



**U.S. DEPARTMENT OF COMMERCE  
ECONOMIC DEVELOPMENT ADMINISTRATION**

**REVOLVING LOAN FUND  
FINANCIAL ASSISTANCE AWARD  
STANDARD TERMS AND CONDITIONS**

**OCTOBER 9, 2007**

**TABLE OF CONTENTS**

PREFACE ..... 1

PART I. GENERAL REQUIREMENTS AND RESPONSIBILITIES ..... 2

A. Purpose ..... 2

B. Authority ..... 2

    1. Definitions ..... 2

    2. Recipient as Trustee ..... 3

    3. Grantor Authority to Change Policies ..... 3

    4. Variances ..... 4

C. Financial Requirements ..... 4

    1. Financial Reports ..... 4

    2. Award Payments ..... 5

    3. Loan Closings and Disbursements ..... 6

    4. Interest Earned on Federal Funds ..... 7

    5. Cost Sharing Requirement ..... 7

    6. Budget Changes and Transfer of Funds among Categories ..... 8

    7. Indirect Costs ..... 9

    8. Incurring Costs or Obligating Federal Funds beyond the Expiration Date ..... 11

    9. Tax Refunds ..... 11

    10. Additional Funding ..... 11

D. Programmatic Requirements ..... 11

    1. Performance (Technical) Reports ..... 11

    2. Unsatisfactory Performance ..... 11

    3. Reporting Programmatic Changes ..... 11

    4. Time-Schedule Extensions ..... 12

    5. Other Federal Awards with Similar Programmatic Activities ..... 12

    6. Non-Compliance with Award Provisions ..... 12

    7. Prohibition against Assignment by the Recipient ..... 14

    8. Disclaimer Provisions ..... 15

    9. Payment of Attorneys’ and Consultants’ Fees ..... 15

E. Non-Discrimination Requirements ..... 15

F. OMB Circular A-133 Audit Requirements ..... 15

    1. Requirement to have an A-133 Audit Performed ..... 15

    2. Requirement to Submit Audit to Federal Audit Clearinghouse ..... 15

    3. Requirement to Instruct Auditor ..... 16

    4. Classification as a Major Program ..... 18

    5. Findings Related to the RLF Program ..... 19

G. DOC Audit Resolution Process ..... 19

H. Payment of Debts ..... 20

1.	Payment of Debts Owed the Federal Government.....	20
2.	Late Payment Charges.....	20
3.	Barring Delinquent Federal Debtors from Obtaining Federal Loans, Loan Guaranties or Loan Insurance. ....	21
4.	Effect of Judgment Lien on Eligibility for Federal Grants, Loans or Programs. ....	21
I.	Name Check Reviews. ....	21
1.	Results of Name Check Review.....	21
2.	Action(s) Taken as a Result of Name Check Review .....	22
J.	Government-wide Debarment and Suspension (Non-Procurement).....	22
K.	Drug-Free Workplace.....	22
L.	Lobbying Restrictions .....	22
1.	Statutory Provisions .....	22
2.	Disclosure of Lobbying Activities .....	22
3.	Special Provisions relating to Indian Tribes.....	23
M.	Freedom of Information Act (FOIA) and Privacy Act Requests .....	23
N.	Codes of Conduct and Sub-Award, Contract and Subcontract Provisions. ....	23
1.	Code of Conduct for Recipients .....	23
2.	Applicability of Award Provisions to Sub-recipients.....	23
3.	Competition and Codes of Conduct for Sub-Awards.....	24
4.	Applicability of Provisions to Sub-Awards, Contracts and Subcontracts.....	25
5.	Minority and Women-Owned Business Enterprises .....	25
6.	Sub-award and/or Contract to a Federal Agency .....	26
7.	Other Federal Requirements Applicable to Sub-awards, Contracts or Subcontracts.....	26
O.	Property Management. ....	27
1.	Recipient as Trustee and Successor Recipients.....	27
2.	Use of Proceeds upon Sale, Collection or Liquidation of RLF Loans .....	27
3.	Sale or Securitization of Loans to Raise New Funds .....	27
4.	Termination of RLF Award.....	27
P.	Environmental Requirements. ....	28
1.	The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4327). ....	28
2.	Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands, May 24, 1977). ....	29
3.	Clean Air Act, Clean Water Act and Executive Order 11738.....	29
4.	The Flood Disaster Protection Act of 1973 (42 U.S.C. § 4002 <i>et seq.</i> ).....	29
5.	The Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 <i>et seq.</i> ).....	29
6.	The Coastal Zone Management Act, as amended (16 U.S.C. § 1451 <i>et seq.</i> ).....	29
7.	The Coastal Barriers Resources Act (16 U.S.C. § 3501 <i>et seq.</i> ).....	30
8.	The Wild and Scenic Rivers Act, as amended (16 U.S.C. § 1271 <i>et seq.</i> ).....	30
9.	The Safe Drinking Water Act of 1974, as amended (42 U.S.C. §§ 300f-j). ....	30
10.	The Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. § 6901 <i>et seq.</i> ).....	30
11.	The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the Superfund Amendments and Reauthorization Act of 1986, and the Community Environmental Response Facilitation Act of 1992, as amended (42 U.S.C. § 9601 <i>et seq.</i> ).....	30

