

Attachment IV

**County of Butte CDBG -  
Micro-Enterprise Loan  
Program Guidelines**



Adopted May 23, 2023

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## **Description of Business Assistance Activity**

### Program Summary

The County of Butte's Community Development Block Grant (CDBG) funds for the purpose of establishing a micro-enterprise assistance program, providing technical assistance and loans to eligible businesses with five or fewer employees. The Micro-Enterprise Loan Program has been established to provide very flexible low interest forgivable loans to micro-enterprises in both the incorporated and unincorporated areas of the County, with the exception of the CDBG Entitlement communities of Chico and Paradise, to offer business assistance to low to moderate income micro-enterprises and job creation and retention for low to moderate income individuals. The repayment schedule for each loan will be based on an analysis of the anticipated debt service capacity of the business.

The loan fund design is based on meeting the CDBG National Objectives of serving low to moderate income micro-enterprises as well as job creation and retention for low to moderate income individuals. The program is based on the retention of jobs and is designed to complement existing local and regional lending activities by filling a gap in the availability of low interest, flexible business loans. The County, Small Business Development Center, Alliance for Workforce Development, regional economic development professionals, commercial lenders, and Chambers of Commerce will provide referrals.

### Technical Assistance

Technical assistance will be available to all qualified loan applicants as well as other eligible micro-enterprises within the County that will benefit from additional specialized one-on-one training. The goal of the technical assistance is to improve the likelihood of the borrower's success in surviving and thriving post-COVID-19, and to assist other micro-enterprises with navigating necessary changes to their business model in order to expand their market share and retain/expand jobs. Technical assistance will be focused on topics such as how to move business transactions on-line and social media marketing.

### Loan Program

A key element of this loan program is to provide for loan balance forgiveness when the business has met its job retention requirements, and has fully expended all loan funds. Loan forgiveness will be based on the business retaining full-time equivalent positions of which for micro-enterprises, the owner is low/moderate income (LMI), or 51% of micro-enterprise employees are low/moderate income households during the recovery period, anticipated to be three months. Once the business has done that, 100% of the loan balance can be forgiven. However, if loan funds are provided for working capital and operating expenses for a period that exceeds three months, then the loan may not be forgiven prior to the length of time the financing covers the business expense.

Loan payments may be deferred for a period of time based on a reasonable forecast of debt service capacity utilizing the required six HUD CDBG underwriting criteria. A key element of this analysis will be a review of the past two years business tax returns, to determine past business viability, and a review of recent in-house, bookkeeper, or CPA-prepared, profit and loss and balance sheet statements measuring the impacts of the Shelter in Place order on the business. The next step will be the development of a month-by-month one-year financial forecast, based on the business history, combined with the evolving relaxation of the order on the business future cash flow. The forecast will determine the loan repayment and loan deferral schedule.

In order to reduce program costs to the County, the County may utilize the services of the local Small Business Development Center, or other service provider, to help the borrower prepare the one-year forecast statements and to assist with preparation of the loan application.

The overarching goal of the program will be to arrange companion loans, when possible, to leverage other loan funds, and extend the County loan program reach while utilizing the CDBG funds on a pro-rata basis.

## **1. Program Overview**

### Eligible Applicants and CDBG Program Requirements

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

An eligible applicant is:

- an existing business legally operating, with any required local business license, insurance, permits per local, state, and federal requirements;
- a business leasing tenant space or owner-occupied business in the service area;
- a business in operation at least one year and profitable as shown on the businesses prior year(s) federal tax return;
- a business that has not already received funding for the same purpose as the funding request, or a "duplication of benefits";
- a business with five or fewer employees, one of which may be the business owner, a "micro-enterprise";
- a business located within Unincorporated Butte County, City of Biggs, City of Gridley, or City of Oroville

The loan applicant must provide documentation that the proposed project will meet CDBG eligibility criteria of national objective and public benefit requirements. The loan applicant must provide documentation of meeting reasonable commercial underwriting criteria outlined in below in these guidelines as well as HUD CDBG

mandated six underwriting standards. These mandated criteria are described below under the section titled "Meeting CDBG Underwriting Requirements".

