

§ 307.12 Post-approval requirements.

Financial reports, progress reports, and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

[64 FR 69879, Dec. 14, 1999]

PART 308—REQUIREMENTS FOR ECONOMIC ADJUSTMENT GRANTS

Sec.

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AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

SOURCE: 64 FR 5429, Feb. 3, 1999, unless otherwise noted.

Subpart A—General

§ 308.1 Purpose and scope.

(a) The purpose of economic adjustment grants is to address the needs of communities experiencing adverse economic changes that may occur suddenly or over time, including but not limited to those caused by:

- (1) Military base closures or realignments, defense contractor reductions

in force, or Department of Energy defense-related funding reductions,

(2) Disasters or emergencies, in areas with respect to which a major disaster or emergency has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*),

(3) International trade,

(4) Fishery failures, in areas with respect to which a determination that there is a commercial fishery failure has been made under sec. 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)),

(5) Long-term economic deterioration, or

(6) Loss of a major community employer.

(b) Economic Adjustment grants are intended to enhance a distressed community's ability to compete economically by stimulating private investment in targeted economic sectors through use of tools that:

(1) Help organize and carry out a CEDS;

(2) Expand the capacity of public officials and economic development organizations to work effectively with businesses;

(3) Assist in overcoming major obstacles identified in the strategy;

(4) Enable communities to plan and coordinate: The use of Federal and other resources available to support economic recovery, development of regional economies, or recovery from natural or other disasters; and

(5) Encourage the development of innovative public/private approaches to economic restructuring and revitalization.

[64 FR 5429, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999]

§ 308.2 Criteria.

(a) A grant may be made under this part only when the project will help the area to meet a special need arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe changes in economic conditions; and the area for which a project is to be carried out has a strategy and the project is consistent with the strategy, except that

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the strategy requirement shall not apply to planning projects.

(b) The term “special need” in paragraph (a) of this section means conditions of unemployment, per capita income, or special need that qualify an area for eligibility under §301.2(b).

(c) Additional criteria, and/or priority consideration factors for assistance, may be set forth in a NOFA.

§ 308.3 Use of Economic Adjustment grants.

(a) Grants may be used to pay for developing a strategy to alleviate long-term economic deterioration or a sudden and severe economic dislocation, or to pay for a project in implementation of such a strategy.

(1) Strategy grants may support developing, updating, or refining a strategy.

(2) Implementation grants support activities identified in an EDA-approved strategy. Specific activities may be funded as separate grants or as multiple elements of a single grant. Examples of implementation activities include:

(i) Infrastructure improvements, such as site acquisition, site preparation, construction, rehabilitation and/or equipping of facilities;

(ii) Provision of business or infrastructure financing through the funding of locally administered Revolving Loan Funds (RLFs), which may include interest rate buy downs;

(iii) Market or industry research and analysis;

(iv) Technical assistance, including organizational development such as business networking, restructuring or improving the delivery of business services, or feasibility studies;

(v) Public services;

(vi) Training (provided that it does not duplicate Department of Labor, Department of Education or other Federally-supported training programs), and

(vii) Other activities as justified by the strategy which meet statutory and regulatory requirements.

(b) Economic Adjustment grants may be spent directly by the grantee or redistributed to other entities.

(1) Redistribution in the form of grants may only be to eligible recipients of grants under part 308.

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(2) Redistribution in the form of loans, loan guarantees, or equivalent assistance may be to public or private entities, including private for-profit entities.

[64 FR 5429, Feb. 3, 1999, as amended at 65 FR 2532, Jan. 18, 2000]

§ 308.4 Selection and evaluation factors.

(a) Projects will be selected in accordance with part 304 of this chapter and the additional criteria as provided in subsections (b) and (c), as applicable.

(b) *Strategy grants.* EDA will, as appropriate, review strategy grant applications for assurances that the proposed activities will conform to the CEDS requirements in §303.3 of this chapter.

(c) *Implementation Grants.* (1) EDA will review implementation grant applications for the extent to which,

(i) If appropriate, strategy meets the CEDS requirements in §303.3 of this chapter.

(ii) The proposed project is identified as a necessary element of or consistent with the strategy.

