gross wage, but indicate that deductions are based on his gross wages.

Column 9. Net Wages Paid for Week: Self-explanatory.

Total: Space has been left at the bottom of columns so totals may be shown if the contractor so desires.

Statement Required by Regulations, Parts 3 and 5: While this form need not be notarized, the statement on the back of the payroll is subject to the penalties provided by 18 USC 1001, namely, possible imprisonment for five years, or a \$10,000 fine, or both. Accordingly, the party signing this required

statement should have knowledge that the facts represented are true.

Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "see Deductions column in this payroll." See paragraph entitled "Fringe Benefits" above for instructions concerning filling out paragraph 4 of the statement.

CERTIFICATION OF UNDERSTANDING
AND AUTHORIZATION OF PAYROLL SIGNATORY

PROJECT NAME: _____

STATE CDBG GRANT NUMBER: _____

This is to certify that the principals, and the authorized payroll officer, below, have read and understand the Minutes of the Pre-construction Conference, the State and Federal labor standards clauses pertaining to the subject project and the U.S. Dept. of Labor and State Dept. of Industrial Relations' wage determinations _____ and _____.

The following person(s) is designated as the payroll officer for the undersigned and is authorized to sign the Statement of Compliance which will accompany our weekly certified payroll reports for this project:

(Name) Payroll Officer

(Signature) Payroll Officer

(Name of Contractor/Subcontractor)

by _____
(Signature of Owner)

(Title)

(Date)

CERTIFICATION OF FRINGE BENEFIT PAYMENTS

PROJECT NAME: _____

STATE CDBG NUMBER: _____

Classification/ Fringe Benefits Provided	Name, Address and Telephone Number of Plan/Fund/Program
1) _____	_____
<u>Health and Welfare</u>	_____
<u>Pension</u>	_____
<u>Vacation</u>	_____
<u>Apprenticeship/Training</u>	_____
2) _____	_____
<u>Health and Welfare</u>	_____
<u>Pension</u>	_____
<u>Vacation</u>	_____
<u>Apprenticeship/Training</u>	_____
3) _____	_____
<u>Health and Welfare</u>	_____
<u>Pension</u>	_____
<u>Vacation</u>	_____
<u>Apprenticeship/Training</u>	_____

OR: (Check if Applicable.)

____ I certify that I do not make payments to approved fringe benefit plans, funds, or programs.

(Contractor/Subcontractor)

by _____
(Signature)

(Date)

(Title)

CONTRACTOR'S/SUBCONTRACTOR'S CERTIFICATION
CONCERNING STATE LABOR STANDARDS AND PREVAILING WAGES

PROJECT: _____

CDBG CONTRACT NUMBER: _____

All contractors and subcontractors shall give the following certification to the City and forward this certification to the City within 10 days after the execution of any contract or subcontract.

- A. "I am aware of the provisions of Section 1720 et seq. of the California Labor Code which requires that the State prevailing wage rate shall be paid to employees where this rate exceeds the Federal wage rate."

- B. "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract."

- C. "It is further agreed that, except as may be provided in Section 1815 of the California Labor Code, the maximum hours a worker is to be employed is limited to eight hours a day and 40 hours a week and the subcontractor shall forfeit, as a penalty, \$25 for each worker employed in the execution of the subcontract for each calendar day during which a worker is required or permitted to labor more than eight hours in any calendar day or more than 40 hours in any calendar week."

(Contractor/Subcontractor)

(Signature)

(Date)

Typed/Printed Name and Title

Record of Employee Interview

U.S. Department of Housing and Urban Development Office of Labor Relations

OMB Approval No. 2501-0009
(exp. 08/31/2007)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The information is collected to ensure compliance with the Federal labor standards by recording interviews with construction workers. The information collected will assist HUD in the conduct of compliance monitoring; the information will be used to test the veracity of certified payroll reports submitted by the employer. **Sensitive Information.** The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained. **The information collected herein is voluntary, and any information provided shall be kept confidential.**

1a. Project Name			2a. Employee Name		
1b. Project Number			2b. Employee Phone Number (including area code)		
1c. Contractor or Subcontractor (Employer)			2c. Employee Home Address & Zip Code		
2d. Verification of identification? Yes <input type="checkbox"/> No <input type="checkbox"/>					
3a. How long on this job?	3b. Last date on this job before today?	3c. No. of hours last day on this job?	4a. Hourly rate of pay?	4b. Fringe Benefits? Vacation Yes <input type="checkbox"/> No <input type="checkbox"/> Medical Yes <input type="checkbox"/> No <input type="checkbox"/> Pension Yes <input type="checkbox"/> No <input type="checkbox"/>	
4c. Pay stub? Yes <input type="checkbox"/> No <input type="checkbox"/>					
5. Your job classification(s) (list all) --- continue on a separate sheet if necessary					
6. Your duties					
7. Tools or equipment used					
8. Are you an apprentice or trainee? <input type="checkbox"/> Y <input type="checkbox"/> N		10. Are you paid at least time and ½ for all hours worked in excess of 40 in a week? <input type="checkbox"/> Y <input type="checkbox"/> N		9. Are you paid for all hours worked? <input type="checkbox"/> Y <input type="checkbox"/> N	
11. Have you ever been threatened or coerced into giving up any part of your pay? <input type="checkbox"/> Y <input type="checkbox"/> N					
12a. Employee Signature			12b. Date		
13. Duties observed by the Interviewer (Please be specific.)					
14. Remarks					
15a. Interviewer name (please print)		15b. Signature of Interviewer		15c. Date of interview	

Payroll Examination

16. Remarks

17a. Signature of Payroll Examiner

17b. Date

Instructions

PREVIOUS EDITION IS OBSOLETE

HUD-11 (08/2004)

General:

This form is to be used by HUD and local agency staff for recording information gathered during on-site interviews with laborers and mechanics employed on projects subject to Federal prevailing wage requirements. Typically, the staff that will conduct on-site interviews and use this form are HUD staff and fee construction inspectors, HUD Labor Relations staff, and local agency labor standards contract monitors.

Information recorded on the form HUD-11 is evaluated for general compliance and compared to certified payroll reports submitted by the respective employer. The comparison tests the veracity of the payroll reports and may be critical to the successful conclusion of enforcement actions in the event of labor standards violations. The thoroughness and accuracy of the information gathered during interviews is crucial.

Note that the interview itself and the information collected on the form HUD-11 are considered confidential. Interviews should be conducted individually and privately. All laborers and mechanics employed on the job site must be made available for interview at the interviewer's request. The employee's participation, however, is voluntary. Interviews shall be conducted in a manner and place that are conducive to the purposes of the interview and that cause the least inconvenience to the employer(s) and the employee(s).

Completing the form HUD-11

Items 1a - 1c: Self-explanatory

Items 2a - 2d: Enter the employee's full name, a telephone number where the employee can be reached, and the employee's home address. Many construction workers use a temporary address in the locality of the project and have a more permanent address elsewhere from which mail may be forwarded to them. Obtain a more permanent address, if available. Ask the employee for a form of identification (e.g., driver's license) to verify their name.

Items 3a - 4c: Enter the employee's responses. Ask the employee whether they have a pay stub with them; if so, determine whether the pay stub is consistent with the information provided by the employee.

Items 5 - 7: Be certain that the employee's responses are specific. For example, job classification (#5) must identify the trade involved (e.g., Carpenter, Electrician, Plumber) - responses such as "journeyman" or "mechanic" are not helpful for our purposes.

Items 8 - 12b: Self-explanatory

Items 13 - 15c: These items represent some of the most important information that can be gathered while conducting on-site interviews. Please be specific about the duties you observed the employee performing. It may be easiest to make these observations before initiating the interview. Please record any comments or remarks that may be helpful. For example, if the employee interviewed was working with a crew, how many workers were in the crew? Was the employee evasive?

The level of specificity that is warranted is directly related to the extent to which interview(s) or other observations indicate that there may be violations present. If interviews indicate that there may be underpayments involving a particular trade(s), the interviewer is encouraged to interview as many workers in that trade(s) that are available.

Items 16 - 17b: The information on the form HUD-11 may be reviewed for general compliance, initially. For example, are the job classification and wage rate stated by the employee compatible with the classifications and wage rates on the applicable wage decision? Are the duties observed by the interviewer consistent with the job classification?

Once the corresponding certified payroll reports are received, the information on the HUD-11 shall be compared to the payroll reports. Any discrepancies noted between the HUD-11 information and that on the payroll report shall be noted in Item 16, Remarks. If discrepancies are noted, follow-up actions to resolve the discrepancies must be taken.

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Federal Labor Standards Provisions

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (1) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR-5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1 321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract in the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or sub-contractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (I) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the

Davis-Bacon Act the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-WO14-1), U.S. Government Printing Office, Washington, DC. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3.(ii)(b) of this section.

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment advance, or guarantee of funds. Further- more, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

4. (i) Apprentices and Trainees. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any sub- contracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these

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clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91 -54, 83 Stat 96).

(3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

STATE LABOR STANDARDS PROVISIONS

State prevailing wage rates shall apply when the State wage rate is higher than the Federal wage rate. All contractors and subcontractors are subject to the application of Section 1720 et seq. of the California Labor Code which details the regulations and procedures governing the payment of State prevailing wages.

All contractors and subcontractors are subject to the provisions of Section 3700 of the California Labor Code which requires that every employer be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the code.

All contractors and subcontractors are subject to the provisions of Sections 1810-1814 of the California Labor Code which provide that the maximum hours a worker is to be employed is limited to eight hours a day and 40 hours a week and the contractor or subcontractor shall forfeit, as a penalty, \$25 for each worker employed in the execution of the contract for each calendar day during which a worker is required or permitted to labor more than eight hours in any calendar day or more than 40 hours in any calendar week and is not paid overtime.

Section 1815 of the California Labor Code requires that notwithstanding the provisions of Sections 1810-1814, employees of contractors who work in excess of eight hours per day and 40 hours per week shall be compensated for all hours worked in excess of eight hours per day at not less than 1-1/2 times the basic rate of pay.

LIST OF SUBCONTRACTORS INCLUDED IN BID

Each GENERAL CONTRACTOR bidding on this project shall list below the name and business address of each SUBCONTRACTOR who will perform WORK or render service under this CONTRACT in or about the construction of the improvement. Each SUBCONTRACTOR must have a contract that contains all necessary CDBG language as contained in this bid package. All subcontractors will be verified for proper licensed by the State of California and checked against federal debarred list. All subcontractors will be required to sign certifications of compliance with federal and state prevailing wage laws. All subcontractors shall provide a detailed list of trades to be used on this project. All subcontractors will be required to submit weekly certified payrolls (Department of Labor Form WH-347 or equal) to _____ the labor compliance officer at _____ for this project.

<u>Trade / Portion of Work</u>	<u>Subcontractor's Name and Address</u>
1. _____ Contract: \$ _____	_____ _____
2. _____ Contract: \$ _____	_____ _____
3. _____ Contract: \$ _____	_____ _____
4. _____ Contract: \$ _____	_____ _____
5. _____ Contract: \$ _____	_____ _____
6. _____ Contract: \$ _____	_____ _____
7. _____ Contract: \$ _____	_____ _____
8. _____ Contract: \$ _____	_____ _____

NOTE: Additional numbered pages may be attached to this page if sufficient space is not provided hereon.

ELIGIBILITY OF CONTRACTOR AND SUBCONTRACTORS

Prior to Final Award or Executing a Construction Contract: The GENERAL CONTRACTOR and each SUBCONTRACTOR who will perform WORK or render service under this CONTRACT must be verified as eligible. To be eligible for award of funds these parties must have current state licenses, not be on the federal debarred list, must have proper insurance (workman's compensation and liability) and must agree to sign all required CDBG certification forms for labor standards and equal opportunity compliance. **As part of completing this form the labor standards coordinator will print out and maintain documentation that eligibility status is maintained during contract (insurance stays current, etc).**

1. Prime Contractor's Name: _____ State License # _____ Expires: _____
Workman's Comp.? _____ Expires: _____
Liability? _____ Expires: _____
Proper Bonds In Place? _____
On Federal Debarred List? _____

2. Sub Contractor's Name: _____ State License # _____ Expires: _____
Workman's Comp.? _____ Expires: _____
On Federal Debarred List? _____

3. Sub Contractor's Name: _____ State License # _____ Expires: _____
Workman's Comp.? _____ Expires: _____
On Federal Debarred List? _____

4. Sub Contractor's Name: _____ State License # _____ Expires: _____
Workman's Comp.? _____ Expires: _____
On Federal Debarred List? _____

5. Sub Contractor's Name: _____ State License # _____ Expires: _____
Workman's Comp.? _____ Expires: _____
On Federal Debarred List? _____

6. Sub Contractor's Name: _____ State License # _____ Expires: _____
Workman's Comp.? _____ Expires: _____
On Federal Debarred List? _____

**NOTICE OF CONTRACT AWARD/PRE-CONSTRUCTION CONFERENCE/
START OF CONSTRUCTION**

DATE: _____

TO: Jon Diedesch, CDBG Program Representative (jdiedesch@hcd.ca.gov)

FROM: City/County of _____

SUBJECT: Notice of Contract Award/Pre-construction Conference/Start of Construction

This is to inform you that _____ (name of company), (I.D. number) _____ at _____ (address) _____, (phone number) _____, has been awarded a contract _____ (CDBG Grant Number) to _____ (brief description of work) _____ in the City/County of _____. The applicable State and Federal wage decisions are Federal #: _____, and State # _____.

The contract value is \$ _____.

The estimated start of construction is _____ 20 _____. Contract completion is estimated to be _____ 20 _____. A Pre-construction Conference will be held concerning this project at _____ (time) on _____ (date) _____ at _____ (address) _____. The City/County has designated _____ (name) _____ as responsible for compliance with labor standards and equal opportunity provisions and the contact information is as follows:

Phone : _____

E-Mail: _____

Mailing Address: _____

SAMPLE PRE-CONSTRUCTION
LABOR STANDARDS MEETING AGENDA

PROJECT NAME: _____ DATE: _____

GRANT NO.: _____ TIME: _____

CITY/COUNTY OF: _____

MEETING PLACE: _____

FEDERAL WAGE DECISION NO: _____

STATE WAGE DECISION NO: _____

A pre-construction conference concerning labor standards provisions, administration and enforcement is to be conducted for the above project on this date. In addition to the attached two handouts, the following labor standards materials will be provided to the prime contractor and made available for others in attendance:

1. Applicable State and Federal Wage Decisions for Comparison Chart Completion.
2. Federal Labor Standards Provisions
3. State Labor Standards Provisions
4. Poster WH-1321, Notice to Employees (must be displayed on site)
5. Payroll Form WH-347 (with instructions)
6. Certification of Understanding and Authorization (sign if needed)
7. Certification for Applicable Fringe Benefit Payments (sign if needed)
8. Standard Contract Language (all contracts and subcontracts)
9. Standard Solicitation for Bid Language (construction over \$10,000)
10. Standard Equal Opportunity Clause (construction over \$10,000) (See Chapter 4)
11. Standard Federal Equal Employment Opportunity Construction Contract Specifications (construction over \$10,000)

Each person at the conference is requested to register their name on an attendance sheet, a copy of will be made part of the meeting minutes.

During the course of the conference, all of the labor standards and wage requirements which are applicable to the construction work to be performed will be discussed in full. These standards and requirements are contained in the following publications:

U. S. Department of Labor Regulations, Parts 1, 3 and 5; Labor Standards Administration and Enforcement Guide, State and Federal labor standards provisions; State CDBG Grant Management Manual; and the attached material.

Prior to adjournment, the participants will be invited to ask questions so that there would be no misunderstanding of what is necessary in order for the contractor and any subcontractors to demonstrate compliance with the labor standards clauses above.

Special notations for this project or matters which are currently unresolved are listed in the space below:

For additional information concerning labor standards and prevailing wage requirements, please contact the labor standards coordinator for this project: _____ at () 555-6666.

Date

Grantee Labor Standards Coordinator

Typed Name

Attachments: List of Subcontractors
Wage Comparison Chart
Payroll Form WH-347
Handouts One and Two

PRE-CONSTRUCTION CONFERENCE HAND OUT NUMBER ONE

Labor Standards Provisions and Related Matters:

1. The term "wage decision" means the State and Federal wage determinations which are applicable and current at the start of construction.

The wage decision specifies the wage rates prevailing in the locality in which the work is to be performed, as determined by the Secretary of Labor, for classes of laborers and mechanics on construction of a similar nature, in accordance with the Davis-Bacon Act, as amended. The wage decision represents the minimum rates which must be paid to all laborers and mechanics employed or working on the site of the work.

The wage decisions which apply to this project are identified on the cover of these minutes. A copy of the wage decisions and the poster "Notice to Employees" (WH-1321) must be displayed at the job site in a prominent and protected area where it can be easily seen and reviewed by the workers.

2. Any class of laborers or mechanics which is not listed in the wage decision and which is to be employed on the project shall be classified or reclassified in conformance with the wage decision, and a report of the action taken shall be sent by HCD to the Secretary of Labor. No payrolls will be accepted which lists classifications that are not contained in the wage decision, or approved for the project by the additional classification process. Any request for additional classifications should be submitted in writing to HCD no later than 10 days from the date of the Pre-construction Conference. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics to be used, the question, accompanied by the recommendation of HCD, shall be referred to the Secretary of Labor for final determination. Unclassified personnel may not work on the job until after this matter is resolved.

"Helper" classifications will not be approved by this office for additional classification, and may not be utilized for the project.

3. All mechanics and laborers employed in the construction of the project shall be paid unconditionally and not less often than once a week, the full amount of wages and bona fide fringe benefits due at the time of payment computed at rates not less than those contained in the wage decision. Contributions made or costs reasonably anticipated under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to 29 CFR 5.5(a)(1)(4). Also, regular contributions or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, and which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.
4. In all cases where fringe benefits are paid to the approved plans, funds or programs, the basic hourly rate of pay should be shown in Column 6, RATE OF PAY, of the payroll and, on reverse side of payroll, under REMARKS, show the amount of fringe benefits being paid to each individual program. Also, Section 4(a) on the reverse side of payroll should be In all cases where fringe benefits are paid in cash directly to the employee, show separately in Column 6, RATE OF PAY, of the payroll, the basic hourly wage rate paid to the employee and fringe benefits paid in cash to the employee; e.g., \$19.28/6.50. Section 4(b) on reverse of payroll should be checked.

5. Whenever the minimum wage rate prescribed in the wage decision for a class of laborers or

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mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor is obligated to pay the fringe benefit as stated in the wage decision, or an hourly cash equivalent (e.g., specific holidays and benefits expressed as a percentage of the basic hourly rate).

6. Apprentices and Trainees - The U. S. Department of Labor (DOL) regulations (29 CFR Part 5) contains language pertaining to the use of apprentices and trainees and establishes the parameters within which an employer may utilize a workman in a trade classification and is permitted to pay that workman a wage rate which is less than the rate required on the wage decision for that trade classification. These conditions are specified below, including the ratio of apprentices or trainees to journeymen that will be permitted on the job site.
- a. Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a state apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or if no such recognized agency exists in a state, under a program registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor. The allowable ration of apprentices to journeymen in any craft classification shall not be greater than the ration permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in the following paragraph, or is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he or she actually performed. The grantee shall furnish to HCD written evidence of the required registration of the contractor's program and apprentices and trainees and those of subcontractors, the approved ratios of apprentices and trainees to journeymen, prior to the use of the apprentices on the job site.
 - b. Trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on a payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish HCD written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

ATTENTION: You are advised that HCD will require strict adherence to the ratio approved under the registered program, and will require back wage adjustments (to the journeyman's rate) for any apprentice or trainee who is employed on the job site in excess of the approved ratio. This ratio must be observed ON THE JOB SITE irrespective of the employer's compliance with the ratio as to the entire work force. The ratio that will be applied is the ratio which is in force at the time of the effective date for the wage decision as defined above, in accordance with the DOL regulations.

Supervisory or management personnel who are at the job site and who are not performing construction work may be counted as journeymen for the purpose of demonstrating compliance with the apprenticeship/trainee ratio. These personnel must be listed on the payroll reports in order to be considered for this purpose.