12.	Environmental Justice in Minority Populations and Low Income Populations (Executive Order 12898, February 11, 1994).....	30
Q.	Miscellaneous Requirements.....	31
1.	Criminal and Prohibited Activities.....	31
2.	Foreign Travel.....	31
3.	American-Made Equipment and Products .....	32
4.	Intellectual Property Rights.....	32
5.	Increasing Seat Belt Use in the United States .....	34
6.	Research Involving Human Subjects. ....	34
7.	Federal Employee Expenses.....	35
8.	Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.....	35
9.	Minority Serving Institutions (MSIs) Initiative.....	36
10.	Research Misconduct. ....	36
11.	Publications, Videos and Acknowledgment of Sponsorship.....	36
12.	Care and Use of Live Vertebrate Animals. ....	37
13.	Homeland Security Presidential Directive – 12. ....	37
14.	Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.....	38

**PART II. RLF RECIPIENTS' MANAGEMENT AND ADMINISTRATIVE REQUIREMENTS ..... 39**

A.	Revolving Loan Fund (RLF) Plan Requirements.....	39
1.	Format and Content.....	39
2.	Evaluation of RLF Plans .....	39
3.	RLF Plan Modifications .....	40
B.	Modifications of Lending Areas and Consolidation of RLF Awards .....	40
C.	Prudent Lending Practices.....	40
1.	Accounting Principles .....	41
2.	Pre-Disbursement and Loan and Accounting System Requirements.....	41
3.	Interest Rates .....	42
4.	Private Leveraging .....	42
D.	Conflicts-of-Interest Rules .....	43
E.	Effective Utilization of Revolving Loan Funds. ....	44
1.	Capital Utilization Standard. ....	44
2.	Sequestration of Excess Funds.....	44
3.	Remittance of Interest on Sequestered Funds .....	45
4.	Persistent Noncompliance .....	46
F.	Financial Accountability in the Administration of an RLF.....	46
1.	General Requirements for RLF Income .....	46
2.	Compliance Guidance .....	47
3.	Priority of Payments on Defaulted RLF Loans .....	47
4.	Default Rates .....	48
G.	Records and Retention.....	48

1.	Closed Loan Files and Related Documents.....	48
2.	Administrative Records.....	48
H.	RLF Semi-Annual Report, Annual Report and Income and Expense Statement.....	49
1.	Frequency of Reports.....	49
2.	RLF Plan Certification.....	49
3.	RLF Income and Expense Statement.....	49
4.	Performance Measures.....	50
PART III. LENDING RESTRICTIONS AND BORROWER REQUIREMENTS.....		51
A.	Uses of Capital.....	51
1.	Restrictions on Use of RLF Capital.....	51
2.	Credit Not Otherwise Available.....	52
3.	Loan Guaranty Agreements.....	52
B.	Pre-Loan Requirements for RLF Recipients and RLF Borrowers.....	52
1.	Environmental Impact.....	52
2.	Protection of RLF Assets.....	52
3.	Hold Harmless Provision.....	52
4.	Non-Discrimination Requirements.....	52
5.	Wage Rate Requirements of the Davis-Bacon Act.....	53
APPENDIX.....		54

## PREFACE

This financial assistance award, executed by the Economic Development Administration (EDA) and the recipient (Recipient), together with the EDA-approved project budget and scope of work, these revolving loan fund (RLF) standard terms and conditions, special award conditions, and all applicable federal statutory and regulatory requirements as incorporated by reference (e.g., all applicable statutes, regulations, Executive Orders, Office of Management and Budget (OMB) Circulars), constitute the complete requirements, hereinafter referred to as the “Terms and Conditions,” applicable to this EDA investment.

The Recipient and any sub-recipient must, in addition to the assurances made as part of the application for investment assistance, comply and require each of its borrowers, contractors and subcontractors employed in the completion of the project to comply with the Terms and Conditions of this Award.

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in the Terms and Conditions specified in this award will be resolved according to the following order of precedence: public laws, regulations and applicable notices published in the *Federal Register*, Executive Orders, OMB Circulars, EDA’s RLF standard terms and conditions, and special award conditions. A special award condition may take precedence on a case-by-case basis over a standard term or condition when warranted by specific project circumstances. Generally, these RLF standard terms and conditions provide the basic requirements for RLF awards; however, the specific facts of the grant award may allow for variances.

Some of the terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes or regulations published in the *Federal Register* or the *Code of Federal Regulations* (C.F.R.), Executive Orders, OMB Circulars or the assurances (Forms SF-424B and SF-424D). To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, Executive Order or OMB Circular.

## PART I

### GENERAL REQUIREMENTS AND RESPONSIBILITIES

- A. **Purpose.** The Economic Development Administration's (EDA) grants to capitalize or recapitalize revolving loan funds (RLFs) are most commonly used for business lending, but also may be established for public infrastructure lending or other authorized purposes involving lending. Generally, under EDA's RLF program, an RLF is capitalized with a combination of EDA grant funds and non-federal matching funds. The requirements set forth in these RLF Standard Terms and Conditions are applicable to RLFs that provide business lending to private borrowers. If the Recipient intends to use the RLF funds to make loans to public entities, EDA will include a special award condition in the Award to accommodate non-business lending activity.
- B. **Authority.** EDA was established under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*) (PWEDA). The regulations implementing PWEDA are published at 13 C.F.R. chapter III. The Department or EDA may issue changes from time to time to the regulations and other requirements and policies that apply to the Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering the Award. The implementation of any such regulatory, administrative or programmatic change in administering the Award must have prior EDA written approval. *See also* part I, sections B.3. and B.4. of these RLF Standard Terms and Conditions.

