

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