Monterey County

Small Business

Revolving Loan Fund

Administrative Manual

Approved by the
Monterey County Board of Supervisors
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Contents

PART I: REVOLVING LOAN FUND STRATEGY

Section 1 Introduction

The Monterey County Revolving Loan Fund Program helps meet the critical 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 and two grants from the California State Community Development Block Grant (CDBG) 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 areas 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 #07-49-02640.01]) - 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 $1,446,820 loan pool was capitalized using $1,333,205 from EDA and $206,641 from local resources.

Section 2 Source of RLF Funds

The source of funds for this SBRLF was originally capitalized with assistance from the U.S. Department of Commerce, Economic Development Administration through the Economic Adjustment Assistance program (CDFA No. 11.307), through repayment of loans made from the SBRLF, through repayment of loans made through other program funds that are designated to be deposited in the SBRLF, and through the balance(s) of other defunct EDA RLF funds.

Table 1[1]

Source of Funding	EDA Award 07-49-02640.01	EDA Award 07-39-03105	Total
EDA Grants	$1,333,205	$200,000	$1,533,205
Local Share			
CTA	$93,026		$93,026
County	$113,615	$34,000	$147,615
Greenfield		$33,000	$33,000
King		$33,000	$33,000
Program Total	$1,446,820	$300,000	$1,839,846

1 The figures shown in Table 1 differ from the original grant amounts and match requirements. The table reflects the actual funds drawn down from each grant source for lending activities.

The SBRLF was not funded with Redevelopment Agency funds.

Section 3 Portfolio Merger

In 2014, the County asked EDA for permission to merge all three programs into one for purposes of continued reporting. The justification for the merger was:

- In 2004, EDA approved the expansion of the target area for the Rural Portfolio to be the same, geographically, as the Countywide Portfolio. The Portfolios use the same economic impact measures and goals. Thus, the EDA approval of expansion of the Rural Portfolio essentially created one program.
- The County, with EDA approval, had already consolidated the Contractors RLF (EDA Award 07-49-02640.01) with the Countywide Portfolio.
- In July 2015, EDA directed the County to prepare this Administrative Plan which merges the two grants.

The relatively small capital base of the Rural Portfolio means that the cost of managing that Portfolio separately will continually absorb any RLF Income generated by loan activity. Efficiencies achieved through program merger will enable the County to make RLF Income available to loan applicants.

Section 3 Background

Section 3.1 Economic Distress Qualification for EDA Assistance

Grant applicants need to qualify based on at least one of three criteria established in the Public Works Act funding EDA. These criteria are:

1. An unemployment rate that is, for the most recent 24-month period for which the data are available, at least one percentage point greater than the national average unemployment rate;
2. Per capita income, for the most recent period for which data is available, eighty percent (80%) or less than the national per capita income; or
3. "Special Need", e.g. plant closures

Monterey County qualifies for assistance based upon an unemployment rate that is more than one percent (1%) higher than the national average. During 2012 and 2013, the national unemployment rate averaged seven point seven percent (7.7%). Monterey County's unemployment rate during the same period averaged ten point four percent (10.4%).

Additionally, five (5) cities (Gonzales, Greenfield, King, Salinas, and Soledad) and five (5) Census Designated Places (Castroville, Chualar, Pajaro, San Ardo, and San Lucas) within the County qualify for assistance based upon per capita incomes that are less than eighty percent (80%) of the national per capita income. These ten (10) communities are home to more than fifty-four percent (54%) of the County's population.

Monterey County continues to experience economic distress as seen in its high annual average unemployment rate. The two (2) largest economic engines in the County, agriculture and tourism, employ large, seasonal workforces. Because of the seasonal nature of these industries, the County's unemployment rate is subject to dramatic seasonal variations.

Based on the two (2) year average unemployment rate, Monterey County qualifies for EDA assistance at the eighty percent (80%) level of the original project cost. This level of EDA assistance is reflected in Table 1 above.

Section 3.2 Nature and Scale of Economic Adjustment Problems

In addition to its chronically high unemployment rate, the County has experienced a number of natural disasters and military base closures over the last twenty-six (26) years. These events, including the 1989 Loma Prieta earthquake, the closure of Fort Ord in 1992, flooding in 1995 and 1998, the closure of the U.S. Army Test and Evaluation Center in 1998, and the realignment of Fort Hunter Liggett in 1998 have contributed to the County's eligibility for Title IX funding.

In 2011, the number of jobs in Monterey County totaled 167,400, reflecting growth of three-tenths (0.3%) growth since 2001. Agriculture experienced the biggest numeric growth (9,000 new jobs) and grew to represent a larger share of total employment (rising from one in five (5) jobs in 2001 to one in four (4) 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 one to two percent (1-2%) annually and has 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, and 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 have been experiencing economic distress and the resulting effects of high unemployment and low per capita income among most of their populations. Further, businesses in these areas have been impeded by slow economic growth and development.

Section 3.3 Development of the Economic Development Strategy

In February and March 1992, the County of Monterey, in conjunction with more than 120 community leaders, engaged in a strategic planning process to develop a vision for the County. The resulting Vision calls for a life of abundant quality with opportunities for individuals to develop their full potential and pursue their dreams. The Vision focuses on protecting and enhancing the County's educational opportunities, economy, and environment. Based on the County's Vision, the Board of Supervisors continued to work with the community and developed a fifteen (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 Economic Development Committee is charged with overseeing the preparation of 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 (5) 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 December 15, 2015.

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 will inform the next revision of the SBRLF Administrative Plan.

Section 3.4 Area Resources/Assets

Section 3.4.1 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, normally 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 its 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 Monterey County’s great natural agricultural strengths. One recent example of developing new opportunities for local agriculture is the Monterey Peninsula Airport District’s work with the Monterey County Vintners and Growers Association to persuade airlines to waive baggage fees for the first case of Monterey County wines travelers take home with them.

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 visitors.

Section 3.4.2 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 to support development of additional, value-added processing facilities such as those producing salads in a bag.

Section 3.4.3 Work Force

In 2012, the County's labor force numbered approximately 226,500 people and an annual average unemployment rate of eleven point four percent (11.4%). While the annual average unemployment was only three point three percent (3.3%) higher than the national rate (and less than one percent (1%) higher than the state), unemployment in Monterey County is subject to large variation during the year. For example, in January 2012, the County's unemployment rate was over sixteen percent (16%) but dropped to eight point six percent (8.6%) in September. This pattern of high unemployment in winter and lower unemployment during the peak summer months has been a fairly stable pattern in the County for at least the last ten (10) years. The pattern also mirrors the cyclical nature of agricultural and tourist activity in the County.

The educational level of the County's labor force does not track with state or national educational attainment. The most extreme difference is found in the 31.2% of the County labor force, older than twenty-five (25) years, who do not have at least a high school or equivalent degree.[2] The high rate of people who have not completed high school in Monterey County is possibly related to the relatively high proportion of the population that is not native born. Thirty-one percent (31%) of the County's population is foreign born as compared to thirteen percent (13%) of the U.S. population. It may also be related to the proportion of the Monterey County population who are not U.S. citizens; forty-five percent (45%) of foreign born U.S. residents have become naturalized citizens while only twenty-seven percent (27%) of foreign born residents of Monterey County have become citizens.

Section 3.4.4 Other Resources

The Monterey Bay region (Monterey, San Benito, and Santa Cruz counties) is home to more than fifteen (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.

Section 3.4.5 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 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.

2 American Community Survey, Table ACS_11_1YR-DP02; accessed June 6, 2013

- 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.

Section 3.4.6 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, the County, Cities, business organizations, and key industries to support economic growth within 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.

Section 3.5 Summary of Monterey County Comprehensive Economic Development Strategy

The Monterey County Economic Development Department (MCEDD) is responsible for implementing the County Economic Development Program. The MCEDD contracts with a Program Administrator (P.A.) 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 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 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 (P.A.) to manage all day-to-day activities for the SBRLF, including marketing, loan packaging, and loan servicing.

MCEDD also works closely with a variety of community and economic development organizations throughout the County to coordinate economic development activities and implement 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 Small Business Development Centers located at Cabrillo Community College and CSU Monterey Bay to provide direct business assistance.