These RLF Standard Terms and Conditions apply to new RLFs and to the future actions of all RLFs funded prior to the effective date of this document. Therefore, the requirements herein apply to RLFs funded between 1975 and 1999 under EDA's Title IX Economic Adjustment Assistance Program, as well as to RLFs funded after February 11, 1999 under section 209 of PWEDA (42 U.S.C. § 3149).

1. **Definitions.** Whenever used in these RLF Standard Terms and Conditions, the following words and phrases shall have the following meanings:
- a. "Award" or "DOC Award" refers to the grant (awarded on Form CD-450 or other predecessor or successor form) of EDA funds to an eligible Recipient;
  - b. "Department" or "DOC" refers to the U.S. Department of Commerce;
  - c. "Government" or "Federal government" refers to EDA;

- d. “Grants Officer,” unless otherwise indicated by a special award condition in this Award, refers to the Regional Director in the appropriate Regional Office who is responsible for all administrative aspects of this Award and is authorized to award, amend, suspend, and terminate EDA investment assistance;
- e. “Program Officer” refers to the EDA staff in the appropriate Regional Office who is responsible for programmatic and technical aspects of this Award;
- f. “Project” refers to the activity for which an EDA grant is awarded;
- g. “Recipient” refers to a grantee awarded an RLF Award;
- h. “Regional Office” refers to an EDA regional office;
- i. “RLF” refers to a revolving loan fund; and
- j. “RLF Standard Terms and Conditions” refers to this document, as may be amended from time to time, and which is made part of an Award.

Capitalized terms used but not otherwise defined in these RLF Standard Terms and Conditions have the meanings ascribed to them in EDA’s regulations at 13 C.F.R. §§ 300.3, 302.20, 307.8 and 314.1.

- 2. **Recipient as Trustee.** The Recipient (or RLF operator) holds the grant funds in trust to serve the purpose of the Economic Adjustment Assistance Program (pursuant to 42 U.S.C. § 3149) for which this Award was made. The Recipient’s obligation to the Federal government continues as long as the federal assets continue to exist. The federal assets may include cash, receivables, Personal Property and Real Property (each as defined in 13 C.F.R. § 314.1) and notes or other financial instruments developed through the use of the grant funds. If EDA determines that the Recipient fails to meet its obligation under this Award, the agency may assert its equitable reversionary interest, or the Federal Interest (defined in 13 C.F.R. § 314.2), in the RLF assets. However, EDA’s non-assertion of its Federal Interest does not constitute a waiver thereof. *See* part I, section O.1. of these RLF Standard Terms and Conditions.
- 3. **Grantor Authority to Change Policies.** EDA, as the federal agency charged with implementing the Economic Adjustment Assistance Program under PWEDA (42 U.S.C. § 3149), is obligated to promulgate policies and procedures to ensure that the Recipient:
  - a. Complies with federal requirements;
  - b. Safeguards the public’s interest in the grant assets; and
  - c. Promotes effective use of the funds in accomplishing the purpose(s) for which they were granted.

Pursuant to this obligation, EDA requires the Recipient to comply with any changes that may occur to EDA’s regulations, policies, or the Terms

and Conditions of this Award. Such changes apply to actions taken by any Recipient, existing and prospective, after the effective date of the change. Loans made by the Recipient prior to the effective date of the change are not affected unless so required by law.

4. **VariANCES.** EDA's policy is to administer RLF grants uniformly, but there may be situations that warrant a variance. To accommodate these situations and to encourage innovative and creative ways of addressing economic adjustment problems, EDA may approve variances to the requirements contained in 13 C.F.R. part 307, subpart B, (*Special Requirements for Revolving Loan Funds and Use of Grant Funds*), provided they:
  - a. Are consistent with the goals of the Economic Adjustment Assistance Program under PWEDA (42 U.S.C. § 3149) and with an EDA-approved RLF Plan;
  - b. Are necessary and reasonable for the effective implementation of the RLF;
  - c. Are economically and financially sound; and
  - d. Do not conflict with applicable legal requirements, including federal, State and local law.

(See 13 C.F.R. § 307.22.)

#### C. **Financial Requirements.**

1. **Financial Reports.** Unless otherwise authorized by a special award condition, all financial reports shall be submitted in triplicate (one original and two copies) to the Grants Officer. See 15 C.F.R. §§ 14.52(a)(2) or 24.41(a)(4), as applicable.
  - a. *Financial Status Report.* The Recipient must submit a "*Financial Status Report*" (Form SF-269) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than thirty (30) days following the end of each reporting period and are required until the grant is fully disbursed. The Recipient must submit a final Form SF-269 within ninety (90) days after the grant has been fully disbursed.
  - b. *Federal Cash Transactions Report.* The Recipient must submit a "*Federal Cash Transactions Report*" (Form SF-272) for each time funds are advanced. The Form SF-272 should be submitted on a semi-annual basis and on the same schedule as Form SF-269. The Form SF-272 is due fifteen (15) working days following the end of each reporting period during the disbursement phase of the Award, unless otherwise specified in a special award condition.