7. The Copeland Act (Anti-Kickback Act) provides that no deduction or rebate on any account be taken from an employee's pay, except such deductions mandatory by law, unless this deduction is authorized in writing by the employee. A copy of the signed authorization must be submitted with the payroll on which the deduction appears. One signed authorization is sufficient for deductions made on a regular basis.
8. Overtime Compensation
 - a. The Fair Labor Standards Act requires compensation at the rate of one and one-half times the basic hourly rate of pay, for all hours worked in excess of 40 hours in any workweek.
 - b. Additionally, on those projects subject to the provisions of the Contract Work Hours and Safety Standards Act, no contractor or subcontractor shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 40 hours in such workweek. In the event of violations, the contractor or subcontractor shall be liable to any affected employee for his unpaid wages as well as to the United States for liquidated damages. Liquidated damages will be computed at the rate of \$10 per day, per violation.
9. The following definitions are contained in the DOL regulations and shall be observed for the purpose of labor standards administration and enforcement throughout the course of this work.
 - a. The term "construction" means all types of work done on a particular building or work at the site. This includes, and is not limited to, altering, remodeling, painting and decorating; the transporting of materials and supplies to or from the building or work; the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work; and any cleaning and preparation which is performed pursuant to the construction contract and is prerequisite to the final acceptance of the completed work.
 - b. The terms "laborer" and "mechanic" includes at least those workers whose duties are manual or physical in nature (including those who use tools or who are performing the work of a trade), as distinguished from mental or managerial.
 - c. Every person performing the duties of a laborer or mechanic in the construction of the project is "employed" regardless of any contractual relationship alleged to exist between the contractor and such person. Furthermore, every person paid by a contractor or subcontractor in any manner for this labor in construction of the project is "employed" and receiving "wages" regardless of any contractual relationship alleged to exist between him and the real employer.
 - d. The term "wages" means the basic hourly rate of pay, any contribution made pursuant to, or costs anticipated to provide, a bona fide fringe benefit plan, fund or program.
 - e. The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under the regulations. No other methods of payment shall be recognized.

10. Subcontractors

The contractor, his or her subcontractors and any lower-tier subcontractors shall insert Federal Labor Standards Provisions and State Labor Standards Provisions in any subcontracts into which they may enter. The contractor shall not thereby be relieved of responsibility for the compliance of any subcontractor with these conditions.

11. Contractor/Subcontractor Certifications

- a. The contractor and each subcontractor are required to submit with, or prior to, their first payroll, the following certifications (a copy of each is attached):
 1. Certification of Understanding and Authorization which certifies that the proper officials have read and understand the minutes of the Pre-construction Conference on Labor Standards Provisions and Related Matters; and identifies the person(s) who is authorized to sign the weekly certified payroll reports.
 2. Certification for Applicable Fringe Benefit Payments which identifies the method by which the contractor/subcontractor will meet any obligation for fringe benefits which may be contained in the wage decision, and any plans, funds, or programs to which such payments will be made.
- b. Internal Revenue Service Employer Identification Number. This assigned number must be furnished by each subcontractor on their first payroll report.

12. Weekly Certified Payroll Reports and Related Records

- a. Payroll forms are available for purchase from the U.S. Government Printing Office Bookstore, or from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, in pads of 100, including one instruction sheet. Contractors may reproduce the payroll form to create an ample supply.
- b. The weekly certified payroll reports and basic records relating thereto (e.g., timecards, canceled payroll checks) shall be maintained during the course of the work and preserved for a period of three years thereafter for all labor which is performed in the construction of the project.

The contractor and all subcontractors shall make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of HCD, HUD and the Department of Labor, and shall permit such representatives to interview employees during work hours on the job site. The subcontractors shall also make such records available to, and permit interviews by, authorized representatives of the contractor.

- c. The original copy of all payroll reports, including those of all subcontractors, shall be submitted weekly to the grantee by the prime contractor. The copy of each payroll shall be accompanied by a "Weekly Statement of Compliance," which is either the reverse of the Payroll Form WH-347 or the "Statement of Compliance". The Statement of Compliance shall be executed with an original signature by the employer (owner, partner, corporate officer) or designated payroll officer for whom we have received authorization. The grantee will not accept any payrolls that have been endorsed with a signature stamp.
- d. Each contractor's payrolls shall be numbered consecutively, beginning with #1. The first payroll shall contain the name, address, and social security number of each employee. The last payroll for each contractor for this project shall be clearly marked "FINAL."

- e. Each payroll shall contain for each employee: the correct work classification (in accordance with the wage decision); the actual daily and weekly hours worked on this project; the hourly rate of pay; the gross wages earned; the deductions made; and the net wages paid. If additional wages were earned for work at another project, the employer may include such additional wages under Column 7 of the payroll as follows: \$350.00/\$600.00 (wages for this project /total for all projects). For these cases, the deductions and the net wages may be computed based upon the total weekly earnings.

- 13. Working Subcontractors - A bona fide subcontractor, with an established business, and who performs work on the job site with their crew, must list on the payroll all personnel engaged in the contract work. As the owner of the firm, for themselves, they need list only their name, work classification/owner, their hours worked each day, total hours for the week and effective rate of pay on the payroll.

NOTE: This is an administrative policy and does not imply that owners are not "mechanics" or "laborers," or that owners are not entitled to the "wages" prescribed by the wage decision for the type of work performed. This policy merely recognizes the right and responsibility of an owner to operate their business in such a way as to assure that their wages can be met from the proceeds of the business. The policy permits the labor relations staff to accept, without further verifications, the owner's certification on the Statement of Compliance that their own wages are sufficient to meet the requirements of the wage decision.

- 14. A laborer or mechanic who performs work on the project in more than one classification within the same workweek shall be classified and paid at the highest wage rate applicable to any of the work which he performs unless the following requirements are met:
 - a. Accurate daily time records shall be maintained. These records must show the time worked in each classification and the rate of pay for each classification, and must be signed by the employee.
 - b. The payroll shall show the hours worked in each classification and the wage rate paid for each classification.
 - c. The payroll shall be signed by the employee, or a copy of the signed daily time record shall be attached to the payroll.

- 15. To minimize the possibility of misunderstanding in regard to the receipt of payrolls, the following conditions are effective immediately for the submission of the weekly certified payroll reports:
 - a. The general contractor is responsible for the careful review and verification of his own and all subcontractors' payrolls before forwarding same to the grantee and for the timeliness of all payroll submissions.
 - b. Payroll submissions must be kept up-to-date. The payrolls for any given week must be submitted not later than 14 days following the close of the corresponding pay week.
 - c. Each submission, whether hand-carried or mailed, must be accompanied by an itemized cover letter. The entire submission will be returned if it is found to be incomplete, i.e., items that are not present that are listed on the cover letter.
 - d. In the event that a submission is returned as incomplete, or that any contractor/subcontractor is found to be delinquent in submitting payrolls, the general contractor will be considered to

be in non-compliance, and any advances may be withheld.

16. During the course of the work, the grantee's labor standards coordinator will perform periodic audits of the payrolls and related submissions. The prime contractor will be notified in writing of any discrepancies or violations that are disclosed in the audit, and of the actions that will be necessary to resolve the discrepancies and/or violations. The prime contractor shall be held entirely responsible for the prompt resolution of all non-compliances, including those pertaining to all subcontractors and any lower-tier subcontractors.
17. At the time that construction is completed for this project, a final audit of the payrolls and related submissions will be performed. The project will not be approved by the grantee to proceed to final endorsement until all items of non-compliance are corrected or until appropriate provision is made by depository agreement to assure the ultimate resolution and payment of any back wages that may be found due, including related liquidated damages.

PRE-CONSTRUCTION CONFERENCE HAND OUT NUMBER TWO

Equal Opportunity Commonly Asked Questions:

1. What are the responsibilities of the offeror or bidder to ensure equal employment opportunity?
The offeror or bidder must comply with the "Equal Opportunity Clause" and the "Standard Federal Equal Opportunity Construction Contract Specifications."
2. Are contractors required to ensure a comfortable working environment for all employees?
Yes, it is the contractor's responsibility to provide an environment free of harassment, intimidation, and coercion to all employees and to notify all foremen and supervisors to carry out this obligation, with specific attention to minority or female individuals.
3. To alleviate developing separate facilities for men and women on all sites, can a contractor put all women employees on one site?
No, the contractor must assign two or more women to each site when possible.
4. Are contractors required to make special outreach efforts to minority and female recruitment sources?
Yes, contractors must establish a current list of minority and female recruitment sources, notify them when employment opportunities are available, including on-the-job training and apprenticeship programs, and record responses.
5. Are any efforts made to record the number of minority and females applying for positions with construction contractors?
Yes, all contractors must maintain a current file of the names, addresses and telephone numbers of all minority and female applicants and document whatever action was taken.
6. What happens if a woman or minority is sent to the union by the contractor and is not referred back to the contractor for employment?
If the unions impeded the contractor's responsibility to provide equal employment opportunity, a written notification is sent to the Director of the U.S. Department of Labor.
7. What efforts are made by contractors to create entry level positions for women and minorities?
Contractors are required to develop on-the-job training programs or participate in training programs, especially those funded by the Department of Labor, to create positions for women and minorities relevant to the contractor's employment needs.
8. Are any efforts made by the contractor to publicize their Equal Employment Opportunity (EEO) policy?
Yes, the contractor is responsible to notify unions and training programs and request their cooperation as well as to include it in any policy manual or collective bargaining agreement, and to publicize it in the company newspaper and annual report. Externally, the contractor is responsible to include the EEO policy in all media advertisement.
9. Are any in-service training programs provided for staff to update the EEO policy?

At least annually, a review of the EEO policy and the affirmative action obligations are required of all personnel employees of a decision-making status. A record of the meeting including date, time, location, persons present, subject matter discussed, and disposition of the subject matter shall be maintained.

10. What recruitment efforts are made for minorities and women?

The contractor must notify both orally and in writing, minority and female recruitment sources one month prior to the date of acceptance for apprenticeship or other training programs. The contractor must also encourage present minority and female employees to recruit members of their own group.

11. Are any measures taken to encourage promotions for minorities and women?

Yes, an annual evaluation is conducted for all minority and female personnel to encourage these employees to seek higher positions.

12. What efforts are taken to ensure that personnel policies are in accordance with the EEO policy?

Personnel policies in regard to job practices, work assignments, etc., are continually monitored to ensure that the EEO policy is carried out.

13. Can women be excluded from utilizing any facilities available to men?

No, all facilities and company activities are non-segregated except for bathrooms or changing facilities to ensure privacy.

14. What efforts are made to utilize minority and female contractors and suppliers?

None, however, records are kept of all offers to minority and female construction contractors.

15. If a contractor participates in a business related association which does not comply with affirmative action standards, does that show his/her failure to comply?

No, the contractor's obligation to comply is his own. If he makes every effort to assume that this group has a positive impact on EEO policy and they fail to accept this attitude, it shall not be contrived as noncompliance on the part of the contractor.

16. Would a contractor be in violation of EEO policy and affirmative action if he set up one set of goals to include minorities and women?

Yes. There is a single goal for minorities and a separate single goal for women. The contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority.

17. Can a contractor hire a subcontractor who has been debarred from government contracts pursuant to EEO?

No. The contractor must suspend, terminate or cancel any subcontractor who is in violation of the EEO policy.

18. What effort has to be taken by the contractor to monitor all employment to ensure the company's EEO policy is being carried out?

The contractor must designate a responsible individual to keep accurate records of all employees which includes specific information required by the government.

RESOURCE LIST INTERNET ADDRESSES

	Site	Address
1	Federal Wage Decisions	lfitzger@hcd.ca.gov and notify your CDBG Rep
2	State Wage Decisions	http://www.dir.ca.gov/DIR/S&R/statistics_research.html
3	DOL Home Page	http://www.dol.gov/
4	OFCCP Home Page	http://www.dol.gov/esa/ofccp/
5	Labor Relations Letters	http://www.hud.gov/olr/olr_lrl.html
6	Contractors Guide to Davis-Bacon	http://www.hud.gov/offices/olr/
7	Labor Standards Administration and Enforcement Guide	http://www.hud.gov/offices/olr/
8	WH-347\ Statement of Compliance	http://www.hudclips.org/sub_nonhud/html/forms.htm
9	Document Matrix and all HCD Forms	http://www.hcd.ca.gov/fa/cdbg/gmm/index.html
10	State Codes	http://www.leginfo.ca.gov/calaw.html
11	Federal Debarred List	http://epls.arnet.gov/
12	DOT Rental Rates	http://www.dot.ca.gov/hq/construc/
13	Semi-Annual Labor Standards Report and Instructions	http://www.hcd.ca.gov/fa/cdbg/gmm/

NOTICE TO ALL EMPLOYEES



Working on Federal or Federally Financed Construction Projects

MINIMUM WAGES

You must be paid not less than the wage rate in the schedule posted with this Notice for the kind of work you perform.

OVERTIME

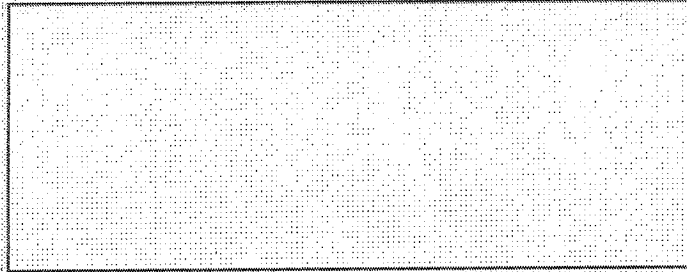
You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 a week. There are some exceptions.

APPRENTICES

PROPER PAY

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

If you do not receive proper pay, contact the Contracting Officer listed below:



or you may contact the nearest office of the Wage and Hour Division, U.S. Department of Labor. The Wage and Hour Division has offices in several hundred communities throughout the country. They are listed in the U.S. Government section of most telephone directories under:
U.S. Department of Labor
Employment Standards Administration

WHD Publication 1321
Revised January 1986

U.S. Government Printing Office: 1986 O-282-282

U.S. Department of Labor
Employment Standards
Administration
Wage and Hour Division



**DEPARTAMENTO
DEL TRABAJO DE
LOS ESTADOS
UNIDOS**
**DIVISIÓN DE
HORAS Y SALARIOS**



AVISO PARA EMPLEADOS

EN TRABAJOS DE CONSTRUCCION FEDERALES O FINANCIADOS POR EL GOBIERNO FEDERAL

SALARIO MINIMO

A usted tienen que pagarle no menos del salario que aparece en la lista que acompaña este aviso para la clase de trabajo que está haciendo.

PAGO POR HORAS EXTRAS

A usted tienen que pagarle no menos de tiempo y medio de su salario regular por todas las horas de trabajo que exceden de 8 horas al día o de 40 a la semana — el total que sea mayor.

APRENDICES

Los salarios para aprendices se aplican solamente a los aprendices que están debidamente matriculados en programas de aprendizaje aprobados por el gobierno federal o estatal.

SALARIO DEBIDO

Si usted no recibe un salario debido, comuníquese con el oficial contratante nombrado a continuación:

o póngase en contacto con la oficina más próxima de la División de Horas y Salarios del Departamento del Trabajo. La división tiene oficinas en cientos de ciudades por todo el país. Aparecen en la mayoría de las guías telefónicas bajo United States Government, Employment Standards Administration, Wage and Hour Division.

CHAPTER 10

REPORTING

I. INTRODUCTION

This chapter provides information on the various reports required to be submitted during the term of a CDBG (Community Development Block Grant) grant and for all CDBG eligible activities funded with Program Income (PI).

II. GRANTEE RESPONSIBILITIES

Each Grantee is responsible for the implementation and monitoring of all CDBG funded activities, whether it is administered by jurisdiction employees or by sub-recipients or consultants and/or contractors. For all open CDBG grants, contract milestones are to be met and all PI committed to activities in an open CDBG grant is to be totally expended prior to accessing grant funds.

It is the responsibility of the Grantee to ensure:

- The most current available CDBG report forms are used and submitted to the Department by the due date.
- The accuracy of the information provided on all reports.

Failure to accurately complete and submit required reports to CDBG may result in the placement of the grantee on a "hold-out" list, which will preclude the jurisdiction from applying for future CDBG grants and negatively impact the jurisdiction's rating on the area of performance when competing in response to a Notification of Funds Available (NOFA).

This section provides instructions for completing the required reports. Please note the due dates provided are the dates by which signed and dated reports are to be delivered to the Department.

Please submit an **original and one copy** of all reports to:

**California Department of Housing and Community Development
Community Development Block Grant Program (CDBG)
Fiscal Unit
1800 Third Street, Suite. 330
Sacramento, CA 95811**

III. FINANCIAL AND ACCOMPLISHMENT REPORT (FAR)

The Financial & Accomplishment Report (FAR) provides the:

- Status of CDBG funds requested;
 - Accrued expenditures;
 - Expenditures of Match and Leverage;
 - Accomplishments;
 - Status of lump sum draw downs;
 - Balance of funds requested for residential rehabilitation loans; and
 - Amount of interest revenue earned on CDBG advances.
- A. Sections I, II and Section VII of the FAR must be completed by all Grantees. Sections III through VI is to be completed if applicable.
- B. The FAR is required for all CDBG grants and it is due as follows:
1. Final FAR: A Final FAR is required to be submitted within 45 days after the expiration date of the grant. Sections I through V of the report must be completed.
 2. Closeout FAR Report: A fully completed FAR, Section I through V and the Accomplishment Report (page 3 of the FAR), will be used as the closeout report. The Closeout FAR is due within 90 days after the expiration date of the grant. The closeout certification letter found on Attachment B must be completed and attached to the closeout FAR.
 3. Final and Closeout FAR: A fully completed FAR can be submitted with both Final and Closeout boxes checked if all the information for the grant closeout is available within 30 days after expiration.
 4. The bi-annual FAR: A fully completed FAR must be submitted for **the first report period, July 1 to December 31** and the **second report period, January 1 to June 30**. These reports are to be submitted during the duration of the grant and must be submitted by January 31st and July 31st during the term of the Standard Agreement.
- C. Instructions for Completing the FAR:
- Grantee, address, and phone number: Enter the jurisdiction's name, mailing address, phone number. Note: Warrants will be mailed to the address shown on the Grantee's Standard Agreement and not the address show on the above heading.
 - Preparer, title, organization, phone number and e-mail address: Enter the name, and other information requested, of the person to contact regarding questions on the completed FAR.

- Grant No: Enter the grant number shown on the Standard Agreement.
- Grant Amend #: If the grant has been amended, please enter the number of the last amendment. Show N/A (not applicable) if there are no amendments to the grant.
- Execution and Expiration Date: Enter the execution date of the grant, located on the bottom right corner of the Standard Agreement, and the date the grant expires.
- SECTION I – Fund Status: *Report Periods are January 1 through June 30, and July 1 through December 31st. An exception is the initial report, which would be from the execution day of the grant to the end of the reporting period, and the final report, which might have an expiration date before the reporting period ends.*

*The first FAR on any grant will start on (1) the date permission is given to incur costs or (2) the date of the fully executed Standard Agreement (STD-213A).**

- SECTION I – Part A – Requested Fund Information: Columns (1) through (8) are to be completed with information from the latest CDBG Funds Request already submitted for reimbursement.
- SECTION I – Part B – Accrued Expenditures & Milestones (only report CDBG funds):
 1. Column (1) Contract Activities: List the grant activities as shown on Page 1 of Exhibit B, Budget Detail and Payment Provisions, of the Standard Agreement.
 2. Column (2) HUD Code: List the HUD Code as shown on Page 1 of Exhibit B, Budget Detail and Payment Provisions, of the Standard Agreement. If the HUD Code is missing, refer to www.hud.gov/offices/cpd/systems/idis/library/refmanual/index.cfm Go to access the IDIS Reference Manual under Appendices which contains the HUD Matrix Codes.
 3. Column (3) Budget Amount: List the complete initial Budget as listed on Page 1 under Exhibit B, Budget Detail and Payment Provisions, of the Standard Agreement.
 4. Column (4) Previously Reported: Enter the total accrued expenditures reported on column 6 of the prior report. The prior report's ending total must **always** be the new report's beginning balance. **Corrections** to previously reported, accrued expenditures will be reported in column 5.

