

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

### § 308.13

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

### 13 CFR Ch. III (1-1-03 Edition)

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