2. **Award Payments.**

- a. *Method of Payment.* The advance method of payment shall be authorized unless otherwise specified in a special award condition. The Grants Officer determines the appropriate method of payment. Payments will be made through electronic funds transfers directly to the Recipient's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996. The DOC Award number must be included on all payment-related correspondence, information and forms.
- b. *Requesting Payment.* When completing Form SF-270 (*Request for Advance or Reimbursement*), the Recipient also must complete Form SF-3881 (*ACH Vendor Miscellaneous Payment Enrollment Form*) and submit both forms to the Grants Officer. Advances shall be approved for periods to cover only expenses anticipated over the next thirty (30) days.
- c. *Department of Treasury's Automated Standard Application for Payment System.* Unless otherwise provided for in the Terms and Conditions, payments under this Award will be made using the Department of Treasury's *Automated Standard Application for Payment (ASAP)* system. Under the ASAP system, payments are made through preauthorized electronic funds transfers, in accordance with the requirements of the Debt Collection Improvement Act of 1996. In order to receive payments under ASAP, the Recipient is required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows it to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP: (i) ASAP account number – the award number found on the cover sheet of the Award; (ii) Agency Location Code (ALC) – 13060001; and (iii) Region Code. Recipients enrolled in the ASAP system do not need to submit Form SF-270 (*Request for Advance or Reimbursement*), for payments relating to their Awards. Awards paid under the ASAP system will contain a special award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.
- d. *EDA's Right to Change Method of Payment.* Advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs. Advanced funds not disbursed in a timely manner must be promptly returned to EDA. If the Recipient demonstrates an unwillingness or inability to establish procedures which will minimize the time elapsing between the transfer of funds and disbursement or if the Recipient otherwise fails to continue to qualify for the advance method of payment,

the Grants Officer may change the method of payment to reimbursement only.

- e. *Timing of Request for Disbursements.* The Recipient must request disbursements from EDA only at the time and in the amount immediately needed to close a loan or disburse RLF funds to a borrower. The Recipient must disburse RLF funds to the borrower within thirty (30) days of receipt of the grant funds. Any grant funds not disbursed within the thirty (30) day period shall be refunded to EDA pursuant to 13 C.F.R. § 307.11(e).
- f. *Amount of Disbursement.* As each new loan is made, the Recipient may request a disbursement of grant funds only for the difference, if any, between the RLF Capital (defined in 13 C.F.R. § 307.8) and the amount of the new RLF loan, less an amount, if any, of the Local Share required to be disbursed concurrent with the grant funds. However, RLF Income held to reimburse eligible administrative expenses need not be disbursed in order to draw additional grant funds. (See 13 C.F.R. § 307.11(c).)
- g. *Interest-bearing Account.* All grant funds disbursed by EDA to reimburse the Recipient for loan obligations already incurred must be held in an interest-bearing account (an “EDA funds account”) by the Recipient until disbursed to the borrower. (See 13 C.F.R. § 307.11(d).)

3. **Loan Closings and Disbursements.**

- a. RLF loan activity must be sufficient to draw down grant funds in accordance with the schedule prescribed in this Award for loan closings and disbursements to eligible RLF borrowers. The schedule usually requires the Recipient to lend the entire initial amount of the RLF Capital base within three (3) years of the Award.

(See 13 C.F.R. § 307.16(a)(1).)

- b. If the Recipient fails to meet the prescribed lending schedule for loan closings and disbursements, EDA may de-obligate the non-disbursed balance of the Award. EDA may allow an exception to the extent the Recipient has Closed Loans:
  - (i) That were approved prior to the scheduled deadline and will commence and complete disbursements within forty-five (45) days of the deadline; or
  - (ii) For which disbursement obligations have commenced (but are not yet completed) prior to the deadline.

For purposes of this paragraph, “Closed Loan” means any loan for which all required documentation has been received, reviewed and executed by the Recipient.

EDA also may allow an exception where it has approved a lending schedule extension.

(See 13 C.F.R. §§ 307.8 and 307.16(a)(2).)

- c. If grant funds are requested and the RLF loan disbursement is subsequently delayed beyond thirty (30) days, the Recipient must notify the Grants Officer and return such non-disbursed funds to EDA. The non-disbursed grant funds must be returned to the Government for credit to the Recipient’s account. Returned grant funds will be available to the Recipient for future draw downs. When returning prematurely drawn grant funds, the Recipient must clearly identify on the face of the check or in the written notification to the Grants Officer “EDA,” the grant award number, the words “Premature Draw,” and a brief description of the reason for returning the grant funds. (See 13 C.F.R. § 307.11(e).)
4. **Interest Earned on Federal Funds.** Under OMB Circular A-102, Recipients and sub-recipients may retain \$100 per year of interest earned on federal advances for administrative expenses. Under OMB Circular A-110, Recipients may retain interest amounts up to \$250 per year for administrative expenses. While these are general provisions regarding interest earned on grant funds, see 15 C.F.R. §§ 14.22(l) or 24.21(i), as applicable, for specific requirements.
5. **Cost Sharing Requirement.** The Recipient must show that the non-federal Matching Share (or Local Share) is committed to the Project, available as needed and not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. See 13 C.F.R. § 301.5.

Awards which include a federal and non-federal share incorporate an estimated budget consisting of shared allowable costs. If actual allowable costs are less than the total approved estimated budget, the federal share and Matching Share shall be calculated by applying the approved federal and non-federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved estimated budget, the federal share shall not exceed the total federal dollar amount authorized by this Award.

- a. As approved in the Award, the Local Share may be used only for lending purposes or for eligible and reasonable administrative costs. The Local Share must be used either in proportion to the grant funds or at a faster

rate than the grant funds. *See* 13 C.F.R. § 307.11(f)(1). The Local Share must be available when needed for lending and must be under the control of the Recipient for use in accordance with the terms of the Award.