5. Column (5) Expenditures This Period: Enter the amount of accrued expenditures incurred for each activity during the report period. Corrections to previously reported expenditures will be reported here and could result in a negative amount being reported. Include an explanation in the comments section when a correction is reported. Federal regulations require CDBG expenditures be reported on an accrual basis.
6. Column (6) Total Accrued Expenditures: Enter the sum of columns 4 & 5. This amount represents the cumulative total CDBG accrued expenditures for each activity. Be advised that the total accrued expenditures for each activity should be equal to or more than the reported cash disbursed for each activity (Section 1 - Fund Status, Column 7).
7. Column (7) Balance: Enter the difference of columns 3 & 6. This amount represents the CDBG grant funds remaining for future expenditures and commitment.
8. Column (8) Percent: Enter the percentage of accrued expenditures incurred for each activity by dividing column 6 by column 3.

- SECTION II - Expenditure of Match, Leverage & State/Federal Sources: Leverage committed to the grant is considered a contractual obligation for the jurisdictions and **must** be expended during the term of the CDBG contract. If leverage is not expended, it will be considered a performance issue.

The expenditure of State/Federal Sources will also be reported in this section, although, these funds committed to the grant are **not** considered a performance issue.

Do not report the expenditure of Program Income committed to an open grant activity in this section. **Program Income is not leverage.** The expenditure of Program Income committed to an activity in an open CDBG grant is to be reported in the *Expenditure of Program Income on Activities Associated With This Grant* section at the CDBG Funds Request.

1. Column (1) Contract Activities: List the grant activities as shown at Page 1 of Exhibit B, Budget Detail and Payment Provisions, of the Standard Agreement.
2. Column (2) Funding Source: List the source of funding of leverage/match for each activity, as shown on Page 2, 3. Leverage, of Exhibit B, Budget Detail and Payment Provisions, of the Standard Agreement.

3. Column (3) Total Budget: List the amount budgeted for each funding source of leverage/match for each activity, as shown on Page 2, 3. Leverage of Exhibit B, Budget Detail and Payment Provisions, of the Standard Agreement.
 4. Column (4) Previously Reported: Enter the expenditures to date reported on column 6 of the prior report. The prior report's ending total must **always** be the new report's beginning balance. Corrections to previously reported expenditures will be reported in column 5 and may result in negative amounts being reported. Include an explanation in the comments section when a correction is reported.
 5. Column (5) Expenditures This Period: Enter the amount expended for each activity during the report period.
 6. Column (6) Expenditures to Date: Enter the sum of columns 4 & 5.
 7. Column (7) Percent Expended: Enter the percentage of grant funds expended for each activity by dividing column 6 by column 3.
- SECTION III – Residential Rehabilitation Loan Account – Escrow Account:
 1. Section 24 -570.511 of the Code of Federal Regulations (CFR), in pertinent part, states grantees may request grant funds for **immediate deposit** into an **escrow account** for use in funding loans and grants for the rehabilitation of privately owned residential property. The Department has determined that a “**grantee controlled account**”, which is an account established for a specific purpose, meets the intent of the regulation if the required limitations are established to control the source and use of the funds in the account.
 2. This section will only be completed by grantees administering a **residential rehabilitation** grant and are drawing down grant funds on an **advance basis**. CDBG funds advanced to a grantee for a residential rehabilitation activity must be deposited into an **escrow account**, as described below:
 - Limited to loans and grants for the rehabilitation of primarily residential property containing no more than four dwelling units.
 - Deposits to the escrow account shall not be made until the contract between the property owner and the rehabilitation contractor has been executed.
 - The contract between the property owner and the rehabilitation contractor must specify that payments to the contractor shall be made through the escrow account.

- The grant funds requested for housing rehabilitation shall be deposited into one **interest bearing** account with a financial institution. Separate bank accounts shall not be established for individual loans and grants.
 - The amount of funds deposited into an escrow account shall be limited to the amount expected to be disbursed within **22 working days** (Federal regulations stipulate 10 working days) from the date of deposit.
 - Funds in the escrow account exceeding the 22 days cash needs, for whatever reason, must be immediately transferred to the program account.
 - Funds deposited into an escrow account shall be used only to pay the actual costs of rehabilitation incurred by the owner under the contract with a private contractor. Other eligible rehabilitation costs shall be paid under normal CDBG payment procedures.
 - The interest earned on escrow accounts, less any service charges for the account, shall be returned to the Department at least quarterly. Please refer to Section IV.
- SECTION IV – Interest Revenue Earned on Advances:
 1. Federal regulations require that money advanced to the grantee be deposited into an **interest bearing** account, and that the interest revenue earned on Federal funds be returned at least quarterly. The first \$100 earned on **all** Federal funds, not only interest revenue from CDBG funds, may be kept for the jurisdiction's administrative costs. The interest revenue earned on CDBG funds will be submitted to the Department at least quarterly.
 2. Interest revenue earned on lump sum draw-downs may not have to be returned to the Department and is discussed in Section V.
- SECTION V - Lump Sum Report:
 1. Certain conditions apply to lump sum draw down cash requests:
 - Department approval must be obtained prior to submission of the lump sum draw down agreement with the local financial institution.
 - Use the standard fund request method to request the funds, but a lump sum report, Section V, must also be completed.

- Funds must be deposited immediately into the lump sum interest bearing account.
 - The entire amount of the lump sum amount stipulated in the lump sum draw down agreement with the financial institution must be drawn down in one cash request.
 - The first housing rehabilitation loan has to be approved within 45 days of the lump sum deposit into the local financial institution.
 - Twenty five percent (25%) of the deposit must be expended within 180 days of the deposit.
2. Federal regulations, Section 24 CFR 570.513, in pertinent part, states grantees may obtain funds for a Housing Rehabilitation activity by means of a lump sum draw down payment option. General administration and activity delivery portions of the CDBG grant must be requested using the regular advance or reimbursement methods discussed in Section I.

Substantial Disbursement
1 st year of agreement - 35% funds disbursed
18 months of agreement - 75% funds disbursed
2 nd year of agreement - 100% funds disbursed

3. Part A - Lump Sum Draw Down Agreement Information: This information will be used to verify the lump sum requirements are being met. The option to do a Lump Sum Draw Down is only available for the activity of Housing Rehabilitation and detailed information is found at Chapter 16 of the CDBG Grant Management Manual.
4. Part B - Fund Reconciliation: This information summarizes the financial status of the lump sum account as of the end of the report period and reports the amount available for additional housing rehabilitation loans. Interest earned on lump sum deposits and payments on loans made from such deposits are program income and, during the period of the agreement, shall be used for rehabilitation loans. The program income earned will be used before grant funds are expended.
5. Part C - Financial Institution Contribution: Check one or more benefits provided by the financial institution.
- Commitment of private funds at below market interest rate (BMIR), at higher than normal risk, or with longer than normal repayment periods.

- Administrative Services is the provision of administrative services in support of the rehabilitation program at no cost or at lower than actual cost.
 - Bank Contribution is the leverage of the deposited funds so that private funds are committed for loans in the rehabilitation program in an amount substantially in excess of the amount of the lump sum deposit. Report the amount committed by the bank.
- SECTION VI – Comments: Include all explanations in this section. Include any explanations or comments to clarify information submitted.
 - SECTION VII – Accomplishment Narrative: Accomplishment narratives are required for each quarter within each report period. Enter the beginning and ending dates of the respective quarter. Enter the names of the contract activities and the corresponding HUD codes in both sections. These should be the same in both sections. In each activity insert a brief description of progress made during each of the quarter. Specify significant changes, problems encountered, or milestones met, such as: “Construction of Sr. Center underway”; or “NEPA clearance obtained - construction to begin within 30 days”; or “Construction delayed due to flooding”, etc. Please make every effort to keep the length of your narrative confined to the space provided.

This information will be entered into HUD’s Integrated Disbursement and Information System (IDIS) to be reported directly to HUD listing the accomplishments/progress for each CDBG funded activity each quarter during the duration of the grant.

- Grantee Certification: The report must be signed by an authorized member of the grantee’s staff. The reports cannot be signed by a contractor or sub-recipient or consultant.

CDBG Financial and Accomplishment Report (FAR)

(Due Semi-Annually and at Closeout)

Grantee:	Preparer:	Grant No.:	
Address:	Title:	Grant Amend. #:	
Phone:	Organization:	Start Date:	
	E-Mail Address:	Expiration Date:	
		CDBG Rep:	

Final FAR
 Closeout Report

Section I – Fund Status **Report Period: From:** _____ **To:** _____

Section 1 Part A – Requested Fund Information							
(1) Contract Activities	(2) HUD Code	(3) Budgeted Amount	(4) Total Requested To Date	(5) Total CDBG Funds Received	(6) CDBG Funds Requested Not Received	(7) Total CDBG Funds Disbursed	(8) *CDBG Funds On-Hand (Col. 5 - 7)
1-							
2-							
3-							
4-							
5-							
6-							
7-							
Total		\$	\$	\$	\$	\$	\$

**Note: If Funds-on-Hand exceeds \$5,000, please explain why in Section VI – Comments.*

Section 1 Part B – Accrued Expenditures & Milestones							
(1) Contract Activities	(2) HUD Code	(3) Budget Amount	(4) Previously Reported	(5) Expenditures This Period	(6) Total Accrued Expenditures	(7) Balance (Col. 3 – 6)	(8) Percent (Col. 6 / 3)
1.							
2.							
3.							
4.							
5.							
6.							
7.							
Total		\$	\$	\$	\$	\$	\$

Section II – Expenditure of Match, Leverage & State/Federal Sources

(1) Contract Activities	(2) Funding Source	(3) Total Budget	(4) Previously Reported	(5) Expended this Reporting Period	(6) Expenditures to Date (Col. 4 +5)	(7) Percent Expended (Col. 6/3)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
Total		\$	\$	\$	\$	

CDBG Financial and Accomplishment Report (FAR)

Section III - Residential Rehabilitation Loan Account (if applicable) Report Period: From: To:

Report the cash received on an advance basis for the Residential Rehabilitation Activity.....\$
 Report the actual amount paid to contractors for Rehabilitation services.....\$
 Balance Remaining for the Residential Rehabilitation Activity.....\$
 Is the remaining balance in a rehabilitation loan account? Yes No. Will balance be expended within 22 working days of deposit? Yes No. If no, explain in Comments Section.

Section IV - Interest Revenue Earned on Advances (if applicable) Report Period: From: To:

Report the total amount of interest revenue earned on CDBG advances: \$
 Report the total amount of interest revenue returned to the Department: \$
Note: Do not return interest from lump sum draw down. However, DO include the interest from escrow accounts required for Residential Rehabilitation Activities

Section V - Lump Sum Report (if applicable)

Part A - Lump Sum draw down agreement information	Part B - Fund Reconciliation	Part C - Financial Institution Contribution
1. Date Agreement Approved by HCD: _____ 2. Date Agreement Executed: _____ 3. Term of Agreement (not to exceed 2 yrs.): _____ 4. Date of deposit into financial institution: _____ 5. Date 45 days past date in line 4: _____ 6. Date 1 st loan approved: _____ 7. Date 180 days past date in line 4: _____ 8. Percent disbursed by 180 th day: _____	1. Lump Sum Deposit: _____ 2. Repayment of P & I: _____ 3. Interest from deposit: _____ 4. Total (1+2+3): _____ 5. Total Loaned: _____ 6. Total Available (4-5): _____	<input type="checkbox"/> BMIR <input type="checkbox"/> Admin. Services <input type="checkbox"/> Bank Contribution: \$ _____ Provide narrative of progress to date: _____ _____ _____

Section VI- Comments:

CDBG Financial and Accomplishment Report (FAR)

Grantee: _____ Grant #: _____ Report Period: From: _____ To: _____

Section VII - ACCOMPLISHMENT NARRATIVE (Significant Changes; Problems Encountered; Milestones Met. Please refer to instructions.):
 First Quarter of the Semi-annual Report Period. From: _____ To: _____

Contract Activities	HUD Code	Narrative Accomplishments
1.		
2.		
3.		
4.		
5.		
6.		
7.		

Second Quarter of the Semi-annual Report Period. From: _____ To: _____

Contract Activities	HUD Code	Narrative Accomplishments
1.		
2.		
3.		
4.		
5.		
6.		
7.		

Grantee Certification:

I certify to the best of my knowledge this report is true in all respects. The reported amounts agree with the official accounting records and all disbursements have been made to meet the purposes and conditions of this grant.

Name: _____ Title: _____

Signature: _____ Date: _____

<p>FOR HCD USE ONLY</p> <p>CDBG Rep.: _____</p> <p>Approval Date: _____</p>
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IV. RETURNED FUNDS FORM

State of California, Department of Housing & Community Development

(Grantee Letterhead)

Date:

Department of Housing and Community Development (HCD)
 Financial Assistance Division
 Community Development Block Grant (CDBG)
 1800 – 3rd Street, Suite 330
 Sacramento, CA 95811

Attn: Fiscal Unit:

RE: Warrant for CDBG Grant No. _____

Please find attached a copy of the warrant, **original** sent to HCD - Accounting Department, for \$_____.

The warrant is being sent to HCD for the following reason(s):

- The return of \$___ of **interest earned** on CDBG funds advanced to the grantee.
- The **temporary return** of \$___ of excess CDBG funds requested.
 The returned funds will be drawn down at a later date.

The returned funds were requested for the following activities:

Program Activity	HUD Code	Total Requested by Activity	Amount Returned by Activity	Net Funds Requested (Cols. 3 minus 4)

- The return of \$___ of unused CDBG grant funds.
 Please **disencumber these funds** from the grant.

Program Activity	HUD Code	Total Requested by Activity	Amount Returned by Activity	Net Funds Requested (Cols. 3 minus 4)

Please contact me at (enter e-mail address and telephone number) if you have any questions.

Sincerely,

Name and Title

V. RETURN OF CDBG FUNDS AND INTEREST REVENUE

Federal regulation 24 CFR 570.489(c) (1) requires local grantees to "use procedures to minimize the time elapsing between the transfer of funds by the State (to the grantee) and disbursement for CDBG activities."

When funds-on-hand exceeds \$5,000, and the excess cannot be justified (that is, it will not be expended within a reasonable time period), you must return the excess to the Department.

Federal regulations also require the return of interest revenue earned on CDBG advances. The interest revenue must be returned to the Department at least quarterly, except interest earned on the lump sum account. **Interest earned on the lump sum account is considered program income** and is retained in the lump sum draw down account for the term of the grant. Any unused grant funds held by a grantee must also be returned to the Department when the grant expires.

Make the check payable to: California Department of Housing and Community Development and mail to:

California Department of Housing and Community Development
Administration & Management Division
Accounting Office - Cashier
P. O. Box 952050
Sacramento, CA 94252-2050

Complete the cover letter found on Attachment A. Send a copy of the warrant and cover letter to:

California Department of Housing and Community Development
Financial Assistance Division
CDBG Program – Fiscal Unit
1800 – 3rd Street, Suite 330
Sacramento, CA 95811

VI. Disencumbrance of Funds

(Grantee Letterhead)

Date:

California Department of Housing and Community Development
Financial Assistance Division
CDBG Program – Fiscal Unit
1800 – 3rd Street, Suite 330
Sacramento, CA 95811

RE: CDBG Grant No. _____

Please disencumber unused CDBG Grant Funds.

Program Activity	HUD Code	Budgeted Amounts	Amount To Be Disencumbered	Balance
TOTAL				

Please contact me at (enter e-mail address and telephone number) if you have any questions.

Sincerely,

Name and Title

VII. Closeout Certification Form

(Grantee Letterhead)

Name of CDBG Program Representative
 California Department of Housing and Community Development
 Financial Assistance Division
 CDBG Program
 1800 – 3rd Street, Suite 330
 Sacramento, CA 95811

RE: **CLOSEOUT CERTIFICATION** of CDBG Grant No. _____

It is hereby certified that all activities undertaken by the Grantee with funds provided under the above grant agreement have, to the best of my knowledge, been carried out in accordance with the grant agreement; that proper provision has been made by the Grantee for the payment of all costs and claims; that the State of California is under no obligation to make further payment to the Grantee under the grant agreement; and that every statement and amounts set forth in the **attached** final CDBG Financial and Accomplishment Report is, to the best of my knowledge, true and correct.

Any property acquired in whole or in part with CDBG funds or CDBG Program Income shall be accounted for in accordance with the provisions of Section 7118 and 7104 of the State CDBG regulations pertaining to property management and program income. Please list any property acquired in whole or in part with grant funds or program income expended for the grant or, if applicable, state "none" acquired. Please see Chapter 19, Property Management, in the Grants Management Manual for more detailed instructions.

Note: Future disposition of this property shall be carried out in accordance with Section 7118 of the State CDBG Regulations. Please see CFR 24 Sec. 570.505 Use of real property for instructions.

1.	4.
2.	5.
3.	6.

The Grantee shall continue to comply with the State CDBG program income reporting requirements.

All costs incurred subsequent to the most recent annual audit period will be audited at the time the Grantee's next annual audit is conducted in accordance with OMB Circular A-133. The Grantee will resolve any audit findings relating to both the program and financial aspects of the grant. In the event there are any costs which are disallowed by this audit or any subsequent audits which cover CDBG expenditures, and which are sustained by the Department of Housing and Community Development, the amount of such costs shall be returned to HCD.

Date:	Typed Name and Title of Authorized Grantee Representative: Name: Title:	Signature of Authorized Grantee Representative:
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VIII. GRANTEE PERFORMANCE REPORT

The Grantee Performance Report (GPR) requests information required by the U.S. Department of Housing and Urban Development (HUD) to implement performance measurements as described in Federal Register notice 71 FR 4970 N 02 and other reporting requirements.

The GPR is designed to collect one year of information on each "activity" funded by a Standard Agreement or with Program Income. For the purposes of the GPR, a report period is defined as the fiscal year from July 1 to June 30th. The Department of Housing and Community Development (HCD) is required to report on each jurisdiction's progress on each activity administered by the local jurisdiction via HUD's Integrated Disbursement and Information System (IDIS). HUD will not allow the State to close an activity and provide a final payment when information is missing in IDIS.

A. Grantee Performance Report Due Dates:

The GPR is required for all open and active contracts except for Planning and Technical Assistance (PTA) grants. The following are the dates of submission:

- i. Annual GPR: Must be submitted for the first report period representing the time period July 1 to June 30, even if there was no benefit yet. An Annual Report is required once a year to report on every activity. **The Annual GPR is - Due July 31 of each year.**
- ii. **The Final GPR is due within 90 days after Expiration or upon Completion as described in the Standard Agreement.**
- iii. **A separate GPR is required for each Standard Agreement being administered by a jurisdiction.**

B. General Instructions for Completing the GPR:

A GPR Excel workbook was developed to permit flexibility in using the document. **Do not alter or edit the form.** You may need to copy a page (sheet) with multiple activities, but should not modify the form and contents. Verify that you have the most recent version of the form by obtaining it from the CDBG Grant Management Manual attachments on HCD's website. <http://www.hcd.ca.gov/fa/cdbg/manual/>. Do not leave any required fields blank. The form is designed according to the screens and data needed in IDIS. Leaving fields blank may limit the ability to navigate through certain IDIS screens.

1. General Information:

Complete all questions concerning each activity.

At the top of each page, provide the correct contract (Standard Agreement) number and indicate the fiscal year. Indicate if the report is an "Annual Report" or a "Final Report". This will assure the information is properly placed into IDIS for the activity. For those jurisdictions that are administering revolving loan accounts (RLA), indicate "Program Income" in the field titled Standard Agreement. Each type of RLA will be identified by the activity in the GPR report (i.e. Matrix: 14A Housing Rehabilitation vs. 13 Homebuyers Assistance), are examples of two different RLA activities. Each activity is reported on separate pages of the form. HUD provides definitions about each activity in the IDIS reference manual: http://www.hud.gov/offices/cpd/systems/idis/library/refmanual/ref_man_b.pdf

The GPR includes periodic reference in the right margin of the page that represents the computer screen number in IDIS (i.e. IDIS cdbg 01). Additional information is available about each question on the screen in Chapter 8 of the IDIS Reference Manual. The information is available at HUD's website at: http://www.hud.gov/utilities/intercept.cfm?/offices/cpd/systems/idis/library/refmanual/ref_man_8.pdf.

