



# **BEN HILL COUNTY, GEORGIA**

## **REVOLVING LOAN FUND (RLF) Policy and Procedures**

September 19, 2011

UNDERWRITING POLICY  
BEN HILL COUNTY REVOLVING LOAN FUND

**GOALS**

The goal of the Ben Hill County Revolving Loan Fund (RLF) program is to expand economic opportunities and create jobs for persons of low and moderate income in Ben Hill County, Georgia, by providing flexible and expedient funding at the local level.

**OBJECTIVE**

The objective of the Ben Hill County Revolving Loan Fund (RLF) program is to provide loan funds to small businesses from public resources, as well as create public-private partnerships with local commercial banks and other private sector lending and investors. To be considered, potential projects must meet one of the two national objectives: 1) Benefit low to moderate income persons; or 2) Prevent or eliminate slums or blight.

**SCOPE**

The Ben Hill County Revolving Loan Fund (RLF) is designed to assist small service, commercial, and industrial business in Ben Hill County, Georgia, by providing financing or “gap financing.” Financial assistance must meet the overall program objectives and must result in the creation or retention of permanent jobs of which **51% must be low to moderate income persons.**

**ELIGIBLE ACTIVITIES**

Projects eligible for funding are enumerated in The Housing and Community Development Act of 1974 (42 U.S.C.A. § 5301 *et seq.*). Eligible activities, include, but not limited to:

- 1) Provision of loans to private, for-profit entities, when the assistance is appropriate to carry out an economic development project that: (A) creates or retains jobs for low-and-moderate income persons; (B) prevents or eliminates slums and blight; or (C) assists businesses that provide goods or services needed by, and affordable to, low and moderate income residents;
- 2) Provision of loans for activities which are carried out by public or private nonprofit entities (including development authorities) including: (A) acquisition of real property; (B) acquisition, construction, reconstruction, rehabilitation, or installation of (i) public facilities (except buildings for the general conduct of government), and (iii) commercial

- industrial buildings or structures and other commercial or industrial real property improvements; and,
- 3) Disposition (through sale or lease) of any real property acquired pursuant to activities authorized by the State's CDBG program or its retention for eligible public purposes.

### **INELIGIBLE ACTIVITIES**

- Refinancing
- Owner/shareholder buyouts
- Illegal activities

### **ELIGIBLE BORROWERS**

- Individuals and entities (public, private and nonprofit) that meet the goals and objectives of the RLF and criteria for RLF funding

### **INELIGIBLE BORROWERS**

(Including, but not limited to)

- Those employees of Ben Hill County, Georgia, and its departments that are in administrative and decision making positions with regard to the RLF (See Conflict of Interest Section)
- Members of the Revolving Loan Fund Committee (See Conflict of Interest Section)
- Companies involved in speculation
- Individuals and entities that have unpaid debt owed to the local governments and utilities commission and State of Georgia
- Individuals and/or entities that have previously defaulted on loans with Ben Hill County, Georgia (including officers, directors, partners and shareholders of companies)

### **ELIGIBLE COSTS**

- Business acquisition, construction, conversion, enlargement, repair, modernization or development costs
- Purchasing of development of land, building, facilities or materials
- Startup operating costs and working capital
- Reasonable fees related to the project