- b. Upon repayment of loans, cash Local Share is treated the same as EDA funds. Repayments of principal must be placed in the RLF for re-lending, and interest earned on outstanding loan principal and accounts holding RLF funds must be used either for re-lending or for eligible and reasonable administrative costs associated with the RLF's operations. *See* 13 C.F.R. § 307.12 and the definition of "RLF Income" in 13 C.F.R. § 307.8.
- c. As approved in the RLF Award, In-Kind Contributions may satisfy Matching Share requirements when specifically authorized in the Terms and Conditions of the Award, and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs. (*See* 13 C.F.R. § 307.17(d).)

When an RLF has a combination of In-Kind Contributions and cash Local Share, the non-federal cash together with the federal cash constitute the funds available for making loans and will be disbursed proportionately as needed for loan closing, provided that the last twenty (20) percent of the grant funds may not be disbursed until all cash Local Share has been expended. The full amount of the cash Local Share shall remain for use in the RLF. (*See* 13 C.F.R. § 307.11(f)(2).)

6. **Budget Changes and Transfer of Funds among Categories.**

- a. Requests for budget changes to the approved budget in accordance with the provision provided below must be submitted to the Grants Officer, who shall make the final determination on such requests and notify the Recipient in writing.
- b. Transfers of funds by the Recipient among direct cost categories are permitted for an Award in which the federal share of the Project is \$100,000 or less. For an Award in which the federal share of the Project exceeds \$100,000, transfers of funds must be approved in writing by the Grants Officer when the cumulative amount of such transfers exceeds ten (10) percent of the current total federal and non-federal funds authorized by the Grants Officer. The ten (10) percent threshold applies to the total federal and non-federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of federal funding obligated to date by the Grants Officer along with any non-federal share. The same criterion applies to the cumulative amount of transfer of funds among projects, functions, joint ventures, consortia, activities, and annual costs when budgeted separately within an Award. Transfers will not be

permitted if such transfers would cause any federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the Recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior approval. In addition, this does not prohibit the Recipient from requesting the Grants Officer's approval for revisions to the budget. (See 15 C.F.R. §§ 14.25(f) or 24.30(c), as applicable.)

- c. The Recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.

7. **Indirect Costs.**

- a. Indirect costs are not allowed in the disbursement phase of the Project. Indirect costs may be allowed after full disbursement of grant funds, during the revolving phase of the RLF Award. (The term "indirect costs" has been replaced with the term "facilities and administrative costs" under OMB Circular A-21, "*Cost Principles for Educational Institutions.*" See 2 C.F.R. part 220.)
- b. Excess indirect costs may not be used to offset unallowable direct costs.
- c. If the Recipient has not previously established an indirect cost rate with a federal agency, the negotiation and approval of a rate is subject to the procedures in the applicable cost principles and the following subparagraphs:
  - (i) *State, Local, and Indian Tribal Governments; Educational Institutions; and Non-Profit Organizations (Non-Commercial Organizations)*

For the above listed organizations, the cognizant federal agency is generally defined as the agency that provides the largest dollar amount of direct federal funding. For those organizations for which the Department is cognizant or has oversight, the Department or its designee will either negotiate a fixed rate with carry forward provisions for the Recipient or, in some instances, will limit its review to evaluating the procedures described in the Recipient's cost allocation methodology plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.

- (ii) Within ninety (90) days of the award start date, the Recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review.

The Recipient shall provide the Grants Officer with a copy of the transmittal letter:

Office of Acquisition Management  
U.S. Department of Commerce  
1401 Constitution Avenue, NW, HCHB Room 6054  
Washington, D.C. 20230

- (iii) The Recipient can use the fixed rate proposed in the indirect cost plan until such time as the Department provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carry-forward provision used in calculating next year's rate. This calculation of actual indirect costs and the carry-forward provision is subject to audit. Indirect cost rate proposals must be submitted annually. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant federal agency within six (6) months after the close of each of the Recipients' fiscal years.
- d. When the Department is not the oversight or cognizant federal agency, the Recipient shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight federal agency requesting a negotiated rate agreement.
- e. If the Recipient fails to submit the required documentation to the Department within ninety (90) days of the award start date, the Grants Officer may amend the Award to preclude the recovery of any indirect costs under the Award. If the Department, oversight or cognizant federal agency determines there is a finding of good and sufficient cause to excuse the Recipient's delay in submitting the documentation, an extension of the ninety (90) day due date may be approved by the Grants Officer.
- f. Regardless of any approved indirect cost rate applicable to the Award, the maximum dollar amount of allocable indirect costs for which the Department will reimburse the Recipient shall be the lesser of:
  - (i) The line item amount for the Federal Share of indirect costs contained in the approved budget of the Award; or
  - (ii) The Federal Share of the total allocable indirect costs of the Award based on the indirect cost rate approved by an oversight or cognizant federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date.

8. **Incurring Costs or Obligating Federal Funds beyond the Expiration Date.** Generally, an RLF Award does not specify an expiration date. The RLF Capital base will continue in existence as long as loans are outstanding and repayments to the RLF are made available to make new loans. For an RLF Award that is subject to an expiration date, extension of that date requires written approval of the Grants Officer. *See also* 15 C.F.R. §§ 14.25(e)(2) or 24.30(d)(2), as applicable.
9. **Tax Refunds.** Refunds of FICA/FUTA taxes received by the Recipient during or after the project period must be refunded or credited to DOC where the benefits were financed with federal funds under the Award. The Recipient agrees to contact the Grants Officer immediately upon receipt of these refunds. The Recipient further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal government, including refunds received after the award end date.
10. **Additional Funding.** The Department has no obligation to provide any additional prospective funding in connection with an Award. Any amendment of this Award to increase funding or to extend the period of performance is at the sole discretion of the Department.

**D. Programmatic Requirements.**

1. **Performance (Technical) Reports.** *See* part II, section H. of these RLF Standard Terms and Conditions for specific RLF reporting requirements.
2. **Unsatisfactory Performance.** Failure to perform the work in accordance with the Terms and Conditions of this Award and maintain at least a satisfactory performance rating or equivalent evaluation may result in designation of the Recipient as a “high-risk” grantee and assignment of special award conditions or other further action as specified in part I, section D.6. of these RLF Standard Terms and Conditions. (*See* 15 C.F.R. §§ 14.14 or 24.12, as applicable.).
3. **Reporting Programmatic Changes.**
  - a. The Recipient must report programmatic changes to the Grants Officer and must request prior approval in accordance with 15 C.F.R. §§ 14.25 or 24.30, as applicable.
  - b. Any changes made to the Project without EDA’s approval are made at the Recipient’s risk of non-payment of costs, suspension, termination or other EDA action with respect to the Award. (*See* 13 C.F.R. § 302.7(b).)

4. **Time-Schedule Extensions.**

a. The Recipient is responsible for contacting EDA as soon as conditions become known that may materially affect its ability to meet the prescribed lending schedule. The Recipient must submit a written request to the Grants Officer for continued use of grant funds beyond a missed deadline for disbursement of RLF funds. The Recipient must provide good reason for the delay by demonstrating that:

- (i) The delay was unforeseen or beyond the control of the 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 achievement of a new proposed lending schedule is reasonable.

The Recipient also must provide an explanation as to why no further delays are anticipated.

(See 13 C.F.R. § 307.16(b)(1).)

b. EDA is under no obligation to grant a time extension, and in the event an extension is denied, EDA may de-obligate all or part of the unused grant funds and may terminate the grant.

(See 13 C.F.R. § 307.16(b)(2).)

5. **Other Federal Awards with Similar Programmatic Activities.** The Recipient shall immediately provide written notification to the Program Officer and the Grants Officer in the event that, subsequent to receipt of the DOC Award, other financial assistance is received to support or fund any portion of the project scope of work in the DOC Award. The Department will not pay for costs that are funded by other sources.

6. **Non-Compliance with Award Provisions.** Failure to comply with any or all of the Terms and Conditions of this Award may have a negative impact on the Recipient's ability to receive future funding from the Department and may be considered grounds for any or all of the following actions: (a) establishment of an account receivable; (b) withholding payments under any DOC Award(s) to the Recipient; (c) the imposition of additional special award conditions; (d) suspension of any active DOC Awards; or (e) termination of any active DOC Awards.

a. *Unauthorized Use.* Except as provided in 13 C.F.R. §§ 314.3 (regarding the authorized use of property) or 314.10 (regarding the release of EDA's

interest in certain property), or as otherwise authorized by EDA, the Recipient must compensate the Federal government for the Federal Share whenever any property acquired or improved in whole or in part with EDA investment assistance is Disposed of, encumbered, or no longer used for the purpose of the Project. The requirements set forth in 15 C.F.R. parts 14 or 24, as applicable, including any supplements or amendments thereto, shall apply. (*See* 13 C.F.R. § 314.4.)

- b. *Suspension and Termination.* EDA may suspend or terminate this Award for cause, including but not limited to failure to:
- (i) Operate the RLF in accordance with the RLF Plan, the RLF Award or EDA's statutory and regulatory requirements;
  - (ii) Obtain prior EDA approval for material changes to the RLF Plan, including provisions for administering the RLF;
  - (iii) Submit timely progress, financial and audit reports as required by the Terms and Conditions of the Award and 13 C.F.R. § 307.14; and
  - (iv) Comply with the conflicts-of-interest provisions set forth in 13 C.F.R. § 302.17.

(*See* 13 C.F.R. § 307.21(a).)

- c. *Suspension of Award.* The Grants Officer may suspend an RLF Award when he or she determines that circumstances warrant temporarily stopping all activities under the Award, including making payments to the Recipient, pending the Recipient taking corrective actions as specified by the Grants Officer. Upon suspension, the Recipient will be prohibited from engaging in new lending activity, although normal loan servicing and collection efforts will continue. In addition, the Recipient may be subject to restrictions on the use of RLF Income and specific actions to protect the RLF assets as may be required. The Grants Officer will promptly notify the Recipient in writing via certified mail of the determination to suspend the Award, the reason(s) for the suspension and what the Recipient can do to remedy the situation. If immediate action is not necessary to protect EDA's interest, the Grants Officer may provide thirty (30) days notice to inform the Recipient that unless information is received within the thirty (30) days establishing compliance with the requested remedial actions, EDA will proceed with the suspension of the Award. However, if it appears that the Recipient has not taken or will not take corrective action, or that continued operation of the Award would place the RLF assets at risk, EDA may suspend the grant immediately. If specified corrective actions are not taken, the Grants Officer may, after considering the best interests of the Federal government, take more severe enforcement action,

including termination of the Award. When applicable, suspension of an Award may result in a no-cost extension of the project period to compensate for work that was not done on the Project during the suspension.