(2) *Revolving Loan Fund (RLF) Grants.* For applicants asking to capitalize or recapitalize an RLF, EDA will review the application for:

(i) The need for a new or expanded public financing tool to enhance other business assistance programs and services targeting economic sectors and/or locations described in the strategy;

(ii) The types of financing activities anticipated;

(iii) The capacity of the RLF organization to manage lending, create networks between the business community and other financial providers, and contribute to the adjustment strategy; and

(iv) Use of in-kind match. When in-kind match is included in a project, such match will be used for borrower technical assistance or general RLF administrative costs (e.g. the training of new RLF staff).

(d) Additional criteria, or priority consideration factors for assistance, may be set forth in a NOFA.

[64 FR 5429, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999; 65 FR 2532, Jan. 18, 2000; 65 FR 71025, Nov. 28, 2000]

§ 308.5 Applicant requirements.

Each application for a grant under part 308 must:

(a) Include evidence of area and applicant eligibility (see part 301 of this chapter). For Technical Assistance under the Economic Adjustment program, if the project is regional or national in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(b) Include, or incorporate by reference, if so approved by EDA, a strategy, as provided in §301.3 of this chapter (except that a strategy is not required when a funding request is for planning assistance, *e.g.*, a strategy grant);

(c) Identify the sources of the other funds, both eligible Federal and non-Federal, that will make up the balance of the proposed project's financing, including any private sources of financing. The application must show that such other funds are committed to the project and will be available as needed. The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant; and

(d) Explain how the proposed project meets the criteria of §308.2.

[64 FR 5429, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999; 65 FR 71025, Nov. 28, 2000]

§ 308.6 Post-approval requirements.

(a) Financial, performance, and progress reports will be specified in the Special Award Conditions of the grant.

(b) Projects involving construction shall comply with the provisions of subpart B of part 305.

(c) RLF Supplemental Requirements and Guidelines—RLF grants are subject to the requirements set forth in this part and the publications: EDA's RLF Standard Terms, EDA's RLF Administrative Manual, and EDA's RLF Audit Guidelines, Appendixes B–D of this part displayed at EDA's web site, <http://www.doc.gov/eda>. A copy of these documents is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance.

Subpart B—Special Requirements for Revolving Loan Fund Projects and Uses of Grant Funds

SOURCE: 65 FR 2532, Jan. 18, 2000, unless otherwise noted.

§ 308.7 Revolving Loan Funds established for business lending.

EDA grants to capitalize or recapitalize Revolving Loan Funds are most commonly used for business lending, but may also be established for public infrastructure lending or other authorized purposes involving lending. The RLF requirements in this subpart B are applicable to RLFs established for business lending. Appropriate modifications of these requirements will be addressed in special award conditions to accommodate non-business RLF awards.

§ 308.8 Definitions.

As used in this part:

Closed loan means any loan for which all required documentation has been executed, received, and reviewed.

Guaranteed loan means a loan made and serviced by a lending institution under the agreement that a third party (*e.g.*, a governmental agency) will purchase the guaranteed portion if the borrower defaults.

Program income means gross income received by the grant RLF recipient or the sub-recipient directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. Program income includes principal repayments and RLF income.

Prudent lending practices means generally accepted underwriting and lending practices for public loan programs based on sound judgment to protect Federal and lender interests. Such practices cover loan processing, documentation, loan approval, collections, servicing, administrative procedures, collateral protection, and recovery actions. Prudent lending practices include compliance with local laws and filing requirements to perfect and maintain security interests in RLF collateral.

Recapitalization grants are additional grant funds awarded to increase the capital base of an RLF.

RLF capital includes the funds which capitalized the RLF plus such earnings and fees generated by RLF activities as may be added to the RLF capital base to be used for lending. The original sources of capital for EDA RLFs are normally comprised of EDA grant funds and local cash matching share.

RLF income means interest earned on outstanding loan principal, interest earned on accounts holding RLF funds not needed for immediate lending, all loan fees and loan-related charges received from RLF borrowers, and other income generated from RLF operations. The RLF recipient may use RLF income only to capitalize the RLF and/or to cover eligible and reasonable costs necessary to administer the RLF, unless otherwise provided for in the grant agreement or approved in writing by EDA. RLF income excludes principal repayments.