Section 4 Financing Strategy and Local Capital Markets

Like many other areas, Monterey County's capital markets are dominated by large lending institutions that do not have close ties to the community and tend to rely on formulas to determine eligibility for credit. Additionally, because these institutions are not local, they frequently do not understand local markets or have local staff who can work with borrowers before they default. Some of these institutions, such as Rabobank, do make an effort to reach out to large scale agricultural ventures; however, they frequently cannot meet the needs of smaller or specialty farmers. There are two or three local banks that are still active in business lending. When evaluating borrowers for credit worthiness, however, most of them rely on either long term personal relationships with borrowers or focus only on borrowers who qualify for SBA loans. California Coastal Rural

Development Corporation (CalCoastal) is another source of local small business lending. CalCoastal uses a variety of specialized government loan and loan guarantee programs to assist small businesses. CalCoastal is good at meeting the needs of small agricultural producers and borrowers who qualify for SBA programs.

The local capital market is underserved by lenders:

- Who are not marketing SBA products;
- Who are willing to work with small or start-up businesses where the borrower does not have long personal history with the bank;
- Who have experienced, locally-based staff with the authority to help borrowers when they experience repayment issues.

Within this context, the primary objective of the SBRLF is to assist borrowers that cannot otherwise obtain financing for their business formation and/or expansion plans. The SBRLF will be used to stimulate new investment in plant and equipment purchases, and the retention and creation of private sector jobs. SBRLF 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 business will be qualified to successfully apply for conventional financing for its future expansion. At that point, the overall goals of increasing access to capital resources will have been accomplished and the repaid funds are available to "revolve" into another loan to another business.

Section 4.1 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 that have national and global market potential including, but not limited to, agribusiness, tourism, retail trade and education.

Paramount in consideration and selection of projects for development and funding will be the extent to which the project has community participation, as demonstrated by community 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:

- Conforms 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;
- Compatibility with the environment;

- Offering significant employment potential;
- Raising the average income in the municipalities and unincorporated areas of Monterey County to above the state average;
- Potential benefit to the unemployed and underemployed and to distressed communities within the County;
- Contributing 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 Created or Preserved
- Ratio of federal funds to each job created
- Permanent vs. Part-time employment
- 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.

Section 4.1.1 The SBRLF will stimulate private sector investment by:

- Providing gap financing and accepting subordinate lien positions to leverage conventional financing;
- Working with private sector lenders to make tandem loans that require the borrower to make only one payment to the private sector lender who will then apply a portion of the payment to the County loan;
- Guaranteeing private sector loans;
- 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.

Section 4.1.2 Meeting the Job Creation or Job Retention Goals of the SBRLF

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

The SBRLF will target creation of permanent full-time jobs in the industrial, commercial, retail and tourism areas. Loans to be used solely for saving existing 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.

Section 4.2 Project Eligibility

Section 4.2.1 Eligible Applicants, Projects & Use of Funds

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 employs fewer than five (5) people and that will create or retain jobs in Monterey County. Although small, 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 enterprises.

Section 4.2.1.1 Eligible Projects

- Projects must be located in the County of Monterey. Projects must create or retain jobs and must leverage privately invested 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.

Section 4.2.1.2 Eligible Uses and Costs

In general, SBRLF funds may be used for the following uses and their associated costs:

• Land & Building Acquisition: Acquisition of 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 review 13 CFR § 302.13 and consult with EDA to determine the applicability of Davis-Bacon wage requirements prior to approving any loan where the loan proceeds will be used for grading or construction.

• Acquisition of machinery, equipment, furniture, fixtures & leasehold improvements: This includes 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: investments which will accelerate recycling land and facilities and will create 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, and 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 P.A. must sufficiently document the need for SBRLF 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 the P.A. must ensure that acquisitions meet the more rigorous tests for repayment ability associated with loans made purely for job retention.

Section 4.2.2 Credit Otherwise Available

A borrower is not eligible for SBRLF financing if credit is otherwise available on similar terms and conditions that would permit completion and/or the successful operation or accomplishment of the project activities to be financed. The County's P.A. will document this in the loan write-up. The P.A. will ensure that a loan write-up includes a discussion of the particular borrower or project to be financed that result in the need for SBRLF financing.

The P.A. is responsible for obtaining supplemental evidence, as appropriate, to support the need for SBRLF financing. This may, but not always, include the following:

- A commitment letter from a participating bank stating the loan terms, the maximum amount to be extended by the bank, and the need for the SBRLF's participation,
- Bank rejection letter(s), if obtainable, indicating reasons for denying the borrower a traditional loan, thereby demonstrating the unavailability of conventional financing, or
- The determination and documentation by P.A. senior loan staff that, due to weaknesses in a borrower's unique credit circumstances (e.g. limited time in business, non-standard financial ratios, operating losses in prior periods, lack of guarantor strength); or due to situations that may exist within the credit markets, such as the unavailability of credit within the previous two years, it would be impractical for the borrower to approach another conventional lender for financing.

Failure to adequately document the need for a SBRLF loan may be grounds for declaring a business ineligible. If it is subsequently determined that a business was not eligible for a SBRLF loan, ineligibility requires the County, through its P.A., to pay any outstanding loan balance to the SBRLF, or to EDA.

Section 4.2.3 Ineligible Applicants, Projects & Uses of Funds

Relocation - Federal funds, including the SBRLF, cannot be used by the County as an economic development incentive to relocate a viable business from one labor market area to another labor market area, e.g. the County cannot make a loan to relocate a business from the San Francisco Bay Area to Monterey County.

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;
- Speculative 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.

Section 4.2.3.1 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 P.A., a P.A. Board member, Loan Committee member, or elected officials of the jurisdiction where the project will be located (or people related to them by blood, marriage or law).

Section 4.2.3.2 Ineligible Costs

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

Section 4.2.3.3 Ineligible RLF Uses

Restrictions on use of SBRLF Capital (13 CFR § 307.17); SBLRF funds may not be used to:

- Acquire an equity position in a private business;
- Subsidize interest payments on an existing 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, acquiring a business to facilitate a significant expansion, or acquiring a business to increase investment resulting in a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the SBRLF;
- Provide SBRLF 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:
  - The SBRLF borrower 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
  - The SBRLF loan will finance the purchase of the rights of a prior lien holder in a foreclosure action and is necessary to preclude a significant loss on an SBRLF loan. SBRLF funds 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 loan costs, plus a reasonable portion of the outstanding SBRLF loan principal, within eighteen (18) months following the date of refinancing.

Section 4.2.4 Compliance and Loan Quality Review

To ensure that the SBRLF Recipient—here, Monterey County—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 SBRLF Grant every three (3) years. The SBRLF Recipient, Monterey County, may undertake this review charged as an administrative cost associated with the SBRLF's operations, provided the requirements set forth in 13 CFR § 307.12 are satisfied.

Section 4.2.6 Administrative Costs

EDA does not have a maximum limit on how much SBRLF income grantees may use to administer the SBRLF.

Section 4.3 Documentation of Jobs Created or Retained

Section 4.3.1 General Documentation Requirements

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

All SBRLF loans must require that businesses benefiting from these loans agree to provide copies of their "Quarterly Wage and Withholding Report" and their "Report of New Employees" to the P.A., at the same time they are submitted to the California Employment Development Department (EDD). As of December 2011, these reports are EDD Form DE6 and DE34, which are included in Appendix A.

Section 4.3.1.1 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, identifies each such job by type, and states whether the job(s) retained or created will be full-time or part-time.

Individual Job Creation or Retention Requirements
The P.A. shall ensure that program records document which individual jobs were actually created or retained as a result of the SBRLF loan.

Section 4.3.1.2 Documentation Requirements for Job Creation Activities

Records for jobs created must include the following minimum information.

- The full-time equivalency status of each job, and the number of FTEs[3] for all jobs created and filled. If there are multiple part-time positions, the positions must be consolidated into FTE.

Section 4.3.1.3 Documentation Requirements for Job Retention Activities

"Otherwise lost" - The P.A. is to ensure that specific evidence is submitted demonstrating that, in the absence of SBRLF assistance, the identified jobs would have been lost.

3 An employee is considered to be full time if they received compensation for 40 hours per week. Two part-time employees working 20 hours each would be the equivalent of one full time employee or "FTE."

Section 4.4 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, through the P.A., will prioritize loans based on those criteria and those described below.

- Businesses in economic sectors targeted by the County's economic development strategy
- Businesses related to the economic revitalization of the former Fort Ord
- Businesses producing the 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
- Businesses that provides a good or service that was formerly purchased outside the area.
- Businesses that create a new visitor destination or support additional travel spending
- Business projects with the greatest potential to increase sales and/or property tax receipts
- Businesses that meet 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 job preservation, consistent with this approved SBRLF Administrative Plan.

