Section 108 Loan Pool Application

Toledo, Ohio

November, 2021

City of Toledo

HUD Section 108 Application [draft]

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Exhibit A: Project Description

The City of Toledo wishes to establish a Section 108 Loan Pool of approximately $37 million. The Loan Pool will be available to prospective borrowers citywide and provides a ready source of long-term, fixed-rate and reasonably priced financing that is not available conventionally. The Loan Pool will bridge financing gaps and enable borrowers to proceed with their respective transactions; create and retain jobs; increase affordable housing; advance equity and equitable development opportunities and expand the existing tax base. Equitable development projects will include projects that support investments in communities and neighborhoods of color or provide financing to BIPOC-led developers, businesses, or organizations.

Although the Loan Pool will be available to eligible borrowers citywide, the City will prioritize investments in projects using Section 108 Financing that are in targeted neighborhood revitalization areas including Junction, Englewood, Old South End and East Toledo; and promote equity and equitable development. The City may elect to support non-income producing projects and use a portion of annual CDBG allocation as a source of repayment.

The City anticipates the eligible activities it will fund are housing rehabilitation, acquisition of real property, economic development and public facilities (see Exhibit B). For each individual transaction, staff will properly document an eligible activity, a national objective and appropriateness (if applicable).

The City has developed Underwriting Guidelines to ensure the individual projects conform to a low risk profile (see Exhibit F). There are separate guidelines for income-producing properties, business loans and public facilities. In addition, there is a 1% spread over the cost of funds for private borrowers. The spread will serve as a loan loss reserve for the Section 108 portfolio. The credit subsidy fee will be added to the fully loaded budget and funded by one of the sources in the capital structure.

The City will establish a delivery system for each component of the implementation process (see Exhibit H). The City has procured technical assistance in preparing the Section 108 application and in establishing a delivery system to implement the program. The Enterprise Community Partners technical assistance team has extensive experience in each component of the delivery system and will provide staff with checklists and guides for each subsystem.

As individual transactions are identified in the future, first staff will screen the proposed ventures for conformance to eligibility and credit thresholds. Those projects passing the screening process will then proceed to the completion of an Eligibility Determination to HUD. The Eligibility Determination will document how the project satisfies an eligible activity, a national objective, the Underwriting Criteria approved in the Loan Pool application and if applicable, appropriateness (Appendix A and public benefit).

Exhibit B: Eligible Activities

The Section 108 Loan Pool is intended to utilize four potential eligible activities:

- Special Economic Development (24 CFR 570.703(i) and 24 CFR 570.203/204)
- Acquisition of Real Property (24 CFR 570.703(a))
- Housing Rehabilitation (24 CFR 570.703(h))
- Public Facilities (24 CFR 570.703(l))

As staff identifies individual projects, they will document compliance with one of the eligible activities. For transactions utilizing the eligible activity of special economic development, staff will document conformance with the appropriateness criteria, including public benefit.

Exhibit C: National Objective

The Loan Pool anticipates utilizing the national objectives of benefitting low and moderate-income citizens via job creation/ retention (24 CFR 570.208(a)(4)); eliminating slums and blight on an area basis (24 CFR 570.208(b)(1)) or housing occupancy (24 CFR 570.208(a)(3)). If applicable, the City may also utilize LMI area benefit (24 CFR 570.208(a)(1) regarding public facilities or economic development projects in which the applicable service area provides goods or services to predominately LMI neighborhoods.

If applicable, the City will utilize the presumption provision. In order for a grantee to presume a job is LMI, it must document compliance with two tests. The first is that the poverty rate of the census tract must equal or exceed enumerated thresholds (greater than 20%; 30% for projects located in a CBD). The second is that the grantee must document that the activity is located in an area of pervasive poverty or general distress (generally the project is located in a block group with a poverty rate above 20%). In the event the City utilizes eliminating slums and blight as a national objective, it will also document compliance with the 70% rule (70% of expenditures benefit LMI citizens over a one, two or three-year accounting period).

EXHIBIT D: SOURCES AND USES OF FUNDS

USUES OF FUNDS

INDIVIDUAL TRANSACTIONS		46,250,000	

SOURCES OF FUNDS

SECTION 108	37,000,000		80%
EQUITY	9,250,000		20%
TOTAL		46,250,000	

*NOTE: Minimum numbers- Each individual project will vary according to private financing and other sources of funds.

Exhibit E: Repayment Schedule

Exhibit E assumes borrowers will utilize $30 million of the Loan Pool for real property and $7 million for personal property (machinery and equipment primarily). Each component will reflect a maturity that is consistent with the economic life of the asset financed or the collateral securing the obligation. Accordingly, the maturity for the realty is 20 years and the term regarding the personal property is ten years.

REPAYMENT SCHEDULE

AMORTIZATION PERSONAL PROPERTY

AMOUNT	7,000,000		
RATE	1.64%	10-Year Treasury	1.64%
TERM	10		
AMORTIZATION PERIOD	10		
INTEREST ONLY	1		

YEARS	1	2	3	4	5	6	7	8	9
BEGINNING BALANCE	7,000,000	7,000,000	6,271,862	5,531,782	4,779,565	4,015,011	3,237,919	2,448,083	1,645,293
PAYMENT	114,800	842,938	842,938	842,938	842,938	842,938	842,938	842,938	842,938
INTEREST	114,800	114,800	102,859	90,721	78,385	65,846	53,102	40,149	26,983
PRINCIPAL	0	728,138	740,080	752,217	764,553	777,092	789,836	802,790	815,956
ENDING BALANCE	7,000,000	6,271,862	5,531,782	4,779,565	4,015,011	3,237,919	2,448,083	1,645,293	829,337
ROUNDING	0	728,000	740,000	752,000	765,000	777,000	790,000	803,000	816,000

10	11	12	13	14	15	16	17	18	19	20	
829,337	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	
842,938	0	0	0	0	0	0	0	0	0	0	7,701,245
13,601	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	701,245
829,337	0	0	0	0	0	0	0	0	0	0	7,000,000
(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	
829,000	0	0	0	0	0	0	0	0	0	0	7,000,000

REPAYMENT SCHEDULE

AMORTIZATION REAL PROPERTY

AMOUNT	30,000,000		
RATE	2.54%	10-Year Treasury	1.64%
TERM	20	Spread	0.90%
AMORTIZATION PERIOD	20		
INTEREST ONLY	2		

YEARS	1	2	3	4	5	6	7	8	9
BEGINNING BALANCE	30,000,000	30,000,000	30,000,000	28,664,682	27,295,448	25,891,435	24,451,760	22,975,517	21,461,777
PAYMENT	762,000	762,000	2,097,318	2,097,318	2,097,318	2,097,318	2,097,318	2,097,318	2,097,318
INTEREST	762,000	762,000	762,000	728,083	693,304	657,642	621,075	583,578	545,129
PRINCIPAL	0	0	1,335,318	1,369,235	1,404,013	1,439,675	1,476,243	1,513,739	1,552,188
ENDING BALANCE	30,000,000	30,000,000	28,664,682	27,295,448	25,891,435	24,451,760	22,975,517	21,461,777	19,909,589
ROUNDING	0	0	1,335,000	1,369,000	1,404,000	1,440,000	1,476,000	1,514,000	1,552,000

10	11	12	13	14	15	16	17	18	19	20	
19,909,589	18,317,975	16,685,934	15,012,439	13,296,438	11,536,850	9,732,568	7,882,458	5,985,355	4,040,065	2,045,365	
2,097,318	2,097,318	2,097,318	2,097,318	2,097,318	2,097,318	2,097,318	2,097,318	2,097,318	2,097,318	2,097,318	39,275,716
505,704	465,277	423,823	381,316	337,730	293,036	247,207	200,214	152,028	102,618	51,952	9,275,716
1,591,614	1,632,041	1,673,495	1,716,002	1,759,588	1,804,282	1,850,110	1,897,103	1,945,290	1,994,700	2,045,365	30,000,000
18,317,975	16,685,934	15,012,439	13,296,438	11,536,850	9,732,568	7,882,458	5,985,355	4,040,065	2,045,365	0	
1,592,000	1,632,000	1,673,000	1,716,000	1,760,000	1,804,000	1,850,000	1,897,000	1,945,000	1,995,000	2,046,000	30,000,000

Exhibit F: Additional Security

The primary security for the Section 108 Loan Pool is the underwriting guidelines that follow in this exhibit. The portfolio will conform to the low risk profile. Moreover, the City will add a spread of 1% over its cost of funds to private borrowers. At current rates, this equates into the present value equivalent of a 7% to 8% loss reserve.