Secondary market includes those entities that purchase an interest in a loan from an original lender.

Securitization refers to the technique of securing an investment of new capital with the stream of income generated by one or more (usually a large group of) existing loans. EDA broadly defines securitization transactions to include techniques such as the sale of loans, pledging the future income stream of a loan, and similar activities, to access investor capital to increase available funds for lending.

§ 308.9 Revolving Loan Fund Plan.

All RLF recipients must manage RLFs in accordance with an RLF Plan (Plan) as described in this part. For all RLF recipients, the Plan must be submitted to and approved by EDA prior to the grant award. For RLF recipients other than states, the RLF Plan must have been approved by resolution of the organizations' governing board and such resolution must be submitted to EDA along with the Plan prior to the grant award; with EDA's approval, political subdivisions of states may be exempted from the resolution requirement.

(a) *Format and content.* (1) The title page of the Plan should show the RLF

recipient organization's name and the date the Plan was adopted.

(2) Part I of the Plan, titled Revolving Loan Fund Strategy, summarizes the area CEDS and business development objectives, and describes the RLF's financing strategy, policy and portfolio standards. Organization of the material and the level of detail provided in the subsections of Part I may be varied to improve the narrative flow, provided the substantive content is adequately covered.

(3) Part II of the Plan, titled Operational Procedures, serves as the internal operating manual for the RLF.

(b) *Evaluation of Plans.* EDA will use the following criteria in evaluating Plans:

(1) The Plan must flow from and be consistent with the EDA-approved CEDS for the area.

(2) The Plan must be an internally consistent, coherent statement of the strategic purpose of the particular RLF and the various considerations influencing the selection of its financing strategy, policies, and loan selection criteria encompassing:

(i) A financing strategy that demonstrates a knowledgeable analysis of the local capital market and the financing needs of the targeted businesses; and

(ii) Financing policies and portfolio standards that are consistent with EDA policies and requirements.

(3) The strategic objectives defined must be sufficiently meaningful, though not necessarily quantified, so that progress toward them can be assessed over time.

(4) The administrative procedures for operating the RLF must be consistent with generally accepted prudent lending practices for public lending institutions.

[65 FR 2532, Jan. 18, 2000, as amended at 65 FR 71025, Nov. 28, 2000]

§ 308.10 Pre-loan requirements.

(a) RLF recipients must adopt procedures to review the impacts of prospective loan proposals on the physical environment. The Plan must provide for the disapproval of any loan project that adversely (without mitigation) impacts flood plains, wetlands, significant historic or cultural properties,

drinking water resources, or nonrenewable natural resources. In administering the RLF, the RLF recipient must adopt procedures to comply, and ensure that potential borrowers comply, with applicable laws and regulations including, but not limited to §§ 316.1, 316.3, 316.7, 316.8, 316.15, and 317 of this chapter.

(b) RLF recipients are responsible for ensuring compliance with the applicable requirements of this chapter prior to providing any loan assistance under the RLF. RLF recipients are responsible for ensuring that prospective borrowers, consultants, or contractors are aware of and comply with the Federal statutory and regulatory requirements that apply to activities carried out with RLF loans. RLF recipients must develop loan agreements that include applicable Federal requirements to ensure compliance. RLF recipients must adopt procedures to diligently correct instances of non-compliance, including the calling of loans, if necessary. RLF recipient loan documents and procedures must protect and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an award to assist (directly or indirectly) in site preparation or construction as well as the renovation or repair of any facility or site. This applies to the extent that such liabilities are incurred because of ground water, surface, soil or other conditions caused by operations of the RLF recipient or any of its predecessors on the property.

§ 308.11 Lending areas and modification of lending areas.

(a) The economic activity and benefits of RLF loans must be located within the eligible areas identified in the grant award. For a determination of eligibility for new RLF lending areas, such areas must be included in or added to a CEDS in accordance with requirements under § 301.3 of this chapter.

(1) Where such RLFs have a grant condition that permits new areas that subsequently become eligible to be added to the lending area, RLFs that were awarded assistance (RLF capitalization or recapitalization) before February 11, 1999, whether fully disbursed

or not, and fully disbursed RLFs that were awarded assistance (RLF capitalization or recapitalization) on or after February 11, 1999, may add such areas with EDA approval.