Section 4.4.1 Project Underwriting Policies

The loan underwriting policies of the Monterey County SBRLF are designed to insure the Fund's on-going viability, to assist businesses that could not proceed without the SBRLF loans, and to ensure that the SBRLF assistance is "appropriate." At a minimum, underwriting for all loans must comply with 13 CFR § 307.15 and 24 CFR § 570, Appendix A, "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements"

The objectives of the underwriting guidelines are to ensure:

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

Section 4.4.2 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 the amount of cost. In some instances, it will be necessary to obtain third-party, fair-market price quotations for assessment of a cost element. Particular attention will be paid to documenting the reasonableness of cost elements in a non-arms-length transaction[4].

Procedures:

For each use of SBRLF Funds, the P.A, on behalf of the County, will determine if costs are reasonable as follows:

- 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 loan application. Determine if the construction contingency is adequate. Determine if the costs include compliance with Davis-Bacon wage requirements, 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 evaluate how the proposed price was 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 cycles, and financial ratios.

4 A transaction involving a party that is controlled by another entity and does not act on its own behalf. The party sets aside independent interest in order to focus on the wishes of the controlling party. Non-arm's length transactions must involve at least one interested party that is concerned about the possible consequences of the transaction. Transactions involving family members, and parent companies and subsidiaries would not be considered non-arm's length transactions because the parties are acting independently.

Sources of information:

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

Prior to the commitment of SBRLF funds to the project, the P.A. shall conduct a review to determine if sufficient sources of funds have been identified and committed to the project, and if the participating parties have the financial capacity to provide the funds to demonstrate the project is viable and will move ahead in a timely manner. In certain circumstances, the County, through the P.A. may commit SBRLF funds in advance of final commitments from other funding sources. However, to conduct the underwriting analysis, the P.A. must ascertain approximate terms and conditions of the other funding sources. Final commitments from the other funding sources, with substantially similar terms and conditions as used in the underwriting analysis, will be required by County, through the P.A., prior to any SBRLF loan closing or disbursement of SBRLF funds.

Procedures:

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

For debt sources, the P.A. will obtain letters of intent or interest which specify the level of commitment and terms/conditions of other loan(s). The proposed terms of these other loans should be reflected in the businesses' projected debt schedule and in its financial projections. The P.A. shall determine if actual loan packages have been submitted to lenders by the proposed borrower.

For equity sources, the P.A. shall determine if the equity injection is verified on the business or personal financial statements of the business/individual in question. If the equity is provided by an investor, the P.A. shall 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

Section 4.4.3 Avoid Substitution of EDA Funds for Non-federal Financial Support

The P.A. will review the project 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, in order to make the most efficient use of 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:

Section 4.4.4 Unavailability of Capital:

The business can afford the cost of financing the project, but is unable to obtain 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 seventy percent (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, the P.A. needs to undertake several steps. The P.A. needs to contact the lender to determine if there is any ability to increase the size of its loan. The P.A. needs to explore other lending sources, both public and private. This includes examination, by the P.A., of the business owner(s) personal financial statements for potential funds, including home equity loans. Finally, in addition to looking at business and personal financial statements and tax returns, the P.A. needs to prepare and analyze a pro forma cash flow analysis., with and without SBRLF funds, to demonstrate the gap.

The terms and conditions of a loan made to bridge this type of gap – inability to obtain funds from other sources, notwithstanding borrower ability to pay – must be on terms found in conventional loans by traditional lenders..

Section 4.4.5 Cost of Capital:

The business cannot support the interest rate, loan term and/or collateral requirements of a lender for the project. In analyzing this type of gap, P.A. discussions with the lender are important to determine if there is any flexibility in lending terms. A business's 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 existence of the gap, the P.A. shall analyze the borrower's business and personal financial statements and tax returns. The P.A. shall explore sources of equity. The P.A. shall evaluate public and private funding sources that would bridge the gap. The P.A. shall develop pro forma cash flow analysis with and without the SBRLF funds to demonstrate the gap. Depending on the amount of the gap, the County, through the P.A., shall adjust the loan to terms or a rate to allow the project to proceed but are not too generous. Terms can be adjusted to allow for deferrals of principal and /or interest payments, 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:

The P.A. shall:

- Review the project 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, and net operating income are reasonable via a comparison of historical financial information and industry averages (Robert Morris).
- Review projections with and without SBLRF 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

Section 4.4.6 Financial Feasibility of the Project

The P.A. will examine each project to determine the financial viability of the project, and thus the reasonable assurance that the public benefit will be realized. To do so, the P.A. shall take the following actions: 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 P.A. shall analyze past, current, and projected financial data to determine if the job estimates (job creation and job retention) are reasonable and supportable. Labor costs shall be analyzed based at the point where business revenues and expenses are equal, i.e. no profit is made or loss incurred. In addition, labor costs shall be checked against industry averages. The P.A. should explain variations from industry averages 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 sufficient to meet debt obligations, after other obligations are met, with enough cash flow remaining to operate successfully. The loan term typically is based upon the nature of 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 economic life, may be justifiable.

The P.A. shall include, with each loan, a written explanation of the "appropriate" analysis that was undertaken, and the reason the terms and conditions of the loan were approved.

Section 4.4.7 Financial Analysis

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

The P.A. will require the applicant to submit information that 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 P.A.'s 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 its current and earlier financial statements to determine trends. The pro forma statements will then be compared to these past statements. Financial ratios will be analyzed. The P.A. will compare statements and ratios to industry averages. For start-up business, the P.A. will analyze projections and develop ratios, and compare both to industry averages.

Section 4.4.7.1 Ratios that will be analyzed include:

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

Quick Ratio: cash & equivalents plus accounts & 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 a business's ability to service long term debt.

Another type of cash flow 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 1.25:1 (cash flow to 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 business' 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 an 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 the collateral should be worth one hundred and twenty-five percent (125%) of the loan balance. However, this is highly dependent on the quality and security value of the collateral. In addition, collateral requirements are a cause of "financial gaps." The P.A. shall use one hundred and twenty-five percent) (125%) as a guideline, which shall only be lowered if the P.A. obtains specific and detailed analysis and explanation from a business for a lower collateral value.

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 by the P.A. 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 relevant factors.

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

Procedures:

The P.A. shall:

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

Sources of information:

- Historical financial statement
- Financial Projections
- Business plan
- Market and industry information
- Industry Averages

Section 4.4.8 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 invested 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 to assist numerous businesses and not unduly enrich a particular 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 to pursue the business with vigor remains high.

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 on investment equal to the "market rate." Real estate appraisers and lenders are important sources of information on "market rate" returns.

Procedures:

The P.A. shall review projections as follows:

- 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 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, the P.A. shall take steps to reduce the return to a reasonable rate by restricting owners' draw/officers' salary, or adjusting the SBRLF loan terms.

If return is below average, the P.A. shall adjust SBRLF loan terms to bring the rate of return closer to the industry average.

Sources of information:

- Financial projections
- Historical financial statements
- Personal financial statements
- Industry averages
- 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, the P.A. shall take other steps to safeguard SBRLF funds in the event of a default.

Procedures:

The P.A. shall:

- 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, the P.A. may need to negotiate with other funding sources.
- If SBRLF funds are to be expended first, the P.A. shall 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

Section 4.5 Portfolio Standards

Small/Large Businesses

- At least eighty-five percent (85%) of SBRLF loan funds are targeted for small businesses, as defined by the US Small Business Administration (SBA). 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 SBRLF loan funds may be used to assist large businesses (as defined by the SBA for the type of business), otherwise eligible for SBRLF funds.

Commercial/Industrial:

Seventy percent (70%) of 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:

- Significant job creation potential, i.e. SBLRF funds loaned must be significantly less than the portfolio standard ($20,000:1 job)
- Offer services that are underserved or not currently offered in the community
- Significant potential for stimulating other economic development activity
- Provide vitally needed services

Because Monterey County's economy is dominated by agricultural and visitor services, 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 seventy percent (70%) of the funds for commercial projects. In the event that the County needs to reduce the industrial portion of the SBRLF portfolio below thirty percent (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.

New Business

It is anticipated that sixty percent (60%) of the SBRLF portfolio will be made to start-up businesses.

Business Expansion

It is anticipated that twenty-five percent (25%) of the SBRLF portfolio will be made to support the expansion of existing businesses.

Business Retention

It is anticipated that fifteen percent (15%) of the SBRLF portfolio will be made to support business retention, to save jobs that would be lost without SBRLF financing.

