



Revolving Loan Funds: Requirements Overview



Presentation Outline



- **Single Audits (Sec. 307.14; ST&Cs I.F; OMB Circular A-133 and EDA Compliance Supplement)**
- **Loan Requirements (Sec. 307.10; ST&Cs Parts II.D, III.A, III.B)**
- **Portfolio Management Requirements (Sec. 307.9, 307.11, 307.12, 307.15, 307.17; ST&Cs Parts II.A, II.C., II.F)**
- **Reporting Requirements (Sec. 307.14; ST&Cs Part II.H)**
- **Capital Utilization Requirements (Sec. 307.16; ST&Cs Part II.E)**
- **Default Rates (ST&Cs Part II.F.4)**
- **Consolidations, Mergers, and Transfers (Sec. 307.18, 307.19, 307.20; ST&Cs Part II.B)**
- **Records and Retention (Sec. 307.13; ST&Cs Part II.G)**
- **Common mistakes**
- **Upcoming Program Changes**

Loan Requirements: Restrictions on Use of RLF Capital



- RLF capital shall not be used to:
 - Acquire an equity position in a private business;
 - Subsidize interest payments on an existing loan;
 - Provide for borrowers' required equity contributions under other Federal agencies' loan programs;
 - Enable borrowers to acquire an interest in a business (stock or assets) unless evidence is furnished in the loan documentation that doing so will save a business from imminent closure or will facilitate expansions with an increase in jobs;
 - Provide funds to a borrower to invest in interest-bearing financial assets
 - Refinance existing debt (see 13 C.F.R. 307.17(b) or part III of the ST&Cs for exceptions)
- General rule: An RLF may not make a loan to itself or to any related organization

Loan Requirements: Conflict of Interest Rules



- An 'Interested Party' of a recipient may not receive, directly or indirectly, any personal or financial benefits from disbursement of RLF loans
 - 'Interested Party' includes any officer; employee; member of the board; those who advise recipient on business decisions such as consultants, attorneys, or accountants; or the immediate family, significant other, or domestic partner of an Interested Party
- A recipient shall not lend RLF funds to an Interested Party
- A recipient shall not lend RLF funds to a former board member or his/her immediate family for a period of at least 2 years since the board member last served on the RLF's board

Loan Requirements: Documentation and Approval



- **Standard loan documents must include:**
 - Loan application;
 - Loan agreement;
 - Record of decision (e.g. minutes of board meeting approving loan)
 - Promissory note;
 - Security agreement(s);
 - As applicable, a deed of trust or mortgage;
 - Notice to, and consent of, prior lien holder, if applicable.
- **The recipient must determine and demonstrate in the loan documentation that credit is not otherwise available on terms and conditions that permit the successful completion or operation of the activity to be financed**
 - **Acceptable documentation: signed bank turndown letter or other documentation acceptable to EDA, as specifically articulated in the RLF operator's EDA-approved RLF Plan**

Loan Requirements: Documentation and Approval



- Recipient must document that it has reviewed the impact of the loan proposal on the physical environment, in accordance with established procedures.
- Recipient must ensure borrowers are aware of federal statutory and regulatory requirements, and Executive Orders (including Davis-Bacon Act wage rates pertaining to construction projects and non-discrimination statutes) and adopt procedures to correct non-compliance, including loan call stipulations.
- All RLF loan documents must protect and hold the Federal government harmless from and against all liabilities related to award to assist in site preparation or construction/repair or renovation of a facility.

Loan Requirements: Other



- Interest rates:
 - Minimum: the lesser of 4% or 75% of the WSJ prime rate
- Loans must be in lending area set forth in EDA-approved RLF Plan and Special Terms and Conditions
 - A recipient may add an additional lending area to its existing lending area to create a new lending area only with EDA's prior written approval; the recipient's RLF Plan and Special Terms and Conditions must then be revised and approved by EDA.
- EDA no longer permits recipients to offer loan guarantees.