Specific ineligible loan applicants include:

- a business operating a private "exclusive" recreational facility;
- a business that has already received funding for the same purpose as the funding request, a duplication of benefits;
- non-profit businesses are not eligible under this program;
- a business or person(s) with unresolved state / federal tax liens;
- a business or person in bankruptcy process are not eligible until bankruptcy process is complete.

### Eligible Project Costs

The following list is provided for reference in order to clarify that CDBG funds will only be used for CDBG eligible activities. The primary purpose of the loan program will be to retain businesses and retain jobs. CDBG funds are non- discretionary and restricted to certain eligible costs.

- operating capital;
- furniture, fixtures, and equipment (FF&E)
- capital improvements

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

### Ineligible Costs

CDBG funds are non-discretionary, limited to certain eligible costs described in the section above. Some ineligible costs are:

- costs incurred prior to submittal of loan application and environmental review completion;
- costs associated with residential housing development, i.e. on mixed use project;
- costs associated with supporting "other" businesses the applicant owns;
- costs on a funded project not meeting a national objective;

- personal expenses such as cars, home repairs, not directly associated with the business;
- costs of paying off personal credit cards;
- costs of paying off any personal debt not directly associated with business;
- cash payments of any kind made directly to the assisted business owner(s) (wages or draws) from loan proceeds;
- costs associated with a funded project when the owner(s) or business is found to be on federal debarred list;
- public infrastructure in support of the business;
- research and development costs for future production (speculative).

## **2. Meeting National Objective Standards**

All eligible activities funded under this program must meet a CDBG “National Objective” as described in the Act, Section 104(b)(3) and federal regulations 24 CFR Part 570.483. Projects not documented as meeting a National Objective are an ineligible activity. Below is a general description of documenting how a project meets the national objective of benefit to low/moderate income (LMI) persons. The County, through its designated representatives, will use Department specific guidance for ensuring each eligible project funded is documented as meeting a National Objective.

For Micro-Enterprises, a National Objective standard is met when jobs are retained or created. At least 51% of the new job positions or retained positions must be held by low/moderate income (LMI) qualified employees or the micro-enterprise owner must meet the LMI requirements. Businesses proposing to retain or create jobs for LMI persons must agree to allow the County, through its designated representatives, to meet with each job applicant prior to hiring or returning to work and complete a Self-Certification of Income Form. This Self-Certification of Income Form shall also be completed by the business owner. Payrolls must be collected by the designated representatives of the County and compared before and after the loan closing. This process is intended to validate the project’s job retention requirement having met the national objective of principally benefiting LMI persons and allow for the close out of the loan requirements with the Department and HUD.

## **3. Meeting Public Benefit Standards**

All eligible project activities funded under this program must meet a minimum CDBG “Public Benefit Standard” as described in the Act, section 104(b)(17) and federal regulations; 24 CFR Part 570.483(f)(g). Public Benefit is provided by the loan recipient in return for use of subsidized federal funds and provides a funding limit or “cap”.

For projects meeting national objective via jobs provided to LMI persons, the Public Benefit standard is jobs, and the maximum CDBG loan funding available is limited to \$35,000 per job. The County, through its designated representatives, will

require loan applicants to provide an estimate of public benefit generated by investment of CDBG funds into the business via the Job Tracking Form. The jobs retained must also be included in the business forecast spreadsheet as a business expense. This proposed level of public benefit will be verified after investment of CDBG funding.

CDBG public benefit requirements of the program will be disclosed at the start of the application process. The County, through its business loan program operator, will use HUD CDBG financial underwriting to identify the need for a CDBG loan and determine the reasonable public benefit that will be generated from the loan.