## DEFINITIONS

- A) Fixed Asset – Permanent business properties such as land, buildings, machinery, and equipment.
- B) Gap Financing – The portion of funds supplied by Ben Hill County through the Revolving Loan Fund that allows a business to remain in operation, expand operations, or “start up” that would not take place without this financial assistance.
- C) Job – Permanent, full-time employment for a period not less than 365 days. Part-time jobs must be converted to full-time equivalents (e.g. a job that will require only working half time would count as only one-half a job).
- D) Job Retained – A job that would be lost if the financial assistance from Ben Hill County was not provided. The business applying for the funds must prove to the satisfaction of the Revolving Loan Fund Committee that these funds are necessary.
- E) New Job Created – A job that was not in existence and represents a new budgeted position that will be filled within six (6) months. The job must be tangible and the applicant must commit that this job will be filled after the loan from Ben Hill County.
- F) Revolving Loan Fund Committee (RLFC) – Public and private citizens to be appointed by the Board of Commissioners of Ben Hill County, Georgia. Members shall be appointed for two (2) years terms.
- G) Low Income – Income levels as published by HUD for the State CDBG and HOME/CHIP Programs. The levels are usually calculated as 80% of a County’s median income adjusted for family size. The most recent data for such determinations may be obtained from DCA at: [www.dca.state.ga.us/grants/cdbg\\_forms.html](http://www.dca.state.ga.us/grants/cdbg_forms.html). Applicants should understand that jobs paying minimum wage do not necessarily qualify as low income jobs. **Individual family income levels at the time of application for employment determine qualification.**
- H) Market Analysis – Objective process whereby the need, market potential, and expected return on investment are determined for a particular product and/or service.
- I) Pro Forma – Estimation of anticipated expenditures, revenues, and cash flow for a given period of time.

- J) Start Up – A “start up” venture is the creation of a new business that was not previously in existence.
- K) Working Capital – Funds available and necessary for normal business operations.
- L) Slums or Blight on a “spot basis” - Acquisition, clearance, relocation, historic preservation and building rehabilitation activities which eliminate specific conditions of blight or physical decay on a spot basis that may not be located in a slum or blighted area. The blight or physical decay must be documented by the Ben Hill County (or the City of Fitzgerald) to meet local or state definitions of blight and physical decay. Under this standard, the activity is limited to the extent necessary to eliminate specific conditions detrimental to the public health and safety.
- M) Slums or Blight on an “area basis” -
  - a) The area, delineated by Ben Hill County (or the City of Fitzgerald), meets a definition of blighted, deteriorated or slum area under state or local law;
  - b) Throughout the area there is a substantial number of deteriorating buildings or the public improvements are in a general state of deterioration;
  - c) The assisted activities address one or more of the conditions which contributed to the deterioration of the area; and
  - d) Ben Hill County (or the City of Fitzgerald) keeps records sufficient to document its finding that a project meets the National Objective of elimination or prevention of slums and blight.

## **ELIGIBILITY**

The Ben Hill County Revolving Loan Fund is limited to businesses located within the corporate limits of the County or businesses wanting to establish within the corporate limits of the County. Highest consideration will be given to those businesses which demonstrate that they will create and/or retain the highest number of jobs for low to moderate income persons for the least amount of public expenditure.

## **APPLICANT REQUIREMENTS**

1. Applications will be provided to all individuals and/or small businesses interested in this program.

2. A “profit and loss” statement is required for the past three (3) years. A Personal financial statement is also required for each business owner. This requirement may be waived for startup businesses.
3. A cash flow pro forma will be required to indicate future needs of the business (Should be for at least 3 years). This requirement may be waived for startup businesses.
4. A market analysis/business plan should be made for each individual/small business making an application to the RLF. The market analysis should include:
  - a) Business or Product definition such as the mix of goods, merchandise, and/or services to be produced or sold.
  - b) Market description including primary and secondary trade areas, potential customer categories, major competitors, and marketing strategies.
  - c) A “Needs Assessment” based on statistical data and evaluation of such factors as market trends, unmet customer demands, customer surveys, etc., development of data supporting this need and an evaluation of success potential.
  - d) Projection of return on investment based on the information gathered and analyzed for the particular product and/or service.
5. Applicants must fully address the purpose of the loan and the time schedule for implementation if funded.
6. Applicants must inject no less than 5% of their own equity in the project (cash, equipment, land, etc.)
7. The goal of this program is the creation/retention of jobs for low income persons. Therefore, each applicant must commit to the number of jobs that will be retained and/or created through this financial assistance. (Sample commitment letter attached.)
8. Description and documentation of ownership of collateral and its certified market value to be used for the loan. In some cases the Committee may require an appraisal to be conducted.
9. List of at least three (3) credit references and how they can be contacted.
10. A credit report will be requested for each applicant (including officers, directors and possibly shareholders) for the purposes of ensuring the identification of the applicant and the accuracy of the information provided by the applicant.
11. Verification of the applicant’s ability to repay the debt (as determined by the Revolving Loan Fund Committee).
12. Funds awarded under this program must begin to be utilized within sixty (60) days of award.