- d. *Termination for Cause Action.* The Grants Officer may terminate an RLF Award for material non-compliance. Material non-compliance includes but is not limited to violation of the Terms and Conditions of the Award; failure to perform Award activities in a satisfactory manner; improper management or use of award funds; or fraud, waste, abuse, mismanagement or criminal activity. The Recipient will be notified of the termination action in writing using the same requirements provided for suspension of an Award in paragraph (c) above if the suspension did not precede the termination action. (*See also* 15 C.F.R. §§ 14.61(a)(2) and (3) or 24.43, as applicable.)
- e. *Termination for Convenience Action.* The Recipient may request at any time termination for convenience of this Award in whole or in part. Termination is undertaken without prejudice to the Recipient when it is agreed upon by both parties that the purpose of this Award would not be served by further expenditure of grant funds. The Grants Officer and the Recipient must agree in writing to the conditions of the termination for convenience. If EDA has disallowed a portion of the Award, EDA will allow the Recipient to continue RLF operations only if the RLF has sufficient funds to permit effective operation. Any unused portion of the Federal Share of the RLF Capital base must be returned to EDA. (*See also* 15 C.F.R. §§ 14.61(a) or 24.44, as applicable, and part I, section O.4. of these RLF Standard Terms and Conditions.)
- f. *Right to Recover.* Whenever EDA terminates an Award for cause or disallows a portion of the Award, it has the right to recover residual funds and assets of the RLF grant in accordance with 13 C.F.R. § 307.20(d). Upon termination, distribution of proceeds will be distributed in the following order of priority:
  - (i) First, for any third party liquidation costs;
  - (ii) Second, for the payment of EDA's Federal Share; and
  - (iii) Third, if any proceeds remain, to the Recipient.
7. **Prohibition against Assignment by the Recipient.** Except as provided in part I, sections O.2. and O.3. of these RLF Standard Terms and Conditions or in a special award condition, the Recipient shall not transfer, pledge, mortgage, or otherwise assign the Award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions.

8. **Disclaimer Provisions.**
    - a. The United States expressly disclaims any and all responsibility or liability to the Recipient or third persons for the actions of the Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this Award or any other losses resulting in any way from the performance of this Award or any sub-award or subcontract under this Award.
    - b. The Recipient's acceptance of this Award does not in any way constitute an agency relationship between the United States and the Recipient.
  9. **Payment of Attorneys' and Consultants' Fees.** Grant funds must not be used directly or indirectly to reimburse any attorneys' or consultants' fees incurred in connection with obtaining investment assistance under PWEDA. (*See* 13 C.F.R. § 302.10.)
- E. **Non-Discrimination Requirements.** No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. The Recipient must act in accordance with EDA's requirements set out in 13 C.F.R. § 302.20 and in part III, section B.4. of these RLF Standard Terms and Conditions.
- F. **OMB Circular A-133 Audit Requirements.**
1. **Requirement to have an A-133 Audit Performed.** A Recipient that expends federal awards of \$500,000 or more in a fiscal year (see section F.3. below) must have a program-specific or single audit performed for that year in accordance with the provisions of OMB Circular A-133, "*Audits of States, Local Governments, and Non-Profit Organizations,*" issued pursuant to the Single Audit Act of 1984 (Pub. L. No. 98-502), as amended by the Single Audit Act Amendments of 1996 (Pub. L. No. 104-156). A Recipient that has expended federal awards through only EDA's RLF program may elect to have a program-specific audit performed. All other Recipients must have a single audit performed. The Circular can be accessed at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.  
  
On Form SF-SAC (OMB Control No. 0348-0057, or any successor form), the Recipient must indicate whether it is submitting data for a single audit or a program-specific audit.
  2. **Requirement to Submit Audit to Federal Audit Clearinghouse.** A Recipient expending federal awards of \$500,000 or more in a fiscal year and therefore, having a single or program-specific audit for that year

conducted in accordance with OMB Circular A-133, must submit a copy of the single or program-specific audit (including Form SF-SAC) to the Bureau of the Census, designated by OMB as a central clearinghouse, at the following address:

Federal Audit Clearinghouse  
1201 E. 10th Street  
Jeffersonville, IN 47132

The Recipient may contact the Federal Audit Clearinghouse by email, phone or fax:

Email: [govs.fac@census.gov](mailto:govs.fac@census.gov)  
Telephone: (301) 763-1551  
(800) 253-0696 (toll free)  
Fax: (301) 457-1592

The Federal Audit Clearinghouse operates on behalf of OMB to disseminate audit information to Federal Agencies and to the public, and to help auditors and auditees minimize the reporting burden of complying with Circular A-133 requirements. For more information, access the website at <http://harvester.census.gov/fac/>.

The audit will be considered “on time” if it is received by the Federal Audit Clearinghouse no later than thirty (30) days after the Recipient receives the auditor’s report or nine (9) months after the end of the Recipient’s fiscal year. The Federal Audit Clearinghouse also offers an online entry system for submission of Form SF-SAC at <http://harvester.census.gov/fac/collect/ddeindex.html>.

3. **Requirement to Instruct Auditor.** The Recipient must instruct the auditor to consider the following when determining Project dollars expended in the fiscal year:
  - a. Balance of RLF loans outstanding at the end of the fiscal year, plus
  - b. Cash and investment balance in the RLF at the end of the fiscal year, plus
  - c. Administrative expenses paid out of RLF Income during the fiscal year.

The calculation of federal award dollars expended is as follows:

[(Balance of RLF loans outstanding at the end of the fiscal year) *plus* (total cash on hand at the end of the fiscal year, including any sequestered funds) *plus* (administrative expenses paid out of RLF Income during the

fiscal year)] *multiplied* by [sum of all EDA dollars/total project dollars from all of Recipient's RLF Awards].