Underwriting Guidelines- Businesses

<u>Definition</u>

User transactions involve projects in which debt service is repaid from cash flow generated by an operating business- either from the production of a good or from the provision of a service. Whether a retail store, a wholesaler, a manufacturer or an accounting firm, all transactions, large and small, are analyzed in the same disciplined manner.

Numerically, business projects are defined as follows (a C-Corp):

Net Sales
Less: Cost of Goods Sold (Usually Nominal in a Service Business)
Equals: Gross Margin
Less: Operating Expenses
Equals: Operating Profit
Less Non Operating Expenses
Equals: Earnings Before Tax
Less: Taxes
Equals: Net Profit After Tax

<u>Project Review</u>

Staff will review transactions on two levels: 1) upfront evaluation to determine whether the loan should be made (credit and federal eligibility) and 2) an annual review to determine whether reserves, collateral and additional security are sufficient. The annual credit review will ensure that the reserves are consistent with risk profiles over time.

<u>Credit Criteria</u>

There are six credit criteria for business transactions. Although the criteria are similar for real estate projects, the process of analysis is materially different.

- Ability to Repay
- Collateral
- Commitment of Entrepreneur
- Adequacy of Balance Sheet
- Management Experience
- Character

All of the criteria are important and a material deficiency in any criterion may be sufficient to decline a loan request. In general, compilation financial statements are sufficient although small firms may only have tax statements available.

Ability to Repay

The ability to repay is generally determined by the debt coverage ratio. It is defined as gross cash flow divided by proposed and existing debt service. Unless a loan is subordinated in repayment to the Section 108 obligation, the debt service of all loans is included in the denominator.

In calculating gross cash flow, the analyst will include existing net profit after tax (if a C-Corp) plus depreciation. Moreover, the analyst can add any after-tax savings related to the proposed transaction, including discretionary expenses, rent savings, reduction of taxes due to increased depreciation and interest expenses, extending the maturities or maturation of existing debt, etc. Conversely, the analyst must net out the after-tax effect of any increased expenses, such as ad valorem tax, insurance, etc.

Since gross cash flow must fund additional capital expenditures and incremental working capital needs in addition to debt service (particularly for growing companies), the analyst must ensure the business has sufficient cash flow and/ or additional debt capacity to fund all cash needs.

For existing businesses, the analyst will spread financial statements and observe trends in sales and profit growth, analyze operating costs as a percentage of sales and on an incremental basis, reconcile net worth from one period to the next and trace changes in cash position between statements.

Collateral

As a second means of repayment, staff will require specific liens on assets for all loans. The County will require verification of value from independent, qualified parties. Concerning appraisals for real estate, the analyst will ensure that the appraiser is acceptable to any co-lending conventional lender. The appraiser must be state certified and have experience with projects similar in size and scope to the subject. The borrower will pay for the appraisal; however, staff or a conventional lender will commission the document. Staff will recognize the lower of cost or value and will scrutinize the methodology the appraiser utilizes to derive a reconciled value.

In general, staff will evaluate the adequacy of the collateral by using a loan to value ratio. The thresholds are enumerated for each classification of asset financed in the risk profiles.

Commitment

Third party borrowers must evidence commitment through the investment of equity and the pledge of corporate and personal guarantees for any owner or principal with an ownership interest equal to or greater than 20%. The loan committee will have discretion in accepting limited guarantees or in very rare occasions, waiving the requirement for personal guarantees.

Adequacy of the Balance Sheet

The analyst will spread the balance sheet over time and will evaluate several quality indicators. The analyst will relate all of the measures to peers in their respective industries with any material disparities requiring further inquiry.

In addition to the following measures, the analyst will reconcile net worth and changes in sources and uses of cash between financial statements. Since the company's survival is dependent upon it capacity to generate cash, the analyst must ensure that all cash needs (debt service, working capital, capital expenditures) are met.

Receivables

The analyst will calculate day's receivable and request an aging of receivables for periods of 0-30, 30-60, 60-90 and 90+ days. Unless there is a compelling reason, all receivables in excess of 90 days will be deemed uncollectable. The analyst will also evaluate the credit quality of the receivables in addition to detecting concentrations of sales and receivables to any one customer.

The Days Receivables is calculated by dividing sales into receivables and multiplying the result by the number of days in the period covered by the financial statements. The days receivables is the average collection period of the business which is then compared to the terms the company extends. The analyst will look at the trend over time. These two simple measures will give the analyst a good indication of the ability of the company to collect its accounts and the quality of the receivables.

$$\text{Days Receivables} = \frac{\text{Receivables}}{\text{Sales}} \times \text{Days In Period}$$

Inventory

The analyst will also compute a day's inventory ratio and an inventory turnover ratio. The Days Inventory is calculated by dividing inventory by cost of goods sold and multiplying the result by the number of days in the period. The Days Inventory is a rough calculation of the average number of days of cash flow relative to volume that the company has invested in inventory.

Inventory Turnover is defined as cost of goods sold divided by inventory and is the average number of times the inventory turned during the accounting period. The analyst will observe changes in these computations over time.

The inventory analysis is more relevant to non- service businesses since most service businesses have small or nominal amounts of inventory. If the transaction involves a relatively large manufacturing firm, the analyst may request an itemization of inventory as to raw materials, works-in-progress and finished goods. In some situations, an itemization as to product line may be needed.

The two simple measures will give the analyst a good indication of the ability of the business to manage its inventory and its quality.

$$\text{Days Inventory} = \frac{\text{Inventory}}{\text{COGS}} \times \text{Days In Period}$$

$$\text{Inventory Turnover} = \frac{\text{COGS}}{\text{Inventory}}$$

Days Payables

The analyst will calculate Days Payables which is defined as payables divided by cost of goods sold times the number of days in the accounting period. The analyst will compare this number to the terms its suppliers extend to the company. Moreover, the analyst will request an aging of payables on a similar schedule as that specified for receivables. Unless proven otherwise, the analyst will assume that a payable in excess of 90 days is reason for the affected supplier to discontinue business with the prospective borrower. In addition, the analyst will note whether the business is exploiting discounts.

$$\text{Days Payables} = \frac{\text{Payables}}{\text{COGS}} \times \text{Days In Period}$$

Days Accruals

The analyst will calculate Days Accruals which is defined as accruals divided by cost of goods sold times the number of days in the period. If the number is high the analyst will request an itemization and ensure that the company is not raiding its payroll withholding accounts.

$$\text{Days Accruals} = \frac{\text{Accruals}}{\text{COGS}} \times \text{Days In Period}$$

Debt/ Worth

The analyst will determine the Debt/ Worth Ratio which is defined as total liabilities divided by net worth of the company. Concerning officers loans, the amount may be treated as equity (subtracted from debt; added to equity) if the obligation is subordinated in both repayment and collateral. Unless there is a compelling reason, the analyst will subtract notes receivable-officers and intangible assets from net worth. Any assets reflecting value rather than cost will be reduced to book value (or adjusted basis for real estate deals) unless justified.