(2) In the case of existing RLFs that are not fully disbursed that were awarded assistance (RLF capitalization or recapitalization) on or after February 11, 1999, the area proposed to be added must also be eligible to receive an EDA grant rate equal to or greater than that of the original grant.

(b) Whenever an area is added, modification to the RLF Plan incorporating the new area and outlining the RLF lending strategy is required. Once approved, area eligibility is retained indefinitely.

[65 FR 2532, Jan. 18, 2000, as amended at 65 FR 71025, Nov. 28, 2000]

§ 308.12 Revolving Loan Fund income.

(a) RLF income can be used to pay for eligible and reasonable administrative costs for the project. RLF recipients are expected to add RLF income to the RLF capital base where practicable. To determine the appropriate amount of RLF income to return to the RLF capital base, RLF operators must consider the costs necessary to operate an RLF program, the availability of other monetary resources, the portfolio risk level and projected capital erosions from loan losses and inflation, the community's (or area's) commitment to the RLF, and the anticipated demand for RLF loans.

(b) RLF income that is not used for administrative costs during the selected twelve-month reporting period in which it is earned, must be added to the RLF capital base for lending purposes at the end of the twelve-month reporting period. Only RLF income earned during a current period may be used for current administrative expenses. RLF income may not be withdrawn from an RLF in a subsequent period for any uses, other than lending, without the written consent of EDA.

(c) In accounting for RLF income, any net proceeds from the sale, collection, or liquidation of a defaulted loan, up to the amount of the unpaid principal, will be treated as repayments of RLF principal and placed in the RLF

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for lending purposes only. Any proceeds in excess of the unpaid principal will be treated as RLF income.

(d) RLF recipients must comply with applicable OMB cost principles (as found in OMB Circular A-87 for State, Local or Indian tribal governments, OMB Circular A-122 for non-profit organizations other than institutions of higher education, hospitals, or organizations named in OMB Circular A-122 as not subject to that circular, and OMB Circular A-21 for educational institutions) and with RLF Audit Guidelines (as found in OMB Circular A-133, Single Audit Act Requirements for State and Local Governments, Indian tribal governments, Institutions of Higher Education and Other Nonprofit Organizations, or the Compliance Supplement, as appropriate) when charging costs against RLF income. For availability of OMB circulars, see 5 CFR 1310.3.

(e) When a RLF recipients uses RLF income to cover all or part of RLF administrative costs it must complete an RLF Income and Expense Statement required under §308.14(c) of this chapter.

[65 FR 2532, Jan. 18, 2000, as amended at 65 FR 71025, Nov. 28, 2000]

§ 308.13 Records and retention.

(a) *Loan files and related documents and records.* Loan files and related documents and records must be retained by RLF recipients over the life of the loan and for a three year period from the date of final disposition of the loan. The date of final disposition of the loan is defined as the date of:

(1) Full payment of the principal, interest, fees, penalties, and other costs associated with the loan; or

(2) Final settlement or write-off of any unpaid amounts associated with the loan.

(b) *Administrative records.* RLF recipients must:

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

(2) Retain records of administrative costs incurred for activities and equipment relating to the operation of the RLF for three years from the actual

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submission date of the last semi-annual or annual report which covers the period that such costs were claimed, or for five years from the date the costs were claimed, whichever is less.

(3) Make any retained records, even those retained for longer than the period described, available for inspection. The record retention periods, described in this §308.13, are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement. In any event, EDA will not question claimed administrative costs that are more than three years old, unless fraud is an issue.

§ 308.14 Revolving Loan Fund semi-annual and annual reports.

(a) *Frequency of reports.* All RLF recipients, including existing RLFs that receive recapitalization grants, must submit semi-annual reports until they qualify or requalify for "Annual Report" status. RLF recipients may apply for "Annual Report" status if:

(1) All grant funds have been disbursed for at least one year;

(2) Accurate semi-annual reports have been submitted on-time for the preceding two years;

(3) Required periodic audits have been completed and submitted to EDA for the most recent audit period within the last two years; and

(4) EDA determines that the RLF is in compliance with all applicable RLF requirements.