13. The Underwriting Policy will be provided by the Ben Hill County Revolving Loan Fund to all businesses requesting a copy. A list of all persons receiving a copy will be maintained in the RLF file in order of date of receipt. This process results in a “first come, first served” method of service. When a minimum amount of cash is on hand, the prospective applicant at the top of the list of Underwriting Policy recipients will be notified by the RLF committee by Certified Mail, Return Receipt Requested, that they have two (2) weeks from the date of receipt of the Certified Mail in which to submit an application to the RLF Committee. The applicant will have thirty (30) calendar days from the date of any written request to the applicant by the Committee to submit additional information needed to complete the application process. Applicants failing to respond to the notice or request for additional information may, at the discretion of the RLF committee, be removed or placed at the bottom of the list.

Depending on the type of activity to be undertaken with the loan funds, various federal, state and local laws may apply. Applicants will be made aware of these during the application process.

Ben Hill County and the Revolving Loan Fund Committee reserve the right to request and require further information that they deem necessary in order to make a decision as to whether or not to approve an application under this program, including requests for personal guarantees.

It should be noted that if construction is a part of the overall project, special conditions may apply. Site improvements may also necessitate special considerations.

## **TERMS AND CONDITIONS**

Applicants for the Ben Hill County Revolving Loan Fund may also receive funds for the project from a private lending institution (A “lending institution” is any person, firm or corporation that will lend the necessary funds for private investment required for this program). In this event, an applicant will be required to provide a letter of commitment from the lending institution acknowledging their agreement and percentage of finance of the asset or working capital (sample attached). This letter must include the following terms: interest rate, term of loan, collateral, and any other requirements stated as part of the loan. The letter must be signed by the lending institution or a person authorized to make such a commitment for that lending institution.

All applicants must prove to the satisfaction of the Revolving Loan Fund Committee that they have the ability to cover all debt services and/or initial equity investments.

**Fixed Asset loans** will be made at an interest rate of not lower than 3% nor higher than 10%. **The life of the loan is not to exceed the life of the asset.** The length of the loan will be determined by the Revolving Loan Fund Committee. A fixed asset loan that is secured by real property may have a term of up to 15 years.

**Working Capital loans** will be made at an interest rate of not lower than 3% nor higher than 10%. **A five (5) year payback is the maximum for a working capital loan.**

**All approved loans may be eligible for deferred payment, at the discretion of the Revolving Loan Fund Committee.**

All loans will be screened and approved after review by each of the following, in order of approval:

1. Staff of the Revolving Loan Fund.
2. Revolving Loan Fund Committee.
3. Board of Commissioners of Ben Hill County, Georgia, which has the final authorization to approve a project for funding.

The Revolving Loan Fund Committee reserves the right to request and require further information. Upon receipt of a complete application, every effort will be made to meet with the applicant within forty-five (45) days of the date of the receipt of the application. If the application is not recommended for approval, the Revolving Loan Fund Committee will respond in writing, with the reason(s) that the application was not recommended. As well, if the application is recommended for approval by the RLFC and is denied by the Board of Commissioner, the Board of Commissioners will respond in writing, with the reason(s) for denial of the application.

Ben Hill County, Georgia, will not discriminate due to race, creed, color, age, sex, religion or national origin in approving loan applications under this program.