#### **4. Meeting CDBG Underwriting Requirements**

In addition to documenting that the project meets CDBG public benefit standard, the loan must also be documented as meeting six HUD CDBG underwriting standards, per federal regulation 24 CFR Part 570.483(e) and Appendix A to Part 570. These underwriting standards are required to document a minimum “due diligence” by the County’s designated business loan program operator to ensure projects are financially sound enough to meet public benefit and national objective job retention standards. The six underwriting standards are general, qualitative, and are supported in part by commercial underwriting standards defined below.

The Six Underwriting Standards are:

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

#### **5. Meeting Other Federal Program Requirements**

Since these loans are provided from a federal funding source, there are a number of federal laws and requirements, which are triggered by their use. The County, through its designated representatives, will require loan applicants to provide information that allows them to make a determination of compliance. Applicants are required to sign loan disclosures and work with the County’s business loan program operator to ensure each project complies with any of the triggered, applicable regulations listed below. The sections below are requirements of the program.

National Environmental Policy Act (NEPA): Every project funded under the program must be reviewed under HUD NEPA regulations 24 CFR Part 58 and the County must sign and certify an Environmental Review Record (ERR) for each project prior to approval or disbursement of loan funds. The County is required to sign and certify the correct NEPA EER, per current Environmental Review Requirements.

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

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

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

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

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

Job Pirating: Job pirating is prohibited per CDBG federal regulation 24 CFR 570.482 (h). Job pirating is defined as using CDBG public funds to facilitate the moving of a business and associated jobs from one jurisdiction to another (business attraction). As such, CDBG federal funds cannot be used to attract/



subsidize a business to move from one labor market area to another or keep a business from moving out of a labor market by making a retention argument. All applicants must sign a Certification of No Job Pirating.

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

Other Requirements:

Duplication of Benefits: All program applicants must sign an attestation stating that they are not requesting funding to pay for or reimburse costs already funded through another federal program or through insurance proceeds.

DUNS Number: All program applicants must obtain a DUN's number if they do not already have one. The DUN's number is free and can be obtained online. In addition, prior to loan approval, the County, through its designated loan program operator, will document that the business being assisted and all owners and affiliated businesses are verified as not being on the federal debarred contractors list. HUD also requires that the Department and the County collect certain income and demographic data from the business and any beneficiaries of CDBG funds.

Debarment: A verification of the status of debarment will be included as a part of the review of the loan application. Debarment or suspension of an organization or individual excludes that company or individual from doing business with the Federal Government.

## **6. Loan Demand**

### Demand Projections

It is anticipated that up to six loans will be made within 12-months or sooner of program implementation. This projection is based on interviews with service providers, financial institutions, and City/County representatives.

## **7. Fair Lending Compliance**

The Butte County Business Assistance and Recovery Loan Fund Program will be implemented in a way that is consistent with the County's commitment to fair

lending. No person or business shall be excluded from participation in, denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with CDBG funds on the basis of his or her religion or religious affiliation, age, race, color, ancestry, national origin, sex, marital status, familial status (number or ages of children), physical or mental disability, sexual orientation, or other arbitrary cause. All personal and financial information of loan applicants will be kept confidential.

## **8. Loan Processing and Approval**

### Loan Application Processing

Loan applications will be accepted through a first come first serve basis. The County will advertise the business loan program, make available a application, and publish the dates under which applications will be accepted. Applications will be accepted through the County's designated technical service provider. Applicants that do not meet basic CDBG requirements of the program will be sent a letter or email of explanation. All applications received will be kept on file to document fair lending standards.

Applications that meet basic eligibility requirements will be contacted for a site visit and collection of additional information. At this time, the need for additional technical assistance to further support the business will be discussed, and appropriate referrals will be made to either a community economic development services provider or the Micro-Enterprise Technical Assistance provider, depending on the need of the business.

### Loan Application Evaluation

Each project/business will be evaluated based on how it has performed in the past and its future financial forecasts. Specifically, the following questions will be asked upon receipt of the loan application. The loan application is designed to obtain the information and documentation necessary to determine loan eligibility.