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

Anticipated Percentage of RLF Portfolio for Specific Uses:

In general, the portfolio will be managed so that no more than eighty-five percent (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. Conventional financing will fund real property purchases. Conventional financing will also fund tenant improvements because of the added cost of complying with Davis-Bacon and/or prevailing wage requirements.

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 standard private sector leverage ratio is established at two private dollars to one SBRLF dollar. This ratio may vary in individual cases, so long as the SBRLF portfolio as a whole achieves a standard ratio of 2:1 private to public dollars.

If other public lending sources are involved in a loan package, the maximum public participation in such a package may not normally exceed fifty percent (50%) of the total project cost. The P.A., on behalf of the County, will administer the SBRLF to maximize private sector involvement in each project in order to leverage SBLRF 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 - "The non-guaranteed portions and ninety percent (90%) of the guaranteed portions of the U.S. Small Business Administration's 7(A) loans and 504 debenture loans", are allowed to be considered private (13 CFR § 307.15 (d)).

Section 4.6 Cost per Job for Portfolio

- In general, the SBRLF portfolio will have a ratio of $20,000 per job-created or saved.
- Individual loans may have job to cost ratios that exceed $20,000 per job.
  - This is a Monterey County goal, not a CDBG or EDA requirement.
- No loan funded using EDA may have a job to cost ratio that exceeds $35,000 per job.

Section 5 Lending Policies

Section 5.1 General Lending Policy

The SBRLF program is intended to be sufficiently flexible to provide borrowers with loan terms that will allow them to become stable business ventures. The SBRLF program 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 small business creation and growth while maximizing the rate at which SBRLF 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 equipment financed or five (5) years for working capital loans.

Section 5.2 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 two percent (2.0%) of these limits without seeking additional approval from the Board of Supervisors.

Section 5.3 Loan Application, Documentation and Origination Fees

- Applicants will be charged a $200 application fee and a loan origination fee equal to four percent (4%) of the loan amount for loans up to $50,000; two point five percent (2.5%) of the loan amount for loans between $50,000.01 and $100,000; and two percent (2%) of the loan amount for loans of $100,000.01 and more.
- The borrower shall pay a documentation fee based on the assets collateralizing the loan. The fee shall be $1,000 to document loans secured solely by business assets and $2,000 to document loans secured by business and personal assets.
- The borrower shall pay any direct costs incurred in loan processing and closing (e.g. appraisals and title insurance).
- When deemed appropriate by the P.A. and the Loan Committee, the loan origination fees may be deducted from the loan amount.

The P.A., with the County's approval, may waive any or all fees. The P.A. shall request, in writing, the County's approval to waive or reduce any application, underwriting or documentation fees. Such request shall be submitted to the County, by submittal to MCEDD, for consideration and approval before any commitments are made to the applicant for an SBRLF loan. The County, by decision of the Director of the MCEDD will decide whether to waive or reduce fees for particular loans consistent with the goals of the SBRLF program.

Section 5.4 Range of Allowable Interest Rates

The minimum and maximum interest rates allowable for an SBRLF loan are tied to the prime interest rate as published by the Wall Street Journal (WSJ) on the date of loan closing. The minimum interest rate may not be less than four percent (4%), unless the published rate is less than four percent (4%) in which case the minimum interest rate may be seventy-five percent (75%) percent of the prime interest rate listed in the WSJ. However, should the prime interest rate listed in the Wall Street Journal exceed fourteen percent (14%), the minimum SBRLF interest rate is not required to be raised above ten percent (10%) - if doing so compromises the ability of the SBRLF loan applicant to implement its financing strategy (13 CFR § 307.15(c)). Within this broad spectrum of allowable interest rates, the County may use set, fixed, or variable interest rates on individual loans.

In administering the SBRLF program on behalf of the County, the P.A. shall base utilization of sub-prime or adjustable interest rates on the following criteria:

- Linking interest rates to job creation - the more jobs the business states and documents, as provided by this Manual, it is going to create, the lower the interest rate. The P.A. should review the interest rate annually to ensure that the anticipated job creation actually takes place and if it does not, increase the interest rate.
- Capital improvement projects may be offered lower interest rates to offset the increased cost of compliance with Davis-Bacon and/or prevailing wage requirements.
- Higher interest rates will be charged for loans to be used as working capital.
- Lower interest rates will be charged to business sectors targeted by the County's Comprehensive Economic Development Strategy.

Section 5.5 Borrower Equity and/or Cash Injection

In general, the P.A., on behalf of the County, shall require 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 of personal resources or percentage of capital or lien free assets required as contribution 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 will be twenty percent (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, if there is evidence of excess security, and/or if the borrower has a proven history of operating successful businesses.

For each individual loan, the personal 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 the amount of new equity required to finance the SBRLF project.

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 one hundred and twenty (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.

Section 5.6 Repayment Terms

In general, loan repayment periods will be based on the useful life of the assets being financed and the cash flow of the borrower. The P.A. will use the following guidelines to establish maximum loan repayment periods:

- Real property purchase loans will not exceed twenty (20) years

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

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

Repayment will normally be accomplished in equal monthly installments, including principal and interest over the life of the loan. SBRLF loan repayment periods will normally equal the repayment period 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 be amortized over a longer period than the loan term (not to exceed the weighted average useful life of the fixed assets financed or five (5) years in the case of working capital loans), so that there is a balloon payment due at the end of the loan term.

A moratorium on principal payments, providing for interest only payments for up to six (6) months, will be allowed if necessary to assist a borrower with temporary cash flow problems.

Section 5.7 Collateral Requirements

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

The County, through the P.A., 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 loan default. This arrangement will be used whenever possible.

The County, through the P.A., will generally secure its loans to the maximum extent possible to ensure an adequate secondary source of repayment. The P.A. is to seek the following types of collateral 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, including flood insurance, as appropriate.
- A landlord's consent to County or P.A. entry, 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 Financing Statements on all assets financed by the loan, plus UCC-1 Financing Statements on existing business assets
- Working capital loans will generally require UCC-l Financing Statements 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, the P.A. is to require personal guarantees of the owner, or any affiliate controlling twenty percent (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 twenty percent (20%) or more owners and affiliate companies will be required for each loan unless sound justification is included in the loan write-up, and thereafter approved by the Loan Committee.

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 SBRLF loan is part of a financing package that includes funds that are controlled or managed by the P.A. and the P.A. thereby 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 P.A. This provision is intended to avoid the appearance that the P.A. has a potential conflict of interest by placing the SBRLF funds at greater risk than it places its own funds.

Section 5.8 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 SBRLF 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 total public participation in such a package may not normally exceed fifty percent (50%) of the total project.

When the SBRLF program is used in conjunction with an SBA 504 loan program, ninety percent (90%) of the guaranteed amount plus the entire un-guaranteed amount will count as the privately leveraged 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.

Section 5.10 Hiring of Displaced Workers

Firms that receive SBRLF assistance will be encouraged to work with the local Workforce Development Board (WDB), the County Office for Employment Training (OET), and the County Department of Social Services to link displaced workers with jobs created through 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 WDB, OET and/or Department of Social Services.

Section 5.11 Key Factors to Determine When Deviations will be Employed

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

Section 6 Loan Committee

Section 6.1 Loan Committee Composition

SBRLF Loan Committee composition will be based on the County's relationship with the P.A. and the P.A.'s existing capacity. If the P.A. has a standing business loan committee that represents the ethnic and geographic diversity of Monterey County, and it includes individuals with banking and lending operations experience and experience in evaluating credit requests, then the County may approve the P.A.'s loan committee to act as the SBRLF Loan Committee, provided that a County Representative is also appointed to the SBRLF Loan Committee. In these circumstances, the County's award of contract to the P.A. will specifically delegate SBRLF Loan Committee authority to the P.A.'s loan committee and designate it as such.

If the P.A. does not have a standing loan committee, or the P.A. has a loan committee that is not representative of the ethnic and geographic diversity of Monterey County, then the Monterey County Board of Supervisors will appoint a five (5) member SBRLF Loan Committee. A majority of the members of the SBRLF Loan Committee must be experienced in banking and lending operations and experienced in evaluating credit requests, similar to those assisted by this fund.

Section 6.2 Role of Loan Committee

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

A quorum of the Loan Committee must be present to take action. A quorum is defined as 50% of members plus one member. At least one member within this number must have lending experience in order to constitute a quorum.

Neither the Loan Committee, the MCEDD, nor the MCEDC may initiate any legal actions without obtaining approval of the Monterey County Board of Supervisors. The Monterey County Board of Supervisors is the only body authorized to initiate legal action on behalf of the County.