Since the anticipated market for the loans are small and medium sized businesses and since many small to mid-market companies hold assets personally, there are no minimum standards for this measure. The analyst and loan committee must use their judgment to ensure that the principals are not bleeding the company, that debt is reasonably managed, that the corporate guaranty has value and that there is adequate security for the loan.

$$\text{Debt to Worth} = \frac{\text{Debt - Subordinated Officer's Loan}}{\text{Net Worth + Subordinated Officer's Loan}}$$

Schedule of Debt

The analyst will obtain a schedule of installment debt including the original amount, outstanding balance, maturity, interest rate, debt service, balloon payments and security for the loan. The analyst will note any pending balloon payments and whether assets (uses) are matched to loans (sources) as to maturity.

The analyst will spread the financial statements and discern trends over time. Moreover, the analyst will review the reconciliation of net worth and the changes in cash position from year to year which traces the sources and uses of cash. The analyst must ensure that the company is generating sufficient cash sources to repay all cash needs (debt service, working capital and capital expenditures). In general, compilation statements are sufficient for review although small firms may only have tax returns. The analyst should not employ any measure as an absolute as many are relative to specific SIC codes and other factors.

Management Experience

The management team should have direct experience in all phases of business: marketing, finance, production and operations. The management team includes not only owners and principals but also outside contractors and anyone who materially participates in the business.

Character

The principals of the company should have a good credit history, no recent bankruptcies and their past should suggest that he/ she will proceed on the project in a reasonable, legal and professional manner.

Risk Profiles

Low to Moderate Risk

Low to moderate risk loans will comprise 92% of the entire Section 108 portfolio. Low to moderate risk business transactions will primarily fund real estate projects for existing, expanding companies.

- Ability to Repay

The low to moderate risk project has a minimum debt coverage ratio of 1.20. Accordingly, there is $1.20 of cash flow available for each $1 of existing and proposed debt service. The business must be in existence at least three years and meet the debt coverage ratio for the past year from historical cash flow although the analyst may include net after-tax savings associated with the transaction. In addition to repaying debt, the analyst must ensure there is sufficient cash flow or additional debt capacity to fund incremental cash needs for working capital and capital expenditures.

- Collateral

The County will utilize the following *maximum* loan to value ratios for low risk projects:

Real Estate:	Up to 80%
Personal Property:	Up to 75%
Inventory	Up to 60%
Receivables	Up to 75%

- Commitment

Low to moderate risk transactions will require general liens in the form of corporate and personal guarantees. In general, all principals with a 20% ownership in the project must sign personally, with the loan committee having the discretion to allow limited guarantees.

- Balance Sheet

The low to moderate risk transaction has a balance sheet which indicates that the company adequately manages its receivables, inventory, debt and accruals. Moreover, management reinvests sufficient profit back into the company and generates adequate cash flow to fund its operating and non-operating cash needs.

- Management

The low to moderate risk company must evidence that the management team has direct experience in all phases of the business- marketing, pricing, operations, financial, personnel, etc.

- Character

The principal and the business should have a good credit history and sound reputations.

Moderate Risk Transactions

The business loans will fund a mixture of real estate, machinery and equipment and working capital. Start-up ventures are eligible for a portion of this portfolio segment but each transaction must have reasonable chance of success. Moderate risk loans will not exceed 8% of the economic development portfolio.

Underwriting Guidelines-Investor/ Real Estate Deals

Definition

Real estate/ investor transactions involve projects in which debt service is paid from cash flow generated from leasing property to third party tenants. Real estate lending incorporates many types of projects: retail, industrial, warehousing, office space, multi-family residential, for example. Although retail projects are different from office buildings, each transaction is analyzed in the same manner. Since the property generates income, real estate/ investor projects are also called income-producing properties.

Numerically, real estate projects are defined as follows:

Gross Rents
Less: Vacancy Factor
Equals: Collected Rents
Less: Operating Expenses (Incurred by Owner of Property)
Equals: Net Operating Income (NOI)

Net Operating Income funds three subsequent claims in the following priority: 1) debt service, 2) replacement reserves and 3) return on and of equity.

Project Review

Staff will review projects on two levels: 1) upfront evaluation to determine whether the loan should be made (credit and federal eligibility) and 2) an annual review to determine whether reserves, collateral and additional security are sufficient and consistent with the risk characteristics of the project. The annual credit review ensures that minimum reserves, which reflect the current risk profile, are maintained over time.

In general, an annual review should be beneficial to the City since two factors should progress in their favor over time: 1) rents, NOI and value should increase and 2) the Section 108 loan balance decreases. Combined with a fixed rate on Section 108 debt, a performing project becomes more secure as the loan ages.

Credit Criteria

There are five credit criteria for real estate projects. Although similar to business financing, there are differences in the criteria. The major difference is in analyzing cash flow available for debt service.

The five criteria are as follows:

- Ability to Repay
- Collateral
- Development Team Capacity/ Experience
- Developer Commitment
- Character

Although lenders disagree as to which of the criterion is the highest priority, all are important and a substantive deficiency of any of the five may be sufficient to decline a loan request.

Ability to Repay

The ability to repay is usually defined as Net Operating Income divided by debt service. Generally called the Debt Coverage Ratio, this simple calculation indicates the cushion that a prospective project has in paying debt service.

Cash flow is the first source of repayment for the Section 108 indebtedness. Unless a loan is subordinated in repayment to the proposed loan, the debt service of all loans is included in the denominator.

In calculating Net Operating Income, the analyst must determine rents, vacancy and operating expenses. The analyst should complete fundamental analysis using the following methodology:

- Observe the Market (Economic Data, Demographic Information, Absorption, Etc.)
- Find Comparable Properties
- Adjust Comparables to Subject
- Select the "Most Comparable" and Weight Accordingly
- Determine Rents, Vacancy and Operating Expenses
- Solve For NOI
- Calculate DCR

Collateral

In the event that cash flow is insufficient to pay Section 108 debt service (and the developer does not voluntarily use other resources to keep the loan current), the loan becomes delinquent. Consequently, the City must now rely on a secondary means of repayment. To repay the loan, the City must obtain a judgment and liquidate the specific lien on the asset pledged as collateral.

For real estate/ investor transactions, the asset pledged is obviously real estate. The lender loans a percentage of the value of all assets pledged as collateral. Accordingly, loan to value is defined as the loan divided by the value. In calculating loan to value, the analyst includes all loans not subordinated in collateral to the Section 108 loan. The loan to value measures the collateral cushion to the lender and indicates how much the collateral can be discounted before the lender incurs a loss on liquidation.

Development Team Capacity/ Experience

The development team for a project could include the following members:

- Contractor
- Architect/ Engineer
- Leasing Agent
- Property Manager
- Syndicator
- Construction Manager
- Mortgage Banker (Arranges Permanent and Construction Loans)
- Provider of Feasibility Study
- Developer

The development team should have experience in all phases of the development. Many large developers can perform some of these functions in-house; others contract out for these services. (In no circumstance should the developer complete the feasibility study; only independent third parties should complete this task.)

Each member of the development team should have successfully completed a project comparable to the subject. In addition, each member of the development team should be established and possess resources sufficient to ensure completion of their respective task.

Developer Commitment

In business loans, personal and corporate guarantees are routine. If a project lacks cash flow to repay the debt service and liquidation of specific liens is insufficient to pay the outstanding balance on the loan, the lender secures a deficiency judgment and attempts to collect on general liens such as personal and corporate guarantees. Consequently, guarantees are the third source of repayment.

It is difficult to rely on general liens for repayment. Homestead exemptions, rights of redemption, bankruptcy laws, state law, allocation of assets between spouses, etc. complicate the issue further.