1. Reporting Activities and National Objectives: The GPR was developed with nine different (9) pages to report on an activity. Each "page" (Excel sheet) pertains to different set of activities that maybe used to report. There are a number of similar questions at the beginning of each page, and then more specific questions about each activity that follows. Each page is organized based on the screen path in IDIS that is organized based on **National Objective Code** that is determined when the activity is awarded funding. This can be observed in the GPR Introduction and Summary page where two columns of radio buttons are present and when selected will direct you to different sheet of questions based on the National Objective for the activity. Please review and make sure you are reporting on the correct page for the activity identified at the top of the page. The following is a list of pages in the excel booklet:

- a) Acquisition and Preparation
- b) Home Buyers Assistance
- c) Public Improvements In Support of Housing
- d) Housing Rehabilitation (All)
- e) Housing Services
- f) Public Facility-Improvement
- g) Public Service
- h) Business Assist & Infrastructure
- i) Micro Enterprise

When directed to the correct page for a single activity, verify the activity is included at the top of the page. Simply check the box for the activity at the top of the page and being answering the questions in the form.

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Ensure the correct year and Standard Agreement number are identified at the top of the page you are completing. If the year and Standard Agreement number are missing, add them at the top of each page when you submitted the GPR.

C. **Introduction & Summary Page and Submitting the GPR:**

The introductory page of the GPR lists all the activities and their activity matrix code numbers. This represents all activities currently offered under the State of California's CDBG program. Begin by checking the box(es) for all activities currently funded by the Standard Agreement under column "A" or column "C" depending on the National Objective. The activity description and/or **matrix code number** should be found in Exhibit B of your Standard Agreement. After checking off all activities to report, indicate the status under column "E" using the drop down box. Identify if the "Data is Pending" or if the "Data is Enclosed." The status feature (Column E) was added to eliminate the need to submit blank pages of the GPR if no beneficiary data is available to report. Next, click the page number button and you will be directed to the sheets in the report for the activity.

Complete the entire section for each activity. If you have an activity that requires the same page in the GPR, (for example, two similar Public Service activities), then simply create a duplicate page to report on the activity. The entire page can be copied and pasted into an additional blank page in the report.

1. **SUBMITTING GPR** Once the GPR is complete, submit the workbook to the Department by e-mail as an attachment or by mail. When saving the file to email, use the name convention of 1) the local jurisdiction, 2) the City or County name, and 3) the fiscal year of the GPR (i.e. Sacramento City 2008-09 or Yolo County 2007-08). We still require an ***Introduction and Summary*** page with an original signature ***in blue ink*** certifying all the information to be true and accurate to be sent to the Department by mail. The entire GPR workbook with data can be email to the following address: cdbg@hcd.ca.gov Keep any and all supporting documentation used for the report for future reference as required for audit purposes.
2. **PRINTING** If you decide to print the entire workbook, you may want to select just the pages required for the report. The entire workbook is nine (9) worksheets with multiple pages and there are five (5) appendix pages for each of the nine (9) worksheets (a total of 74 pages). We only need the pages and appendixes used to provide the necessary accomplishment data.

D. **Common Sections of the GPR:**

The following sections are included on each page of the GPR. They are common to all activities and represent required fields in IDIS and HCD:

1. **Program Description (idis cdbg 06):** A series of questions are consolidated into this Section. Check off any descriptions that apply and continue to complete the form. If a question requires an Appendix, check the box to the right of the question and click the button with the Appendix number to be directed to that form. The appendices are within the page being used so that all information concerning the activity remains with the page of the report. The following questions must be addressed for each activity:
 - a) **One-for-One Replacement (Reconstruction)** – If the activity involves one-for-one replacement due to a planned demolition, check the box to the right and use the button to be directed to Appendix A to provide additional information on this activity. Use this Appendix if the acquisition and relocation regulations under the Uniform Relocation Act and §104(d) of the Housing and Community Development Act (HCDA), ***Residential Anti-displacement and Relocation Assistance Plan*** requirements apply when replacing any demolished or converted units.
 - b) **Special Assessment** – If the activity is a public improvement where part or all the costs will be recaptured through a fee charged to residents that do not qualify as beneficiaries, indicate by checking the box.
 - c) **Displacement** – IDIS requires additional information on an activity that involves displacement (any household, business, farm or nonprofit organization that is moved permanently from real property as a direct result of rehabilitation, demolition or acquisition of any CDBG assisted activity. This activity also requires additional information to be provided on the displacement page (Appendix B).
 - d) **The activity is designed to generate program income** – Check the box if the activity will generate program income.
 - e) **Favored Area** – Check the box if this activity is an economic development activity that is of important national interest and is excluded from the aggregate benefit test. Applies only to matrix codes 18a and 18b.
 - f) **Colonia** – Check the box if the activity is being administered on behalf of a Colonia that is defined as a jurisdiction located within 150 miles of the U.S. – Mexico border.

- g) **Brownfield Activity (number of Acres)** – Check the box if the activity is located in a designated Brownfield Area (defined as under-utilized and has environmental contamination). Include the number of acres being remediated.
- h) **Historic Preservation Area** – Check the box if the activity is located in an area that is designated as a Historic Preservation site.
- i) **Presidential Declared Disaster** – Check the box if the activity is part of a federally declared disaster.
- j) **Multi-Unit Housing** – Check the box if the activity includes Multi-Unit Housing (2+ Units/structure).
- k) **Rental Housing** – Check the box if the activity involves rental housing.
- l) **Presumed Benefit (Limited Clientele)** - Check the box if the activity has a national objective of Low and Moderate Clientele (LMC) and serves a category of persons that are presumed to be of low- to moderate-income due to the nature of the activity or the type of people served. Types of limited clientele include: abused children, battered spouses, elderly persons, severely disabled, illiterate adults, persons living with AIDS, homeless persons and migrant farm workers. An example of presumed benefit based on nature and location would be a daycare center located within a low income housing project serving residents of the project.
- m) **Subrecipient Agreement** - Check the box if an approved subrecipient agreement is being used with a third party to assist in the administration of the CDBG activity. Additional information is required about the subrecipient and should be included in the Subrecipient form (Appendix C).
- n) **Slum and Blight** – Check the box if the service area is located in a designated as slum and blight. Additional information is required about the area and should be included on the Slum and Blight Form (Appendix D).
- o) How many veterans are being assisted by this program or project?

2. Section 3 – Economic Opportunity for Low and Very-Low: If grant funds and/or program income is used in excess of \$200,000 per year towards housing rehabilitation, housing construction, or public construction, then a Section 3 report requirement may apply. This also includes payment towards local staff administering the CDBG program. The GPR was developed to assist local jurisdictions in making this determination by including two questions in this section: 1) Indicate if the size of your project is over \$200,000 in CDBG funds, and 2) Indicate if a prime and/or subcontract contract was used in an amount greater than \$100,000. If you answer “yes” to both questions, then Section 3 reporting requirements (HUD 24 CFR §135) apply and a Section 3 report is required. Attach the Section 3 report to the GPR and submit them to the Department. For more information from the Code of Federal Regulations go to:
http://www.access.gpo.gov/nara/cfr/waisidx_07/24cfr135_07.html.
The Section 3 report form can be found at the following web address:
http://www.hud.gov/offices/ftheo/section3/rev_60002_final.pdf
3. Minority Contractor Information: Based on the funding award for this activity, indicate the amount of funds awarded to minority business enterprise (MBE) or women business enterprises (WBE).
4. Type of Assistance (idis cdbg 05): HUD requires information on the result of funding this award. The questions on each of the nine pages are designed to provide further detail about the program and accomplishments. The following questions apply to all activities:
 - a) Please indicate if the activity is in the form of loan(s) or grant(s), or both.
 - b) Indicate the number of grants and/or loans provided under this activity.
 - c) If loan(s) were provided, enter the interest rate, amortization period in months, and the loan size. If a number of loans are made with different loan sizes, interest rates and amortization periods (in months), provide the total monies loaned, the average interest rate and the average amortization period. Ensure you enter numeric characters for the fields.
 - d) If the program offers a deferred payment or a loan forgiveness feature, indicate the average interest rate applied until forgiveness or the deferral. Indicate the average period of months in the note(s) and/or regulatory agreement(s), and indicate the total monies loaned. Ensure you enter numeric characters in the fields.

5. Direct Benefit – Race (cdbg08): IDIS requires jurisdictions to report on race and income information at least once a year on beneficiaries who receive assistance. There are two columns provided with one identified and titled “Hisp”. This abbreviation represents Hispanic that is no longer considered a race category, but an ethnic category that must be associated with a particular race. Jurisdictions need to provide a total for each race classification and then provide the number of those who consider themselves Hispanic.

Please note that some GPR pages appear different depending on which accomplishment type code is required for the activity. An example of the two accomplishment types are “Households” and “People”. The accomplishment type “Households” is primarily used to report on housing activities, and the accomplishment type “People” is primarily for non non-housing activities.

6. Income Levels (cdbg13): Indicate the number of persons or households benefiting from the CDBG activity based on their income level. To provide this information, records should be maintained to substantiate the level of income. For activities that are funded under a National Objective of Low and Moderate Area (LMA) or a Slums and Blight Area (SBA) local jurisdictions may use census data to extrapolate race information of those benefiting from the activity. For LMH activities, income is based on households and for all other national objectives the income is based on persons. CDBG uses “Section 8 Annual Income” as the operative definition (24 CFR Part 5): In this section, indicate the number of persons or households benefiting from this activity whose income was considered:
 - a) Extremely Low – the persons/households benefiting with family gross income that is at or below 30% of the median income for the County.
 - b) Low – the persons/households benefiting with family gross income between 31% to 50% of the median income for the County.
 - c) Moderate – the persons/households benefiting with family gross income that is between 51% to 80% of the median income for the County.
 - d) Greater than moderate – the persons/households benefiting with family gross income that is over 80% of the median income for the County.
 - e) Total Persons/Households – Indicate the total for all income categories being reported.

The column to the far right request the number of persons or households based on income level for all years of the activity. This will indicate the total number of persons or households that have benefited from this activity over the entire term of contract.

E. **Individual Activity Pages:**

The following information requested is more specific to the activities than the common questions already discussed. The sections that follow are more specific to the type of activity (Matrix Code) being reported:

Energy Star In the pages that follow, a number of questions concerning Energy Star are raised. HUD requests information on the number of units that have received an Energy Star certification. The certification must be issued by a HERS rater and typically involves an inspection that requires software to measure its energy characteristics, such as insulation levels, window efficiency, wall-to-window ratios, heating and cooling system efficiency, the solar orientation of the home, and the water heating system. Diagnostic testing, such as blower door for building air leakage and duct blaster testing for forced air systems leakage is also performed by the rater and is part of the rating. Do not identify units as "Energy Star" if they simply have energy star appliances in the unit.

- HOW TO COMPLETE PAGE 1 -

ACQUISITION AND PREPARATION OF REAL PROPERTY

A number of activities concerning "Acquisition and Preparation of Real Property" are located on this page. Check off which of the following activities will be reported:

- (01) Acquisition of Real Property
- (02) Disposition
- (04) Clearance and Demolition
- (04A) Cleanup of Contaminated Sites
- (12) Construction Housing (by CBDO)

This page includes the common questions already addressed in this chapter, such as the Program Description, Section 3, Minority Contractor Information, Type of Assistance, Direct Benefit and Income Levels. There are four additional sections on this page for Acquisition and Preparation of Real Property. The four sections include: Multi-Unit Housing, Activities in Support of Housing for Owner Units, Activities in Support of Housing for Rental Units, and Rehabilitation of Owner Units. Not all Sections are required for each activity.

Multi-Unit Housing (idis cdbg 14)

Special attention must be given to properly identify multi-family housing activities. If the activity has a National Objective Code for Low and Moderate Housing (LMH), and if the project has more than two units per structure, this section of the form must be completed. Do not complete this section if the activity is for single unit residential or a non-LMH activity.

If the project includes multi-unit housing (more than two units per structure), then provide information on the number of units at the three different stages. The first stage is the total number of units at the beginning of the activity or since the last GPR report. It should include the total number of units at the start of the activity, the number of units that are occupied, and of those occupied units, how many are designated low and moderate income. The second stage requests information on the number of units that that will be completed by the end of this report period (the year). The number should just represent the number of units completed since the beginning of the report period, not an accumulation of prior years. A report period represents a fiscal year from July 1 to June 30th. Under the number of units completed for the total grant term, this information represents the total accumulated number of units for the activity. This represents the final numbers and total units for the entire grant term over all the years of the activity.

Activities in Support of Housing - Owner Units (idis cdbg 22 & 23)

Complete this section when the activity being conducted is "in support of housing" and will be owner units. An example would be acquisition of real property with the ultimate purpose of providing owner units. This section also applies when addressing slum and blight (designation of an area or spot basis) or when addressing an urgent need. This section should not be used if monies are used for actual rehabilitation or construction of units.

1. Indicate the number of total owner units.
2. Of the total owner units, indicate the number of:
 - a. Affordable units.
 - b. the number that are certified as Energy Star by an HERS rating.
 - c. the number of Section 504 accessible units.
3. For the affordable units, indicate the number of years of affordability that will be guaranteed.
4. Of the total owner units, indicate the number of households previously living in subsidized housing.
5. Out of the units that are affordable:
 - a. Indicate the number of units occupied by the elderly.
 - b. Indicate the number of units that were designated for persons with HIV/AIDS.
 - c. Of the HIV/AIDS units, indicate the number of units for chronically homeless.
6. Indicate the number of units specifically designated for the homeless.
 - a. Of those, indicate the number specifically for chronically homeless.

Activities in Support of Housing - Rental Units (idis cdbg 18 & 19)

Complete this section when this activity includes projects with rental units. For example, when monies are used for the Acquisition of Real Property (01) and the project will include rental units when completed, HUD requires the Department to report on the following information:

1. Indicate the total rental units constructed.
2. Out of the total rental units constructed, indicate the number designated as:
 - a. Affordable units.
 - b. Section 504 accessible: - Indicate out of the total rental units, the number of units that were constructed to be Section 504 accessible.
 - c. Units that are certified as Energy Star by an HERS rating: - Indicate out of total rental units the number of units that met Energy Star Standards.
 - d. Units designated for persons with HIV/AIDS, including units receiving assistance for operations.

- e. Of those listed as HIV/AIDS, specify the number for the chronically homeless.
3. Out of the total rental units, indicate the number of permanent housing units designated for homeless persons and families including units receiving assistance for operations.
 - a. Of the total rental units, how many were designated for homeless persons and/or families, including units receiving assistance for operations, which were made available to the chronically homeless?
 4. Of the number of Affordable Units, indicate:
 - a. How many were occupied by the elderly.
 - b. The number of units that were subsidized with project-based rental assistance from federal, State or local program sources of funds.
 - c. The number of years the units will have affordability restrictions.

Homeowner Rehabilitation (IDIS CDBG 24)

Complete this section when activities identified at the top of the form have the ultimate purpose of rehabilitation of homeowner units. An example would be the Acquisition of Real Property (01) where the funds are used for the acquisition of property with a rehabilitation purpose. This section should not be used when funds are used for the actual cost associated with the Homeowner Rehabilitation, only when funds are used for the acquisition, clearance or demolition that is required for the final purpose that will include homeowner rehabilitation. For this page:

1. Indicate the total number of owner units to be rehabilitated
2. Of the total owner units indicate:
 - a. The number of units occupied by the elderly.
 - b. The number of units moved from substandard to standard (HQS or local code).
 - c. The number of units certified as Energy Star by an HERS rating.
 - d. The number of units that were 504 accessible.
 - e. The number of units that were brought into compliance with lead safety rules (24 CFR Part 35).

Accomplishment Narrative

The Accomplishments Narrative field is used to provide additional information on the status of the activity that cannot be expressed by the other fields. It can be used to explain any delays, and provide a timeframe for completing the activity.

- HOW TO COMPLETE PAGE 2 -

HOMEOWNERSHIP ASSISTANCE

Since CDBG funds a number of Homebuyer assistance activities, this page was developed specifically to report on this activity. Check off which activity is being reported:

- (05R) Homeownership Assistance – not direct
- (13) Direct Homeownership Assistance

This page includes the common questions already addressed in this chapter such as the Program Description, Section 3, Minority Contractor Information, Type of Assistance, Direct Benefit and Income. Answer the questions that apply to this activity by checking off the box to the right and, complete any appendix required. Each worksheet includes Direct Benefit information such as race and the income levels of those being served. There are two additional sections called Housing – Public Service and Direct Financial Assistance to Homebuyers.

Housing – Public Service (cdbg 17A)

Complete this section when a Homeownership Assistance activity is administered as a service. Effective December 11, 1995, homeownership under (05R) is limited to only a homebuyer down payment assistance program. In this section, HUD requests the following:

1. Indicate the number of persons/households assisted, according to the following:
 - a. Total being served for the program year.
 - b. Now have new access to this type of service or benefit.
 - c. Now have improved access to this type of service or benefit.
 - d. Now receive a service or benefit that is no longer substandard.

Direct Financial Assistance To Homebuyers (idis cdbg 25)

Complete this section when a jurisdiction is providing direct home ownership (05R) or indirect home ownership (13).

- 1) Indicate the total number of homebuyer households.
- 2) Out of the total number of homebuyers assisted:
 - a. Indicate the number of homebuyers purchasing for the first-time.
 - b. Of the first-time homebuyers, what number received housing counseling?
- 3) Indicate from the total number homebuyer households, what number were receiving down payment assistance/closing costs.

Accomplishment Narrative

The Accomplishments Narrative field is used to provide additional information on the status of the activity that cannot be expressed by the other fields. It can be used to explain any delays, and provide a timeframe for completing the activity.

- HOW TO COMPLETE PAGE 3 -

PUBLIC IMPROVEMENT IN SUPPORT OF HOUSING

Complete this section when the public improvement activity is developed in "support of housing". There are two possible pages in which to report on one of the following activities. For those activities where the National Objective Code is Low and Moderate Housing (LMH) and it includes a public improvement in support of housing, use this page. If the activity is under a different National Objective, then report the activity under Public Facilities and Improvements (Page 6). Use this worksheet to report on the following activities in support of housing:

- (03) Public Facilities & Improvements
- (03H) Solid Waste Disposal Improvement
- (03I) Flood Drainage Improvement
- (03J) Water/Sewer Improvement
- (03K) Street Improvement
- (03L) Sidewalk Improvements
- (03N) Tree Planting

This page includes the common questions already addressed in this chapter such as the Program Description, Section 3, Minority Contractor Information, Type of Assistance, Direct Benefit and Income Levels. Answer the questions that apply to this activity by checking off the box to the right and, complete any appendix that may be required. Each worksheet includes Direct Benefit information such as race and the income levels of those being served. The two additional sections required for this worksheet are Public Facilities and Improvements In Support of Housing and Multi-Unit Housing.

Public Facilities and Improvements In Support of Housing (idis cdbg 17b)

1. Indicate the number of persons/households assisted of which:
 - a. Total benefiting for the program year
 - b. Now have new access to this type of public facility or infrastructure improvement.
 - c. Now have improved access to this type of public facility or infrastructure improvement.
 - d. That is served by the public facility or public improvement that is no longer substandard.

2. Some activities where persons benefit from the public facilities may include overnight shelters or other emergency housing. Indicate the number of beds that were created in the overnight shelter or other emergency housing.

Multi-Unit Housing (idis cdbg 14)

If the project includes multi-unit housing (more than two units per structure), then provide information on the number of units at the three different stages. The first stage is the total number of units at the beginning of the activity or since the last GPR report. It should include the total number of units at the start of the activity, the number of units that are occupied, and of those occupied units, how many are designated low and moderate income. The second stage requests information on the number of units that that will be completed by the end of this report period (the year). The number should just represent the number of units completed since the beginning of the report period, not an accumulation of prior years. A report period represents a fiscal year from July 1 to June 30th. Under the number of units completed for the total grant term, this information represents the total accumulated number of units for the activity. This represents the final numbers and total units for the entire grant term over all the years of the activity.

Accomplishment Narrative

The Accomplishments Narrative field is used to provide additional information on the status of the activity that cannot be expressed by the other fields. It can be used to explain any delays, and provide a timeframe for completing the activity.

- HOW TO COMPLETE PAGE 4 -

HOUSING REHABILITATION

A number of activities that address "Housing Rehabilitation" were placed on this page. Check off the activity to the right for one of the following activities:

- (14a) Rehabilitation – Single Unit Residential
- (14b) Rehabilitation – Multi-Unit Residential
- (14c) Public Housing Modernization
- (14d) Rehabilitation – Public Owner Residential Buildings
- (14f) Energy Efficiency Improvements
- (14g) Acquisition for Rehabilitation
- (14i) Lead Based Paint, Hazards Test Abatement
- (16a) Residential Historic Preservation

This page includes the common questions already addressed in this chapter such as the Program Description, Section 3, Minority Contractor Information, Type of Assistance, Direct Benefit and Income Levels. Complete the questions that apply to this activity by checking off the box to the right and when necessary, complete any appendix that may be required. Each worksheet includes the Direct Benefit information such as race and the income levels of those being served. There are four additional sections for this worksheet that include Rehabilitation Homeowner & Rental, Homeowner Rehabilitation, Multi-Unit Housing and Rehabilitation of Rental Units.