(b) *Report contents.* RLF recipients must certify as part of the semi-annual or annual report to EDA that the RLF is being operated in accordance with the Plan referenced in §308.9 of this part. RLF recipients must request EDA approval of modifications to the Plan at any time there is evidence that such modifications are needed to ensure effective use of the RLF as a strategic financing tool.

(c) *RLF income statement.* (1) RLF recipients using RLF income equivalent to 50 percent or more or at least \$100,000 of RLF income for RLF administrative expenses during the selected twelve month period, must submit a completed RLF Income and Expense Statement per §308.12(e) to the appropriate EDA Regional Office within 90

days of either September 30 or the RLF recipient's fiscal year end, whichever period is selected by the RLF recipient. RLF recipients using less than 50 percent and less than \$100,000 of RLF income for administrative expenses in the twelve-month period will retain the RLF Income and Expense Statement for three years. RLF recipients are required to make this statement available to EDA personnel upon request.

(2) *Performance Measures.* RLF recipients will submit to EDA as part of the semi-annual or annual report, the information identified as the Core Performance Measures in the special conditions accompanying the grant award. EDA will advise RLF recipients in writing, within a reasonable time for submission, in the event there are any modifications in the information required to be submitted.

§ 308.15 Prudent management of Revolving Loan Funds.

(a) *Accounting principles.* (1) RLFs are expected to be operated in accordance with the generally accepted accounting principles (GAAP) and the provisions outlined in OMB Circular A-133 and Compliance Supplements as applicable.

(2) In accordance with GAAP, a loan loss reserve may be reflected in the financial statements to show the fair value of an RLF's loan portfolio provided it is non-funded and represents non-cash entries.

(b) *Loan and accounting system documents.* (1) RLF recipients are required to provide certification by an independent accountant familiar with the RLF recipient's accounting system that its accounting system is adequate to identify, safeguard, and account for all RLF funds, including RLF income.

(2) RLF recipients are required to certify that standard RLF loan documents necessary for lending are in place and that these documents have been reviewed by its legal counsel for adequacy and compliance with the terms and conditions of the grant and applicable state and local laws. The standard loan documents must include, at a minimum, the following:

- (i) Loan application,
- (ii) Loan agreement,
- (iii) Promissory note,
- (iv) Security agreement(s),

(v) Deed of Trust or Mortgage (as applicable),

(vi) Agreement of prior lien holder (as applicable), and

(vii) Personal Guaranty Agreement (for officers or owners of corporate borrowers, as applicable).

(c) *Interest rates.* A RLF recipient can make loans and loan guarantees to eligible borrowers at interest rates and under conditions determined by the RLF recipient to be most appropriate in achieving the goals of the RLF. However, the minimum interest rate an RLF can charge is four (4) percentage points below the current money center prime rate quoted in the Wall Street Journal or the maximum interest rate allowed under state law, whichever is lower. In no event may the interest rate be less than four (4) percent. However, should the prime interest rate exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of the RLF recipient to implement its financing strategy.

(d) *Private leveraging.* (1) RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. This leveraging requirement applies to the portfolio as a whole, rather than to individual loans and is effective for the life of the RLF. Private investment, to be classified as leveraged, must be made concurrently with an RLF loan as part of the same business development project and may include:

- (i) Capital invested by the borrower or others,
- (ii) Financing from private entities, or

(iii) The unguaranteed portion and 90 percent of the guaranteed portions of SBA 7(a) and SBA 504 debenture loans.

(2) Private investments do not include equity build-up in a borrower's assets or prior capital investments by a borrower unless the investment is made within nine months of the RLF loan and is recognized by the RLF recipient.

(e) *Conflict of interest.* (1) No officer, employee, or member of the RLF recipient's Board of Directors, or other Board (hereinafter referred to as "other board") that advises, approves,

recommends or otherwise participates in decisions concerning loans or the use of RLF grant funds, or person related to the officer, another employee, or any member of the Board by immediate family, law, or business arrangement, may receive any benefits resulting from the use of the RLF loan or grant funds. In addition, the RLF recipient may not lend RLF funds to an employee of the RLF recipient or any member of the RLF recipient's Board of Directors, or a member of any other Board. Immediate family is defined as parents, grandparents, siblings, children and grandchildren, but does not include more distant relatives, including cousins, unless they live in the same household. Exception: A benefit or loan may be conferred if the officer, employee, or Board member affected first discloses to the RLF recipient on the public record the proposed or potential benefit and receives the RLF recipient's written determination that the benefit involved is not so substantial as to reflect adversely upon or affect the integrity of the RLF recipient's decision process or the services of the officer, employee or board member.