Real estate projects have separate complexities. For intricate tax reasons, it is difficult for developers to corporately or personally guarantee permanent mortgages, especially if the ownership form is a limited partnership or limited liability corporation (which are common) and the project involves significant tax benefits. Despite the complication, developers can indicate commitment in the following ways:

Guarantee Completion of Construction

The developer should guarantee that he/ she will complete construction on the project according to the specifications agreed upon.

Absorb Cost Overruns

The developer should absorb any cost overruns on the project, regardless of cause.

Guarantee Cash Shortfalls

If NOI is insufficient to pay debt service and fully fund replacement reserves, the developer should guarantee any cash flow shortfalls. Functionally, this provision is very similar to a recourse mortgage.

Defer Development Fee

Developers earn fees for performance. Accordingly, the bulk of the developer fee should be paid only after the project is built, the property is leased and debt coverage threshold is obtained. If the deal is syndicated, the investor agreement frequently contains this provision.

The analyst must evaluate financial strength of the entity extending the guarantees and determine their respective value. Among the factors affecting this analysis are other contingent liabilities of the same or related guarantor, means of valuing assets, tax considerations and state and federal laws governing allocation of assets between spouses.

Character

A review of a developer's character includes such items as a credit history, a Dun and Bradstreet or similar report, prior bankruptcies, past criminal activity, past or pending litigation, professional standing and relationships within the community.

Regardless of the economics of a transaction, a developer with a chronic history of defaults, late payments, bankruptcy, broken promises and litigation with previous lenders may negate all of the positive aspects of the deal. Nevertheless, the analyst must use prudent judgment in evaluating the information. Credit reports and rumors frequently contain inaccurate information and the existence of a prior blemish does not necessary mean the developer is not credit worthy.

Risk Profiles

Low to Moderate Risk Projects

Low to moderate risk loans will comprise the entire Section 108 loan portfolio. Low to moderate risk transactions have the following characteristics:

- Ability to Repay

The low to moderate risk project has a Debt coverage Ratio of at least 1.20 to 1. Thus, there is $1.20 of projected NOI for every $1 of new and existing debt service. There is a strong market for the net leasable area and/or there is significant pre-leasing of qualified tenants; therefore, the analyst has a high degree of confidence in projecting NOI.

A low to moderate risk real estate transaction allows a reasonable amount of time for the project to achieve a stabilized rate of occupancy and allocates an appropriate leasing reserve in the budget. Moreover, the developer annually funds a replacement reserve to eventually renew those components of the property that wear out periodically (roof, HVAC, appliances, etc.) Furthermore, the budget is complete, reasonable and is based on a guaranteed maximum price for costs related to construction.

In addition to providing the lender with an adequate investment, a low to moderate risk project also provides adequate benefits to investors and the developer. Accordingly, the developer earns a reasonable fee if the property performs and the investors receive a market return on invested capital.

- Collateral

The loan to value should not exceed 80%.

The appraisal should be completed by an appraiser certified by the state and with a professional affiliation such as SRA or MAI. Moreover, the appraisal should conform to FIRREA standards. In general, the appraisal should determine fair market value and fee simple ownership. In addition, the appraiser should have experience evaluating comparable properties. Although the developer incurs the cost, the appraisal should be completed on behalf of the City or a conventional co-lender.

The analyst should always scrutinize the appraisal critically and not merely open the summary page and accept the reconciled value without question. The analyst should review the three approaches to value, note the assumptions and limiting conditions and made adjustments where appropriate.

- Development Team Capacity/ Experience

Each member of the development team should have experience in successfully completing a project comparable to the proposed transaction. Moreover, each member of the development team should be established and have adequate resources to guarantee the completion of their respective task.

- Developer Commitment

The developer should show commitment to the project. If the ownership entity is a limited partnership (or other entity which usually conveys a large percentage of ownership), the developer can evidence commitment by guaranteeing the completion of construction, absorbing budget shortfalls, guaranteeing cash flow shortfalls and deferring developer fees. Moreover, the entity issuing the guarantee has sufficient resources at risk in the event of a deficiency.

If the developer retains significant ownership, the developer can sign a recourse note or a limited guarantee in proportion to his interest in addition to the guarantees and deferrals enumerated above.

- Character

The developer should have a favorable credit history; moreover, the developer's past suggests that he/ she will proceed on the project in a legal, reasonable and professional manner.

<u>Effect of Size</u>

Although small deals are analyzed in essentially the same manner as larger transactions, large projects should undergo more intense scrutiny and higher standards since larger loans pose potentially more risk to the community.

Accordingly, localities should require the following for projects whose costs exceed $1 million:

Developer Financial Statements

In most projects, the financial statements of the developer should be completed by a CPA and reflect current market appraisals which are assessed by an independent, qualified appraiser. Moreover, the net worth calculation should reflect the equivalent of cash and net out sales expenses and taxes. Furthermore, the developer should sign and date the financial statements.

Cost Certification

In a cost certification, an independent third party reviews the disbursements of funds and certifies that the distributions occurred in a manner that is consistent with the approved project budget.

Feasibility Studies

For larger projects, the community should obtain a market or feasibility study from an independent, third party who is experienced in the type of project involved in the financing request.

Other Considerations

Analysis of the Budget

The analyst must scrutinize the budget for completeness, reasonableness and consistency with comparable projects. It is the starting point for determining the need for financing, for addressing the financial aspects of appropriateness and for calculating the amount of equity needed to complete the project. Both overstated and understated budgets pose risks to the community.

An inflated budget usually increases the amount of the loan without increasing value commensurately. This increases the risk to the locality and the developer frequently captures the excess as an increment in the development fee.

An understated budget poses different risks. In extreme situations, there are not enough funds to complete the project. Alternatively, the developer compromises on the quality (which may effect rents) of the project or diverts his attention to transactions with more lucrative potential for compensation.

Environmental Issues

Although HUD policy requires an environmental release prior to the disbursement of funds, the analyst should be aware of issues such as a Phase I environmental review, flood plain, earthquake prone areas and other related environmental issues. In addition, the project must conform to all applicable zoning ordinances.

Site Control

The developer must have site control for a period sufficient to complete predevelopment work and to allow for the Section 108 application and review process.

Underwriting Guidelines- Public Facilities

If the City undertakes a public facility, it is likely that the asset will not generate income (an exception is a supplemental ad valorem tax for industrial parks or other non-LMI entities). In that event, the City will pledge income streams or assets that are sufficient to adequately secure the Section 108 obligation.

- If an income stream is the security, staff will evaluate the historical cash flow and secure a projection of future cash flows for the term of the Section 108 loan. Staff will then discount the future cash flows to a present value using the interest rate forecast for the Level # 2 loan plus a 50 basis point premium. The discounted present value must equal 125% of the Section 108 loan amount (equivalent to a 80% Loan to Value).

- If assets are the security, the City will secure a qualified appraisal of the property. The property must not be "specialized" and the value should adjust for any deficiencies or "cost to cure". The asset have a minimum value sufficient to conform to an 80% Loan to Value ratio.

- An alternative to the above is having the City make the Section 108 loan a "general obligation" of the City.

Exhibit G: Organizational Chart

Exhibit H: Delivery System

The City will establish a delivery system for its Section 108 Loan Pool. The system will consist of the following components. Each component is also a subsystem. Although existing City staff do not possess the necessary skills and experience to complete these tasks, it will utilize consultants and/or subcontractors to provide the needed services. The City will incorporate checklists for its subcontractor/ consult to follow to ensure conformance to Section 108 provisions, underwriting guidelines and program close-out. Accordingly, the City will closely monitor the activities of the firm in order to detect any problems or deficiencies early.

