

**COUNTY OF SULLIVAN INDUSTRIAL  
DEVELOPMENT AGENCY  
AGRI-BUSINESS REVOLVING LOAN AND LEASE FUND**

**Policy Guidelines**

*This is an Equal Opportunity Program. USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET center at 202-720-2600 (voice and TDD). To file a complaint of discrimination write: USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington DC 20250-9410, or call (800) 795-3272 (voice) or (202)-720-6382 (TDD).*

**CONTENTS**

Section 1.	GENERAL.....	3
1.1	Policy Guidelines.....	3
1.2	Objectives.....	3
1.3	Form of Assistance.....	3
Section 2.	ELIGIBILITY REQUIREMENTS.....	3
2.1	Eligible Activities.....	3
2.2	Eligible Applicants.....	3
2.3	Eligible Uses of ABRLF.....	3
2.4	Ineligible Uses of ABRLF.....	3
Section 3.	PROGRAM STANDARDS.....	4
3.1	ABRLF Financing Amount.....	4
3.2	Minimum Amount of ABRLF Assistance.....	4
3.3	Maximum Amount of ABRLF Assistance.....	4
Section 4.	LENDING POLICIES.....	4
4.1	Term of Loans.....	4
4.2	Loan Interest Rate.....	4
4.3	Loan Repayment Terms.....	4
4.4	Loan Security.....	5
4.5	Loan Subordination.....	5
4.6	Exceptions.....	5
Section 5.	LEASING POLICIES.....	6

5.1	Term of Leases.....	6
5.2	Lease Payment Terms.....	6
5.3	End of Term Purchase.....	6
Section 6.	APPLICATION PROCESSING.....	6
6.1	Loan and Lease Applications.....	6
6.2	Application Fee.....	6
6.3	Application Processing.....	6
6.4	Loan and Lease Approval.....	7
6.5	Loan and Lease Disapproval.....	7
Section 7.	POST-APPROVAL PROCESS.....	7
7.1	Loan Commitment Letter.....	7
7.2	Loan Closings.....	8
7.3	Security.....	8
7.4	Loan Disbursements.....	8
7.5	Fees; Administration.....	9
Section 8.	LEASE POST-APPROVAL PROCESS.....	9
8.1	Lease Commitment Letter.....	9
8.2	Lease Execution.....	10
8.3	Financing Statements.....	10
8.4	Execution of Lease.....	10
8.5	Fees; Administration.....	10
Section 9.	LOAN AND LEASE MANAGEMENT.....	10
9.1	Delinquencies.....	10
9.2	Default.....	10
9.3	Compliance Monitoring.....	10

**County of Sullivan Industrial Development Agency  
Agri-Business Revolving Loan and Lease Fund**

**Policy Guidelines**

**Section 1. GENERAL**

1.1 Policy Guidelines. These Policy Guidelines are adopted by the County of Sullivan Industrial Development Agency (“Agency”) and are intended to serve as the primary administrative document for the Agri-Business Revolving Loan and Lease Fund program (“ABRLF”). Any changes to the ABRLF must be adopted by the Agency. A Loan and Lease Review Committee consisting of two (2) members of the Agency and the Agency’s Chief Executive Officer (“Loan and Lease Review Committee”) shall oversee the ABRLF. The two (2) Agency members serving on the Loan and Lease Review Committee shall serve at the pleasure of the Agency.

1.2 Objectives. The primary objectives of the ABRLF are to facilitate the establishment or expansion of agricultural business activity within the County of Sullivan (“County”) and create employment opportunities.

1.3 Form of Assistance. The ABRLF will provide assistance only in the form of secured loans and equipment leases.

**Section 2. ELIGIBILITY REQUIREMENTS**

2.1 Eligible Activities

(a) The principal business activity that will be primarily impacted by the financing shall be agri-business and shall be located within the County.

(b) The business activity to be undertaken with assistance from the ABRLF must directly result in the creation or retention of employment positions consistent with Federal regulations.