#### COLLATERAL:

Personal guarantees, assignment of life insurance and liens on the assets acquired with the loan proceeds are types of collateral that may be required. The RLFC may require additional collateral or take additional steps to ensure that the loan is secured. In the event that the RLFC requires a life insurance policy, the borrower will be required to pay the premiums for the policy and provide proof of the policy.

#### LOAN FORMS:

Each applicant will be required to complete an application, provide a copy of his/her driver's license or other form of government issued photo identification and execute additional forms as may be required for the purpose of applying for and receiving a RLF loan.

#### LOAN TERMS:

Loan terms depend upon the project and the assets being financed. The RLF will generally finance land and building for a period longer of 10 to 15 years, equipment for 5 to 7 years and working capital for up to 2 years.

There is no penalty for prepayment of the RLF loan.

Loans will vary in amount. Interest rates are dependent upon the project and assets being financed; however, in most circumstances, the minimum interest rate will be 3%.

Suggested examples of loan structuring are as follows:

a) Small loans

Unsecured	
Loan Amt.	\$1000 – 3500
Int. Rate	6 – 8%
Time	Up to 2 years

50% Collateral	
Loan Amt.	\$3500 – 8000
Int. Rate	5 -8%
Time	Up to 3 years

Fully Secured	
Loan Amt.	\$8000 – 10,000
Int. Rate	3.75 – 8%
Time	Up to 3 years

b) Medium loans

50% Collateral	
Loan Amt.	\$5000 – 20,000
Int. Rate	3.75 – 8%
Time	Up to 3 years

Fully Secured	
Loan Amt.	\$10,000 – 25,000
Int. Rate	3.75 – 6%
Time	Up to 4 years

c) Large loans

50% Collateral	
Loan Amt.	\$25,0000 – 40,000
Int. Rate	3.75 – 6%
Time	Up to 10 years

Fully Secured	
Loan Amt.	\$40,000 – 99,000
Int. Rate	3.75 – 6%
Time	Up to 15 years

d) Loan fees

The borrower is responsible for payment of fees associated with the loan, including origination fee, processing fee, administration, loan closing costs and other out of pocket expenses. The borrower may use the loan proceeds to pay the fee. In no event may the origination, procession or closing fees financed by the Revolving Loan Fund exceed 3% of the Revolving Loan Fund amount.

## LOAN DOCUMENTS

The County Attorney, or other approved attorney, will prepare all documents with regard to approved loans. Generally, the documents will document: 1) the borrower’s authority to borrow from the Revolving Loan Fund; 2) the indebtedness to the Revolving Loan Fund; 3) the terms and conditions of the loan; 4) the borrower’s responsibilities under the terms and conditions of the loan; and 5) collateral for the Revolving Loan Fund.

## JOB CREATION AND RETENTION

Documents regarding job creation and retention will be maintained in each project file. Included in the documents will be a commitment letter from the borrower.

## RECAPTURED FUNDS

All funds “recaptured” by Ben Hill County from this program shall be returned to the RLF account and used only for future projects. The accounting and administrative system used to account for the Ben Hill County Revolving Loan Fund shall, at a minimum, conform to the guidelines contained in the Georgia Department of Community Affairs’ publication “*Guidelines for Administration of Local Revolving Loan Funds*” and any Revolving Loan Fund regulations promulgated by the Department of Community Affairs. An accounting of the Revolving Loan Fund shall also be included in the County’s annual audit.

## **ACCOUNTING/AUDITS**

Proper financial management and a separate accounting system will be established for the Revolving Loan Fund. A separate revenue account (CDBG/EIP Revolving Loan Fund) will be maintained for the purpose of lending, loan repayments and proceeds from the sale of any Revolving Loan Fund assets. Accurate and proper records will be kept with regard to each project financed. The Revolving Loan Fund will a part of Ben Hill County’s annual audit.