- Is business an eligible applicant?
- Are the proposed project costs eligible?
- Will project meet a CDBG national objective?

- Will business meet public benefit jobs retention?
- Does project appear to meet six HUD underwriting standards?
- Are federal overlays triggered that will adversely impact project development?
- Are the business and all owners' credit worthy?
- Does the business and owner pay bills on time, collect on time?
- Does owner have documented market demand for projected sales?
- Does owner have management capacity to operate the business?
- Does owner have financial accounting capacity to operate the business?
- Is the owner contributing a reasonable amount of equity?
- Is the owner able to get conventional bank financing, if not, why not?
- Was the business financially viable in the past (net income covers debt)?
- Are there reasonable financial assumptions for future viability/success?
- Is there enough collateral available to secure the proposed loan?
- Is the owner's personal financial status stable?

By collecting enough initial application information to answer the above list of questions, the County's designated business loan program operator will have a good sense of how strong a borrower is, and how successful they will be, if assisted with a CDBG loan. Most of this information is collected on the loan application form and verified verbally at the initial site visit with the business owner. By having a discussion with the borrower and asking these questions the County's designated business loan program operator will know what additional information/documentation needs to be collected to provide a clear picture and documentation of how CDBG funds can be used to retain the business and its jobs.

The business will be required to provide accurate financials for past, current, and future projection of the business operations. All owners will have credit checks conducted as part of loan underwriting. The County's designated technical service providers will arrange to provide sample financial Excel forms (balance / cash flow sheets, profit and loss, personal financial statements, and proforma) and coordinate the use of these tools with the Small Business Development Center who will assist the loan applicant with preparing the month by month one-year financial forecast. This arrangement will provide an objective source of guidance to the applicant, reduce cost to the County and accelerate the lending process.

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

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

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

The County's designated service providers will assist the loan applicants with meeting these requirements where applicable in the most fundamental and expeditious manner possible. Loan files will be set up as applications are received and compliance information gathered.

#### Determination of Loan Amount

The Program has a maximum loan amount of \$20,000. The actual loan amounts will be based on the business's need for capital and considering the ability to meet the public benefit requirements. Loans funded may include a recommendation that the borrower participate in a technical assistance activity or program. This requirement is intended to ensure that the borrower has been provided with the tools and resources necessary to further support the business.

#### Determination of Loan Term

The loan term is tied directly to the debt service capacity of the borrower, the use of funds, and what security is being pledged for the loan. If a business needs operating capital or equipment, then the term of the loan can be amortized over ten years to minimize monthly loan payments. If the loan is for capital improvements and can be secured on real property, then the terms can be extended out to 20 years. The key element of this loan program is to provide for loan balance forgiveness when the business has fully expended all loan funds and has met its job retention requirements. The measurement for meeting this requirement is based on the business retaining one full time equivalent job for every \$35,000 loaned for a period of three months. The job retained must be filled from a member of a low-to-moderate income household. Once the business has done that, 100% of the loan balance can be forgiven. This policy will encourage the business to retain employees to meet the goal of job creation and retention. However, if loan funds are provided for working capital and operating expenses for a period that exceeds three months, then the loan may not be forgiven prior to the length of time the financing covers the business expense.

#### Determination of Interest Rate

The loan interest rate will be one percent.

#### Loan Processing Fees

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

### Personal and Business Credit

Each applicant will have third party credit reports obtained showing credit scores and payment history. All owners and their spouses with 20% or more interest in the business will get credit reports reviewed. If the personal credit reporting service provides low credit scores or shows poor credit history, applicants must provide a written explanation of their current credit situation to clarify their situation.

### Personal and Business Financial Information

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

For the business fiscal year, historic financial statements will be required. These will consist of past two year's balance sheets and profit and loss statements, generated from past tax returns. These statements should be put together by the person responsible for doing the bookkeeping and finance management for the business. If the business owner needs help with gathering this information, they can contact the Small Business Development Center to assist.