2.2 Eligible Applicants. Eligible applicants include sole proprietorships, partnerships, corporations and limited liability companies. Loans and leases may also be provided to individuals acting as principals of an eligible entity and who will rent or lease assets to an otherwise eligible applicant.

2.3 Eligible Uses of ABRLF. ABRLF loan funds may be used for any justifiable business purpose including, but not limited to fixed assets, current assets including inventory and receivables, and permanent working capital. ABRLF lease funds may also be used for the purchase of equipment by the Agency to be leased by the Agency to an eligible applicant.

2.4 Ineligible Uses of ABRLF. ABRLF funds shall not be used for the refinancing of existing debt.

### **Section 3. PROGRAM STANDARDS**

3.1 ABRLF Financing Amount. The ABRLF is intended to bridge financing with traditional financing sources. Therefore, ABRLF assistance shall be no greater than the minimum amount necessary to facilitate the business activity. Applicants must demonstrate that other private and public sources of debt and equity have either been maximized or are inappropriate, unaffordable, or otherwise unavailable. It is generally expected that the amount of ABRLF assistance will not exceed fifty (50%) percent of the total amount of the required financing, including fixed asset and working capital requirements.

3.2 Minimum Amount of ABRLF Assistance. ABRLF assistance will not be considered where the amount of such required assistance is less than Twenty-Five Thousand and 00/100 (\$25,000.00) Dollars.

3.3 Maximum Amount of ABRLF Assistance. ABRLF assistance may not exceed the amount of Two Hundred Thousand and 00/100 (\$200,000.00) Dollars for each project assisted.

### **Section 4. LENDING POLICIES**

4.1 Term of Loans. For fixed asset loans the loan term will generally be consistent with the life of the assets being financed, with such periods being consistent with standard commercial lending policies and in no instance exceeding ten (10) years. For working capital loans, the loan term may not exceed five (5) years. For all loans, the term shall be determined by the Loan and Lease Review Committee based upon such factors as the structure of other related loans, the nature of the collateralized assets, and the applicant's projected ability to repay the loan.

4.2 Loan Interest Rate. The interest rate charged shall be a fixed rate in the case of fixed asset loans and a variable rate in the case of working capital loans.

(a) For fixed rate loans, the interest rate shall be one (1%) percent plus the treasury constant maturity index published for the week immediately prior to the loan closing date for the same time-frame as the loan amortization.

(b) For working capital loans, the variable interest rate shall be equal to the one (1%) percent plus the prime rate as published by the Wall Street Journal for the day immediately prior to the Loan Closing date.

(c) In no event shall any fixed rate or variable rate be less than four (4%) percent at any time.

4.3 Loan Repayment Terms. The Loan and Lease Review Committee will determine the schedule of loan repayments on case-by-case basis based on the applicant's projected ability to repay the loan, the projected value of the collateral and other security, and the overall risk assumed. Repayment terms may involve standard forms of loan amortization, periods of interest only payments, extended amortization schedules with balloon payments of principal and/or such other terms as may be determined by the Loan and Lease Review Committee to be appropriate.

4.4 Loan Security. The Loan and Lease Review Committee will determine the required security for each loan on a case-by-case basis based on such factors as risk of default, the nature and value of the security, and the position of the ABRLF in relation to the other lenders. In determining the appropriate security, the following will apply:

(a) The Loan and Lease Review Committee will generally require a security interest in all assets financed. Collateralization of additional assets of the borrower may be required at the Loan and Lease Review Committee's option.

(b) For loans to corporations or limited liability companies the Loan and Lease Review Committee may require the personal guarantee of any owner of stock or membership of the borrower.

(c) For loans to closely-held corporations, the Loan and Lease Review Committee may require collateralization of selected personal assets of one or more of the shareholders.

(d) For loans to individuals, partnerships, or corporations that have affiliated interests and/or identities of ownership with other business entities, the Loan and Lease Review Committee may require additional guarantees.