(2) An officer, employee or board member of the RLF recipient will not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment or any other thing of monetary value, for himself or for another person, from any person or organization seeking to obtain a loan or any portion of the grant funds.

(3) Former board members and/or officers are ineligible to apply for or receive an RLF loan for a period of one year from the date of termination of his/her services. Exception: A benefit or loan may be conferred if the officer, or Board member affected first discloses to the RLF recipient on the public record the proposed or potential benefit and receives the RLF recipient's written determination that the benefit involved is not so substantial as to reflect adversely upon the integrity of the RLF recipient's decision process.

§ 308.16 Disbursement of funds to Relieving Loan Funds.

(a) *Timing of request for disbursement.* A RLF recipient must request disburse-

ments from EDA only at the time and in the amount immediately needed to close a loan or disburse funds to a borrower. Grant funds must be requested only for immediate use, *i.e.*, when the intent is to disburse the funds within 14 days of receipt.

(b) *Amount of disbursement.* As each new loan is made, the grant RLF recipient may request a disbursement of grant funds only for the difference, if any, between the amount of funds available for relending (from repayments of loan principal and RLF income) and the amount of the new loan, less an amount for local matching funds as may be required to be disbursed concurrent with the grant. However, RLF income received during the grant period may be held to cover eligible administrative expenses and need not be disbursed in order to draw additional grant funds.

(c) *Interest-bearing accounts.* All RLF grant funds disbursed by EDA to reimburse RLF recipients for loan obligations already incurred must be held in interest bearing accounts by RLF recipients until disbursed to the borrower.

(d) *Pre-disbursement requirements.* RLF recipients are required to provide:

(1) Evidence to EDA that they have fidelity bond coverage for persons authorized to handle funds under the grant award in an amount sufficient to protect the interests of EDA and the RLF. Note that such insurance coverage must exist at all times during the life of the RLF; and

(2) Certification in accordance with § 308.15(b)(1) of this part.

(e) *Delays.* (1) If grant funds are requested and the loan disbursement is subsequently delayed, a RLF recipient may hold the funds up to 30 days from the date of receipt. In the event that a loan disbursement is delayed beyond 30 days from the date of receipt of the Federal disbursement, the undisbursed funds must be returned to the Government for credit to the RLF recipient's account. Returned funds will be available to the RLF recipient for future draw down. When returning prematurely drawn funds, checks should identify on their face the name of the grantor agency—"EDA" followed by

the grant award number and the words "Premature Draw."

(2) The interest earned on prematurely withdrawn funds must be returned to the Government (with the exception of \$100 per year which may be retained for administrative expenses by states, local governments and Indian tribes in accordance with 15 CFR Part 24, and \$250 for those subject to 15 CFR Part 14 as appropriate) and should be remitted promptly, but no less frequently than quarterly. All checks submitted should state "EDA" on their face and the award number followed by the word "INTEREST" in order to identify the check in question as remittance of interest income.

(f) *Local share.* (1) When some portion of the local share of the RLF project is cash, it may only be used for lending. If the RLF project has an all-cash matching share, EDA's funds will be disbursed as needed for loan closing. The cash matching funds must be used either in proportion to the EDA funds, or at a faster rate than EDA funds.

(2) When an RLF project has a combination of in-kind and cash matching share, the non-federal cash together with the Federal cash constitute the funds available for making loans and will be disbursed proportionately as needed for loan closing, provided that the last 20 percent of the Federal funds may not be disbursed until all local in-kind match has been expended. The full amount of the local cash matching share will be expected to remain for use in the RLF.

(3) Upon repayment, local cash share funds are treated the same as EDA funds. Repayments of principal must be placed in the RLF for relending and interest payments must be used either for relending or for eligible RLF administrative costs. The local cash matching share must be available when needed for lending and must be under the control of the RLF recipient for the duration of the RLF for use in accordance with the terms of the grant.

§ 308.17 Effective utilization of Revolving Loan Funds.

(a) *Loan closing and disbursement schedule.* (1) RLF loan activity must be sufficient to draw down grant funds in accordance with the time schedule for

loan closings and disbursements to eligible RLF borrowers as prescribed in the award conditions. The time schedule requires that the initial round of lending (*i.e.*, the grant disbursement phase) be completed within three years of the grant award.

(2) If a RLF recipient substantially fails to meet the prescribed time schedules for loan closings and disbursements, EDA may terminate the undisbursed balance of the award. Exceptions may be granted where:

(i) Funds are needed to close and disburse funds on loans approved prior to the deadline and will be disbursed within 45 days of the deadline,

(ii) Funds are needed to meet continuing disbursement obligations on loans closed prior to the deadline, or

(iii) EDA has approved a time schedule extension.

(b) *Time schedule extension.* (1) RLF recipients are responsible for contacting EDA as soon as conditions become known that may materially affect their ability to meet the approved time schedules. RLF recipients must submit a written request to EDA for continued use of grant funds beyond a missed deadline. Extension requests must provide good reason for the delay and demonstrate that:

(i) The delay was unforeseen or generally beyond the control of the RLF recipient;

(ii) The need for the RLF still exists;

(iii) The current and planned use and the anticipated benefits of the RLF will remain consistent with the current CEDS and the RLF Plan;

(iv) The achievement of a new proposed time schedule is reasonable; and

(v) An explanation why no further delays are foreseen.

(2) EDA is under no obligation to grant a time extension, and in the event an extension is denied, EDA may deobligate (terminate) all or part of the unused portion of the grant.

(c) *Capital Utilization Standard.* (1) During the revolving phase, RLF recipients must manage their repayment and lending schedules such that at least 75 percent of the RLF's capital is loaned out or committed at all times. RLF income earned during a current reporting period is not included as RLF

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capital when calculating the capital utilization percentage. Exception:

(i) RLF recipients that anticipate making large loans relative to the size of the capital base, may propose RLF Plans that call for holding more than 25 percent.

(ii) EDA may require an RLF with a capital base in excess of \$4 million to adopt a Plan that maintains a proportionately higher percentage of their funds loaned out.

(2) When the percentage of loaned out capital falls below the applicable standard, the dollar amount of the funds equivalent to the difference between the actual percentage of capital loaned out and the standard is referred to as "excess funds."

(i) *Sequestration of excess funds.* If the capital utilization standard is not met for two consecutive reporting intervals, EDA may require the RLF recipient to deposit "excess funds" in an interest bearing account; the portion of the interest earned on that account, attributable to the EDA grant, will be remitted to the U.S. Treasury. EDA approval is required to withdraw sequestered funds.

(ii) *Persistent noncompliance.* A RLF recipient will normally be provided a reasonable period of time to lend "excess funds" and achieve the standard. However, if a RLF recipient fails to achieve the standard after a reasonable period of time as determined by EDA, the grant may be subject to sanctions for suspension and/or termination.

§ 308.18 Uses of capital.

Generally, eligible loans to borrowers include loans for fixed assets, the acquisition of equipment, working capital, or other authorized uses. The EDA grant and the local cash matching funds will be used only for the purpose of making loans under an RLF. To preclude borrowers from using RLF funds inappropriately, the purpose of each RLF loan should be clearly stated in the loan agreement. RLFs established for business lending must conform to the following:

(a) *Loan guarantees.* Prior to full disbursement of grant funds, the RLF recipient may not use the RLF to guarantee loans made by other lenders. In the revolving phase, after the full dis-

bursement of grant funds, the RLF may be used to guarantee loans of private lenders provided the RLF recipient has obtained EDA's prior written approval of its proposed loan guarantee activities. The Plan for any loan guarantee activities should include the following information:

(1) The maximum guarantee percentage that will be offered;

(2) A certification from the RLF attorney that the guarantee agreement is valid under state law. At a minimum, the guarantee agreement must address the following:

(i) The maximum reserve requirement;

(ii) The rights and duties of each party in regard to loan collections, servicing, delinquencies and defaults;

(iii) Foreclosures;

(iv) Bankruptcies;

(v) Collateral disposition and the call provisions of the guarantee; and

(vi) Interest income and loan fees, if any, which will accrue to the RLF.