Section 6.3 Loan Committee Policy

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

The SBRLF Loan Committee and the P.A.'s Board of Directors will adhere to the Conflict of Interest requirements contained in these guidelines. All meetings of the SBRLF Loan Committee shall be conducted in accord with the Brown Act, California Government Code section 54950-54963.

Members of the SBRLF Loan Committee and Board of Directors must recuse themselves from deliberation process for loan approval where they have a professional, financial, familial or other personal interest in the transaction. This duty to recuse would not normally apply to a banking relationship that is limited to ordinary checking and/or savings accounts.

PART II OPERATIONAL PROCEDURES

Section 1 Loan application and review

Section 1.1 Standard Loan Application Requirements

At a minimum, the P.A. shall collect, for each SBRLF loan application, the following information, as required by 13 CFR § 307.15(2):

- Identifying information of the business including:
  - Principal or corporate address
  - Principal owners and officers and their residence addresses
  - Data Universal Numbering System (DUNS) number
- Verification that the business and its principal owners are not shown in the U.S. General Services Administration System for Award Management (SAM.gov [formerly the Excluded Parties List System {EPLS}]) as ineligible to receive federal contracts or grants.
- A brief history of the business
- Business management resume for the borrower
- Credit reports for the business and any individuals guaranteeing the SBRLF loan
- Two (2) years of business tax returns (if loan is to an operating business)
- 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 twenty percent (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 ninety (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 SBRLF loan proceeds will be used and description of additional sources of funding
- Copies of any permits or licenses associated with the opening and/or operation of the business
- Copy of any proposed contracts, i.e. purchase contract, if the SBRLF 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 for this item may include:
  - Credit offers for shorter terms than are available through the SBRLF;
  - Credit offers with interest rates more than five percent (5%) greater than the interest rate available through the SBRLF;
  - Credit offers that are insufficient to implement the entire business project, as proposed.

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

Use of Credit Reports

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

Section 1.2 Use of Appraisal Reports

The P.A. shall verify the value of pledged collateral through a market analysis, appraisal, or other objective means that are deemed appropriate for the particular project. Appraisals must be performed by qualified personnel and should include a review of prior uses of the property to determine the potential for environmental contamination left from these earlier uses.

Section 1.3 Loan Write-Up

The Loan Write-Up is the document upon which credit decisions will be based and shall be generated by the P.A. The Loan Write-Up must contain sufficient information for the Loan Committee to determine the credit worthiness of applicants and to determine if a loan furthers the overall SBRLF portfolio goals described in Section 4.5 of this Administrative Manual.

At a minimum, the P.A. shall ensure that the Loan Write-Up includes 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. number of jobs created or retained, cost per job, private leverage, etc.)
- The specific SBRLF 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 P.A. 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 business to receive the SBRLF loan, including history and management
- A description of any required licenses and permits and whether or not the applicant business 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 applicant business will provide
- Marketing strategy of the applicant business and market conditions
- Project financing, including a complete description of all sources and amounts of financing in addition to the SBRLF program
- 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 each lender, the collateral assigned to that lender's loan, and the value of the assigned collateral. The UCC-1 Financing Statement filing position and collateral value should be listed below each lender.

- Business assets that are being used to secure a loan, including an estimate of the market value and estimated liquidation value of the assets.
- If business assets will be shared as collateral among the lenders (e.g. SBRLF and SBA loans), the assets must be individually listed with their market and resale values appearing below the financing source they will secure.
- Loan terms, including the interest rate, scheduled payment amount, and all loan covenants
- Balance of the SBRLF, both before and after the requested loan(s), if made.

Section 1.4 Loan Review

The P.A. will review loan applications for completeness, SBRLF 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 P.A.
- Detailed review and final written recommendation to Loan Committee by the P.A., based on loan criteria, strength of business, principals' business and management experience, and all other factors identified in this Manual.
- An analysis of the loan's impact on the overall SBRLF loan portfolio.

The P.A. shall not recommend an SBRLF loan for approval unless it determines that there is a reasonable assurance of repayment and the applicant meets SBRLF program requirements. The P.A.'s recommendation shall include the loan terms and conditions.

Section 1.5 Loan Closing and Disbursement

Upon SBRLF Loan Committee approval, the P.A. will:

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

The P.A. shall use all due diligence to ensure that approved loans are closed within thirty (30) days of approval. The P.A. is responsible for ensuring that the form of loan agreements, promissory notes, personal guarantees, and associated loan documents utilized in making an SBRLF loan comply with all applicable state and federal legal requirements.

Section 1.6 Loan Closing Documentation Requirements

Prior to disbursing any loan, the P.A. 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-l Financing statements, UCC Search
- Deed of Trust
- Policy of Title Insurance
- Landlord's Consent
- Agreement of prior lien holder, as appropriate

The P.A. shall obtain 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 for obtaining the required 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, the P.A. shall provide an Intercreditor Agreement that details how the assets that collateralize each loan are allocated, and the rights and duties of each lien holder. The P.A. shall prepare and record separate UCC-1 Financing Statements that specifically list the assets that will secure each loan.

Section 1.7 Loan Disbursement Requirements

The P.A. shall make all disbursements in accordance with the SBRLF Loan Committee conditions. These may include, but are not limited to:

- Making direct payment to vendors for equipment purchased with SBRLF loan funds
- Phased disbursement of SBRLF loan funds intended to be used as working capital
- Procuring evidence that contracts with vendors have been executed and require pre-payment

The P.A. 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 by authorized P.A. staff.

Section 1.8 Loan File Closing and Documentation

The County will maintain the original SBRLF grant files, copies of all SBRLF reports to EDA, and SBRLF correspondence. In addition, the County will also maintain records of all Loan Write-ups provided by the P.A., and the County's written responses to the P.A. regarding applicant eligibility.

The P.A. 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 at which the loan was approved
- Loan correspondence

The P.A. must keep the following documents in a fireproof safe:

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

Section 1.9 Appeal of Loan Committee Action

The SBRLF loan applicant must file an appeal within thirty (30) days from the date of the letter notifying the applicant of the SBRLF Loan Committee's decision. The time limit may be extended by the County on a case-by-case basis, for good cause.

Applicants may appeal decisions made by the SBRLF Loan Committee to the Director of Economic Development. Appeals to the Director of the Economic Development Department 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 this Manual cover a given applicant's business circumstance. Appeals that do not clearly state the basis for appeal or that are defamatory or specious may be denied consideration. After consideration, the Director of the Economic Development Department may decide to deny the appeal and let the SBRLF Loan Committee's action stand, or to direct the SBRLF Loan Committee to reconsider the application. The Director of Economic Development shall issue the appeal determination within thirty (30) days of receipt of the appeal. The decision of the Director of Economic Development is final.

Section 2 Administration of the SBRLF

Section 2.1 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 apply the more restrictive requirements. These requirements include evaluating environmental impacts and determining applicability of Davis-Bacon wage requirements (13 CFR § 305) for all projects.

Section 2.2 Roles and Responsibilities

The County will contract with a Program Administrator (P.A.) to handle the day-to-day operation of the SBRLF, including: marketing, preparing Loan Write-ups, presenting credit requests to the SBRLF Loan Committee, loan documentation, loan payment processing, loan disbursements, delinquent loan collections, and all other tasks specified in this Administrative Manual.

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 at least 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 coverage. 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 an additional insured, and to state that the contractor's insurance is "primary" and the County of Monterey's insurance is "non-contributory".

General Responsibilities of the Program Administrator

In general, the Program Administrator is responsible for the day-to-day operations of the SBRLF including:

- Marketing
- Working with applicants to complete loan applications

- Preparing Loan Write-ups and presenting them to the SBRLF Loan Committee
- Preparing loan documents for approved loans
- Recording all security instruments, e.g., UCC-1 Financing Statements, Deeds of Trust
- Taking all steps necessary to maintain the legal enforceability of security instruments, e.g., renewal of UCC-1 Financing Statements every 5 years or as otherwise required by law.
- Disbursing loans to borrowers in accordance with SBRLF Loan Committee direction.
- Preparing and sending monthly invoices to borrowers.
- Receiving and posting payments
- Preparing monthly account reconciliations and drafting required grant reports.
- Working with delinquent borrowers on collections for the first ninety (90) days
- Assisting the County, and such vendors as it may retain to perform collections work on delinquent loans, on collections of delinquent loans
- Providing monthly reports of portfolio activity

The P.A.'s specific duties and how they will be carried out will be enumerated in the County's contract with the P.A. The County's contract with the P.A. shall incorporate this Administrative Manual by reference.

Responsibilities of County

In general, the County is responsible for:

- Ensuring that all grant requirements are met and operating as EDA's point of contact on issues related to management of the SBRLF;
- General oversight of the program;
- Competitive selection of the P.A.;
- Marketing the availability of the SBRLF through its business outreach and retention program;
- Participating as a voting member of the P.A.'s Loan Committee whenever action is being taken on a loan proposed for funding through the SBRLF, or, convening an SBRLF Loan Committee as provided in this Administrative Manual;
- Providing final approval for all foreclosure actions or other collections litigation, such approvals to issue only by the County Board of Supervisors.
- Preparing and submitting all reports required by the original grant agencies.

The County will work with the P.A. to market the Small Business Revolving Loan Fund. The P.A. will promote the program using a variety of means. For example, the P.A. shall notify the media, with the borrower prior consent, that the borrower's business received an SBRLF loan and is having a grand opening or similar public celebration. Second, the P.A. will meet with area bankers and the Small Business Development Center's counselors to make them aware of the loan program and encourage them to recommend it to their clients when appropriate. Third, P.A. 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 SBRLF program. The County will actively promote the SBRLF to businesses through its business outreach and retention program and other community activities.

The County and P.A. will make specific efforts to inform the minority community of the SBRLF program. The primary method will be through the U.S. Commerce Department's Minority Business Development Center serving Monterey County. County and P.A. outreach to minority communities will be coordinated with Spanish language television, radio, and print media.

The P.A. is responsible for publishing, at least once annually, a public notice in local newspapers of broad circulation, and through the distribution of flyers, that there are SBRLF funds available for lending. The P.A. must pay for the cost of this advertising out of available SBRLF Income.

Technical Assistance

The P.A. will provide direct technical assistance to applicants, as well as coordinate the provision of technical assistance to applicants, from a variety of programs including the Small Business Administration, Service Core of Retired Executives, and the Small Business Development Center located at CSU Monterey Bay. These organizations are available for consultation on available financing, business plan development, marketing and other key business topics. The P.A. will also make referrals to other agencies as deemed appropriate.

Section 2.3 Reporting Requirements

As an SBRLF Recipient, the County will 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. County will do so in accordance with the following deadlines and legal requirements:

- 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 > sixty (60) days late, the SBRLF grant may be suspended;
- If reports are > ninety (90) days late, EDA may begin termination for cause, unless a grantee, here the County, has already requested a termination for convenience or the Regional Director has approved an extension request;
- If the County, as a recipient, uses fifty percent (50%) or more of RLF income (or >$100K) for administrative expenses during the reporting period, it will submit an Income and Expense Statement (ED-209I, or any successor form).

As an SBRLF Recipient, the County will certify, as part of the semi-annual report to EDA, that the SBRLF is operating in accordance with the applicable SBRLF Plan.

Section 2.4 Records and Retention

The County will comply with requirements for SBLRF records and retention, found at 13 CFR § 307.13 and reprinted here:

(a) *Closed Loan files and related documents.*

The RLF Recipient shall maintain Closed Loan files and all related documents, books of account, computer data files and other records over the term of the Closed Loan and for a three-(3) year period from the date of final disposition of such Closed Loan. The date of final disposition of a Closed Loan is the date:

(1) Principal, interest, fees, penalties and all other costs associated with the Closed Loan have been paid in full; or

(2) Final settlement or discharge and cessation of collection efforts of any unpaid amounts associated with the RLF loan.

(b) *Administrative records.*

RLF Recipients must at all times:

(1) Maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs.

(2) Retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF for three (3) years from the actual submission date of the last semi-annual report that covers the Reporting Period in which such costs were claimed.

(3) Make available for inspection retained records, including those retained for longer than the required period.

The record retention periods described in this section are minimum periods and such prescription does not limit any other record retention requirement of law or agreement. In no event will EDA question claimed administrative costs that are more than three (3) years old, unless fraud is at issue.

Section 3 Loan Servicing

Section 3.1 Loan Payment & Posting Procedures

The P.A. is responsible for ensuring that borrowers meet their repayment obligations. The P.A. 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.
- Borrowers are allowed a five-day grace period between the payment due date and the date late penalties will be applied.
- The P.A. may provide borrowers a coupon book instead of sending borrowers monthly invoices, but the P.A. must be vigilant to ensure that borrowers are reminded of late or missed payments within five (5) days of a missed payment due date.
- Posting payments to the borrower's account on the day the payment was received and adjusting the outstanding principal balance accordingly.
- The P.A. will deposit all loan payments into bank accounts owned by the County within seventy-two (72) hours of receiving the payment.

It shall be the policy of the County of Monterey to maximize SBRLF program income from all loan repayments. Therefore, all loan payments shall be applied as follows:

- Late Fees
- Accrued Interest
- Principal

In the event that a borrower becomes delinquent or goes into default, the County policy shall be to maximize recovery of accrued interest and outstanding principal. To accomplish this goal, the County will consider workout plans with delinquent borrowers on a case-by-case basis. Work out plans must be realistic and enable the borrower to comply with the plan. The County will consider options to enable the borrower to bring loan repayment current in the following order:

- Capitalization of all accrued interest and late fees, and extending the term of the loan.

    - This option requires a borrower to execute a new loan agreement and promissory note.
- Capitalization of all accrued interest and late fees, and extending the term of the loan, and modification of repayment terms so that future payments are applied in the following order: to principal, late fees, and accrued interest.
    - This option requires the borrower to execute a new loan agreement and promissory note.
- Capitalization of all accrued interest and late fees as a new, separate loan that is amortized over the term of the original loan at zero percent (0%) interest.
    - This option requires the borrower to execute a new loan agreement and promissory note.
- Incrementally forgive late fees and accrued interest.

Section 3.2 Loan Monitoring Procedures

The P.A. shall check monthly ledgers to verify that borrowers are continuing to make the required loan payments. The P.A. shall also engage in active loan monitoring, which requires periodic review of the original loan conditions; ensuring that collateral continues to be secured; and ensuring that UCC-1 Financing Statements are renewed every 5 years or as required by law. The P.A. shall visit the borrower's business location and shall meet with the borrower or borrowers at least annually, as close to the loan anniversary date as possible. At each business location visit and borrower meeting, the P.A. shall:

Collect 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
- Current Accounts Payable and Accounts Receivable documentation
- Business and personal tax returns
    - Inspect any business equipment or other items serving as collateral for the SBRLF loan
    - Inspect any business equipment or other project that was purchased from loan proceeds

Depending on the credit risk of the business and the use of funds, the P.A. may require the borrower to submit monthly, quarterly or semi-annual financial statements.

The PA is shall establish a "tickler" system to ensure it collects all documents from borrowers in a timely manner and that all UCC-l Financing Statements, insurance certificates, and other security instruments and agreements are current and in force.

The County will meet with the P.A.'s lending staff quarterly to review and discuss outstanding loans. The P.A. shall bring to these meetings current documentation of outstanding SBRLF loans and repayment status; the P.A. shall also bring to these meetings documentation of its annual business location visits/borrower meetings and the outcomes of those visits/meetings.

At these meetings, the County and the P.A. will identify borrowers that may be experiencing difficulty with loan repayment and will develop an intervention strategy to prevent the loan from defaulting. These meetings will focus on loans that have missed at least one payment, or that have a history of late loan payments. The County and the P.A. will share information about the reason for the missed or late payment(s). The P.A. shall implement the intervention strategy agreed upon in order to avoid default by identified borrowers.

Section 3.3 Delinquency, Default, Write-Off & Bankruptcy Procedures

Section 3.3.1 General Policy

In general, SBRLF loan payments are delinquent when payment is not received in the full amount on or before the end of business of the day payment is due. The precise terms of SBRLF loan payment shall be stated in the loan agreement and promissory note which evidence the loan. As described above, the P.A. shall take all regular and customary steps to collect on delinquent loans. The P.A. may retain legal counsel, at its sole expense, to draft demand letters to the borrower. The P.A. may not, however, file any legal action in the courts, nor direct its counsel to file any legal action in the courts, as the decision of whether to initiate legal actions on behalf of the County may only be made by the Board of Supervisors.

The P.A. 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 P.A. will be responsible for initiating the appropriate collection actions regarding loans that are ten (10) or more days delinquent, as described below.

Twenty Days Delinquent

When an SBRLF borrower is twenty (20) days late with a payment, the P.A. shall assess a late fee of five percent (5%) of the payment amount and send a written notice of delinquency to the borrower, indicating the past due status of their loan. This notice shall issue within 10 (ten) days of the missed payment due date, and shall advise the borrower that the 5% late fee will be imposed if payment is not made by the twentieth day after it was due.