## **PROJECT REVIEW, SELECTION AND APPROVAL**

The Revolving Loan Fund Committee will primarily be responsible for review of all applications and selection of projects to be financed. The Committee will consist of five to seven members who shall be appointed for two year terms by the Ben Hill County Board of Commissioners. If at all possible, the Committee members should have experience in the areas of finance, banking, accounting, real estate and general business administration. At least five members shall be drawn from the community. The Committee should include women, minority and lot to moderate income representation. At any given time, there shall be no more than two county commissioners appointed to the Committee.

The Committee will review all applications for funding, meet with applicants and take steps necessary to thoroughly assess whether projects would be prudent investments and meet the goals of the Revolving Loan Fund. The Committee will recommend loans to the Board of Commissioners for approval and the structuring of the loans that meet underwriting standards for collateral and security. In the event that the Committee does not recommend a loan for approval, the Committee shall provide the Board of Commissioners with a report of said loans and the reasons for determination that the applicant not be approved for financing.

In addition, the Committee will be responsible for recommending to the Board of Commissioners revisions of Revolving Loan Fund polices.

A quorum of the Committee members is necessary for conducting the business of the Revolving Loan Fund Committee. A majority vote of the quorum will be required for the purpose of making decisions on behalf of the RLFC.

Committee members may not be absent from more than four meetings yearly; otherwise, he or she will be automatically removed from the RLFC. A fifth absence may be excused by the

RLFC only upon the showing of extenuating circumstances. Examples of extenuating circumstances are verified serious illness, death in the immediate family and similar like situations.

For the purpose of maintaining a quorum, Committee members are required to notify the RLFC Secretary or RLFC Chairman, as soon as practicable, of tardiness or absence from any Committee meeting.

## **LOAN COLLECTION POLICY**

Following is the policy for collection of all loans made by the Ben Hill County Revolving Loan Fund:

1. Each borrower will be allowed to choose the payment day and will be provided with an amortization schedule. The borrower is expected to make the full, amortized payment each month in a timely manner.
2. If full payment is not made within 15 days of the due date, a letter is sent by Ben Hill County reminding the borrower of his or her overdue payment.
3. If full payment is not made within 30 days, a \$35.00 penalty is added to the monthly amount due and another letter is sent to the borrower informing them of his or her overdue payment, late fee and warning them of actions to be taken for non-payment. Said penalty shall be added for every 30 days that the overdue payment is not made in full, with interest compounded monthly on the penalty.
4. If full payment is not made within 60 days, a letter is sent by the County Attorney informing the borrower that they are in default and immediate payment must be made.
5. If full payment is not made within 90 days, the loan will be turned over to a collection agency or processed through the court system for default.
6. In the event that the borrower is behind in payments and has contracted (or subcontracted) for any type of project involving Ben Hill County, Georgia, or any of its departments, at the option of Ben Hill County, Georgia, payments may be withheld from funds due to the borrower for work performed, which will be applied to the unpaid loan balance.
7. Any costs associated with collection of the loan payment will be assessed against the borrower, which includes attorney's fees, court costs, etc.
8. Late payments and default of a loan will be reported to credit agencies.

For those borrowers who are consistently late in making payments to Ben Hill County, the RLFC may deviate from the policy set forth above. On the third instance within a one year period where borrower has not made full payment in 30 days, the RLFC may immediately request the

County Attorney to inform the borrower that he or she is in default and immediate payment must be made. Any additional instances where the borrower is 30 days or more late in payment may be immediately referred to the County Attorney to inform the borrower that he or she is in default and immediate payment must be made.

The RLFC may depart from the collection policy if a hardship can be documented to his or her satisfaction. The determination of whether a hardship exists may be at the discretion of the RLFC or Ben Hill County Board of Commissioners. A copy of any departure from the foregoing policy should be retained in the borrower's file.

### **COMPLIANCE REQUIREMENTS**

Ben Hill County, Georgia, is required to ensure that the RLF's proposed program, activities, and goals are in compliance with all applicable Federal and State laws, regulations and executive orders. The major applicable laws, regulations and executive orders include but are not limited to the following:

General:

1. Housing and Community Development Act, as amended and as implemented by the most current HUD regulations (24 C.F.R. Part 570, Subpart I)
2. State of Georgia Community Development Block Grant Program Regulations
3. Title 50, Chapter 18, Article 4, Official Georgia Code, Georgia Open Records Act
4. HOME Investment Partnership Act of 1990, as amended.