(b) *Restrictions on RLF capital.* RLF capital may not be used to:

(1) Acquire an equity position in a private business;

(2) Subsidize interest payments on an existing loan;

(3) Provide the equity contribution required of borrowers under other Federal loan programs;

(4) Enable an RLF borrower to acquire an interest in a business, either through the purchase of stock or through the acquisition of assets, unless the need for RLF financing is sufficiently justified and documented in the loan write-up. Acceptable justification could include acquiring a business to substantially save it from imminent foreclosure, or acquiring it to facilitate a significant expansion or increased investment. In any case, the resulting economic benefits should be clearly consistent with the strategic objectives of the RLF;

(5) Provide loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposit, or other investments not related to the objectives of the RLF;

(6) Refinance existing debt unless:

(i) There is sound economic justification and the RLF recipient sufficiently documents in the loan write-up that

the RLF is not replacing private capital solely for the purpose of reducing the risk of loss to an existing lender(s) or to lower the cost of financing to a borrower, or

(ii) An RLF uses RLF income sources and/or recycled RLF funds to purchase the rights of a prior lien holder during an in-process foreclosure action in order to preclude a significant loss on an RLF loan. This action may be undertaken only if there is a high probability of receiving compensation within 18 months from the sale of assets sufficient to cover an RLF's expenses plus a reasonable portion of the outstanding loan obligation; or

(7) Finance any activity that serves to relocate jobs from one commuting area to another. (Commuting area is that area defined by the distance people travel to work in the locality of the project receiving RLF financial assistance.) An RLF's standard loan agreement must include a provision for calling the loan if it is determined that:

(i) The business used the RLF loan to relocate jobs from another commuting area, or

(ii) The activity financed was subsequently moved to a different commuting area to the detriment of local workers.

(c) *Credit otherwise available.* Unless otherwise provided for in the grant agreement or modified in writing by EDA, a borrower is not eligible for RLF financing if credit is otherwise available on terms and conditions that permit the completion or successful operation of the project activity to be financed. The RLF recipient is responsible for determining that each borrower meets this requirement and for documenting the basis for its determination in the loan write-up.

§ 308.19 Variances.

EDA may approve variances to the requirements of subpart B of this part provided they:

(a) Are consistent with the goals of the Economic Adjustment Program and with an RLF's strategy,

(b) Are necessary and reasonable for the effective implementation of the RLF,

(c) Are economically and financially sound,

(d) Do not conflict with applicable legal requirements, and

(e) Do not change the scope of the award after the period of availability of the funds for obligation has expired.

PARTS 309–313 [RESERVED]

PART 314—PROPERTY

Subpart A—In General

- Sec.
- 314.1 Federal interest, applicability.
- 314.2 Definitions.
- 314.3 Use of property.
- 314.4 Unauthorized use.
- 314.5 Federal share.
- 314.6 Encumbrances.

Subpart B—Real Property

- 314.7 Title.
- 314.8 Recorded statement.

Subpart C—Personal Property

- 314.9 Recorded statement—Title.
- 314.10 Revolving loan funds.

Subpart D—Release of EDA's Property Interest

- 314.11 Procedures for release of EDA's property interest.

AUTHORITY: 42 U.S.C. 3211; 19 U.S.C. 2341–2355; 42 U.S.C. 6701; 42 U.S.C. 184; Department of Commerce Organization Order 10–4.

SOURCE: 64 FR 5476, Feb. 3, 1999, unless otherwise noted.

Subpart A—In General

§ 314.1 Federal interest, applicability.

(a) Property that is acquired or improved with EDA grant assistance shall be held in trust by the recipient for the benefit of the purposes of the project under which the property was acquired or improved. Limited exceptions to this requirement are listed in § 314.7(c).

(b) During the estimated useful life of the project, EDA retains an undivided equitable reversionary interest in property acquired or improved with EDA grant assistance, except for the exceptions listed in § 314.7(c).

(c) EDA may approve the substitution of an eligible entity for a recipient. The original recipient remains responsible for the period it was the recipient, and the successor recipient