(e) For loans to businesses that have a dependence upon specific individuals for their continuing viability, the Loan and Lease Review Committee may require an assignment of insurance on the lives of those persons.

4.5 Loan Subordination.

(a) The Loan and Lease Review Committee may allow a subordination of debt and collateral to private institutional lenders where necessary to facilitate the maximum financial participation by the private lenders.

(b) The standing of the financing relative to other public or quasi-public lenders will be negotiated on a case-by-case basis.

(c) The Loan and Lease Review Committee will generally require subordination to financing of the notes payable to any officer, owner, or similarly affiliated party to the borrower where appropriate and feasible. Such subordination may include subordinate security interests and/or repayment restrictions.

(d) The Loan and Lease Review Committee will generally require the execution of intercreditor agreements in instances where multiple lenders exist. The use and form of such agreements shall be the responsibility of the Agency Attorney.

4.6 Exceptions. The Loan and Lease Review Committee, by a unanimous vote of the committee, may approve exceptions to the policies and criteria stated in this Section 4 where the ABRLF assistance will result in an extraordinary degree of public benefit. The nature of such public benefit shall be expressed by a member of the Loan and Lease Review Committee to the

Agency and appear in the Agency's motion and minutes at the meeting at which the ABRLF assistance is approved.

## **Section 5. LEASING POLICIES**

5.1 Term of Leases. For equipment leases, the lease term shall not exceed the useful life of the assets being financed, with such periods being consistent with standard commercial leasing policies. For all leases, the term shall be determined by the Loan and Lease Review Committee based upon such factors as the structure of other related project financing, the nature of the collateralized assets, and the applicant's projected ability to repay the loan or lease.

5.2 Lease Payment Terms. The Loan and Lease Review Committee will determine the schedule of lease payments on case-by-case basis based on the applicant's projected ability to repay the lease, and the overall risk assumed. Payment terms may involve standard finance charge calculations, periods of finance charge only payments, extended payment schedules with balloon buyout payments and/or such other terms as may be determined by the Loan and Lease Review Committee to be appropriate.

5.3 End of Term Purchase. The lease may provide for the purchase of the leased equipment at the end of the lease term for a dollar value established at the time of execution of the lease.

## **Section 6. APPLICATION PROCESSING**

6.1 Loan and Lease Applications. Application for assistance must include all of the information required by the Application form (attached hereto as Appendix A), and any additional information as may be reasonably requested by the Loan and Lease Review Committee.

6.2 Application Fee. A Two Hundred Fifty and 00/100 (\$250.00) Dollar non-refundable application fee shall be paid at the time of submission of applications.

6.3 Application Processing. The processing of loan or lease application will be the responsibility of the Agency staff and the Loan and Lease Review Committee and will generally consist of the following:

- (a) Review of applications for completeness and procurement of appropriate additional information.
- (b) Review for ABRLF program eligibility criteria.
- (c) Determine economic feasibility, perform credit analysis, and assess risk.
- (d) Determine amount and terms of ABRLF loan or lease terms, including appropriate security.

6.4 Loan and Lease Approval. The Loan and Lease Review Committee shall process and review ABRLF applications and present them to the Agency with recommendations for approval or disapproval. The Agency shall have sole authority to approve loans and leases from the ABRLF. The application of other appropriate conditions of loans or leases and covenants of the borrower shall be the responsibility of the Agency Attorney with the input from the Agency Chief Executive Officer.

6.5 Loan and Lease Disapproval.

(a) Loan and lease applications may be disapproved by the Agency Executive Director based on a lack of application completeness or a failure to meet the eligibility criteria pursuant to Sections 4 and 5 hereof respectively. In such instances, the applicant will be notified in writing of the disapproval.

(b) Loan and lease applications may be disapproved at the direction of the Loan and Lease Review Committee if the committee determines that ABRLF financing is clearly inappropriate based on the reviews conducted in accordance herewith. In such instances, the applicant will be notified in writing of the disapproval.