Marketing

The City will market the program to potential sources of transactions- developers, businesses, bankers, commercial realtors, attorneys and other persons who are aware of prospective projects. The effort will include presentations to small groups individually and marketing materials including brochures, e-mail transmissions and direct mail.

Screening

Once staff identifies a prospective transaction, it will request the potential borrower to submit sufficient information to screen the project for eligibility (eligible activity, national objective and appropriateness) and conformance to the Underwriting Guidelines (Exhibit F). Accordingly, staff will spend time only on those projects that have a reasonable chance of success (both eligible and having low risk).

Packaging

If the prospective transaction passes screening, staff will then proceed to preparing the Eligibility Determination.

Approving

The City presumes the Area Office will make the evaluation of the Eligibility Determination. HUD central will approve the Loan Pool Application.

Closing

Once approved, the Level # 1 transaction goes to HUD Central for closing both the interim loan and the conversion to permanent financing at the public offering. HUD Central prepares the majority of the Level # 1 documents and most are boilerplate.

Regarding the Level # 2 transaction, the City will acquire the services of an experienced attorney to prepare the closing documents. The documents will vary with the type of transaction but usually include a Loan Agreement, a Note, Jobs Agreement (if applicable), Deed of Trust or Mortgage, UCC filing (if applicable) and some form of General Lien (guarantee).

Disbursement

The City will establish policies and procedures to disburse Section 108 funds for both Level # 1 and Level # 2 transactions. Staff will create the Loan Guarantee Custodian Account with the Custodial lender to accept disbursements (wire transfers) from the Fiscal Agent.

The City will establish procedures to adequately document disbursements to the third-party borrower and to ensure that value is added to the project and to reduce risk to the City.

Portfolio Management

The City will develop a portfolio management subsystem to properly document conformance to public benefit and national objective provisions, collect and account for loan repayments and to preserve the value of the collateral securing the Section 108 loans. Moreover, staff will establish the Repayment and Loss Reserve Custodial Accounts with the Custodial Lender.

The City is using technical assistance from Enterprise Community Partners whose team includes subcontractors who have extensive experience with the origination and delivery of the Section 108 program. The technical assistance team will provide staff with checklists and guides to assist in establishing and implementing each component of the delivery system.

Steps in Delivery

Step 1:

Conflict of Interest Resolution; Other Political Issues

Step Two: Screening

Obtain sufficient information to screen prospective transaction

Eligibility

- Eligible Activity
- National Objective
- Appropriateness (if Eligible Activity is Special Economic Development)
    - Appendix A
    - Public Benefit

Credit

- Ability to Repay
- Collateral
- Commitment of Principals
- Experience
- Character/ Credit History
- Balance Sheet (if Business Loan)

Information

- Fully Loaded Budget
- Sources of Funds
- Appraisals/ Feasibility Studies (if available or needed)
- Historical Financial Information
- Projections
- Experience of Principals (Development Team if Developer Deal)
- Employment
- Personal Financials of Principals
- Project Description

Step 3: Packaging

If project passes screening:

- Other Federal Requirements (Uniform Act; Davis-Bacon; Environmental)?
- Initiate Environmental Release of Funds
- Assemble Loan Package
- Submit to Loan Committee

Step 4: Submit to Area HUD Office (Individual Transactions after HUD Central approves the Loan Pool)

Step 5: HUD Approval

Step 6: Closing

Interim Financing

- Level # 1
- Level # 2

Conversion to Permanent Status (Public Offering)

- Level # 1
- Level # 2

Step 7: Disbursing

- Level # 1
- Level # 2
    - Davis-Bacon (if applicable)
    - Inspections
    - Proper Documentation

Step 8: Portfolio Management

Financial

- Accounting
- Preservation of Collateral
- Workouts
- Foreclosure

Programmatic

- Job Monitoring
- Project Close-out

Filing System Overview

The filing system consist of three separate files:

Origination

The origination file involves the transaction from inception to approval.

Closing File

The closing file involves the file from approval through disbursement. For Section 108 loans, the documentation includes Level #1 and Level # 2 transactions.

Portfolio Management File

The portfolio management file involves the transaction from disbursement through project close out. It incorporates financial aspects of loan servicing, preserving the value of the portfolio and ongoing monitoring of federal compliance until project close out.

Checklist-Origination File

Transaction File

- Origination

1. Eligibility

a. Brief Description
   i. Project Description
   ii. Sources and Uses
   iii. Rate and Term
   iv. Amount Requested
   v. Amount Approved
   vi. Material Changes
b. Eligible Activity (24 CFR 570.201-207, CDBG; 24 570.703, Section 108)
c. National Objective (24 CFR 570.208)
d. Appropriateness (if eligible activity is special economic development; 24 CFR 570.209)
   i. Conformance to Appendix A
      1. Reasonableness of Costs
      2. Commitment of Sources
      3. Non-Substitution
      4. Feasibility
      5. Return on Equity
      6. Pro-Rata Disbursement
   ii. Public Benefit
      1. Cost Per new FTE
      2. LMI Persons Served (if applicable)
e. Other Federal Requirements (if applicable)
   i. Davis-Bacon
   ii. Uniform Act
   iii. Environmental

2. Underwriting

a. Business Loans

   i. Ability to Repay
   ii. Collateral

iii. Commitment of Owners
iv. Management Experience
v. Adequacy of Balance Sheet
vi. Character

b. Developer/Real Estate/Income-Producing Properties
    i. Ability to Repay
    ii. Collateral
    iii. Commitment of Owners
    iv. Development Team Experience
    v. Character

Checklist: Level #1 Documents

- HUD Form 7082
- Contract for Loan Guarantee Assistance
- Fiscal Agency Agreement
- HUD Promissory Note
- Opinion of Counsel
- General Resolution
- Custodial Letter Agreements
- Advance Form (with Signature Cards)

Checklist-Level # 2

- Loan Agreement
- Note
- Specific Lien (Mortgage, Deed of Trust, UCC, Security Agreement)
- General Lien (Guarantees)
- Intercreditor Agreement
- Certificate of Secretary
- Opinion of Counsel
- General Resolution
- Assignment of Insurance
- Title Insurance
- Separate Jobs Agreement

LOAN CLOSING CHECKLIST

Loan Number: ____________________

Staff: ____________________

Date Loan Closed: ____________________

Authority Attorney: ____________________

Borrower's Attorney: ____________________

Initial Loan Grading: ____________________

Date File Completed: ____________________

Signature of Staff: ____________________

Business: ____________________

Contact: ____________________

Address: ____________________

____

____

City: ____________________

Zip Code: ____________________

Phone Number: (   ) ____________

Fax Number: (   ) ____________

NOTE: Please include each element in the file in the order it appears here. When an item is not included, please initial as Not Applicable, N/A.

DOCUMENTS REQUIRED TO CLOSE LOAN:

Are the Following Closing Documents Included?	Date:	Initials:
Copy of Loan Agreement:	/ /	
Note:	/ /	______
Mortgage / Deed of Trust:	/ /	______
Security Agreement / UCC Filing:	/ /	______
Business Guarantee:	/ /	______
Personal Guarantee:	/ /	______
Assignment of Hazard Insurance at Closing:	/ /	______
Assignment of Flood Insurance at Closing:	/ /	______
Assignment of Life Insurance at Closing:	/ /	______
Title Insurance:	/ /	______
Copy of Intercreditor Agreement:	/ /	______
Documentation that the Business has Agreed to Loan Terms as Expressed By Loan Committee: (For Corporations– Certificate of Secretary)	/ /	______
Documentation that Executor of Loan is Empowered to Borrow by Business: (For Corporations– General Resolution)	/ /	______
Documentation that Attorney Agrees that Business is a Legal Entity, is entitled to borrow, and has no pending litigation. (Opinion of Counsel):	/ /	______

ADDITIONAL DOCUMENTS REQUIRED IN THE FILE:

Are Copies of Correspondence with Attorneys Included Chronologically?	/ /	
Memo to Attorney:	/ /	______
Instructions to Borrower Issued:	/ /	______
Other Documentation:	/ /	______

Name of Closing Attorney: ____________________

STAFF COMMENTS: ____________________

USING THE LOAN CLOSING CHECKLIST

Summary

Use this checklist to close each loan in the portfolio.