Within seven (7) working days of sending a written notice of delinquency to the borrower, the P.A. will personally meet with the borrower to discuss the loan re-payment problem and possible remedies. The P.A. shall ascertain the borrower's ability to repay and secure, if possible, the borrower's plans for bringing the loan current. The P.A. shall confirm the results of the personal meeting, including borrower's representations regarding loan repayment, to the borrower in writing, within 24 hours of the meeting. The P.A. shall report, in writing, the results of the personal meeting to the County within 3 (three) days thereafter, including providing the County with a copy of the written confirmation it sent to the borrower. The P.A. will also refer the borrower to the Small Business Development Center for counseling if appropriate.

If the borrower is unresponsive or unwilling to work with the P.A. to bring the loan current, and if the borrower refuses to personally meet with the P.A. concerning the delinquency, the P.A. shall document the borrower's lack of cooperation with call and correspondence logs. The P.A. shall provide the County with copies of call and correspondence logs compiled on delinquent borrowers on the tenth (10th) day of each month.

Thirty Days Delinquent

When an SBRLF borrower is thirty (30) days late with a payment, the P.A. shall personally meet with the borrower at least monthly, and more often if circumstances warrant, to review the borrower's financial status and work with the borrower to bring the loan current. The P.A. shall confirm the results of each personal meeting, including the borrower's representations regarding loan repayment, to the borrower in writing, within 24 hours of each meeting. The P.A. shall report, in writing, the results of each personal meeting to the County within three (3) days thereafter, including providing the County with a copy of the written confirmation it sent to the borrower. In its written report(s) to the County, the P.A. shall recommend further steps to be taken to bring the loan current to the County.

Ninety Days Delinquent

When an SBRLF borrower is ninety (90) days late with a payment, the County and the P.A. shall meet to discuss options for either bringing the loan current or initiating collections activities. In preparation for this meeting the P.A. and County shall compile summaries of all contacts either organization has had with the borrower since the first missed payment including dates, the name of the business representative spoken to, any agreements that were reached and any representations that were made by the borrower regarding loan repayment. This summary must include information on each meeting held between the P.A. and borrower that occurred after a borrower first became thirty days late with a payment.

The P.A. may recommend restructuring repayment if the borrower suffered temporary disruption to the business that made servicing the SBRLF loan impossible, the disruption has resolved, and the borrower is likely to be able to resume loan repayment. The P.A. should document what the event was, what the borrower has done to recover from the disruption, and a recommendation of how the loan should be restructured.

If the P.A. and/or County have been unsuccessful in working with the borrower to either bring the loan current or restructure the loan by the ninety-first (91st) day after the last payment was due, the Director of the Economic Development Department shall declare the loan to be in default and subject to the collections policy described below.

Section 3.3.2 Referral of Defaulted Loans to Outside Collections Agency

The County's overriding consideration when deciding whether or not a defaulted loan is referred to a collections agency is to protect the SBRLF assets and, to the greatest extent possible, recover outstanding principal, accrued interest and late fees so that they may be loaned to future borrowers.

The County's authority to refer loans in default to an outside collections agency is found in California Government Code Section 26220. This section of the Government Code gives the County Board of Supervisors broad discretion to refer County debt to professional collections agencies "under any terms and conditions that the board may prescribe." This section of this Administrative Manual establishes the terms and conditions under which delinquent SBRLF loans are to be referred to a collections agency so long as the policy guidelines set forth below are strictly observed.

The Director of the Economic Development Department may declare a delinquent SBRLF loan in default, and may refer that loan to a collections agency retained by the County, without seeking additional, individual approvals from the Board of Supervisors. Neither the Director of the Economic Development Department, the P.A., nor any outside collections agency, may initiate any legal action to obtain a judgment against a delinquent or defaulted SBRLF borrower. Any such lawsuit must be individually and directly authorized by the Board of Supervisors.

The Director of the Economic Development Department is authorized to refer defaulted SBRLF loans to a collections agency ninety-one (91) days after a borrower misses a regular payment when the following conditions have been satisfied:

1. The borrower has been unresponsive or unwilling to work with the P.A. to bring the loan current or to restructure the debt, as documented by call and correspondence logs maintained by the P.A.;
2. The borrower is still operating the business funded by the loan but has been unresponsive to or unwilling to work with the P.A. to bring the loan current or to restructure the debt;
3. The borrower is no longer operating the business that the loan was intended to support;
4. The borrower has not filed for bankruptcy court protection;

The Director of the Economic Development Department is also authorized to refer an SBRLF loan to a collections agency:

1. Ninety-one (91) days after a loan become delinquent and if the P.A. has not presented a loan restructuring proposal, agreed to by the borrower, to the SBRLF Loan Committee for consideration; or,
2. If the borrower has not satisfied all the requirements of a restructured loan, e.g. catch-up payments or securitization of the loan by providing additional collateral, within thirty (30) days of the SBRLF Loan Committee approving the loan restructuring described above.

The Director of Economic Development is not authorized to send defaulted loans to a collections agency if:

1. The borrower is still operating the business funded by the loan and is working with the P.A. to restructure the loan and present a proposal to the SBRLF Loan Committee
2. The borrower is working with the P.A. to restructure the loan and to present the loan restructuring proposal to the SBRLF Loan Committee within ninety (90) days of the loan becoming delinquent; or
3. The borrower has sought the protection of the bankruptcy court.

Section 3.3.3 Collections Requiring Legal Action

If the P.A. and a professional debt collection agency retained by County to assist with the collection of delinquent SBRLF loans exhaust all collection options that do not require the initiation of legal proceedings, the Director of the Economic Development Department shall make a recommendation to the Board of Supervisors as to whether to (1) initiate legal action to collect the unpaid SBRLF loan amounts due or (2) to write off the unpaid SBRLF loan amounts due as uncollectible debt Recommendations to initiate litigation shall be brought before the Board of Supervisors for decision in closed session, pursuant to established County practice. If the Board authorizes litigation, the Director of the Economic Development Department shall take steps to bring the authorized lawsuit with the assistance of either County Counsel, or outside retained counsel with expertise in collections, as resources permit. If the Board indicates loan write off as uncollectible debt is preferable, the Director of the Economic Development Department shall take steps to place decision on write off on a Board of Supervisors' public meeting agenda as soon as practicable.

Section 3.3.4 Bankruptcy

On occasion a SBRLF borrower may seek bankruptcy court protection. Typically notice of a bankruptcy filing is delivered to the P.A. as the County's representative. The P.A. is responsible for:

- Filing any and all claims with the Bankruptcy Court necessary to secure the SBRLF's claim within the time period proscribed by the Court;
- Following up with any additional requests for information from the Court or Trustee;
- Representing the SBRLF at Court hearings when required; and,
- Providing the County with copies of bankruptcy filings within twenty-four (24) hours of receipt.

The P.A. is not authorized to negotiate settlements without County approval and participation.

In the event that a borrower files for Chapter 11 bankruptcy relief the County and P.A. must carefully read the bankruptcy reorganization plan so that they understand how the Reorganization Plan will address late fees and interest accrued prior to the borrower filing for bankruptcy protection. To the extent possible, the County and P.A. should advocate to the Bankruptcy Court that late fees and accrued interest be paid through the Reorganization Plan before the Plan is confirmed by the Court.

Section 3.3.5 Write-off Procedures

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

- When the P.A. and representatives from the County's Economic Development Department have met, reviewed the loan history, and the Director of the Economic Development Department concludes that collection is unlikely.
- When a borrower has been discharged from bankruptcy.

When a loan is to be considered for write-off, the P.A. shall refer the loan the County, in writing, for follow up review and action. The referral shall include: a discussion of what steps have been taken to collect and/or restructure the debt and the status of all collateral, including when any UCC-1 Financing Statements are due to expire. The MCEDD will review the loan's history to make a determination regarding the write-off of a delinquent SBRLF loan.

For write-off of delinquent SBRLF loans of up to the Small Claims Court jurisdictional amount of $5,000.00, or such limit as may then apply to Small Claims Court, the Director of the Economic Development Department is authorized to recommend write off the defaulted SBRLF loan to the CAO. The CAO may, in turn, write off the claim as authorized by Monterey County Code section 5.16.030.A.3.

All other delinquent SBRLF loans which the Director of the Economic Development Department deems appropriate for write off shall be brought to the Board of Supervisors in closed session, for decision. The Director of the Economic Development Department may seek additional guidance from the Office of the County Counsel to determine if a loan should be written-off.