(c) Loan and Lease Applications may be disapproved by the Loan and Lease Review Committee for any reason or reasons which represent a reasonable determination that the approval of the ABRLF application would not meet the objectives of the ABRLF and/or would not represent an appropriate or prudent use of ABRLF funds. In such instances, the applicant will be notified in writing of the disapproval.

## **Section 7. POST-APPROVAL PROCESS**

7.1 Loan Commitment Letter. Within thirty (30) calendar days from the date of the Agency's approval of a loan hereunder, a commitment letter shall be sent to the applicant that includes, at a minimum, the following information:

(a) The amount of the loan approved, the applicable interest rate, the term of the loan, the terms or repayment, and the expiration date of the commitment.

(b) The required use of the ABRLF loan funds.

(c) The ABRLF requirements for collateral and additional security, including guarantees, pledges of assets, stock, membership interest, assignment of life insurance, etc.

(d) Summary information regarding employment requirements.

(e) Any other conditions of lending.

(f) A listing and explanation of any fees to be charged and other closing costs that will be the responsibility of the borrower.

(g) A listing of those conditions and requirements of the borrower that must be fulfilled precedent to a loan closing.

(h) Any other information that could reasonably be expected to influence the borrower's decision to accept the terms of the loan commitment.

7.2 Loan Closings. The Agency Attorney shall have the responsibility to prepare and/or require the preparation of all appropriate closing documents. The borrower shall be required to pay all closing costs incurred by the ABRLF including costs incurred by the ABRLF acting on behalf of the borrower. The Agency Attorney shall determine the appropriate closing documents to be executed based upon the terms and conditions of the loan approval and standard commercial lending policies. Such documents shall generally include the following:

(a) A loan agreement that includes a description of the loan terms and security, appropriate representations and warranties, the conditions of lending, affirmative and negative covenants – including compliance with applicable federal laws and regulations, requirements regarding employment creation and reporting, default provisions, and any other provisions which may be appropriate.

(b) A note or notes to evidence the indebtedness and the terms of repayment.

(c) The appropriate documents to evidence and record mortgages, liens, guarantees, and such other security as may be required by the terms of the loan.

(d) Other appropriate documents as determined by the Agency Attorney.

7.3 Security. The Agency Attorney will be responsible for perfecting all security interests including, where appropriate, the execution of security agreements, the filing of financing statements, the execution and filing of mortgage documents, the execution of guarantees, and any other appropriate actions to adequately protect the ABRLF's security interest. Intercreditor agreements should be executed where appropriate to further protect the ABRLF's interests and to facilitate the processing of defaults and foreclosures.

7.4 Loan Disbursements. The disbursement of loan proceeds shall be the responsibility of the Agency Chief Executive Officer. For such disbursement, the following guidelines shall generally apply:

(a) Subject to the borrower's compliance with the terms and conditions of the loan agreement, all documents evidencing and securing the loan, and other guidelines for disbursements as described in this Section 6.4, the ABRLF may disburse loan proceeds upon the borrower's presentation of vouchers and other such evidence satisfactory to the Agency Chief Executive Officer that represent paid or accrued expenses of the borrower and which are eligible costs as determined by the Agency Chief Executive Officer.

(b) Where other debt or equity financing is to be used in conjunction with the ABRLF financing, such debt or equity must, in the option of the Chief Executive Officer of the Agency



be firmly committed for such use. Evidence of the commitment(s) must be submitted by the borrower.

(c) Where other debt or equity financing is to be used in conjunction with the ABRLF financing, the Chief Executive Officer of the Agency will, at his discretion, determine an appropriate draw schedule for ABRLF funding based on such factors as the magnitude of risk assumed by the ABRLF, the nature of the activities being financed and the draw schedule for the other financing. The manner and terms of the disbursement of the ABRLF financing should normally be included in the approval of the financing by the Loan and Lease Review Committee. However, in instances where the Loan and Lease Review Committee has not prescribed a draw schedule, the Chief Executive Officer of the Agency may approve a draw schedule.