A budget showing how the funds will be used must be provided to understand how the CDBG funds will be used. Using the information in these financial statements, along with any back-up documentation required, will provide the information necessary to prepare the loan proposal.

### Collateral Requirements

When possible, loans under this program will be collateralized using commercial lending standards. However, the County understands that some borrowers will not have the collateral available to meet conventional lending standards. In these cases, the County's business loan program operator will determine if the borrower is fully committed to the loan and has provided as much collateral as possible as security for the loan. This determination will take into consideration the cost associated with securing the collateral and the estimated liquidated value. The collateral pledge must be deemed to have value, if not, the loan should be unsecured. In addition, the County recognizes that CDBG funding is typically in a subordinate position to banks and other lenders.

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

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

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

#### Business Experience and Management Capacity

The loan applicant will provide brief management histories to show the experience of business owners and their management staff in successful operation of the existing business or something comparable.

#### Loan Approval Process

Once the County's designated business loan program operator has compiled a complete loan file with all the credit, financial, and underwriting information needed to show the loan is eligible under these guidelines, then a loan proposal will be prepared. The proposal will be submitted to the program operator's designated loan committee for approval.

Loan approval meetings will be scheduled as loan proposals are ready for presentation. Members may request additional information and or attach conditions on closing or funding of the loan. If the loan is approved, then the County's designated loan program operator will move forward with loan closing. Once approved, the County's designated business loan program operator will draw loan closing documents for signing by the borrower and then the County. Funds will be provided to the borrower in accordance with CDBG distribution requirements. Applicants that are declined will be sent a letter or email of explanation.

#### Applicant Confidentiality

Persons involved in the loan process for this program will not disclose any of applicant's business or personal confidential information as part of loan review and approval process. All confidential information of businesses will only be disclosed to persons required to view the information as part of loan review and approval.

All personal and business confidential information of loan applicants will be kept in a locked secured storage facility and are not available to persons outside of the program.

#### Dispute Resolution/Appeals Process

Any business applying for assistance through this program has the right to appeal if their application is denied. The appeal must be made in writing to the County of Butte. The County staff will then schedule an appeal meeting for the applicant that will be heard by the County Administrator. If the application is denied a second time then the person may ask to have their appeal presented to the County's Board of Supervisors for a final decision.

#### Exceptional Circumstances

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

#### Loan Closing Process

After approval, the designated business loan program operator will prepare for the loan closing. The loan closing documents are Laser Pro documents, which are the standard loan documents used by banks and lenders. The borrower will sign all the necessary documents and agreements. The executed documents will then be forwarded to the County for signature. The original loan documents will be kept in a fireproof safe with retained by the designated business loan program operator until the close of the program.

### **9. Loan Servicing for Loans Not Meeting the Loan Forgiveness Requirement**

The County's designated business loan program operator will retain all original project files within locked storage. Original legal documents will be kept in locked fire proof filing system for future loan servicing. The County's designated business loan program operator will provide annual income tax statements to the borrower for their tax purposes and other documentation as required within the loan closing documents. All loan payments will be made directly to the County's designated

business loan program operator. The payments will be deposited into an account and remitted to the County on a quarterly basis. The designated business loan program operator will inform County staff if payments are late and provide an explanation as to why the payments are late and recommendations to cure the deficiency.

The County Program will require periodic financial statements, annual tax returns, and proof of insurance annually from the borrower during the course of the loan term. Upon reviewing the borrower's financial statements, the County's designated business loan program operator may require the business to take actions that improve the business cash flows. In cases where the loan committee may have required that the borrower meet with a technical service provider, the County may receive brief reports from the provider on the progress the borrower is making during its recovery period.

The borrower must disclose any sale of equipment or assets that are used as loan security by the Lender. The borrower may submit a written request to the County's designated business loan program operator to change the CDBG loan terms, if the business is not able to fully service CDBG debt repayments or if they wish to pre-pay the loan by making one or more larger payments.