How to Use the Checklist

Insert this checklist into each loan closing file. Complete the top section, except for the Date File Completed. Each of the documents listed below should be present at the loan closing. Each should be inserted into the file once they have be completed and signed. The attorney responsible for closing the loan should maintain the originals of each completed document in a file at a separate location. Refer to the chart below if there is any confusion about the terms used in the document.

LOAN CLOSING: GLOSSARY			
Item	**Definition**	**Reason for Inclusion**	**Comments**
Documents Required to Close Loan			
Copy of Loan Agreement	The major legal contract between the lending agency and the borrower, it contains all the terms and conditions of the loan and defines the rights and expectations of both parties.	This is the main legal contract between the lender and the borrower. The document is drawn up by the closing attorney.	This document is always required.
Note	Evidence that the borrower is obligated to repay the loan. The note lists the amount, rate and repayment terms agreed.	Establishes the obligations of the borrower.	This document is always required.
Mortgage / Deed of Trust	A specific lien executed on the real property pledged as collateral. This document defines each specific asset pledged as collateral.	A properly executed and recorded deed of trust provides the lender with the collateral for the loan. This document records the lending agency lien against real estate owned by the business and states whether the lending agency is in first, second (etc.) position on the asset.	The lien must be recorded to be recognized. Record the lien at the courthouse. This document is always required when real property (real estate) is pledged as collateral. Whether this document is a deed of trust or a mortgage depends on the state concerned.
Security Agreement / Uniform Commercial Code (UCC) Filing	A specific lien executed on the personal property pledged as collateral. This document defines each specific asset pledged as collateral.	A properly executed and recorded deed of trust/mortgage provides the lender with the collateral for the loan. This document records the lending agency lien against personal property and states whether the lending agency is in first, second (etc.) position on the asset.	This document generally only applies to user deals.

LOAN CLOSING: GLOSSARY			
Item	**Definition**	**Reason for Inclusion**	**Comments**
Business Guarantee	A general lien against the assets of the business.	This document ensures that if the business defaults, the lending agency has the right to recoup the funds it has committed by foreclosing on the business and taking the assets that remain after all the items with specific liens have been sold.	This document is always required for user deals.
Personal Guarantee	A general lien against the assets of the principal(s) of the business.	This document ensures that if the business defaults, the lending agency has the right to recoup the funds it has committed by foreclosing on the personal assets of principals of the business involved and taking the assets that remain after all the items with specific liens have been sold.	This document is almost always required for user deals.

LOAN CLOSING: GLOSSARY

Item	Definition	Reason for Inclusion	Comments
Assignment of Hazard Insurance at Closing	The transfer of the borrowers rights to collect insurance proceeds to the lender. In the event that the property is partially or complete borrower is of the another legal transfer of the right A copy of a standard hazard insurance policy issued by a company acceptable to the lending agency. The policy should be submitted together with a 'Paid' premium invoice in an amount greater than the loan amount or 100% of the insurable value of the Security Property, with extended coverage, vandalism and malicious mischief insurance. The policy should contain a standard mortgagee loss payable clause assigned to the lending agency.	This document ensures that if the business suffers irreparable damage and is no longer able to operate the remaining loan amount due will be repaid to the lending agency by the insurer. Control of the use of any insurance proceeds, in the event of damage to the business.	This document is always required. It is important to note that the insurance policy must have the lending agency as the beneficiary, otherwise the insurance provides no protection for the lending agency.
Assignment of Flood Insurance at Closing	The borrower should provide the lending agency with a standard flood insurance policy issued under the National Flood Insurance Program naming the lending agency as the beneficiary in the event of a flood.	This document ensures that if the business suffers irreparable damage and is no longer able to operate, the remaining loan amount due will be repaid by the insurance policy.	Flood Insurance is only required when the property is located in a flood plain. A specific environmental review is required when the property is located in a flood plain.

LOAN CLOSING: GLOSSARY			
Item	**Definition**	**Reason for Inclusion**	**Comments**
Assignment of Life Insurance at Closing	A policy taken out by the principal(s) naming the lending agency as the beneficiary of the insurance should the principal(s) die while the loan is still being repaid.	In cases where the success of the business depends primarily on the ability of the principal(s), it may be appropriate to request that the principal takes out life insurance in favor of the lending agency. This helps protect the position of the lending agency. Control of insurance proceeds.	

LOAN CLOSING: GLOSSARY			
Item	**Definition**	**Reason for Inclusion**	**Comments**
Title Insurance	The borrower should submit a title insurance statement issued by a company acceptable to the lending agency. The policy should insure the lending agency in the amount of the loan, without exception for possible unfiled mechanics or materialmen's liens. The policy should contain only title exceptions that are acceptable to the lending agency. If a binder is issued, the term of the binder should not be less than the term of the loan. The title insurance policy or binder must be submitted to the lending agency before the loan is closed so that it can be carefully reviewed. If the original title policy is not available at loan closing, a marked-up binder initialled by the title company will be acceptable, providing the original policy is promptly forwarded to the lending agency.	A check on Title Insurance will prevent loans being taken out on property which the lending agency would not be able to claim a title to in the event of a default.	This document is only relevant to loans in which real property is pledged as collateral.

LOAN CLOSING: GLOSSARY

Item	Definition	Reason for Inclusion	Comments
Copy of Intercreditor Agreement	A agreement among the lenders which: a) Establishes the position of each lender by rank; first, second, third, etc. b) States in writing a commitment by each of the lenders to notify the others in the event that the borrower encounters fails to make a payment. Often this implies warning the other borrowers when the loan is thirty days overdue. c) Contains a record of other arrangements made between the lending parties.	The intercreditor agreement insures that the CDBG lending agency will be informed of any problems encountered with the borrower. This facilitates the active management of the portfolio. Establishes a spirit of cooperation, defines roles of each lender. Having an intercreditor agreement will assist in maintaining the responsibilities of the public lender.	In particular, this document provides an way of identifying the rights of each of the lenders in the event of a default. This document should always be included.
Documentation that Business has Agreed to Loan Terms as Expressed By Loan Committee (For Corporations-Certificate of Secretary)	Evidence that the borrower understands and agrees to the terms and conditions of the loan as approved by the loan committee.	This document ensures that the borrower took out the loan with a clear understanding of the loan terms and conditions. Including this document helps to avoid misunderstandings with the borrower. An unauthorized executor may undermine the validity of the obligation.	This document should always be required.
Documentation that the Executor of the Loan is Empowered to Borrow By Business (For Corporations - General Resolution)	This document ensures that the individual signing the loan documents is entitled to commit the borrower to the agreement.		This document should be required.

LOAN CLOSING: GLOSSARY			
Item	**Definition**	**Reason for Inclusion**	**Comments**
Opinion of Counsel	Documentation that the attorney agrees that the business is a legal entity, is entitled to borrow, and has no pending litigation.	Provides a check against lending to borrowers in legal difficulty.	This document serves to protect the lending agency against lending funds to a business which is not legally permitted to borrow funds, or is in financial or legal difficulty.