Rehabilitation of Units (cdbg 9)

This section is required for all activities identified above except 14i. Indicate if the activity offers a specific program with one of following services:

- a. Installing security devices;
- b. Installing smoke detectors;
- c. Performing emergency housing repairs;
- d. Providing supplies and equipment for painting houses; or
- e. Operating a tool lending library.

Only complete this section if the activity was set up to offer a specific program that is limited to installing these devices. Do not report on this activity under a rehabilitation program if it only happens to include one or more of these features. HUD is attempting to identify programs specifically established to provide these features.

Rehabilitation of the Owner Units (idis cdbg 24)

This section applies to activities identified at the top of the page that include the rehabilitation of homeowner units. This section should be addressed when the CDBG funds are used for the actual cost associated with the homeowner units being rehabilitated. Skip this section and move on to the next section if the activity does not include the rehabilitation of homeowner units. For this page:

1. Indicate the total number of owner units.
2. Of the total owner units:
 - a. Indicate the number of units occupied by the elderly.
 - b. Indicate the number of units moved from substandard to standard (HQS or local code).
 - c. Indicate the number of units that are certified as Energy Star by an HERS rating.
 - d. Indicate the number of units that were 504 accessible.
 - e. Indicate the number of units that were brought into compliance with lead safety rules (24 CFR Part 35).

Multi-Unit Housing (idis cdbg 14)

If the project includes multi-unit housing (more than two units per structure), then provide information on the number of units at the three different stages. The first stage is the total number of units at the beginning of the activity or since the last GPR report. It should include the total number of units at the start of the activity, the number of units that are occupied, and of those occupied units, how many are designated low and moderate income. The second stage requests information on the number of units that that will be completed by the end of this report period (the year). The number should just represent the number of units completed since the beginning of the report period, not an accumulation of prior years. A report period represents a fiscal year from July 1 to June 30th. Under the number of units completed for the total grant term, this information represents the total accumulated number of units for the activity. This represents the final numbers and total units for the entire grant term over all the years of the activity.

Rehabilitation Of Rental Units (idis cdbg 20 &21)

Complete this section if the activity involves rental housing and the activity has at least one renter. Questions 1-4 request information about all units and questions 5-7 concern the affordable units only. This section requires the total number of rental units rehabilitated:

1. What is the total number of rental units:
2. Of the total units, indicate the number are:
 - a. Affordable units.
 - b. Of the total units, indicate the number of units that were Section 504 accessible.
 - c. Of the total units, indicate the number brought from substandard conditions to standard conditions (meeting housing quality standards or local codes).
3. Of the total units, indicate the number that are certified as Energy Star by an HERS rating.

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4. Indicate how many of the total units were brought into compliance with the lead safety rules (24 CFR Part 35).
5. Of the total units, indicate the number of units that were created through the conversion of a non-residential building to a residential building.
6. Of the units that are designated affordable:
 - a. Indicate the number occupied by the elderly. Elderly is defined as units occupied by persons age 62 or older.
 - b. Indicate how many years the units will remain affordable.
 - c. Indicate the number of affordable units that were subsidized with project-based rental assistance by another federal, State or local program.
7. Of the affordable units, indicate the number of units that were designated for persons with HIV/AIDS (including units receiving assistance for operations).
 - a. Of those persons with HIV/AIDS, (including units receiving assistance for operations), indicate the number for the chronically homeless.
8. Of the affordable units, indicate the number of permanent housing units for homeless persons and families, including units receiving assistance for operations.
 - a. Of the homeless persons and families, indicate the number of units for the chronically homeless.

Accomplishment Narrative

The Accomplishments Narrative field is used to provide additional information on the status of the activity that cannot be expressed by the other fields. It can be used to explain any delays, and provide a timeframe for completing the activity.

- HOW TO COMPLETE PAGE 5 -

HOUSING SERVICES

A number of housing related activities with a national objective Low and Moderate Housing (LMH) are located on this page instead of the public services page 7. This page was developed to address a number of services that fall under the LMH National Objective. A few activities appear to belong under this service section; however, since they are not allowed under LMH national objective, they are not found on this page. The following activities are reported on this form:

- (05S) Rental Housing Subsidies
- (05T) Security Deposits
- (08) Relocation – Housing*
- (09) Loss of Rental Income*
- (19E) Operation and Repair Foreclosed Property

*Only report on this page if the activity has a LMH National Objective code.

Housing related services that are not identified on this page include Housing Counseling (05U), Emergency Subsistence Payments (05Q), and Legal Services (05C). There are two activities, Relocation (08) and Loss of Rental Income (09) that fall on two different pages of the GPR (Page 5 and 7). When the activity has a National Objective Code of Low and Moderate Housing (LMH) the activity is reported on this page. When the activity is a non-LMH activity, use page seven for Public Service. The matrix code for Foreclosed Property (19E) under LMA should be reported on this page. Do not report activities that are exclusively funded by the NSP program on this report. General CDBG funds that are used in conjunction with other funding should be reported in this GPR.

This page includes the common questions already addressed in this chapter such as the Program Description, Section 3, Minority Contractor Information, Type of Assistance, Direct Benefit and Income Levels. Answer the questions that apply to this activity by checking off the box to the right, and when necessary, complete any appendix required. Each worksheet includes Direct Benefit information such as race and the income levels of those being served. There are four sections in this worksheet that may need to be completed for the activities identified. They include the Multi-Unit Housing, Housing – Public Service, Emergency Assistance (subsistence payments), and Homeless Prevention.

Multi-Unit Housing (idis cdbg 14)

If the project includes multi-unit housing (more than two units per structure), then provide information on the number of units at the three different stages. The first stage is the total number of units at the beginning of the activity or since the last GPR report. It should include the total number of units at the start of the activity, the number of units that are occupied, and of those occupied units, how many are designated low and moderate income. The second stage requests information on the number of units that will be completed by the end of this report period (the year). The number should just represent the number of units completed since the beginning of the report period, not an accumulation of prior years. A report period represents a fiscal year from July 1 to June 30th. Under the number of units completed for the total grant term, this information represents the total accumulated number of units for the activity. This represents the final numbers and total units for the entire grant term over all the years of the activity.

Housing – Public Service (cdbg 17)

Complete this section when providing Rental Housing Subsidies (05S) or Security Deposits (05T). In this section, HUD requests the following:

1. Indicate the number of persons/households assisted, enter:
 - a. Total benefiting for the program year, the number that
 - b. Now have new access to this type of service or benefit;
 - c. Now have improved access to this type of service or benefit;
 - d. Now receive a service or benefit that is no longer substandard;
2. Some activities where persons benefit from the public facilities may include overnight shelters or other emergency housing. Indicate the number of beds that were created in the overnight shelter or other emergency housing.

Emergency Assistance - Subsistence Payments (IDIS CDBG 30)

Complete this section if the activity is providing Rental Housing Subsidies (05S) in the form of short term rental assistance for up to 3 months. In this section, HUD requests the following:

1. Indicate the total number of households that received rental assistance.
2. Of the total households assisted, indicate the number that received short-term rental assistance (for not more than three months).
3. Of the total households assisted, indicate the number of households assisted that were previously homeless.
4. Of the number of households assisted that were previously homeless, indicate the number of chronically homeless households.

Homeless Prevention (IDIS CDBG 31)

Complete this section only if the activity is for the homelessness prevention or if the activity is conducting a Security Deposits (05T) program.

1. Indicate the total number of homeless individuals benefiting from this activity.
2. Indicate the number of persons assisted that:
 - a. Received emergency financial assistance to prevent homelessness.
 - b. Received emergency legal assistance to prevent homelessness.

Accomplishment Narrative

The Accomplishments Narrative field is used to provide additional information on the status of the activity that cannot be expressed by the other fields. It can be used to explain any delays, and provide a timeframe for completing the activity.

- HOW TO COMPLETE PAGE 6 -

PUBLIC FACILITIES AND IMPROVEMENTS

Complete this section on one of the following activities identified as "Public Facilities and Improvements". This section applies to activities with a National Objective of Low and Moderate Area (LMA) or Low and Moderate Clientele (LMC) or Slum and Blight Area (SBA). **Do not use this page for housing activities under a National Objective of Low and Moderate Housing (LMH).** Check off what activity is being reported and address the following sections. If more than one activity is being reported, create a duplicate sheet for the report. The following activities and matrix codes report on this page:

- (03) Public Facilities and Improvements
- (03A) Senior Centers
- (03B) Handicapped Centers
- (03C) Homeless Facilities
- (03D) Youth Centers
- (03E) Neighborhood Facilities
- (03F) Parks, Recreation Facilities
- (03G) Parking Facilities
- (03H) Solid Waste Disposal Improvement
- (03I) Flood Drainage Improvement
- (03J) Water/Sewer Improvement
- (03K) Street Improvement
- (03L) Sidewalk Improvements
- (03M) Child Care Centers
- (03N) Tree Planting
- (03O) Fire Station/Equipment
- (03P) Health Facilities
- (03Q) Abused and Neglected Children Facilities
- (03R) Asbestos Removal
- (03S) Facilities for Aids Patients
- (03T) Operating Costs of Homeless/Aids
- (11) Privately Owned Utilities
- (16B) Non-Residential Historic Preservation

This page includes the common questions already addressed in this chapter such as the Program Description, Section 3, Minority Contractor Information, Type of Assistance, Direct Benefit and Income Levels. Answer the questions that apply to this activity by checking off the box to the right and when necessary, complete any appendix that may be required. Each worksheet includes Direct Benefit information such as race and income levels of those being served. There is only one additional section for this worksheet regarding Public Facilities and Improvements as follows:

Public Facilities and Improvements (idis cdbg 17b):

1. Indicate the number of persons/households assisted, as follows:
 - a. Total benefiting for the program year.
 - b. Now have new access to this public facility (community facility) or public improvement (public works).
 - c. Now have improved access to this type of public facility (community facility) or public improvement (public works).
 - d. That are served by the public facility (community facility) or public improvement (public works) that is no longer substandard.

2. Some activities where persons benefit from the public facilities may include overnight shelters or other emergency housing. Indicate the number of beds that were created in the overnight shelter or other emergency housing.

Accomplishment Narrative

The Accomplishments Narrative field is used to provide additional information on the status of the activity that cannot be expressed by the other fields. It can be used to explain any delays, and provide a timeframe for completing the activity.

PUBLIC SERVICES

Complete this section to report on activities identified as "Public Services". This section applies to activities with a National Objective of Low and Moderate Area (LMA) or Low and Moderate Clientele (LMC) or Slum and Blight Area (SBA). There are two activities identified by asterisk that may report on the Housing Services page 5 when using a National Objective Code of Low and Moderate Housing (LMH). Check off the activity being reported and address the following questions. If reporting on more than one activity, create a duplicate sheet for each activity. The following activities and matrix codes use this page:

(05) Public Services	(05L) Child Care Services
(05A) Senior Services	(05M) Health Services
(05B) Handicapped Services	(05N) Abused & Neglected Children
(05C) Legal Services	(05O) Mental Health Services
(05D) Youth Services	(05P) Screening Lead Paint & Hazards
(05E) Transportation Services	(05Q) Subsistence Payments
(05F) Substance Abuse Services	(05U) Housing Counseling
(05G) Battered & Abused Spouses	(06) Interim Assistance
(05H) Employment Training	(08) Relocation*
(05I) Crime Awareness	(09) Loss of Rental Income*
(05J) Fair Housing Activities	(15) Code Enforcement
(05K) Tenant/Landlord Counseling	

This page includes the common questions already addressed in this chapter such as the Program Description, Section 3, Minority Contractor Information, Type of Assistance, Direct Benefit and Income Levels. Complete the questions applicable to this activity by checking the box to the right and complete any appendix that may be required. Each worksheet includes Direct Benefit information such as race and the income levels of those being served. There are three additional sections for this worksheet that are different than other questions already discussed. The sections do not apply to the activities of Relocation (08), Loss of Rental Income (09) and Code Enforcement (15); however the information is still required for all other activities. The three sections include questions about Public Service, Homeless Prevention and Emergency Assistance.

Public Service (idis cdbg 17)

1. Indicate the number of persons/households assisted, according to the following:
 - a. Total being served for the program year
 - b. New access to this service, assistance, or facility.
 - c. Improved access to this service, assistance, or facility.
 - d. A service, facility, or assistance that is no longer substandard.

2. Some activities where persons benefit from the public works (public facilities) or public facilities (community facilities) include overnight shelters or other emergency housing. Provide:
 - a. What number of homeless persons were given overnight shelter and
 - b. Indicate the number of beds created in overnight shelter or other emergency housing from this activity.

Homeless Prevention (idis cdbg 31)

Complete this section if the activity is for Legal Services (05C) or Subsistence Payments (05Q).

1. Indicate the total number of homeless individuals benefiting from this activity.
2. Of the persons assisted, enter the number that:
 - a. Received emergency financial assistance to prevent homelessness.
 - b. Received emergency legal assistance to prevent homelessness.

Emergency Assistance - Subsistence Payments (idis cdbg 30)

Complete this section if the activity includes Legal Services (05C) or Subsistence Payments (05Q). The following questions must be addressed:

1. Indicate the total number of households or persons receiving assistance.
2. Of the total assisted, indicate the number that received short-term rental assistance (for not more than three months).
3. Of the total assisted, indicate the numbers that were previously homeless.
4. Of the number assisted that were previously homeless, indicate the number of chronically homeless.

Accomplishment Narrative

The Accomplishments Narrative field is used to provide additional information on the status of the activity that cannot be expressed by the other fields. It can be used to explain any delays, and provide a timeframe for completing the activity.

HOW TO COMPLETE
PAGE 8 Business Assistance & Infrastructure (BA&I)
& PAGE 9 Micro-Enterprise (Micro)

ECONOMIC DEVELOPMENT

Business Assistance & Infrastructure / Micro-Enterprise

A number of activities are funded under Economic Development Allocation and require performance measurements information. At the top of the page, indicate the activity funded by checking the box next to the description:

- (14E) Rehabilitation Public/Private Commercial Industry
- (17A) Commercial Industrial Land Acquisition/Disposition
- (17B) Commercial Industrial Infrastructure Development
- (17C) Building Acquisition, Construction, Rehabilitation
- (17D) Other Commercial/Industrial Improvements
- (18A) Economic Development – Direct Financial Assistance for For-Profits
- (18C) Micro-Enterprise Assistance
- (03P) Health Facilities - Jobs

This page includes the common questions already addressed in this chapter such as the Program Description, Section 3, Minority Contractor Information, Type of Assistance, Direct Benefit, and Income Levels. In the Program Description section complete the questions that apply to this activity by checking the box to the right of each question. When necessary, complete any appendix pages that are required for the activity.

The level of information required for each activity is based on which National Objective assigned to the project when funded. For all activities reported under the Economic Development Allocation, HUD currently requires information about the direct beneficiaries such as race (cdbg08) and income (cdbg13).

For all activities that include the creation or retention of jobs under the National Code Objective of Low and Moderate Jobs (LMJ), the beneficiaries are persons whose jobs were created or retained as a result of CDBG funding. Jurisdiction must complete the **Job Creation/Retention** (idis cdbg 11) and **Type of Jobs Created** (idis cdbg 26-27) sections. This will provide HUD the number of jobs created, retained, and a description of the jobs created or retained for the year. HUD also requires a DUNS number for each business assisted (cdbg 29).

Job Creation/Retention (idis cdbg 11, 26, & 27)

In the Job Creation/Retention section, grantees should provide the actual number of jobs created and/or retained as a result of the activity. The information should represent a single report period (Single year) and not represent an accumulation of the jobs for the entire grant period.

Attention Micro-Enterprise grantees! Job Creation/Retention is not a CDBG requirement for Micro-Enterprise activities. However, since Micro-Enterprise assistance results in the creation of jobs, HUD is collecting job data to report to Congress and other decision makers on the positive impacts of this important activity.

Of the jobs created/retained, grantees will also report on the number of jobs that are full time and part time positions and also on the number of jobs that are held by low and moderate income persons. When reporting on the part time jobs, IDIS requires the total hours worked each week by part time employees. The information is required for both proposed and actual part time hours. For example if a business will create five part time jobs with three people working 20 hours each and two people working 15 hours each, the total hours to report for a week would be 90 hours. The following further describes how to complete this section:

1. Actual

Create: Enter the total number of full time positions created this report period. Of the full time positions, indicate the number of positions held by low and moderate income persons. Also report on the number of part-time positions created by indicating the total weekly hours worked and of those hours, the number of hours worked by low and moderate income persons.

Retain: Enter the total number of full time positions that were retained by the activity this report period. Of the full time positions, indicate the number of positions held by low and moderate income persons. Enter the number of hours worked by part-time employees whose jobs were retained by indicating their total weekly hours, and of those hours, how many hours were worked by low and moderate income employees.

2. **Health Care Benefits:** For the jobs reported, indicate the number of jobs created with employer sponsored health care benefits. Also for Jobs that were retained, provide the number of jobs with employer sponsored health care benefits.

3. **Unemployed:** For the Jobs that were created, indicate the number of persons who were previously unemployed.

4. **Job Category:** Indicate the number of Jobs Created and Jobs Retained by Job Category. Next to each Job description, indicate the total number of jobs created under this category. Use the Economic Development Administration's Job Category Definitions for guidance.

Assistance To Business (idis cdbg 28)

Complete the following section if funds were awarded from the CDBG Enterprise or the Over-the-Counter allocation for Business Assistance, Infrastructure, or **Micro-enterprise**.

1. **Business assisted - NEW** Indicate the current number of business Start-ups Assisted in your last GPR report. If this GPR represents the first time you are reporting accomplishments, than NO (or zero) Start-ups would be reported. When reporting the first year, indicate only the number Start-ups that were assisted in this Report period. This represents only those Start-ups receiving assistance during the report period (July 1 to June 30) and not for prior years. Under "Total Start-ups assisted under this contract", this number represents all Start-ups (Cumulative) that have been assisted by this contract and award. Do not include any numbers about the proposed number of Start-ups you anticipate. Report only the actual number of Start-ups assisted and/or that received funding.

Business assisted - EXISTING Indicate the number of Existing Business that were provided assistance in the last GPR report. If this GPR represents the first time you are reporting accomplishments, than NO (or zero) Existing Business would be reported. When reporting the first year, indicate only the number Existing Business assisted in this Report Period. This represents only those Existing Business receiving assistance during the report period (July 1 to June 30) and not for prior years. Under "Total Existing Business Assisted under this contract", this number represents all Existing Business that have been assisted by this contracted and award. Do not include numbers about any of the proposed number of Existing Business you anticipate to fund or assist. Only provide the number of Existing Business assisted and/or that received funding.

If applicable, provide the number of existing business assisted that are expanding. This number reported should be the total number of existing business expanding, and not just those who are expanding in a single report period. Report the number of expanding business based on the total number of existing business reported in contract period.

If applicable, provide the number of existing business assisted that are relocating. This number reported should be the total number of relocating businesses and not just those who are relocating in a single report period. Report the number of businesses relocating based on the total number of existing business assisted in contract period.

2. Provide the name of the New or Existing Business assisted and their DUNS Identification. A business can obtain a DUNS number on the internet at www.dnb.com/US/duns_update/.
3. If applicable, indicate the number of businesses with commercial facade treatment and/or business rehabilitation.
4. If applicable, indicate the number of businesses assisted that provide goods or services to meet the needs of a service area, neighborhood, or community:

Public Facilities and Improvements in Support of Jobs (idis cdbg 17b):

If the Economic Development activity includes funding for a public facility or public improvement with a national objective of Low/Mod Jobs (LMJ), then address the following questions about the facility or improvement:

1. Indicate the number of persons/households that:
 - a. Benefited during the program year.
 - b. Now have new access to this public facility (community facility) or public improvement (public works).
 - c. Now have improved access to this type of public facility (community facility) or public improvement (public works).
 - d. Are served by the public facility (community facility) or public improvement (public works) that is no longer substandard.

