

§ 307.15

13 CFR Ch. III (1–1–07 Edition)

(2) *Performance measures.* As part of the semi-annual or annual report, RLF Recipients shall submit to EDA the information identified as the “Core Performance Measures” in the special award conditions of the Grant documents. EDA will advise RLF Recipients within a reasonable time of any required modifications to the information submitted.

§ 307.15 Prudent management of Revolving Loan Funds.

(a) *Accounting principles.* (1) RLFs shall operate in accordance with generally accepted accounting principles (“GAAP”) as in effect from time to time in the United States and the provisions outlined in OMB Circular A–133 and the Compliance Supplement, as applicable.

(2) In accordance with GAAP, a loan loss reserve may be recorded in the RLF Recipient’s financial statements to show the fair market value of an RLF’s loan portfolio, provided this loan loss reserve is non-funded and represents non-cash entries.

(b) *Loan and accounting system documents.* (1) Within sixty (60) days prior to the initial disbursement of EDA funds, an independent accountant familiar with the RLF Recipient’s accounting system shall certify to EDA and the RLF Recipient that such system is adequate to identify, safeguard and account for all RLF Capital, outstanding RLF loans and other RLF operations.

(2) Prior to the disbursement of any EDA funds, the RLF Recipient shall certify that standard RLF loan documents reasonably necessary or advisable 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 law. 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) Guaranty agreement (as applicable).

(c) *Interest rates.* An RLF Recipient may make loans and may guarantee loans to eligible borrowers at interest rates and under conditions determined by the RLF Recipient to be appropriate in achieving the goals of the RLF. However, the minimum interest rate an RLF can charge is four (4) percentage points below the lesser of the current money center prime interest rate quoted in the *Wall Street Journal*, or the maximum interest rate allowed under State law. In no event shall the interest rate be less than four (4) percent. However, should the prime interest rate listed in the *Wall Street Journal* 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 leverage private investment of at least two dollars for every one dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF’s operation. To be classified as leveraged, private investment must be made within twelve (12) months prior to approval of 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 non-guaranteed portions and ninety (90) percent of the guaranteed portions of the U.S. Small Business Administration’s 7(A) loans and 504 debenture loans.

(2) Private investments shall not include accrued equity in a borrower’s assets.

§ 307.16 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 schedule prescribed in the award conditions for

loan closings and disbursements to eligible RLF borrowers. The schedule usually requires that the RLF Recipient lend the entire amount of the initial RLF Capital base within three (3) years of the Grant award.

(2) If an RLF Recipient fails to meet the prescribed lending schedule, EDA may de-obligate the non-disbursed balance of the RLF Grant. EDA may allow exceptions where:

(i) Closed Loans approved prior to the schedule deadline will commence and complete disbursements within forty-five (45) days of the deadline;

(ii) Closed Loans have commenced (but not completed) disbursement obligations prior to the deadline; or

(iii) EDA has approved a time schedule extension pursuant to §307.16(b).

(b) *Time schedule extensions.* (1) RLF Recipients shall promptly inform EDA in writing of any condition that may adversely affect their ability to meet the prescribed schedule deadlines. RLF Recipients must submit a written request to EDA for continued use of Grant funds beyond a missed deadline for disbursement of RLF funds. RLF Recipients must provide good reason for the delay in their extension requests by demonstrating that:

(i) The delay was unforeseen or beyond the control of the RLF Recipient;

(ii) The financial 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; and

(iv) The proposal of a revised time schedule is reasonable. An extension request must also provide an explanation as to why no further delays are anticipated.

(2) EDA is under no obligation to grant a time extension and in the event an extension is denied, EDA may deobligate all or part of the unused Grant funds and terminate the Grant.

(c) *Capital utilization standard.* (1) During the Revolving Phase, RLF Recipients must manage their repayment and lending schedules to provide that at all times at least seventy-five (75) percent of the RLF Capital is loaned or committed. The following exceptions apply:

(i) An RLF Recipient that anticipates making large loans relative to the size of its RLF Capital base may propose a Plan that provides for maintaining a capital utilization percentage greater than twenty-five (25) percent; and

(ii) EDA may require an RLF Recipient with an RLF Capital base in excess of \$4 million to adopt a Plan that maintains a proportionately higher percentage of its funds loaned.

(2) When the percentage of loaned RLF Capital falls below the applicable capital utilization percentage, the dollar amount of the RLF funds equivalent to the difference between the actual percentage of RLF Capital loaned and the applicable capital utilization percentage is referred to as "excess funds."

(i) *Sequestration of excess funds.* If the RLF Recipient fails to satisfy the applicable capital utilization percentage requirement for two (2) consecutive reporting intervals, EDA may require the RLF Recipient to deposit excess funds in an interest-bearing account separate from the EDA funds account. The portion of interest earned on the account holding excess funds attributable to the RLF Grant shall be remitted to the U.S. Treasury. RLF Recipients must obtain EDA's written authorization to withdraw any sequestered funds.

(ii) *Persistent non-compliance.* An RLF Recipient will generally be allowed a reasonable period of time to lend excess funds and achieve the applicable capital utilization percentage. However, if an RLF Recipient fails to achieve the applicable capital utilization percentage after a reasonable period of time, as determined by EDA, it may be subject to sanctions such as suspension or termination.

§ 307.17 Uses of capital.

(a) *General.* RLF Capital shall be used for the purpose of making RLF loans that are consistent with an RLF Plan or such other purposes approved by EDA. To ensure that RLF funds are used as intended, each loan agreement must clearly state the purpose of each loan.

(b) *Restrictions on use of RLF Capital.* RLF Capital shall not be used to: