

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(2) The interest earned on prematurely withdrawn funds must be returned to the Government (with the exception of \$100 per year which may be retained for administrative expenses by states, local governments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