LOAN CLOSING: GLOSSARY

Item	Definition	Reason for Inclusion	Comments
Additional Documents Required in the File			
Copies of Correspondence with Attorneys Included Chronologically	All correspondence with the lending agency attorney and borrowers attorney should be carefully recorded. This should include the Instructions to Borrower Issued and the Memo to Attorney.	The file must contain copies of all the commitments agreed to by either party during loan origination. It serves as a record of all the legal understandings between the two parties.	
Memo to Attorney	Notification that the loan has been approved by the loan committee and that the attorney should prepare the loan closing documentation.	Notifying the attorney that the loan has been approved.	It may be helpful to include this document in the file for both user and investor deals.
Instructions to Borrower Issued	Notification to the borrower of the procedure for the loan closing. This document lists the schedule for the loan closing and details the obligations of all parties during the process.	Ensures that the loan closing is coordinated by ensuring the responsibilities of the borrower and the other parties are clear.	This document is prepared by the lead attorney responsible for closing the loan. It may be helpful to include this document in the file for both user and investor deals.
Other Documentation	Copies of all correspondence with the borrower should be included.	Including all correspondence serves to avoid confusion between the lending agency and the other parties.	The file must contain copies of all the commitments agreed to by any party during loan origination.

INTERIM/CONSTRUCTION LOAN DISBURSEMENT CHECKLIST

DRAW#1 Date / /	Amount Requested	Amount Authorized	Authorizing Staff Member	Copy of Check Included	Does Draw Exceed Prorata? Yes/No (If yes, explain)

Date of Site Inspection: / - / Inspection Documentation Included: Yes/No

STAFF COMMENTS:

DRAW#2 Date / /	Amount Requested	Amount Authorized	Authorizing Staff Member	Copy of Check Included	Does Draw Exceed Prorata? Yes/No (If yes, explain)

Date of Site Inspection: / / Inspection Documentation Included: Yes/No

STAFF COMMENTS:

DRAW#3 Date / /	Amount Requested	Amount Authorized	Authorizing Staff Member	Copy of Check Included	Does Draw Exceed Prorata? Yes/No (If yes, explain)

Date of Site Inspection: / / Inspection Documentation Included: Yes/No

STAFF COMMENTS:

DRAW#4 Date / /	Amount Requested	Amount Authorized	Authorizing Staff Member	Copy of Check Included	Does Draw Exceed Prorata? Yes/No (If yes, explain)

Date of Site Inspection: / / Inspection Documentation Included: Yes/No

STAFF COMMENTS:

CHECKS TO BE MADE BEFORE CONVERTING LOAN TO PERMANENT:

Appropriate Davis-Bacon Documentation Included	Date: / /	Initials:
Retainage Documentation Included	Date: / /	Initials:
Certificate of Occupancy or Delivery of Equipment Inspection:	Date: / /	Initials:
Documentation of Performance of Cost Certification:	Date: / /	Initials:
Documentation of Performance of Lien Check	Date: / /	Initials:

Date Converted to Permanent: Date: / / Initials:

PERMANENT LOAN DISBURSEMENT CHECKLIST

CHECKS TO BE MADE BEFORE CONVERTING LOAN TO PERMANENT:

	Date	Initials
Is Any Appropriate Davis-Bacon Documentation Included?	/ /	______
Is Any Retainage Documentation Included?	/ /	______
Certificate of Occupancy or Delivery of Equipment Inspection:	/ /	______
Has Cost Certification Been Performed?	/ /	______
Has Lien Check Been Performed?	/ /	______

Date of Draw	Amount Authorized	Authorizing Staff Member	Copy of Check Included
/ /	______	______	______

LOAN OFFICER COMMENTS: ______

USING THE LOAN DISBURSEMENT CHECKLIST

Summary

Use this checklist to disburse funds and to document that all the required checks have been performed before the loan is converted to a permanent loan.

How to Use the Checklist

Step 1

Select the required checklist: if the loan being closed is an interim loan, use Interim/Construction Loan Disbursement Checklist, if the loan is being permanently financed, use the Permanent Loan Disbursement Checklist.

Step 2

Insert this checklist into each loan servicing file. Each time funds are disbursed, complete the relevant section of the document.

Step 3

When all the disbursements have been made, perform all the checks listed in the section entitled, "Checks to be Made Before Converting the Loan to Permanent." Each of the checks is required to ensure that the permanent loan conforms to the goals of the lending program and is financially secure. When each of the checks is completed, sign and date that this is the case in the appropriate place. Refer to the table below to resolve any uncertainty about the nature of the checks required.

Step 4

If appropriate, when the construction/interim loan has been converted to a permanent loan, date and initial the "Date Converted to Permanent" box. Then proceed to loan servicing. Please refer to the chart below if there are any questions about the terms used in the checklist.

LOAN DISBURSEMENT:GLOSSARY			
Term	**Definition**	**Reason for Inclusion**	**Comments**
Amount Requested	Payment requested by contractor or borrower for services and/or goods provided during a particular time period.	It is important to prove that the work for which payment has been requested has actually been performed.	The work performed or equipment delivered should be inspected before any disbursement of funds takes place.
Amount Authorized	Payment granted by lending agency based on the agency valuation of the work performed or goods supplied to date.	Before the payment is authorized, it is important to prove that the work for which payment has been requested has actually been performed.	Once the work performed or equipment delivered has been inspected, payment can take place. The inspection of construction work or equipment delivery needs to be carefully documented.
Prorata	The ratio of funds disbursed by the lending agency compared to those committed by other sources. E.g., if a borrower has arranged a loan totalling \$100,000, with \$80,000 (80%) from private sector sources and \$20,000 (20%) from CDBG funds, the maximum disbursement ratio of CDBG funds should be 20% of the overall funds committed at any stage of disbursement.	It is important to ensure that CDBG funds follow private sector funds rather than precede them. Checking the prorata or "disbursement ratio" will ensure that this policy is followed.	Funds should only be disbursed when the lending agency has verified the appropriate level of funds to be disbursed.
Documentation of Davis-Bacon Compliance	That workers employed on CDBG funded construction projects are paid the "prevailing wages" for the area in which the project is located.	Compliance with Davis-Bacon regulations must be carefully regulated during the construction process.	Davis-Bacon only applies to construction work with project costs which exceed \$2000.

LOAN DISBURSEMENT:GLOSSARY

Term	Definition	Reason for Inclusion	Comments
Retainage	Funds withheld until the end of a construction project to ensure that the project is completed in an acceptable manner.	The final funds disbursed usually include the profit claimed by the contractor. By retaining these funds until the certificate of occupancy (C/O) has been obtained, the CDBG lending agency creates an incentive for the contractor to complete the project promptly and to a high standard.	Retainage documentation should be inserted into all investor deals involving contractors.
Certificate of Occupancy (C/O) or Delivery of Equipment Inspection	That construction is complete or that all equipment has been delivered. The C/O document certifies that all Health, Welfare, and Safety Codes have been satisfied.	This inspection certifies that the construction conforms to community standards.	This documentation must be included with every loan that has interim disbursements.
Cost Certification	That the project funds were expended on the items identified in the uses of funds statement. The amounts stated in the uses of funds document must correspond to those expended.	Cost certification ensures that the funds committed by the lending agency go towards the purposes they were intended to.	Cost certifications are generally performed by an accountant or another qualified third party, although this may only be possible with larger construction projects. Often cost certification depends on the submission of invoices to document that the funds were expended in the appropriate manner. Cost certification should always be performed.

LOAN DISBURSEMENT:GLOSSARY			
Term	**Definition**	**Reason for Inclusion**	**Comments**
Lien Check	A series of checks on the borrower to check that none of the following have been filed: a) Mechanics Lien Check by a contractor or equipment vendor for non-payment of bills for goods or services rendered b) Liens filed for non-payment of taxes owed c) Any other law suits. (This check is called Lis Pendens).	At each disbursement and before the loan is made permanent, care must be taken to ensure that the borrower is not facing any problems that might compromise the value of the collateral. These checks serve to identify any such problems.	Each of these checks should always be performed.
Permanent Loan	The status the loan assumes when disbursements have been completed, construction is closed out or equipment delivered, and the loan assumes the terms and conditions under which repayment will be made.	When all disbursements of funds are completed, the borrower is submitted to a number of checks, as outlined above. Once these checks have been satisfactorily concluded the loan will be made permanent.	

Exhibit I: Appropriateness

Since the City will likely utilize the eligible activity of special economic development, individual transactions may be subject to the appropriateness criteria enumerated in 24 CFR 570.209.

Financial Aspects

The City will document compliance with each economic development transaction according to "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements" specified in 24 CFR 570.209(a):

Reasonableness of the Proposed Project Costs and Financial Feasibility

Each use of loan funds shall be evaluated to ensure the reasonableness of proposed project costs. The scope of this evaluation will depend on the size and nature of each project. Care will be taken to use third party evaluations of costs wherever appropriate, and particular attention will be exercised when an activity involves a non-arm's-length transaction.

Commitment of all Sources of Funds

The City shall review every project to verify that all sources of funding are committed prior to disbursement of Section 108 Loan funds.

Substitution of CDBG funds for Private Sources

City staff will evaluate all projects to ensure conventional debt and equity within the capital structure are reasonable. Moreover, staff will document that Section 108 funds are not substituting for private funds and that the Section 108 funds bridge a Financing gap, a Rate of Return gap or a Locational gap.

Feasibility of the Project

Staff will document that with the inclusion of the Section 108 funds in the capital structure, all transactions conform to the Underwriting Guidelines enumerated in Exhibit F. Accordingly, all transactions will comply with a low to moderate risk profile.

Return on Owner's Equity

The City will document whether the Return on Equity is excessive. The type of transaction may affect the analysis and may include pre-tax evaluations, after-tax calculations, net present value or internal rate of return. This component is difficult to apply to small and medium businesses and may not be applicable.

Pro Rata Disbursement Policy

It is the intent of the Section 108 Loan Pool to disburse funds on a pro rata basis with other funds being used in specific projects. In those situations where pro rata disbursement is not followed (such as acquisition of real property), staff will justify the procedure and seek alternative means to mitigate risk.

Public Benefit

The City will also document the conformance of economic development transactions to "Standards for Evaluating Public Benefit" enumerated in 24 CFR 570.209(b).

Under the provisions of 24 CFR 570.209(b)(2)(v)(F), the grantee may elect to waive the aggregate standard if the assistance is provided to a business located in a census tract with a minimum of 20% of its residents below the threshold for poverty.

For the majority of transactions, staff will employ the number of jobs as the criterion for documenting public benefit; however, in limited situations, the group reserves the option of utilizing the number of low and moderate-income persons the project serves.

Exhibit J: Certifications

Certifications to Accompany HUD Section 108 Loan Guarantee Program Applications for Entitlement Public Entities

Instructions for Use

Entitlement public entities, which are metropolitan cities or an urban counties receiving a Community Development Block Grant (as defined in 24 CFR 570.701), can use **the certifications in this form as well as the attached form containing certifications regarding lobbying when submitting an application for Section 108 Loan Guarantee Program assistance.**

The Section 108 Loan Guarantee Program is authorized by Section 108 of the Housing and Community Development Act of 1974, as amended, 42 USC §5308. The program's authorizing statute and governing regulations at 24 CFR part 570, subpart M, and in particular 24 CFR 570.704(b), require applications for loan guarantee assistance submitted by these entities to be accompanied by certain certifications.

States or non-entitlement entities should not use this form, as there are different requirements for these entities when submitting an application. For more information on the requirements for States and non-entitlements, please email section108@hud.gov.

HUD will normally accept the certifications submitted with the application; however, HUD may consider relevant information which challenges the certifications and require additional information or assurances from the public entity as warranted by such information.

Certifications to Accompany HUD Section 108 Loan Guarantee Program Applications for Entitlement Public Entities

ENTITLEMENT PUBLIC ENTITY CERTIFICATIONS

In accordance with the applicable statutes and the regulations governing Section 108 application submission requirements, the undersigned certifies, on behalf of the entitlement public entity and to the best of his or her knowledge and belief, that:

1. It possesses the legal authority to make the pledge of grants required under 24 CFR 570.705(b)(2);

2. It has made efforts to obtain financing for activities described in the application without the use of the loan guarantee, it will maintain documentation of such efforts for the term of the loan guarantee, and it cannot complete such financing consistent with the timely execution of the program plans without such guarantee;

3. It possesses the legal authority to submit the application for assistance under 24 CFR Part 570, Subpart M and to use the guaranteed loan funds in accordance with the requirements of Subpart M;

4. Its governing body has duly adopted or passed as an official act a resolution, motion or similar official action:

   (a) Authorizing the person identified as the official representative of the public entity to submit the application and amendments thereto and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the public entity to act in connection with the application to provide such additional information as may be required; and

   (b) Authorizing such official representative to execute such documents as may be required in order to implement the application and issue debt obligations pursuant thereto (provided that the authorization required by this paragraph may be given by the local governing body after submission of the application but prior to execution of the contract required by §570.705(b));

5. Before the submission of its application to HUD, it has:

   (a) furnished citizens with information required by 24 CFR 570.704(a)(2)(i);

   (b) held at least one public hearing to obtain the views of citizens on community development and housing needs;

   (c) prepared its application in accordance with the citizen participation requirements and made the application available to the public;

6. It is following a detailed citizen participation plan that meets the requirements described in 570.704(a)(2);

7. It will affirmatively further fair housing, and the guaranteed loan funds will be administered in compliance with:

   (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); and

   (b) The Fair Housing Act (42 U.S.C. 3601-3619);

8. In the aggregate, at least 70 percent of all CDBG funds, as defined at §570.3, to be expended during the one, two, or three consecutive years specified by the public entity for its CDBG program will be for

activities which benefit low- and moderate-income persons, as described in criteria at §570.208(a);

9. It will comply with the requirements governing displacement, relocation, real property acquisition, and the replacement of low- and moderate-income housing described in §570.606;

10. It will comply with the requirements of 24 CFR 570.200(c)(2) with regard to the use of special assessments to recover the capital costs of activities assisted with guaranteed loan funds;

11. (Where applicable, the public entity may also include the following additional certification.) It lacks sufficient resources from funds provided under this subpart or program income to allow it to comply with the provisions of 24 CFR 570.200(c)(2), and it must therefore assess properties owned and occupied by moderate income persons, to recover the non-guaranteed loan funded portion of the capital cost without paying such assessments in their behalf from guaranteed loan funds;

12. It will comply with the other provisions of title I of the Housing and Community Development Act of 1974 as amended (42 U.S.C. 5301 et seq.) and with other applicable laws.

____

(Entitlement Public Entity)

________________________________ ____________________

(Signature of Authorized Official) (Date)

____

(Typed Name and Title of Authorized Official)

Certifications to Accompany HUD Section 108 Loan Guarantee Program Applications for Entitlement Public Entities

SECTION 108 LOAN GUARANTEE PROGRAM

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

____

(Entitlement Public Entity)

____

(Signature of Authorized Official)

____

(Typed Name and Title of Authorized Official)

____

(Date)

Certifications to Accompany HUD Section 108 Loan Guarantee Program Applications for Entitlement Public Entities

SECTION 108 LOAN GUARANTEE PROGRAM

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

____

(Entitlement Public Entity)

____

(Signature of Authorized Official)

____

(Typed Name and Title of Authorized Official)

____

(Date)

Exhibit K: Presubmission Requirements

The City of Toledo has included the proposed Loan Pool in its Consolidated Plan and Action Plan. Accordingly, the activity conforms to the public notices, public hearings, the Citizen Participation Plan and other provisions enumerated in 24 CFR 570.704(a).