#### 7.5 Fees; Administration.

(a) ABRLF Fee. The ABRLF Administration Fee to cover administrative expenses associated with ABRLF loans shall not exceed two (2%) percent of the principal amount of the ABRLF loan.

(b) Agency Attorney Fee. The Agency Attorney shall charge a fee equal to the greater of one (1%) percent of the ABRLF or Five Hundred and 00/100 (\$500.00) Dollars, plus disbursements.

### **Section 8. LEASE POST-APPROVAL PROCESS**

8.1 Lease Commitment Letter. Within thirty (30) calendar days from the date of the Agency's approval of a lease hereunder, a letter shall be sent to the applicant that includes, at a minimum, the following information:

(a) The lease payment, the term of the lease, the end of term purchase price of the equipment, if applicable.

(b) A list of equipment to be purchased by the Agency and leased to the applicant.

(c) Summary information regarding employment requirements.

(d) Any other conditions of leasing.

(e) A listing and explanation of any fees to be charged and other closing costs that will be the responsibility of the applicant.

(f) A listing of those conditions and requirements of the lessee that must be fulfilled precedent to execution of the lease.

(g) Any other information that could reasonably be expected to influence the applicant's decision to accept the terms of the lease commitment.

8.2 Lease Execution. The Agency Attorney shall have the responsibility to prepare and/or require the preparation of the lease and related documents. The lessee shall be required to pay all closing costs incurred by the ABRLF including costs incurred by the ABRLF acting on behalf of the lessee. The Agency Attorney shall determine the appropriate lease documents to be executed based upon the terms and conditions of the lease approval and standard commercial leasing policies. Such documents shall generally include the following:

(a) A lease agreement that includes a description of the equipment to be leased, the lease payment, the end of term purchase price of the equipment, if applicable, appropriate representations and warranties, the conditions of leasing, affirmative and negative covenants – including compliance with applicable federal laws and regulations, requirements regarding employment creation and reporting, default provisions, and any other provisions which may be appropriate.

(b) Other appropriate documents as determined by the Agency Attorney.

8.3 Financing Statements. The Agency Attorney will be responsible for the execution and filing of financing statements.

8.4 Execution of Lease. Following purchase, delivery, and installation of all equipment, the Agency and the lessee shall execute a lease agreement and related documents.

8.5 Fees; Administration.

(a) ABRLF Fee. The ABRLF Administration Fee to cover administrative expenses associated with ABRLF loans shall be two (2%) percent of the value of the equipment subject to the lease.

(b) Agency Attorney Fee. The Agency Attorney shall charge a fee equal to the greater of one (1%) percent of the value of the equipment subject to the lease or Five Hundred and 00/100 (\$500.00) Dollars, plus disbursements.

## **Section 9. LOAN AND LEASE MANAGEMENT**

9.1 Delinquencies. The Agency Chief Executive Officer will contact the borrower or lessee in the event of any delinquency of payment to inform the borrower or lessee of the delinquency and to determine if there is a need to procure additional information or to provide technical assistance. Delinquencies that continue for sixty (60) days will be referred to the Agency Attorney and Loan and Lease Review Committee for further action.

9.2 Default. The ABRLF is NOT a grant.

9.3 Compliance Monitoring. The Chief Executive Officer shall be responsible for monitoring the borrower's or lessee's compliance with all of the conditions and covenants of the ABRLF Loan and Lease Documents with the exception of the repayment requirements. Such responsibility shall include taking appropriate actions in the event of non-compliance, informing

the Loan and Lease Review Committee and Agency Attorney of any incidence of default under the terms and conditions of the loan or lease agreement, and providing file documentation as appropriate.

PLEASE CONTACT THE COUNTY OF SULLIVAN IDA FOR MORE INFORMATION ABOUT THE PROGRAM AND FOR A COPY OF THE APPLICATION – 845-295-2603.

##

60352-001v2

Approved this 11<sup>th</sup> day of December, 2017.