Portfolio Management Requirements: Prudent Lending Practices

- Administered in accordance with Generally Accepted Accounting Principles
- Administered in accordance with “prudent lending practices”
 - Defined as “generally accepted underwriting and lending practices for public loan programs, based on sound judgment to protect federal and lender interests”
 - Cover loan processing, documentation, loan approval, collections, servicing, administrative procedures, collateral protection, and recovery actions
 - Include compliance with local laws and filing requirements to perfect and maintain a security interest in RLF collateral



Portfolio Management Requirements: Leverage and Fidelity Bond Coverage



- A CEDS is a strategy that meets the requirements of 13 C.F.R. § 303.7.
- Public Works and Economic Adjustment Assistance projects funded by EDA must be consistent with a CEDS (or other strategy) approved by EDA for the region in which the project will be located.
- The CEDS ensures sound and continuous planning and coordination of public and private sectors in response to local needs and economic development objectives.
- For most grants, the application must show how the project will address the regional economic development needs and objectives outlined in the CEDS.

Portfolio Management Requirements: RLF Plans



- **RLF Plans must:**
 - **Summarize the region’s CEDS and demonstrate compatibility between the RLF’s business development objectives and the regional strategy**
 - **Analyze the local capital market and the financing needs of target businesses**
 - **Describe the RLF’s financing strategy, policy, and portfolio standards in the context of this analysis**
 - **Set out administrative procedures (including loan processing, underwriting, closing, disbursement, collection, monitoring, foreclosure) consistent with “prudent lending practices” and designed to comply, and ensure potential borrowers comply, with applicable laws and regulations, include conflict-of-interest rules)**
- **The grantee must notify EDA of any changes in writing;**
- **EDA must approve any substantive changes**
- **EDA has added a regulatory requirement grantees update RLF Plans as needed to respond to changing economic conditions and, at a minimum, at least every 5 years**

Reporting Requirements



- **Semi-annual reports are due October 31 and April 30**
 - Annual reporting is no longer permitted
 - If reports are > 60 days late, RLF suspended
 - If reports are > 90 days late, EDA will begin termination for cause, unless the grantee has already requested a termination for convenience or the Regional Director has approved an extension request
- **A recipient using 50% or more of RLF income (or >\$100K) for administrative expenses during the reporting period must submit an Income and Expense Statement (ED-209I)**

Requirements for RLF Income

- Income from lending activities (fees and interest payments received) may be used to cover eligible, reasonable, and documented costs needed to administer the RLF, provided that:
 - The RLF income and administrative costs occurred in the same reporting period;
 - RLF income not used for administrative costs during the period is made available for lending;
 - RLF income is not withdrawn in a subsequent reporting period for any purpose other than lending without the prior written consent of EDA;
 - The recipient completes an RLF Income and Expense Statement if required; and
 - The recipient complies with the applicable federal cost principles (OMB Circular A-87 for state and local governments and tribes; OMB Circular A-122 for non-profits).



Capital Utilization Requirements



- Recipients must sequester “excess funds” if RLF capital loaned or committed falls below the target capital utilization rate set by EDA in two consecutive reporting periods, unless excess funds are less than \$5K
- Recipients required to sequester funds shall submit a letter certifying that the funds were sequestered with a copy of the deposit slip showing the bank name, account number, and the amount of the deposit

Capital Utilization Requirements, cont.



- The recipient must submit the portion of the interest earned on the account holding sequestered funds that is attributable to EDA's share of the award to EDA, within 30 days of the end of the quarter.
- A brief memorandum must accompany the check and must include a calculation showing how EDA's share of the interest was determined.
- The recipient must also submit to EDA evidence of interest payment remittance (copy of check, wire transfer, or direct deposit of funds).

Extensions to Comply with Capital Utilization Requirements

- The Regional Director may, in his or her discretion, grant a recipient a 6-month waiver of the sequestration requirement provided that:
 - The recipient provides written documentation of the extenuating circumstances precipitating the excess cash situation, as well as a written plan, signed by the recipient's authorized representative, describing specific actions the recipient will take to achieve compliance within the next 6 months



Consequences for Non-Compliance with Capital Utilization Requirements



- If funds remain sequestered for 12 months, EDA will propose to disallow amounts sequestered and recover the pro-rata federal share
- The Regional Director MAY approve a recipient's request for an extension, provided that this request describes the extenuating circumstances precipitating non-compliance and lays out steps, with projected milestones, for achieving compliance

Default Rates



- An RLF's default rate is calculated as the dollar value of loans in default, divided by the dollar value of total loans outstanding.
- If an RLF's default rate is $> 15\%$, EDA may request additional information from the recipient, including but not limited to:
 - A narrative outlining actions to address the non-performing portion of the portfolio;
 - Detailed information about each non-performing loan;
 - An EDA-approved corrective action plan and amended RLF Plan;
 - Quarterly progress reports.
- Failure to submit an acceptable corrective action plan within 120 days, failure to comply with an EDA-approved corrective action plan, or failure to allow EDA to conduct a site visit may result in termination.