Financial Management:

5. 24 C.F.R., Part 85 ("Common Rule")
6. Federal OMB Circular A-133 (Audit Requirements)
7. Federal OMB Circular A-87 (Cost Principles)

Civil Rights:

8. Title VI – Civil Rights Act of 1964
9. Section 109 – Title I – Housing and Community Act of 1974
10. Title VIII of the Civil Rights Act, 1968
11. Section 504 of the Rehabilitation Act of 1973
12. Executive Order 11246 – Equal Employment Opportunity, as amended by Executive Order 11375, Parts II and III
13. Executive Order 11063 – Equal Employment Opportunity, as amended by Executive Order 12259
14. Section 3 of the Housing and Development Act of 1968, as amended Section 118 of Title I, Community Development and Housing Act, 1974
15. Georgia Department of Community Affairs Civil Rights Compliance Certification
16. Age Discrimination Act of 1975

17. Executive Order 12432: National Priority to Develop Minority and Women Owned Businesses.

Labor Standards:

18. The Contract Work Hours and Safety Standards Act (40 U.S.C.A. §327-330) as supplemented by Department of Labor regulations
19. The Davis-Bacon Act (40 U.S.C.A. § 276(a) to (a-7), as supplemented by Department of Labor regulations
20. The Copeland “Anti-Kickback” Act (18 U.S.C.A. § 874) as supplemented by Department of Labor regulations

Acquisition/Relocation:

21. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (46 U.S.C.A. § 4601) and regulations at 24 C.F.R., Part 42
22. The Georgia Relocation Assistance and Land Acquisition Policy Act of 1973
23. The Georgia Urban Redevelopment Law (O.C.G.A. § 36-61-1 *et. seq.*)

Housing:

24. The Truth in Lending Act (Regulation Z)
25. Title I Consumer Protection Act (P.L. 90321)
26. The Lead Base Paint Poisoning Prevention Act ( 24 C.F.R. Part 35)
27. Construction Industry Licensing Board Act (O.C.G.A. § 43-14-1 *et. seq.*)
28. Georgia Industrial Building Act of 1982, as amended (O.C.G.A. Title 8, Chapter 2, Article 2, Part 1 “Industrialized Buildings”; Part 2 “Manufactured Housing (Mobile Homes))
29. Mandating State Construction codes, as well as the Georgia State Energy Code.

Environmental:

30. The National Environmental Policy Act (NEPA) of 1969 implemented by Executive Order 11514 of March 5, 1970, as amended by Executive Order 11991 of May 24, 1977, and the Council on Environmental Quality’s (CEQ) NEPA Regulations, 40 CFR, Parts 1500-1508
31. Environmental Review Procedures for the CDBG Program, HUD (24 C.F.R., Part 58)
32. The National Historic Preservation Act of 1966 as amended; particularly Section 106 and the Regulations of the Advisory Council on Historic Preservation
33. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971; particularly Section 2(c)
34. The Reservoir Salvage Act of 1960; particularly Section 3, as amended by the Archeological and Historic Preservation Act of 1974
35. Flood Disaster Protection Act of 1973 as amended; particularly Sections 102(a) and 202(a)
36. Executive Order 11988, Floodplain Management, May 24, 1977 (42 F.R. 26951 *et. seq.*) particularly Sections 2 and 5

37. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 F.R. 56961 *et. seq.*) particularly Section 2(a)
38. Georgia Air Quality Act of 1978 (O.C.G.A. § 12-9-1 *et. seq.*) to regulate air pollution and protect air quality
39. Shore Assistance Act of 1977 (O.C.G.A. § 12-5-230 *et. seq.*)
40. Georgia Hazardous Waste Management Act (O.C.G.A. § 12-8-60 *et. seq.*)
41. Georgia Health Code (O.C.G.A. § 31-3-1 *et. seq.*) regulates individual sewerage treatment systems
42. The Coastal Zone Management Act of 1972 as amended; particularly Section 307(c) and (d)
43. The Safe Drinking Water Act of 1974 as amended; particularly Section 1424(e)
44. The Endangered Species Act of 1973 as amended; particularly Section 7
45. The Archaeological and Historic Preservation Act of 1974
46. The Coastal Resources Barriers Act of 1982, as amended
47. The Wild and Scenic Rivers Act of 1968 as amended; particularly Section 7(b) and (c) (16 U.S.C.A. § 1278(b) and (c))
48. The Clean Air Act Amendments of 1970 (P.L. 91-604, 42 U.S.C.A. § 7401 *et. seq.*) as amended, particularly Section 176(c) and (d) (42 U.S.C. 7506(c) and (d))
49. HUD Environmental Standards (24 CFR, Part 51) Environmental Criteria and Standards (44 FR 40860-40866, July 12, 1979)
50. Georgia Coastal Marshlands Protection Act of 1970 (O.C.G.A. § 12-5-280 *et. seq.*) to protect the ecology of marshlands/wetlands.
51. Georgia Groundwater Use Act of 1972 (O.C.G.A. § 12-5-170 *et. seq.*)
52. Georgia Safe Drinking Water Act of 1977 (O.C.G.A. § 12-7-1 *et. seq.*)

## **OTHER APPLICABLE COMPLIANCE REQUIREMENTS**

### **ENVIRONMENTAL REQUIREMENTS**

Compliance with environmental laws should be completed and documented prior to the funding of any RLF project. This includes compliance with historic preservation regulations.

An environmental review must be completed. An Environmental Assessment is required in cases where construction is proposed. Projects that do not involve construction (i.e. purchase of machinery and equipment) may be exempt from the assessment requirement. If the environmental review process determines that the RLF project is exempt from the National Environmental Policies Act (NEPA) requirements and other environmental review procedures in accordance with 24 CFR Part 58, a Finding of Exemption Form must be filled out.

### **DAVIS-BACON ACT**

The Davis Bacon Act is triggered for any construction-related project that involves Federal money when the amount of construction is over \$2,000. This means that any RLF money going into a construction activity (new construction, rehab, etc. but not furnishings, equipment, etc.) trigger the following compliance issues:

- wage rates must be requested for all construction trades
- Labor Standard Provisions and Wage Rates must be included in contracts
- Copies of weekly payrolls must be collected for all contracts (general and sub)
- Random interviewing of employees on site by RLF administrators

When a grant number is requested for an RLF Davis-Bacon wage rate request, simply indicate “Ben Hill County RLF Project” instead of the requested grant number.

## **OPEN RECORDS STATUTE**

Georgia law requires that “all state, county, and municipal records, except those which by order of a court of this state or by law are prohibited from being open to inspection by the general public, shall be open for a personal inspection of any citizen of this state at a reasonable time and place, and those in charge of such records shall not refuse this privilege to any citizen” (O.C.G.A. § 50-18-70 *et seq.*). This means that past and current records on the use of CDBG/EIP funds are required to be open for public inspection.

However, certain proprietary information which is required by DCA to be included in an economic development application and must be supplied by a business in order to compete and which constitute a “trade secret” (O.C.G.A. § 10-1-740 *et seq.*; 16-8-13(a)(4)) is exempt from disclosure under O.C.G.A. § 50-18-70 *et seq.*

## **CONFLICT OF INTEREST PROHIBITIONS**

In general, no person who is an elected or appointed official, employee, agent, consultant, officer or any person serving in a similar capacity with any participating public agency, who exercise or have exercised any functions or responsibilities with respect to any RLF activities, can benefit from local RLF activities.

In addition, those persons who are in a position to participate in a decision-making process or gain inside information regarding RLF proposed activities or related activities, obtain financial interest or benefit from the project, or have any interest in any contract, sub-contract or agreement with respect to any RLF project are also prohibited from benefiting from a RLF project.

The prohibitions against benefiting from a RLF project would apply to the covered individuals or those with whom they have family or business ties, for one (1) year following their tenure in the covered position. If questions arise concerning the conflict of interest prohibitions, we urge you to contact the Georgia Department of Community Affairs in order to discuss the situation before proceeding with a questionable project.

## **AUDITING REQUIREMENTS**

The Ben Hill County RLF accounting standards are to comply with the generally accepted accounting principles found in the Governmental Accounting and Financial Reporting Standards (State of Georgia Accounting Procedures Manual, July, 2003 or most current version). The Georgia Department of Community Affairs asks that the audit report include a balance sheet and income statement for the RLF.

### **SPECIAL PROVISIONS FOR EMPLOYMENT INCENTIVE PROGRAM (EIP) CAPITALIZED LOCAL REVOLVING LOAN FUNDS**

The following excerpt is taken from the State of Georgia Annual Action Plan for FFY 2003.

DCA may permit localities that have or will receive revenue (principal, interest or other payments) from EIP or other loans or leases to retain that revenue so long as it is used for the same activity that generated the revenue and also used in accordance with the requirements of this regulation and any other applicable federal, state, or local law, regulation, contract, guidance manual or memorandum.

For localities that will retain program revenue, DCA will require that such revenue be deposited into a separate revolving loan fund (RLF) account that bears the local government's name and used to carry out specific Title I eligible activities. The RLF must be created by a local resolution and implemented by local policies and procedures approved by DCA.

Localities allowed to retain program revenue must ensure that the RLF is adequately managed. DCA will categorize the RLF as being adequately managed so long as the following responsibilities are being met:

- a. Maintenance of an accounting and financial management system that complies with generally accepted accounting principals and DCA's guidelines for RLF financial management systems;
- b. Compliance with DCA's reporting requirements for local RLF's;
- c. Operation of the local RLF in accordance with DCA approved policies, procedures, and federal, state, and local law, regulation, contracts, guidance manuals and memoranda;
- d. Maintenance of a project review and selection committee with the capacity to review and analyze loan requests and determine whether such requests represent prudent investments as defined by generally accepted underwriting criteria;
- e. Maintenance of a loan packaging and structuring capacity that meets appropriate underwriting standards for security and documentation;
- f. Maintenance of a loan servicing and monitoring capacity which ensures that loan payments are collected, that loan covenants are enforced, and that loan security is maintained;
- g. Maintenance of a loan portfolio which represents investments in businesses engaged in sound business purposes that have demonstrated tangible employment of low and moderate income persons as defined by DCA; and
- h. Attendance at DCA sponsored training workshops that will be held periodically for purposes of training local RLF administrators.

To assist with the financing of a local RLF program's administrative cost, DCA will allow (on an annual basis) the greatest of 5% or \$2,500 of interest earned by the RLF to be used for administration and audit costs. In certain foreclosure and/or hardship situations, DCA may allow additional amounts to be expended for administrative, audit or legal costs.

Localities allowed to retain program revenue must also ensure that the RLF is utilized in a timely and efficient manner. DCA will categorize a RLF as being adequately utilized so long as the following criteria are met:

- a. The RLF is used to continue the same activity which generated the program revenue; and,
- b. The RLF's cash balance (on average) shall not exceed \$125,000 or 30% of the total RLF assets, whichever is greater.

Should a locality be unable to utilize the RLF in accordance with items (a) and (b) above, the locality may request DCA to waive the provisions. DCA may grant waivers when it is determined that sufficient future activity is probable or the locality is taking steps to ensure future activity. However, in general, a locality may not retain unused assets any longer than the full term of the original EIP/RFP loan, or five (5) years, whichever is shorter.