When a borrower declares bankruptcy and notice is provided to the P.A., the P.A. shall provide the County with a copy of all bankruptcy filings it received within 24 hours of receipt. Thereafter, the P.A., on behalf of the County, will ensure that all required filings are made to ensure the maximum recovery possible. MCEDD will provide timely notice and documentation of bankruptcy proceedings to the Office of the County Counsel to ensure that it is afforded a timely opportunity to supervise, or participate in the P.A.'s filing of Court papers or claims in bankruptcy proceedings, as may be appropriate. A loan will not be written-off until the bankruptcy trustee has distributed all payments required under the repayment plan.

MCEDD will notify the P.A. within five (5) business days of the decision to write-off an SBRLF loan.

Section 4 Effective Utilization of Revolving Loan Funds

Section 4.1 Capital Utilization Standard.

The County shall comply with the following Capital Utilization requirements.

During the "Revolving Phase" (defined at 13 C.F.R. § 307.8 as the stage of the SBRLF'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:

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,

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.

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).)

Section 4.2 Sequestration of Excess Funds

The County shall comply with the following Sequestration requirements.

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:

- A letter certifying that a separate, interest-bearing account has been established for the purpose 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

- 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 SBRLF Loan Committee approval after the due date of reports (refer to 13 CRF 307.16 for more information).

Section 4.3 Sequestration Not Required

The County shall comply with the following Sequestration requirements.

EDA will not require sequestration of excess funds if:

- The amount to be sequestered is less than $5,000.00; or
- The Recipient provides written documentation of 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 following six (6) months, and the Grants Officer signs and approves this plan. Six-month compliance extensions are solely at the Grant Officer's discretion.

Section 5 Monitoring of High Loan Defaults (13 CFR § 307.16)

The County shall comply with the following Monitoring requirements:

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 13 CFR § 307.21 and the terms and conditions of the Grant.

Section 6 Priority of Payments on Defaulted RLF Loans

The County shall comply with the following Priority of Payment and SBRLF income requirements:

When the P.A. receives payment on a SBRLF loan that has been declared in default, and the SBRLF loan is not subject to liquidation pursuant to 13 C.F.R. § 307.20, such payments shall be applied in the following order of priority (See 13 C.F.R. § 307.12(c)):

- 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.

The posting of payments in this manner is not consistent with the lending industry common practice, which customarily applies payments to accrued fees and interest first. Applying payments in this manner reduces the amount of fee and interest income that is ultimately earned on the SBRLF loan; however, it maximizes the preservation of the SBRLF capital pool.

The Recipient is expected to add SBRLF Income to the SBRLF Capital base where practicable. To determine the appropriate amount of SBRLF Income to return to the SBRLF Capital base, SBRLF recipients must consider the costs necessary to operate the SBRLF 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 SBRLF, and the anticipated demand for SBRLF loans.

Section 7 Oversight

The Monterey County MCEDD will provide general oversight of the P.A. At a minimum, the County will perform the following oversight activities to ensure that the program operates in accordance with the grant terms and conditions:

- Serve on the P.A.'s Loan Committee when actions affecting SBRLF loans are under consideration.
- Act on loans that are more than one hundred and twenty (120) days delinquent, up to and including litigation, if appropriate.
- Review the P.A.'s monthly financial reports.
- Review and transmit all required grant reports to appropriate grant agency.

Section 8 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 P.A. 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 the activities, purchases, and similar for which loan funds are used. This information will allow the County 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 P.A. will be contractually bound to adhere to all grant agency requirements. The contract with the P.A. will specifically incorporate the EDA Revolving Loan Fund Guidelines, Standard Terms and Conditions, and Audit Standards, and this Administrative Manual. 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 P.A. within thirty (30) days of receipt.

Section 9 Environmental Review

The P.A., with the assistance of the County, shall assess the significance of all environmental impacts of activities to be financed for compliance with the National Environmental Policy Act of 1969 (NEPA) and other Federal environmental mandates, as per the Assurances (SF-424D as revised) executed with the Economic Development Administration, and the California

Environmental Quality Act (CEQA). No activity shall be financed which would result in a significant adverse environmental impact unless the impact is to be mitigated to the point of insignificance. When necessary to ensure compliance, any required mitigation shall be made part of the loan conditions.

No project shall be approved which would result in the alteration of, or have an adverse impact on, any wetland without prior consultation with the U.S. Department of the Interior, Fish and Wildlife Service and, if applicable, obtaining a section 404 permit from the Army Corps of Engineers.

Consistent with E.O. 11988, no project shall be approved which would result in new, above ground development in a one hundred (100) year flood plain. This determination will be made by reviewing the proposed development against FEMA Flood Insurance Rate Maps.

The State Historic Preservation Officer, (SHPO) shall be notified of each loan proposal that involves significant new construction or expansion and asked to submit comments on the effect of the proposed activity on historic and archaeological resources. The County shall work with the SHPO and EDA in cases where the SHPO has recommended actions or the SHPO has determined the loan proposal will have an adverse impact on these resources.

All loan applicants shall be requested to provide information indicating whether or not there are hazardous materials such as EPA listed (see 40 CFR § 300) hazard substances, leaking underground storage tanks, asbestos, polychlorinated biphenyls (PCB), or other hazardous materials on a project site that have been improperly handled and have the potential of endangering public health. If deemed necessary, loan applicants may be required to perform or provide evidence of a Phase I site assessment to identify possible sources of contamination, a Phase II site assessment to test soil and/or groundwater samples, and a Phase III site remediation involving mitigation of applicable contaminants. In cases where there are unresolved site contamination issues, the P.A. shall work with the loan applicant and the appropriate state environmental agency office to resolve these outstanding issues.

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

Projects located 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), before receiving SBRLF assistance.

All SBRLF loan applicants must:

- Complete an environmental/hazardous waste questionnaire.
- Cooperate with the County, P.A. or other party to conduct environmental review and complete the Environmental Review Record.
- If deemed necessary by the P.A. 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 before completion of the environmental review process. Upon completion of environmental review, SBRLF loans may be committed, conditioned on compliance with specified environmental mitigation measures or the completion of a tiered review[5].

In general, the environmental review must include a determination of the level of review appropriate to the activity to be financed by the SBRLF loan, 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 P.A. shall be responsible for ensuring that the environmental review is completed by a qualified firm or person if not the P.A. itself. The P.A. will submit all required documents to the County with instructions for publication, review, or filing. The P.A. 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 County may request the applicant to bear all or part of the costs of environmental review.

Section 10 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, it will establish additional accounts.

Section 11 Conflict of Interest

The County shall operate the SBRLF consistent with General Terms and Conditions of all EDA assistance found at 13 CFR § 300.3 ("Interested Party"). SBRLF Recipients must also adhere to the following special conflicts-of-interests rules applicable to SBRLF loans set out in 13 CFR § 302.17(c):

(1) An Interested Party of a Recipient of an RLF Grant shall not receive, directly or indirectly, any personal or financial benefits resulting from the disbursement of RLF loans;
(2) A Recipient of an RLF Grant shall not lend RLF funds to an Interested Party; and
(3) Former board members of a Recipient of an RLF Grant and members of his or her Immediate Family shall not receive a loan from the RLF for a period of two (2) years from the date the board member last served on the RLF's board of directors.

5 The National Environmental Policy Act (NEPA) allows for the broad study of environmental issues that may be encountered when developing a project. In these situations, when a large area is studied before specific development locations have been identified, NEPA allows for a tiered review. The tiered review takes the broad findings and focuses them down to the specific development location.

Because the County anticipates using SBRLF loans to move businesses into established buildings it is not anticipated that any SBRLF loans will trigger this level of review under NEPA.

Section 12 Employee Dishonesty

The County will maintain a minimum $1,000,000 policy for employee dishonesty and crime insurance coverage. The County will evaluate the adequacy of this policy in the event that grant capitalization, from all sources, exceeds $3,000,000.

Section 13 Treatment of Proprietary Information

Because the County is subject to federal and state public disclosure laws, the County, members of the SBRLF Loan Committee, and the P.A. are unable to make assurances of confidentiality to borrowers regarding their financial or proprietary information. Such information will be disclosed, or will be shielded, in accordance with applicable laws.

Section 14 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.

Section 15 County's Counsel Review of all Contracts and Legal Forms.

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

Section 16 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, as amended from time to time, and as specified in applicable EDA statutes, regulations, and policies.

Appendix A – EDD Forms DE6 and DE34