2. Some activities where persons benefit from the public facilities may include overnight shelters or other emergency housing. Indicate the number of beds that were created in the overnight shelter or other emergency housing.

Accomplishment Narrative

The Accomplishments Narrative field is used to provide additional information on the status of the activity that cannot be expressed by the other fields. It can be used to explain any delays, and provide a timeframe for completing the activity.

Page 9, Micro-Enterprise (to be completed only by grantees funded for Micro-Enterprise)

The questions on this page are similar to those described above; however, page 9 also includes additional data to be collected only for Micro-Enterprise activities.

F. **Appendix Pages:**

The following information describes the five (5) GPR Appendices that can be accessed by clicking one of the macro buttons on the Program Description page or by simply moving the cursor down the report page. Site each activity page include appendices at the bottom of the page, you will end up with nine (9) copies of the five (5) appendix pages if the entire workbook is printed. To avoid printing blank pages the Appendices, you may want to select only the activity pages you need to print.

Appendix A

One for One Replacement

Complete this section when reporting on any replacement housing required under 24 CFR §570.496a(c) (1) and 24 CFR §570.606(c) (1). This information is required to record the number and type of housing units being replaced due to the conversion or demolition of one or more occupied or vacant lower-income units.

Under the one-for-one replacement rule, provide replacement dwelling units when ever occupied and vacant low/moderate dwellings units are demolished or converted to another use. Conversion to another use occurs when an activity (typically rehabilitation of a low/moderate income dwelling unit) results in that unit no longer being a low/moderate income unit because either 1) As a result of the activity, the rent exceeds the Section 8 fair market rent, or 2) the unit has been converted to another use other than housing.

List the address of all units converted and/or that will be demolished as well as identify the address of where the replacement units are located. Data that describes the units to be demolished or converted includes the type of units and the number of the units based on one of the following; 0/1 Zero or One bedroom unit, Two Bedroom units, Three Bedroom Units, Four Bedroom Units, or 5+ Five or more Bedroom units. For the units being converted or demolished, enter the date of the grant or loan agreement made with the property owner, and also provide the date of the contract to begin demolition or conversion of the project.

Next identify the address of the property designated to be the replacement property and include the address. Indicate the number of units and the type of units that will serve as the replacement. Indicate the date of when the new or converted units will be made available. If the local jurisdiction received a waiver from HUD and the Department that allowed an Exception Agreement (waiving the requirement to provide a replacement unit) then enter the date of that Exception Agreement.

Appendix B

Displacement (idis cdbg 15)

Complete this section when the activity involves displacement. The jurisdiction needs to provide each Census Tract and the name of the city where the displacement occurred. This applies to any household, business, farm, or nonprofit organization that moved from any property as a direct result of rehabilitation, demolition or acquisition of any CDBG assisted activity. When completing the form, provide the number of those displaced, their ethnicity and the number that remained in the census tract. If the relocation was to another Census Tract or city, complete one or more of the GPR Displacement forms as required. The information that is required is a valid Census Tract, number of those displaced, the number that remained and the number of those relocating.

Appendix C

Presumed Benefit & Nature and Location (idis cdbg 10)

Provide a description of how the nature and/or location of the activity benefits a limited clientele, at least 51% of whom are low and moderate income. For example, it would be reasonable to classify a dental program that only serves residents of a public housing project as an activity that benefits a low and moderate clientele based on the nature and/or location. A description that justifies this designation is all that is required (Idis cdbg 10).

Appendix D

Subrecipient Agreement

HUD requests additional information on a subrecipient that is being used completed the work when the grantee did not directly administer the activity. Please identify the subrecipient that administered the activity for your organization.

1. Indicating if the work was carried out by grantee employees, contractors, or by a combination of grantee employees and contractors.
2. If the activity was not being carried out by the grantee, provide the name of the organization and identify information about the organization.
3. Check all descriptions that apply to the organization.

The Housing and Development Act §105(a)(15) describes the agencies providing assistance, in pertinent part, as neighborhood-based nonprofit organizations, local development corporations, and nonprofit organizations serving the development needs of communities in non-entitlement areas to carry out neighborhood revitalization, community economic development or energy conservation projects in furtherance of the objectives of section 5301(c) of this title.

Appendix E

Slum & Blight (idis cdbg 12)

Provide a description of the boundaries of the designated slum and blight area. Also indicate the percent of buildings that were deteriorated when the area was designated slum/blight. If qualifying on the basis of the condition of public improvements, provide a brief description for each type of improvement that is within the area and its condition at the time of the designation. Indicate the year of the designation.

CHAPTER 11

OMB Circular A-133 SINGLE AUDIT REPORT

Introduction

The Single Audit Act and Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, requires non-federal entities that expend equal to or in excess of \$500,000 in federal awards within a fiscal year (July 1 - June 30) to have an audit performed in accordance with the Single Audit Act.

This chapter addresses what the OMB A-133 Single Audit is, what the basic requirements are, what the submission requirements are and how this is related to "eligible applicants" for CDBG funding, and how the CDBG program manages audit findings of our grantees.

Section 1 - Grantee Responsibilities

As a grantee of federal funds, you must be in compliance with Federal and State audit rules. This section covers what is required, when it is required, and outlines how to prepare for and respond to an audit.

A. Audit Requirements

1. Definitions: *Non-Federal entity* means a State, local government, or nonprofit organization.

Federal award means federal financial assistance and federal cost-reimbursement contracts that non-federal entities receive directly from federal awarding agencies or indirectly from pass-through entities. It does not include procurement contracts, funded under awarded grants or contracts, for buying goods or services from vendors. Any audits of such vendors shall be covered by the terms and conditions of the contract.

2. Requirements: Pursuant to the Office of Management and Budget (OMB) Circular A-133, non-federal entities that expend less than \$500,000 in federal awards (beginning January 1, 2004) are exempt from federal audit requirements for that year, except as noted under section .215, "Relation to Other Audit Requirements," in the Circular. However, other State or contract audit requirements might apply. **A letter to the SCO declaring an exemption from federal audit requirements is required.** There is no form from SCO for this purpose. (See Audit Submittal below for address).

Please Note:
Grantees are also responsible for obtaining audits from subrecipients, when applicable, that expend CDBG funds to operate CDBG activities (projects or programs). The grantee must confirm that the reporting subrecipients are conducting the required annual audits in accordance with current grantee policies and OMB Circular A-133

Non-federal entities that expend \$500,000 or more in a fiscal year in federal awards shall have a single audit conducted in accordance with the "Scope of Audit" section in the Circular.

The jurisdiction's auditor must follow the applicable OMB Circular to complete the audit. (See other references in Section 5.)

If the jurisdiction has given CDBG funds to a nonprofit organization (e.g., to operate an emergency shelter) via a subrecipient agreement, then the jurisdiction is responsible for ensuring that the nonprofit agency is in compliance with OMB Circular A-133. This includes monitoring the agency and ensuring that it submits a single audit, if required, and monitoring the resolution of any audit findings.

B. Preparing for an Audit

This explains the basic process to prepare for an audit when one is required.

1. Scheduling Audits: When an audit is required, the audited must submit a data collection form and a reporting package in accordance with section .320, "Report Submission," in the Circular. The reports shall be submitted within the earlier of 30 days after receipt of the auditor's report(s) or nine months after the end of the audit period. To meet the timing requirement for submission and NOFA application eligibility, a complete A-133 must be submitted to **both** the Federal Clearinghouse and the California State Controller's Office (SCO) on or before March 31, 2012 of each year for the fiscal year ending the prior June 30. (See Audit Submittal below for further submission instructions and requirements).
2. Selecting an Auditor: The selection of an outside Certified Public Accounting (CPA) firm must be consistent with procurement standards prescribed by Attachment O of OMB Circular A-102.

The American Institute of Certified Public Accountants (AICPA) requires that a financial audit be completed by an independent auditor. The audit should not be completed by anyone on the jurisdiction's staff or governing body.

3. Assembling Records: Prior to the arrival of the auditor, assemble the following CDBG records and files:
 - a) Financial reports submitted to the Department and those received from sub grantees.
 - b) All audit reports issued in the past two years.
 - c) The CDBG contract.
 - d) Copies of the CDBG State Regulations, OMB Circular A-87, GAO's Guidelines for Financial and Compliance Audits of Federally Assisted Programs and this Grant Management Manual.

- e) All major contracts, such as leases, employment agreements, and major purchase commitments entered into by the organization.
 - f) Cost allocation plan and SCO-approved indirect cost rate plan, if applicable.
 - g) Source documents, books of original entry and final entry, and worksheets.
4. Exit Interview: At the completion of the audit, the auditor should hold an exit conference. At the exit conference, the auditor will present the preliminary opinions and findings (both negative and positive). The jurisdiction should prepare a written response indicating agreement or disagreement to each finding. The response should include the jurisdiction's plans to resolve the findings and/or reasons for disagreement. The auditor will respond to the jurisdiction's response in the audit.
5. Audit Submittal: In addition to requiring that the complete audit package be sent to the Federal Clearinghouse, OMB Circular A-133, Subpart C, .320(e) - "Additional Submission by Subrecipients" also requires "...auditees that are also subrecipients shall submit to each pass-through entity, one copy of the reporting package..." In the case of CDBG funding, the Department is the pass-through entity, however, California state law (SAM 20700) states that the SCO is the designated agency for OMB A-133 compliance for local governments, thus grantees are required to submit their completed audit to the SCO at the address below. A copy of the A-133 Single Audit package should not be sent directly to CDBG.

SCO A-133 submission address:

**State Controller's Office
 Division of Audits
 Financial Audits Bureau/Single Audits Unit
 P.O. Box 942850
 Sacramento, CA 94250-5874**

Deadline for submission to the SCO for NOFA application eligibility purposes is the NOFA application due date each fiscal year. The SCO will review all submissions and notify grantees and the Department of any technical compliance issues and will add the jurisdiction's name and A-133 status to the Status List. The Department will check this list after 5:00 PM on the application due date to determine applicant eligibility. Applicants determined to be eligible will have an opportunity to present documentation to prove that they were in compliance with the SCO submission requirement prior to the application due date.

State Administrative Manual 20700 requires that **all local governments submit their complete A-133 Single Audit packages to the State Controller's Office (SCO)**. For further information see: <http://sam.dgs.ca.gov/TOC/20000/20070.htm>

And, for further information on the SCO submission, see SCO's webpage at: http://www.sco.ca.gov/aud_single_audits.html

For NOFA application eligibility, SCO must be in receipt of the jurisdiction's complete A-133 Single Audit package by the NOFA application due date each year.

6. Payment of Audit Costs: Pursuant to OMB Circular A-133 and A-87, the percentage of costs charged to Federal awards for a single audit shall not exceed the percentage derived by dividing federal funds expended by total funds expended by the recipient (including program matching funds) during the fiscal year. This percentage may only be exceeded if appropriate documentation demonstrates higher actual costs.

Please refer to the "Audits Costs" section of the Circular for audit costs that cannot be charged to CDBG grants.

C. Resolving Audit Findings

The Department is responsible for reviewing all State CDBG grantee audit findings and issuing a Management Decision Letter to grantees with findings within 180 days from the date the audit was received by SCO. The Management Decision Letter will list all CDBG findings, per the A-133 Single Audit Report, and the Department's required corrective action. This action may include the repayment of disallowed costs.

The Management Decision Letter will also give the grantee a period of time to correct and submit the supporting documents that show the grantee has policies and procedures in place that will ensure future findings are mitigated.

The Department will review the response and, if in agreement, will notify the jurisdiction in writing that the finding(s) have been resolved (Clearance Letter). The Department will continue to support the grantee in implementing all necessary safeguards to help ensure compliance with federal, CDBG requirements.

Resolution of audit findings is very important. Lack of timely response could result in a loss of points on future CDBG applications.

Section 2 – Common Problems

- Records not maintained on a current basis or not kept in accordance with standards contained in the State regulations;
- Not recording all receipts (e.g., CDBG advances, loan application fees, rental income, program fees, bid deposits, etc.);
- Bank reconciliations and subsidiary ledgers not maintained (such as rehabilitation loan ledgers that accurately identify amounts borrowed, payments, additions and balances);
- Financial data, as shown on performance reports, not reflecting the records;
- Late or missing reporting requirements;
- Unsupported or insufficient support for payments;
- Expenditures made prior to the date the Department signed the grant agreement;
- Program income not used for approved CDBG activities; or,

- Funding of projects outside approved geographic boundaries described in the application.

Section 3 – Department's/State's Role

Once the audit is completed, counties and cities must submit the completed annual audit to the SCO ("complete" is determined by SCO and must include all parts of the audit required by SCO). The audit will be reviewed for technical accuracy, and the SCO will notify the grantee if the audit does not meet the financial and compliance audit requirements of generally accepted governmental auditing standards.

Non-submittal or incomplete submittal to the SCO may result in the following actions, if not corrected:

- Withholding a percentage of Federal awards until the audit is completed satisfactorily;
- Withholding or disallowing overhead costs;
- Suspending Federal awards until the audit is conducted; or,
- Terminating the grantee's Federal award.

Section 4 - CDBG Application Threshold Requirement

The State CDBG Program's annual Notice of Funding Availability (NOFA) contains details of application thresholds related to the OMB A-133 Single Audit requirements. Per 25 CCR 7060(a)(4), and as noted above, **all prospective applicants must be in compliance with OMB A-133 Single Audit *submission* requirements at time of application.** The Department will determine eligibility by communicating directly with SCO, either via their on-line Status Report or via discussing applicant's submission status directly with SCO staff.

For NOFA eligibility purposes, OMB A-133 Single Audit reports are due to the State Controller Office (SCO) nine months after the entity's fiscal year end (Reference: OMB Circular A-133, "Report Submission" section, items (e) and (f).). For most California entities, **reports are due March 31st of each fiscal year.** As noted earlier, the State Administrative Manual §20700, states that the California Department of Finance designated SCO as the coordinating agency for A-133 compliance for all pass-through entities.

The annual CDBG NOFA and Application will provide the most up to date web-link to the SCO status report so every prospective applicant will have an easy and effective method by which they can check and confirm SCO's acceptance of their OMB A-133 Single Audit report. Compliance is a CDBG application threshold requirement; therefore this information should be carefully checked and confirmed before the CDBG application is submitted.

Applicants will be considered "in compliance" as of the date of the CDBG application deadline if the SCO's Single Audit Status Report shows their jurisdiction's audit listed under one of the following Desk Review Statuses: **Accepted, In Process, Exempt, or No Review.** Jurisdiction audits showing any other Desk Review Status will be *ineligible* to apply.

To ensure accuracy and provide each jurisdiction the fullest opportunity to meet this threshold requirement, once CDBG staff has verified each applicant's status using the SCO status report, CDBG will submit a list of potentially *ineligible* applicants to the HCD Audit Department along with a request that the SCO be contacted to confirm the accuracy of the OMB A-133 report status as of the specific date of CDBG application deadline.

Applicants determined to be ineligible due to being out of compliance with the submission requirements of SCO will be given an opportunity to provide evidence to the contrary.

Section 5 - References

- State CDBG Regulations, Section 7122, contains the audit requirements for the State CDBG Program (http://www.hcd.ca.gov/fa/cdbg/State_CDBG_Regulations_August_2012.pdf).
- Government Auditing Standards (Yellow Book) published by the U.S. General Accounting Office contains audit standards for the audit of organizations receiving Federal funds for their programs, activities, functions, and for Federal funds received by contractors, nonprofit organizations, and other external organizations (<http://www.gao.gov/yellowbook>).
- OMB Circular A-87 establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally recognized Indian tribal governments (governmental units) (http://www.whitehouse.gov/omb/circulars_a087_2004/).
- OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments describes the auditing requirements for local jurisdictions (<http://georgewbush-whitehouse.archives.gov/omb/circulars/a102/a102.html>).
- OMB Circular A-122, Cost Principles for Non-Profit Organizations establishes principles for determining costs of grants, contracts and other agreements with non-profit organizations (http://www.whitehouse.gov/omb/circulars_a122_2004/).
- OMB Circular A-133 requires that the audit of State, local governmental, and nonprofit organizations, programs, activities, and functions performed by State or local government auditors or by public accountants be made in accordance with General Accounting Office audit standards (http://www.whitehouse.gov/sites/default/files/omb/assets/a133_compliance/arra_addendum_1.pdf).
- Public Law 98-502 - the Single Audit Act of 1984.
- Federal Audit Clearing House (<http://harvester.census.gov/sac/>).
- California State Controller's Office (SCO) (http://www.sco.ca.gov/aud_single_audits.html#middle_column).
- California State Administrative Manual (SAM) (<http://sam.dgs.ca.gov/TOC/20000/20070>).

CHAPTER 14

PROGRAM INCOME AND REVOLVING LOAN ACCOUNTS

Introduction

Under the Community Development Block Grant (CDBG) Program, there are specific rules and requirements associated with the management and use of Program Income (PI) received by grantees and their subrecipients.

This Chapter defines PI, explains the PI Reuse Plan, and describes requirements for managing, using, tracking and reporting PI to the Department. Forms, instructions, and additional resources are provided as separate attachments to this chapter.

Program Income constitutes federal CDBG funds and must be expended and used in compliance with all CDBG statutes and regulations. Like CDBG grant funds, for example, PI must be used for CDBG Eligible Activities that meet a National Objective.

This Chapter does not discuss asset management or loan portfolio management, as these subjects are discussed in detail in Chapter 19 of this Grant Management Manual. However, it is important for grantees that provide CDBG funds in the form of loans to ensure that they have an adequate "system" for documenting, tracking and accounting for repayments of CDBG loans: Program Income.

Section 1 - What is Program Income

PI as defined in *CFR §570.489(e)(1) [CDBG Final Rule 2012]*, is gross income received by a jurisdiction, or a subrecipient of the jurisdiction that was generated from the use of CDBG funds, regardless of when the CDBG funds were appropriated and whether the activity has been closed out. When income is generated by an activity that is only partially assisted with CDBG funds, the income must be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; or a single parcel of land purchased with CDBG funds and other funds). Program income (as applied in the State's CDBG Program) includes, but is not limited to, the following:

- A. Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds, except as provided in Section 2 below defining what income is NOT PI;
- B. Proceeds from the disposition of equipment purchased with CDBG funds;

PRORATION

When income is generated by an activity that was only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used. For example, if a loan was originally made using 50 percent (50%) CDBG funds and 50 percent (50%) local funds, then 50 percent (50%) of the repayment of that loan would be considered CDBG PI.

- C. Gross income from the use or rental of real or personal property acquired by the jurisdiction or subrecipient of the jurisdiction with CDBG funds, less the costs incidental to the generation of the income;
- D. Gross income from the use or rental of real property, owned by the jurisdiction or other entity carrying out a CDBG activity that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;
- E. Payments of principal and interest on loans made using CDBG funds, except as provided in Section 2 below defining what income is NOT PI;
- F. Proceeds from the sale of loans made with CDBG funds, less reasonable legal and other costs incurred in the course of such sale that are not otherwise eligible costs under sections 105(a)(13) or 106(d)(3)(A) of the Act;
- G. Proceeds from the sale of obligations secured by loans made with CDBG funds, less reasonable legal and other costs incurred in the course of such sale that are not otherwise eligible costs under sections 105(a)(13) or 106(d)(3)(A) of the Act;
- H. Interest earned on funds held in a revolving fund account (RLA);
- I. Interest earned on program income pending disposition of the income;
- J. Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not of low and moderate income, if the special assessments are used to recover all or part of the CDBG portion of a public improvement; and,
- K. Gross income paid to a jurisdiction or subrecipient of the jurisdiction from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

Section 2 - What is Not Program Income

Per CFR §570.489(e)(1) [CDBG Final Rule 2012], (as it applies to the State's CDBG Program), PI does not include:

- A. The total amount of funds, which does not exceed \$35,000 received in a single year from activities, other than revolving loan funds that is retained by a jurisdiction and its subrecipients (all funds received from revolving loan funds are considered program income, regardless of amount). See Section 7 – Program Income Accounting for further discussion.

