

§ 308.18

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

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

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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