Records and Retention Requirements



- Recipient must maintain closed loan files and all related documents, books of account, computer data files and other records over the term of a closed loan and for a 3-year period following disposition. See 13 C.F.R. 307.13.
- Recipient must retain records of administrative costs incurred for activities and equipment relating to the operation of the RLF for 3 years from the submission date of the semi-annual report that covers the period that such costs were claimed
- Recipient must make available for EDA's or the OIG's inspection any retained records

RLF Consolidations: Eligibility Requirements



- The RLF recipient to administer the consolidated RLF grant meets the following requirements:
 - RLF has been fully disbursed for at least 1 year;
 - RLF has submitted timely and accurate reports for prior 2 years;
 - RLF has submitted required audits during prior 2 years; and
 - RLF is in compliance with all applicable RLF requirements.
- EDA has obtained written approval from the Grant Administrator of the State Community Development Block Grant (CDBG) program, or from the Grant Administrator of another federal program, if CDBG or other federal funds were used for the matching share.
- There is a justifiable reason for the consolidation.
- When the consolidation will merge RLFs from multiple recipients, all recipients have submitted resolutions from their board (or equivalent) approving the consolidation.
- Administering recipient submits updated RLF Plan for EDA approval.

RLF Consolidations: Mechanics



- EDA shall send the recipient an Offer to Consolidate Existing RLF Awards, which shall specify:
 - The new EDA project number;
 - The new eligible lending area; and
 - The new EDA investment rate.
- Recipient's authorized representative signs Offer and returns to EDA.
- EDA notifies recipient in writing of consolidation.
- When the award documents of a recapitalization explicitly provide for consolidation with the original award(s) once eligibility requirements are met, it is not necessary for EDA and the recipient to complete the steps noted on the slide.

Common Pitfalls



- Loan application not included in borrower file (often the case when borrower is receiving loans from multiple loan programs)
- Mismatch between purpose of the loan stated in the loan application and the loan agreement—purpose of loan must be clearly stated in loan agreement
- Failure to document that Davis-Bacon wage rates were paid when purpose of the loan is construction
- Failure to enforce ALL terms of loan agreement (e.g. “borrower must submit quarterly financial reports”)
- Failure to store promissory note in secure and fireproof place
- No bank turndown letter in loan file

Common Pitfalls (cont.)



- Failure to document adherence with special conditions laid out in RLF Plan, if applicable (e.g. if an RLF Plan stipulates that the RLF will only approve a loan over \$500,000 with prior approval of the City Council, the documentation for a loan of \$550,000 must include proof that the City Council approved the loan).
- Loan documents do not include the required “hold harmless” provision set forth in 307.10(c).
- Failure to adhere to RLF Plan targets and/or requesting numerous waivers rather than updating Plan.
- Failure to document private leveraging.
- No hazard and liability insurance and/or grantee not named in policy as “loss payee.”
- No job count documentation.

Common Pitfalls (cont.)



- Failure to conduct annual borrower site visits
- Failure to file a Proof of Claim with bankruptcy court if borrower files for bankruptcy
- Time sheets and travel vouchers don't distinguish which EDA grant program is being charged
- Income and expenses in accounting records do not match reports submitted to EDA
- Unallowable costs recorded
- Failure to correctly account for interest income attributable to EDA

Upcoming Program Changes



- Publication of a Final Rule, which will make minor changes to the current Interim Final Rule
- Publication of revised RLF Standard Terms and Conditions (minor changes only)
- Replacement of current Semi-Annual Report Form (ED-209S) with a single streamlined form collected semi-annually, the ED-209
 - The ED-209 will eliminate all calculable and redundant fields
- Implementation of new automated reporting and tracking system

For More Information

- Visit [EDA's web site](#)
- View [EDA's Regulations](#)
- View the [Standard Terms and Conditions for the RLF program](#)