"DE-FEDERALIZING PI"

While the Final Rule increases the amount of PI that can be de-federalized from \$25,000 to \$35,000, it is important to note that the Final Rule removes all RLA funds (including interest earned in a RLA) from the \$35,000 calculation. *All funds in any RLA are considered Program Income.*

- B. The following classes of interest, which must be remitted to HUD for transmittal to the Department of the Treasury, and will not be reallocated under section 106(c) or (d) of the Act:
1. Interest income from loans or other forms of assistance provided with CDBG funds that are used for activities determined by HUD to be not eligible under §570.482 or section 105(a) of the Act, to fail to meet a national objective in accordance with the requirements of §570.483, or to fail substantially to meet any other requirement of this subpart or the Act;
 2. Interest income from deposits of amounts reimbursed to a state's CDBG program account prior to the state's disbursement of the reimbursed funds for eligible purposes; and,
 3. Interest income received by units of general local government on deposits of grant funds before disbursement of the funds for activities, except that the jurisdiction may keep interest payments of up to \$100 per year for administrative expenses otherwise permitted to be paid with CDBG funds.
- C. Proceeds from the sale of real property purchased or improved with CDBG funds, if the proceeds are received more than 5 years after expiration of the grant agreement between the state and the jurisdiction.
- D. Interest earned on open grant advances. This must be returned to the Department. (See Chapters 9 and 13.)
- E. Unexpended CDBG loan/grant funds. For example, if a grantee made a \$40,000 loan to rehabilitate a dwelling but the final cost was only \$35,000, the \$5,000 would be returned to the grantee loan pool as unspent funds.
- F. Any rebates, credits, discounts, refunds, etc. and interest earned.

Section 3 - Revolving Loan Accounts (RLAs)

RLAs are separate accounts independent of other program accounts. RLAs are limited to the following four activities, and are established to generate loans for:

- A. Housing Rehabilitation – Single Family (1-4 units);
- B. Direct Homeownership Assistance (Homebuyer);
- C. Business Assistance; and,
- D. Microenterprise Assistance;

NOTE: Multi-Family (5 or more units) Rental Rehabilitation is not listed among the four RLAs above, and thus may not be completed under an RLA. Each Multi-Family Rental Rehabilitation project must be submitted to the Department under the Program Income Waiver or applied for under the annual NOFA for grant funding.

These in turn generate repayments to the RLA for continued use in carrying out such CDBG eligible activities.

A jurisdiction may establish several RLAs, but each must be for one of the single, CDBG eligible lending-type activities listed above, which must meet a CDBG national objective. The name of the RLA should reflect its single activity name in order to avoid confusion on CDBG reports. (CFR §570.489(f)).

Housing Rehabilitation Revolving Loan Account

The CDBG eligible activity under this RLA is a single-family housing rehabilitation program. The program will be used for the purpose of making loans to rehabilitate residential units (1-4 units), occupied by income eligible households. The CDBG national objective of benefit to Low/Moderate-income (Low/Mod) households will be met by limiting program participants to households that have an annual income at or below 80 percent (80%) of HUD median income limits for the jurisdiction's county. Households will be income qualified based on the income calculation method specified in 24 CFR Part 5, and in accord with the Department's Income Manual.

Rehabilitation of "projects" (projects with five (5) or more units on one site) is not allowed under this RLA. Projects with five or more units must be funded via the annual grant process or through the PI Waiver process.

Jurisdictions wishing to include tenant occupied projects for the Housing Rehabilitation program must submit separate (distinguishable from the Owner Occupied Housing Rehabilitation guidelines) guidelines outlining the unique tenant occupied rules and processes.

The review and funding of requests for CDBG loan or grant assistance under this RLA shall be conducted under the Housing Rehabilitation Program Guidelines that have been adopted by jurisdiction and approved in writing by the Department.

No more than 19 percent (19%) of program funds expended from this RLA shall be used for AD costs.

Direct Homeownership Assistance (Homebuyer) Revolving Loan Account

The CDBG eligible activity under this RLA is acquisition of single family housing. The program will be used for the purpose of making loans to assist income eligible homebuyers to purchase a residential property. The CDBG national objective of benefit to Low/Mod-income households will be met by limiting program participants to households that have an annual income at or below 80 percent (80%) of HUD median income limits. Households will be income qualified based on income calculation method specified in 24 CFR Part 5 and in accord with the Department's Income Manual.

The review and funding of requests for CDBG loan or grant assistance under this RLA shall be conducted under the Homeownership Assistance Program Guidelines that have been adopted by the jurisdiction and approved in writing by the Department.

No more than 8 percent (8%) of the funds expended from this RLA shall be used for AD costs.

Business Assistance Revolving Loan Account

The CDBG eligible activity of Special Economic Development will be conducted under this RLA. Specifically, the RLA will fund a business assistance program that provides direct financial assistance for eligible businesses that propose projects which create or retain permanent jobs. The CDBG national objective being met by the Special Economic Development activity will typically be benefit to Low/Mod-income persons. As such, at least 51 percent (51%) of the full time job positions created or retained will be made available to persons whose households have an annual income at or below 80 percent (80%) of the jurisdiction's **county** median income. Income eligibility is based on the income calculation method specified in 24 CFR Part 5 and in accord with the Department's Income Manual.

Business assistance projects under this RLA program may also meet the national objective of elimination of slums and blight but this must be approved by the Department in writing as part of the business's initial loan application.

Under this RLA, the use of Area Benefit to meet the national objective requirement is allowed in limited circumstances. Therefore, jurisdictions should discuss this with their Economic Development Loan Rep before moving forward with any assistance under this RLA. Assistance under this RLA requires approval in writing from the Department.

Local review and underwriting of business assistance projects requesting a CDBG loan under this RLA shall be conducted under the Business Assistance Program Guidelines that have been adopted by the jurisdiction and approved in writing by the Department.

Each individual project funding request made under this RLA program must be submitted for Department review and written approval, prior to closing the loan.

Up to 15 percent (15%) of the total funds expended for business assistance activities shall be used for activity delivery costs.

Microenterprise Assistance Revolving Loan Account

The CDBG eligible activity of direct financial assistance to eligible microenterprise businesses will be conducted under this RLA. Specifically, the RLA will fund a microenterprise direct financial assistance program that provides financial assistance to start up or existing microenterprise businesses. Eligible businesses must meet the HUD definition of microenterprise. A microenterprise is defined as a business that has five (5) or fewer employees including the owner(s). The only CDBG national objective which will be used for this activity is benefit to Low/Mod-income households. As such, micro business owners assisted under this program must be documented as having an annual household income at or below 80 percent (80%) of the jurisdiction's **county** median income, based on income calculation method specified in 24 CFR Part 5, and in accord with the Department's Income Manual.

Local review and underwriting of microenterprise business assistance projects requesting a CDBG loan or grant under this RLA shall be conducted under the Microenterprise Financial Assistance Program Guidelines that have been adopted by the jurisdiction and approved in writing by the Department.

Each individual project funding request made under this RLA program must be submitted for Department review and written approval, prior to closing the loan.

Up to 15 percent (15%) of the total funds expended for business assistance activities shall be used for activity delivery costs.

- A. In order to assure compliance with all applicable federal overlay requirements, Departmental approval of a PI Reuse Plan must be formally requested. (See Section 4 below for PI Reuse Plan information.) Additionally, before any RLA can become active, the PI Reuse Plan must be subject to proper Citizen Participation procedures, and adopted by the jurisdiction's governing board.

Once approval is requested and granted by the Department, and the PI Reuse Plan has been adopted by the jurisdiction's governing board, including being signed by both the jurisdiction's Authorized Representative and the Department's CDBG Section Chief, a jurisdiction, may proceed with expenditure of PI through the RLA(s) described in their approved PI Reuse Plan. (Please see fillable template for the PI Reuse Plan online in this Chapter, under Forms/Reports.)

- B. Each RLA must be "**substantially revolving**," defined as the use of at least 60 percent (60%) of the funds in an RLA for loans, which will then be repaid to the account. Amounts up to the remaining 40 percent (40%) may be expended on non-revolving activities, activity delivery, and grants for the same activity as the RLA. **Note: GA is not included in the calculation for percentage of RLA expenditures that are non-revolving.**

- C. PI in an RLA designated for the same activity as any active grant must be "**substantially expended**" before grant funds are requested for the grant activity. In this case, substantially expended means having no more than \$5,000 in the RLA.

- D. If a RLA activity is different than activities funded by active grants, (grant activities such as Public Service or Public Facilities) the PI funds do not need to be substantially expended prior to requesting more grant funds.

PROGRAM INCOME BALANCE

The Department reserves the right to ensure grantees are expending PI in a timely manner. Jurisdictions with excessive PI (\$500,000 or more, including GA) at the end of the fiscal year will be required to submit a plan for expending the funds or risk having to return the PI to the Department. The Grantee should use the PI Annual Report to describe the reason for the large amount of PI on hand and the method(s)/plan(s)/reason(s) the grantee will use to reduce the amount over the coming year.

However, if the jurisdiction needs to 'accumulate' PI to fund a project that will cost more than \$500,000, the jurisdiction must identify the project in their **Semi-Annual PI Expenditure/Performance Report** (in the Annual Comment Section of the Report) with a detailed narrative about the project and the expected timing for the project to start and complete.

Approval of a PI Balance above \$500,000 will be made on a case-by-case basis.

- E. When completing the Semi-Annual PI Expenditure/Performance Report, expenditures of PI through an RLA are reported. As with other CDBG fiscal reports, funds are considered to have been expended once the costs have been incurred for actual work completed and paid (cash basis accounting).
- F. Each RLA must have an approved set of program guidelines. (For template guidelines please see this Chapter's webpage under "Additional Resource Information".) A single set of guidelines must be used to administer the RLA and the same type of grant-funded activity in an open grant. However, if the RLA activity is different than the open grant activity, the program guidelines need to clearly reflect these differences.
- G. The transfer of PI from one RLA to another, or from an RLA to an open grant, or PI Waiver project, is allowable. However, the transfer must be approved by the jurisdiction's governing body, and the Department.

If the jurisdiction's PI Reuse Plan does not allow for the transfer, the jurisdiction must update the PI Reuse Plan to reflect the transfer options, including the addition of the PI Waiver option. While the PI Reuse Plan has a 5 year expiration date from final execution, it is recommended that the governing body review it at least annually to determine if the plan should be revised.

The approval must be complete before a transfer can be done. Also, please note that the revision of the PI Reuse Plan would require Departmental approval and execution before it can be considered "complete". Until then, the Semi-Annual PI Expenditure/Performance Report should reflect these funds as not being transferred. These types of transfers may be done at any time during the year.

- H. If the transfer of PI from one RLA to another, or from an RLA to an open grant, is in the aggregate amount of \$5,000 or less, the transfer is not subject to the Citizen Participation requirement. However, a certified resolution is required.

Section 4 - Program Income Reuse Plan

The PI Reuse Plan is intended to satisfy Federal requirements specified in Section 104(j) of the Housing and Community Development Act ("the Act"), as amended and 24 CFR 570.489(e)(3)(ii)(B). These sections permit a unit of general local government to retain PI for CDBG-eligible community development activities if the State has granted advance approval of a local plan that will govern the expenditure of these funds. The PI Reuse Plan therefore serves as an acceptable substitute for an ongoing contract with the Department. The Department has developed a PI Reuse Plan that contains all the necessary language and information to ensure that all the contractual requirements for PI are included.

Click here to open a copy of: [The PI Reuse Plan Template](#). The template can also be found with all other CDBG forms [at this link: CDBG Forms and Reports](#); or on this chapter's webpage under Forms/Reports.

Steps for Adopting a PI Reuse Plan

1. Submit draft PI Reuse Plan to your CDBG Representative for review and approval (submit Program Guidelines for approval also, if not already approved).
2. Complete the Citizen Participation process and obtain your governing body's approval.
3. Submit approved PI Reuse Plan (signed by the Authorized Representative) to your CDBG Representative.
4. Once you receive a copy back with the CDBG Section Chief's signature, you may expend the associated PI funds if all federal overlay components required for approval to expend funds have been completed.
5. The PI Reuse Plan is effective for five (5) years, at which time a new agreement must be executed between the grantee and the Department. PI may not be expended unless a new PI Reuse Plan is fully executed and adopted.

Section 5 - Committing Program Income to an Application or Open Grant

PI may be expended in conjunction with a CDBG grant. However, once committed, the PI must be expended before drawing down any additional funds from the respective grant activity.

There are two ways of committing PI using a grant activity:

- A. Committing PI to a specific activity in a new CDBG application.** There is no dollar amount limit, and must be done via a certified resolution while following the Citizen Participation process. The certified resolution and proof of publication (noticing the public hearing) must be submitted with the application. (See Chapter 18 for information on Citizen Participation/Public Hearings.) If the activity is awarded, the PI committed to the activity will also be approved. The amount committed must be available in the jurisdiction's PI account and cannot be used for any purpose until either all Special Conditions for the awarded activities have been approved in writing, or the jurisdiction has been informed that the activities the PI was committed to were not awarded.
- B. Committing PI to existing activities in an active CDBG grant.** There is no dollar amount limit, and may be done via a certified resolution while following the correct Citizen Participation. Approval will be done on a case by case basis (based on a re-evaluation of the application for the originally awarded activity) once the jurisdiction has submitted the request in writing to the department. It is recommended that the jurisdiction not start Citizen Participation or request a resolution from the governing body until initial approval is given by the Department.

If approved, this process will require a contract amendment to add the PI to the activity and may require additional clearance of special conditions.

Section 6 - Program Income Waivers

PI Waiver Forms can be found with all other CDBG forms at this link: [CDBG Forms and Reports](#); or on this chapter's webpage under Forms/Reports.

PI Waivers allow a jurisdiction to commit PI to an activity outside of an RLA or an open contract. In other words, with a PI Waiver, a jurisdiction may commit PI to a non-revolving activity that is not tied to an application or an open grant, or is a different activity than the jurisdiction has currently been awarded funds for.

In order to expend or commit PI as described above, a jurisdiction must submit a PI Waiver Request Form. On a case-by-case basis, the Department may approve a PI Waiver if the request is consistent with present policy as discussed in this Chapter, and if the requested activity meets all state and federal statutes and regulations, including eligibility and meeting a National Objective.

*PI Waivers are limited to **two** (2) "active" projects/programs at any one time. Active means the Waiver activity(s) has been approved by the Department (jurisdiction's receipt of the approval, signed by the CDBG section staff) but the jurisdiction has not yet "closed out" the approved activity. "Closed Out" has the same meaning as a grant activity with all the required reporting, Citizen Participation, and board resolutions.*

To request a PI Waiver, email the completed form to the CDBG program at CDBG@hcd.ca.gov, and to your HCD Representative. The submission steps are:

- Complete the correct PI Waiver Form, available here: [CDBG Forms and Reports](#), signed by the Authorized Representative, and ensure the form includes a detailed description of the activity that also provides information demonstrating that the project is eligible and meets a National Objective.
- CDBG Program staff will review the jurisdiction's PI Waiver request. Depending on the nature of the activity, the Department will approve, conditionally approve or deny the request.

Upon approval, the form will be returned to the jurisdiction indicating what conditions must be met, similar to contractual special conditions. The jurisdiction is not permitted to incur costs until all conditions given to the jurisdiction have been met (i.e., proof of Citizen Participation, NEPA clearance, proof of site control, procurement, Davis Bacon, etc.).

Section 7 - Program Income Accounting

- A. It is important to maintain separate accounting records for PI, which adequately identifies the source(s) and use(s) of PI. These records must contain information pertaining to all grant or sub-grant awards of PI and all authorizations, obligations, un-obligated balances, liabilities, outlays of expenditures, and income.

- B. Additionally, as with awarded grant funds, appropriate accounting records of PI costs for PI GA, Activity Delivery and activity costs must be maintained.
- C. Effective control and accountability for PI must be demonstrated through State program and fiscal monitoring, and an annual single audit, as required by 24 CFR 570.489(d), 24 CFR 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," OMB Circular A-87, A-122 and A-133.
- D. PI must be used solely for authorized purposes and each jurisdiction must exercise sufficient control to assure compliance with applicable CDBG program requirements, performance goals, and activities being carried out on a timely basis and within budget. The use of PI must be reported in the required annual audit (see Chapter 11) and cost principles associated with OMB A-87 must be used.
- E. PI received must be accounted for based on the jurisdiction's loan portfolio management system (see Chapter 19). This allows the tracking of PI earned by each loan.
- F. Per 24 CFR 570.489(e)(2)(i), as amended in the CDBG Final Rule May 23, 2012, all PI received through a RLA, will be counted a PI regardless of the amount, and all PI generated through an open grant that is \$35,000 or less may either be:
 - 1. Counted and reported as PI, allowing the Jurisdiction to include that amount in its PI GA (17%) calculation; or,
 - 2. Not counted as PI and reported as such, which "de-federalizes" the funds, and allows them to be deposited into the jurisdiction's General Fund. Supporting accounting records and documentation must be in the Jurisdiction's file to substantiate the calculations reported.

If PI is generated from a loan that is made partially from a RLA and partially from another source, PI accounting and reporting must reflect the correct amounts and proportions of PI from the RLA (counted and reported as PI Income) versus the amount generated from the other source. Proportional accounting would also be necessary if both grant and RLA funds were used to fund the loan. However this would only be needed if the jurisdiction chooses to use option 2 above.

- G. Separate accounts for RLAs is required by 570.489(f)(2), and although not required, it is strongly suggested to establish separate, interest-bearing, bank accounts for PI and RLAs as well. This will assist in determining how much interest income must be classified as PI and will aid in eliminating the risk of commingled funds.

H. Once the proper accounts have been established, it is essential the accounting procedures and internal controls be adequate to assure all PI is properly recognized. This requires establishing a system which will anticipate repayments of loans and take appropriate actions when loan repayments are delinquent. At a minimum, accounting procedures and internal controls must ensure the following:

1. All PI due to the jurisdiction is collected (i.e., loan payments).
2. All funds received are accurately classified and coded to the accounts to be credited, including the setting aside PI GA when repayment has been received.
3. The misappropriation of funds is prevented.
4. Funds are immediately deposited into the proper bank account.
5. PI funds are expended before requesting additional CDBG funds when using PI for the same activity as an open grant.

**SEMI-ANNUAL/ANNUAL
PROGRAM INCOME
EXPENDITURE AND
ACCOMPLISHMENT
REPORT**

As of January, 2012, the Department collects all PI and associated accomplishment data in a single Excel workbook. PI will be reported semi-annually, with those reports auto-populating the Annual PI Report. Accomplishments tied to the expenditure of PI will be reported annually (due July 31 each year) on new tabs that have been added to the workbook.

Section 8 - Program Income and Accomplishment Reporting

Jurisdictions that have either: 1) Made loans with State CDBG funds which, when repaid, would be considered PI; or, 2) Are receiving income that has been directly generated from the use of State CDBG funds, are required to submit the Semi-Annual PI Expenditure/Performance Report, which includes accomplishment data. This report is due twice per year to cover a full state fiscal year (see below for dates). It is required to be reported regardless of the amount of PI on hand at the jurisdiction (zero balance at the beginning and end of the report period must still be reported).

The PI reporting form is designed to automatically roll the aggregate information from both of the semi-annual forms into the annual form, and must be submitted electronically as instructed on the report.

Jurisdictions are required to have a positive PI balance on hand at the end of each semi-annual reporting period. The positive balance must be reflected on PI reports. Therefore, jurisdiction may not use a negative PI balance and fund activities with future PI receipts. Negative PI balances would require the jurisdictions to "repay" the PI account with local funds.

When to Submit

Semi-Annual/Annual Program Income Accounting and Accomplishment Report

Submit this report by: July 31st for period ending June 30th and January 31st for period ending December 31st.

Applicability

Semi-Annual / Annual PI Expenditure and Accomplishment Report Information

Both Semi-Annual and Annual PI reports must be submitted by all Grantees as noted above. This includes when the PI balance is less than \$35,000 or PI was not expended during the year, and when the PI balance on hand is zero. This report is required regardless of the amount of PI on hand.

The jurisdiction must use a single report form for the receipt of PI from all CDBG open and closed grants, waivers and RLA sources; and to report the actual expenditures of PI.

PI reports will include the actual expenditures of PI through RLAs, PI Waivers, and PI committed to open grants. The accomplishment types (people, businesses, housing units, and/or jobs) must be reported in the performance section of the Semi-Annual PI Expenditure/Performance Report as described in the text box above, and the narrative below.

Accomplishment Information

- All accomplishments achieved through the expenditure of PI outside of an open grant, including through RLAs and PI Waivers must be reported annually on the Semi-Annual/Annual Program Income Expenditure and Accomplishment Report.
- A properly publicized public hearing must be held to review the accomplishments associated with each active RLA.
- All accomplishments achieved through the expenditure of PI within an open grant will be reported within the Semi-Annual/Annual Grantee Performance Report.
- Semi-Annual/Annual Grantee Performance Report with accomplishments resulting from grant activities and the Semi-Annual/Annual PI Expenditure and Accomplishment Report with accomplishments resulting from the expenditure of PI (both are tracked separately in IDIS) is due by July 31st.
- Jurisdictions that are unable to report accomplishments and required demographic data risk having to repay their PI account due to not meeting a national objective, which therefore deems the activity ineligible.

PI EXPENDED WITHIN A GRANT

Accomplishment data resulting from activities within a **grant** (PI committed to a grant funded activity) must be reported with the Semi-Annual/Annual Grantee Performance Report.

However, the PI **expenditure** data is reported on the Semi-Annual/Annual PI Expenditure and Accomplishment Report.

Section 9 - Program Income Compliance

Activities funded with program income (PI) will be monitored in the same manner as active grants and must be in compliance with all Federal regulatory overlays, including:

- Procurement (Chapter 8)
- Citizen Participation (Chapter 18)
- Labor Standards (Chapter 5)
- Lead-Based Paint Regulations (Chapter 20)
- Environmental Review (Chapter 3): *For Housing Rehabilitation RLA, a jurisdiction may now request a 5-Year NEPA Clearance. (Refer to page 16 of Chapter 3 for more information.)*

Section 10 – Program Income General Administration (PI GA) and Activity Delivery (AD) Costs

It is important for jurisdictions to understand that PI GA and AD have very different requirements and associated responsibilities. While some CDBG eligible costs are considered both AD and PI GA, the jurisdiction's choice to charge a particular cost to AD or PI GA has ramifications the jurisdiction should consider.

For example, PI GA is limited to 17% of the total amount of received PI, which must be accounted for separately. While these funds can be rolled from year to year, a jurisdiction may not expend more than the 17% of PI received in that year. Expending more than the 17% would result in the jurisdiction having to repay the PI GA account for the amount expended over 17%.

AD cannot be expended unless it will result in an eligible activity that has met a national objective. Expending AD prior to this occurring would result in the jurisdiction having to repay the PI GA account for the amount of PI GA expended. AD is also limited to the amount available within a RLA that is non-revolving, which is up to a maximum of 40%. However, should PI GA be available, AD costs may be able to be paid for with PI GA funds. AD is limited to a Program Year (July 1-June 30) and if the funds have been expended with no national objective being met, the jurisdiction risks having to repay the PI account.

PI GA expenditures are not included in the 40% non-revolving calculation but AD is.

Program Income General Administration (PI GA) Expenses

- PI GA can be expended regardless of the expenditure of activity funds or AD. Once loan repayments are received, PI GA (17%) is taken off the amount received and accounted for separately from Activity and AD expenditures. (See Chapter 7, pg. 24 for a detailed chart of allowable costs.) Eligible costs, for example, may include loan portfolio management.
- Prior to 2011, allowable PI GA expenses were calculated based upon PI expended, and prior to May 23, 2012 CDBG Final Rules, allowable PI GA was 18 percent (18%).
- Are not considered to be specific to any activity, including an RLA activity.
- Must be accounted for separately since unexpended PI GA can roll from one fiscal year to the next (July 1-June 30).
- Planning Activities (PTA) are only eligible for funding under PI as PI GA. Any expenditure of PI GA for planning activities must be reported in the comment section of the PI report.

Activity Delivery (AD) Expenses

- AD expenditures are not eligible unless the activities in which the costs are associated have met a national objective. This applies to RLA, Waiver, or open grant activities.
- AD committed to an active grant activity is allowed at the same percentage rate as specified in the grant contract.
- AD must be specifically listed in the certified resolution when committing PI to the active grant activities and listed on PI reports.
- PI AD is allowed up to the **same maximum percentages used for grant funded activities** (See Chapter 7, page 24 for a detailed chart of allowable costs):
 - Housing New Construction - **8 percent (8%)**
 - Direct Homeownership Assistance - **8 percent (8%)**
 - Housing Rehabilitation - **19 percent (19%)**
 - Community/Public Facilities - **8 percent (8%)**
 - Public Services - **8 percent (8%)**
 - Improvements/Public Works - **8 percent (8%)**
 - Direct Economic Development Assistance – **10 percent (10%)**
 - If complex labor standards are invoked (see Chapter 5 – Labor Standards) then activity delivery for any of the above, with the exception of Housing Rehabilitation, can be up to – **12 percent (12%)**

Using CDBG PI for Loan Servicing (HOME and CDBG Funded Loans)

PI may be used to pay for CDBG and HOME Program loan servicing costs but only within the allowable 17 percent (17%) for PI GA.

Section 11 - Transferring Program Income To or From an Entitlement Program

Transfer of PI to Entitlement Program

Jurisdictions may move PI received under the State program to the Entitlement program if/when the jurisdiction is authorized and chooses to participate in the CDBG Entitlement Program provided the jurisdiction's governing body certifies to the Department in writing that the jurisdiction has:

- A. Officially elected to participate in the Entitlement Grant Program;
- B. Agrees to use such PI in accordance with Entitlement Program requirements;
- C. Set up Integrated Disbursement Information System (IDIS) access and agrees to enter receipt of PI into IDIS; and,
- D. The jurisdiction submits the above to the State and receives the Department's approval to no longer report State CDBG PI to the Department.

Transfer of PI of Grantees Losing Entitlement Status

The jurisdiction will inform the Department in writing of the Jurisdiction's decision to either:

- A. Retain program income generated under Entitlement grants and continue to comply with Entitlement program requirements for program income; or,
- B. Retain the program income and transfer it to the State CDBG program, in which case the Jurisdiction will certify that it will comply with the state's rules for program income, and the requirements of 24 CFR 570.489(e) and (f).

Section 12 - Q & A

- Q. *Does PI expended on planning activities need to be tracked as PI GA, and therefore fall under the 17% PI GA Cap?*
- A. Yes, PI expended on planning activities fall under the PI GA Cap.
- Q. *What is the maximum that I am allowed to have in an RLA and still request grant funds for the same activity?*
- A. In order for the RLA funds to be considered substantially expended, you may have no more than \$5,000 in the RLA.
- Q. *Where do I report the PI accomplishment information that used to be in the GPR?*
- A. **Accomplishments from PI expended on an open grant activities are reported annually on the Semi-Annual/Annual Grantee Performance Report**

Accomplishments from PI expenditures from a RLA or a Waiver activity are reported annually on the Semi-Annual/Annual PI Expenditure and Accomplishment Report.

Both accomplishment types are tracked separately in IDIS and both reports are due by July 31st each year.

Section 13 - References

- A. Final Rule (FR) 570.489(e) and (f):** Defines program income and criteria for establishing revolving loan accounts at the local level, as amended April 23, 2012, effective May 23, 2012 in the CDBG Final Rule.
- B. California Code of Regulations Title 25, s 7104.**

BUSINESS ASSISTANCE LOAN REVIEW CHECKLIST

RFP #10400
Appendix B8

INSTRUCTIONS FOR COMPLETION OF CHECKLIST:

1. MAXIMUM LOAN \$250,000
2. ALL loans must have PART ONE AND TWO COMPLETED. ALL DOCUMENTATION FOR THE LOAN MUST BE IN THE JURISDICTIONS LOAN FILE.
3. GRANTEE after completing the loan underwriting process may submit the loan package using the following options:
 - a. If the loan amount is \$70,000 or less, complete Checklist Part One and Part Two and submit ONLY PART ONE including supporting documentation and signed certification or;
 - b. If the loan amount is greater than \$70,000 and less than \$250,000, complete and submit PART ONE AND TWO including supporting documentation.
4. The loan package and all supporting documents must be organized and submitted in the order shown in the checklist and all pages MUST be numbered.
5. Refer to the INSTRUCTIONS and NOTES for completing the checklist and additional information regarding required documentation.

GRANTEE		UNDERWRITER	
Jurisdiction:		Organization Name:	
Name of Contact:		Contact Name:	
Phone:	E-Mail:	Phone:	E-Mail:
BUSINESS NAME:		NAME OF BORROWER(S):	
BUSINESS ADDRESS:			
PURPOSE OF LOAN: <input type="checkbox"/> Start Up <input type="checkbox"/> Expansion <input type="checkbox"/> Retention		Data Universal Numbering System (DUNS #): <i>(Borrower must secure a DUNS # before funds can be disbursed)</i>	
SOURCES OF FUNDS		DEBARRED STATUS: (EPLS Website: www.epls.gov)	
	AMOUNT	Business <input type="checkbox"/> No <input type="checkbox"/> Yes	
CDBG Open Grant		Borrower(s) <input type="checkbox"/> No <input type="checkbox"/> Yes	
CDBG Program Income		<i>(Borrower's who are on debarred status are not eligible to apply for CDBG funds)</i>	
Local Public Funds			
Borrowers Contribution			
Bank Loans			
Other (Specify)			
TOTAL PROJECT COST			

PART ONE:		
1. General Loan Documentation	YES	NO
a. Attached Loan Committee Memo with Detailed Project Description and Underwriting summary?	<input type="checkbox"/>	<input type="checkbox"/>
b. Attached completed NEPA review attached with original signatures?	<input type="checkbox"/>	<input type="checkbox"/>
c. Is Prevailing Wage Monitoring triggered? If YES , provide information on wage monitoring consultant.	<input type="checkbox"/>	<input type="checkbox"/>
d. Is Real Property to be acquired using CDBG Funds? If YES , has proper CDBG acquisition process followed?	<input type="checkbox"/>	<input type="checkbox"/>
e. Is Real Property Acquisition part of the project? If YES , is a proper option to purchase in place?	<input type="checkbox"/>	<input type="checkbox"/>
f. Will the Project cause Displacement of any persons or businesses?	<input type="checkbox"/>	<input type="checkbox"/>
g. Is the project within jurisdictional boundaries? If NO , attach an explanation and justification.	<input type="checkbox"/>	<input type="checkbox"/>
h. Date of Most Recent Program Guideline Approval:		

BUSINESS ASSISTANCE LOAN REVIEW CHECKLIST

2. National Objective (Complete A or B)	YES	NO
A. Documentation of Elimination of Slums and Blight	<input type="checkbox"/>	<input type="checkbox"/>
B. Documentation that Full Time Equivalent (FTE) TIG jobs (51%) will be created or retained	<input type="checkbox"/>	<input type="checkbox"/>
i. Is Employment Agreement for job creation and FTE TIG Certifications prepared and ready for execution?	<input type="checkbox"/>	<input type="checkbox"/>
ii. Total number of FTE jobs created/retained (FTE=1750 Hours Per Year):		
iii. Proposed number of FTE TIG jobs created:		
iv. Proposed number of FTE TIG jobs retained:		
v. Percentage of FTE TIG jobs created and/or retained:		%

3. Public Benefit	
a. Total number of FTE jobs created:	Total number of FTE jobs retained:
b. Does total number of FTE jobs support the loan amount? (One FTE required for each \$35,000 of funds)	<input type="checkbox"/> <input type="checkbox"/>

PART TWO: Loan Underwriting (Loans Greater than \$70,000)

4. Underwriting Documentation	YES	NO
a. Business Plan with description of business history, management, and marketing plan	<input type="checkbox"/>	<input type="checkbox"/>
b. Documentation of Site Control	<input type="checkbox"/>	<input type="checkbox"/>
c. Detailed Description of Use of CDBG Funds including proposed disbursement schedule	<input type="checkbox"/>	<input type="checkbox"/>
d. Detailed Sources and Uses Table	<input type="checkbox"/>	<input type="checkbox"/>
e. Tax Returns – Attach Business and Personal Tax Returns	<input type="checkbox"/>	<input type="checkbox"/>
f. Debt Coverage Ratio Calculation (DCR)	<input type="checkbox"/>	<input type="checkbox"/>
g. Return on Investment Calculation (ROI)	<input type="checkbox"/>	<input type="checkbox"/>
h. Loan Terms and Conditions – justification of loan terms and conditions	<input type="checkbox"/>	<input type="checkbox"/>
i. Submitted Electronic Files (MSEXcel) – ALL financial information such as historical financial statements, proforma financial projections, ROI, DCR)	<input type="checkbox"/>	<input type="checkbox"/>

5. The Grantee has complied with the following HUD Underwriting Guidelines	YES	NO
Documentation that project costs are reasonable (570.482(e)(2)(i)). Provide third party cost estimates.	<input type="checkbox"/>	<input type="checkbox"/>
Documentation that all sources of project financing are committed (570.482(e)(2)(ii)). Provide third party loan approval letters and documentation.	<input type="checkbox"/>	<input type="checkbox"/>
Documentation that, to the extent practicable , CDBG funds are not substituted for non-Federal financial support (570.482(e)(2)(iii)). Provide documentation the owner is not able to fund activities solely with other financing.	<input type="checkbox"/>	<input type="checkbox"/>
Document that the project is financially feasible (570.482(e)(2)(iv)). Has market demand been verified?	<input type="checkbox"/>	<input type="checkbox"/>
Documentation that, to the extent practicable , the return on the owner's equity investment will not be unreasonably high (570.482(e)(2)(v)). Provide ROI calculation with CDBG Loan Terms and with conventional financing terms.	<input type="checkbox"/>	<input type="checkbox"/>
Documentation that, to the extent practicable , CDBG funds are disbursed on a pro rata basis with other finances provided to the project. (570.482(e)(2)(vi)).	<input type="checkbox"/>	<input type="checkbox"/>

ADD CERTIFICATION STATEMENT

CDBG ECONOMIC DEVELOPMENT BUSINESS ASSISTANCE LOAN REVIEW CHECKLIST

NOTES AND INSTRUCTIONS

<p>1a. Attach the Loan Committee Memo with a detailed project description and narrative of project underwriting in Part II.</p>	<p>1b. Grantees must complete a NEPA review for each CDBG business loan, and must receive NEPA clearance from the State prior to releasing loan funds. NEPA should be started at loan application submittal. Level of NEPA review is based on scope of work for entire project. See Chapters 3 and 15 (appendix) in the Grant Management Manual for a complete description of the process for determining level of NEPA review. If there are any questions regarding the level of review required, contact Department staff.</p>	<p>1c. Provide information confirming capacity to provide Labor Standards Monitoring and compliance with CDBG procurement requirements, Davis Bacon Prevailing Wage monitoring requirements.</p>
<p>1d, e, and f. If CDBG assistance is provided to a business purchasing a building with an existing tenant (residential or commercial) and, as part of the project, the tenant must be displaced, relocation requirements will be triggered. See Chapter 6 in the Grant Management Manual for guidance on relocation and acquisition requirements</p>	<p>1g. Attach documentation confirming a written agreement (eg; revenue sharing agreement) between jurisdictions. If funds designated for a non-entitled jurisdiction are utilized for a project in an entitled jurisdiction, prior written approval from HCD is required.</p>	<p>1h. Provide date of most recently approved Program Guidelines.</p>
<p>2A. Attach legible map documenting the project is in a slum or blighted area (Redevelopment Area or Area with a proper HUD survey and local designation). Provide a written narrative of how the proposed project will eliminate or prevent blight in the area.</p>	<p>2Bi. Has business acknowledged and agreed to job creation requirements (ie; letter from the business, loan disclosure statement, loan committee condition).</p>	<p>2Bii A maximum of four (4) part time employees may be aggregated to create or retain one (1) FTE.</p>
<p>PART TWO. SUBMITTAL OF BACKUP DOCUMENTATION NOTED IN PART TWO IS NOT REQUIRED FOR LOANS LESS THAN \$70,000, HOWEVER, ALL INFORMATION MUST BE COLLECTED AND VERIFIED FOR ALL LOANS AND WILL BE SUBJECT TO REVIEW AT MONITORING.</p>		
<p>If the loan request is for a Startup, the startup business, and any additional businesses where the borrower has a 20% or greater ownership interest, shall be underwritten and the following information is required:</p> <ul style="list-style-type: none"> ✓ Credit Report including a version of the FICO scoring method (eg; Beacon, Empirica, etc.). Jurisdiction shall determine minimum FICO credit score required. If a FICO score is not provided a detailed analysis and narrative supporting the credit worthiness of the borrower shall be provided. 	<p>If the loan request is for a Expansion to an existing business, the expanding business and any additional businesses where the borrower has a 20% or greater ownership interest, shall be underwritten and the following information is required;</p> <ul style="list-style-type: none"> ✓ Credit Report including a version of the FICO scoring method (eg; Beacon, Empirica, etc.). Jurisdiction shall determine minimum FICO credit score required. If a FICO score is not provided, a detailed analysis and narrative supporting the 	<p>If the loan request is for Business Preservation and/or Job Retention, the business and any additional businesses where the borrower has a 20% or greater ownership interest shall be underwritten and the following the following information is required;</p> <ul style="list-style-type: none"> ✓ Credit Report including a version of the FICO scoring method (eg; Beacon, Empirica, etc.).Jurisdiction shall determine minimum FICO credit score required. If a FICO score is not provided, a detailed analysis and narrative supporting the creditworthiness of the

CDBG ECONOMIC DEVELOPMENT BUSINESS ASSISTANCE LOAN REVIEW CHECKLIST

NOTES AND INSTRUCTIONS

<ul style="list-style-type: none"> ✓ Copy of three (3) years personal tax returns. ✓ Copy of a personal financial statement. ✓ Detailed Sources and Uses table. ✓ Minimum three (3) years of pro forma Profit and Loss Statements, Balance Sheets, and Cash flows or until business shows profitability. ✓ Provide Debt Coverage Ratio, Sales Growth Ratio, Current Ratio, Quick Ratio, and Debt to Equity Ratio yearly for a minimum of three (3) years or until business shows profitability. ✓ Personal Guarantees from all corporate borrowers. ✓ Document of collateral and valuation. ✓ Description of organization and resumes of management team. ✓ Copies of all leases, supply contracts, employment agreements. ✓ Business Plan with Market Analysis. 	<p>creditworthiness of the borrower shall be provided.</p> <ul style="list-style-type: none"> ✓ Copy of two (2) years personal tax returns. ✓ Copy of two (2) years business tax returns for existing expanding business. ✓ Copy of personal financial statement. ✓ Detailed Sources and Uses Table. ✓ Two (2) years historical financials for existing business. ✓ Two (2) years of pro forma Profit and Loss Statements, Balance Sheets, and Cash Flows. ✓ Detailed market analysis supporting the sales growth projections. 	<p>borrower shall be provided.</p> <ul style="list-style-type: none"> ✓ Copy of two (2) years personal tax returns. ✓ Copy of two (2) years business tax returns for existing business. ✓ Copy of personal financial statement. ✓ Detailed Sources and Uses Table. ✓ Two (2) years historical financials for existing business. ✓ Two (2) years of pro forma Profit and Loss Statements, Balance Sheets, and Cash Flows. ✓ Detailed market analysis supporting the sales growth projections.
<p>4b. Site control documentation (ie: title policy confirming borrower as owner, lease agreement, purchase agreement).</p>	<p>4c. Provide detailed uses of CDBG funds (ie: furniture, fixture, equipment list, installation costs, construction cost breakdown).</p>	<p>4d. Sources and Uses Table shall detail ALL Sources and Uses of project financing.</p>
<p>4e. Start Up - Copy of three (3) years personal tax returns. Business Expansion – Copy of two (2) years personal tax returns and two (2) years business tax returns. Job Retention - Copy of two (2) years personal tax returns and two (2) years business tax returns.</p>	<p>4f. Debt Coverage Ratio Calculation (DCR). The calculation for DCR is: Total Cash Flow available for Debt Service/Total Debt Service (including ALL EXISTING and NEW debt)</p>	<p>4g. Return on Investment calculation (ROI). Calculate the ROI using the CDBG loan rate and term and the proposed conventional loan rate and term and provide a comparison between the two. The calculation for ROI is: <u>NOI* - Interest Expense**</u> <u>Owners Equity***</u> * NOI is Net Operating Income. **Interest Expense is the interest only portion of debt service. ***Owners equity is cash or a cash equivalent.</p>
<p>4h. Provide summary of proposed loan terms and conditions. Ensure terms and conditions meet local Program Guidelines.</p>	<p>4i. Provide all spreadsheets, projections, calculations in an electronic format (ie: MSEXcel©). Electronic format shall include formulas utilized in the preparation of the financial information presented.</p>	