

§ 308.13

13 CFR Ch. III (1–1–01 Edition)

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

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,