Example 1: A Recipient initially received \$700,000 in EDA funds to capitalize its RLF, provided \$200,000 in Matching Share, and received \$100,000 in State funds. Therefore, total Project dollars are \$1,000,000. At the end of the fiscal year after several years of operation, the RLF has \$1,100,000 in outstanding RLF loans, \$200,000 in cash, and the Recipient used \$28,000 of RLF Income to pay administrative expenses.

The federal award dollars expended should therefore be calculated as follows:

$$[\$1,100,000 + \$200,000 + \$28,000] \times [\$700,000/\$1,000,000] = \\ \$1,328,000 \times 70\% = \$929,600$$

If a Recipient co-mingles EDA funds with funds from subsequent recapitalizations, EDA dollars is the sum of EDA's investments in all co-mingled EDA funds, and total Project dollars is the sum of all Project dollars in all co-mingled EDA funds.

Example 2: A Recipient initially received \$700,000 in EDA funds to capitalize its RLF, provided \$200,000 in Matching Share, and received \$100,000 in State funds. Therefore, total project dollars for the initial investment are \$1,000,000. The Recipient subsequently received a Recapitalization Grant (defined in 13 C.F.R. § 307.8 as EDA investments of additional grant funds to increase the capital base of an RLF) from EDA of \$500,000 and put in an additional \$300,000 of Matching Share.

At the end of the fiscal year, the co-mingled RLF has \$2,000,000 in outstanding loans, \$300,000 in cash, and the Recipient used \$52,000 of RLF Income to fund administrative expenses.

The federal award dollars expended should therefore be calculated as follows:

$$[\$2,000,000 + \$300,000 + \$52,000] \times \\ [(\$700,000 + \$500,000)/(\$1,000,000 + \$500,000 + \$300,000)] \\ = (\$2,352,000) \times (.667) = \$1,568,000$$

If a Recipient buys out a senior lien position, the funds paid out to assume the senior lien position are considered expended in the year in which the senior lien assumption occurred. Any profits resulting from a sale at

foreclosure are considered expended in the year in which the sale occurred.

*Example 3:* A Recipient initially received \$500,000 in EDA funds and provided \$250,000 in Matching Share. At the end of the fiscal year, the RLF had \$1,000,000 in outstanding loans, \$300,000 in cash (including \$50,000 sequestered in a separate interest-bearing account), and the Recipient used \$30,000 of RLF Income to fund administrative expenses. During the fiscal year, the Recipient, which has a second position lien for \$50,000 on a commercial property of a borrower, acquires the first position lien of another lien holder for \$150,000. During the same fiscal year, the property is sold at foreclosure for \$400,000, netting the Recipient a \$200,000 profit.

The federal award dollars expended should therefore be calculated as follows:

$$[\$1,000,000 + \$300,000 + \$150,000 + \$200,000 + \$30,000] \times$$
$$[\$500,000 / \$750,000] =$$

$$\$1,680,000 \times (2/3) = \$1,120,000$$

If the profit from the foreclosure sale is being held as cash, these funds should not be double-counted.

Further instructions to the auditor may be found in the *Compliance Supplement* (Appendix B to OMB Circular A-133). The *Compliance Supplement* is available from the Government Printing Office, Superintendent of Documents, Washington, D.C. 20402-9325 or online at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. To ensure that an audit is properly performed, the Recipient is obligated under OMB Circular A-133 to prepare appropriate financial statements, including the schedule of expenditures of federal awards (SEFA), in accordance with §\_\_.310 of the Circular.

4. **Classification as a Major Program.** For purposes of this Award, the Recipient must instruct its auditor to consider the Federal Share of the RLF Capital base when making a determination regarding the RLF's classification as a major program. Therefore, the RLF Capital base must be listed correctly on the Recipient's SEFA. If EDA subsequently determines that the RLF program was erroneously excluded from the Recipient's list of major programs, the Recipient shall have six (6) months to submit a corrected audit to the Federal Audit Clearinghouse. Failure to do so may result in termination of the RLF Award.

5. **Findings Related to the RLF Program.** A Recipient that files a program-specific or single audit with findings related to the RLF program will be required to develop a corrective action plan in cooperation with EDA. Failure to achieve corrective action milestones may result in termination of the RLF Award.

**G. DOC Audit Resolution Process.**

1. Under the Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 *et seq.*), an audit of this Award may be conducted at any time. EDA, the OIG, the Comptroller General of the United States or any of their respective agents or authorized representatives shall have access to the Recipient's properties in order to examine all books, documents, papers and records, whether written, printed, recorded, produced or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to verify the Recipient's compliance with this Award and facilitate audits, inspections, excerpts, transcripts or other examinations as authorized by law. (*See* 13 C.F.R. § 302.14(b).)

When the OIG requires a program audit on a DOC Award, the OIG will usually make the arrangements to audit the Award, whether the audit is performed by an independent accountant under contract with the Department, OIG personnel, or any other federal, State or local audit entity.

2. An audit of this Award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (an account receivable) due to the Department. For this reason, the Recipient should take seriously its responsibility to respond to all audit findings, questioned costs and recommendations with adequate explanations and written evidence when disputing audit determinations.
3. A Recipient whose Award is audited will have an opportunity to dispute the audit findings.
  - a. Unless the Inspector General determines otherwise, the Recipient will have thirty (30) days from the date of the transmittal of the OIG's draft audit report to submit written comments and documentary evidence.
  - b. The Recipient will have thirty (30) days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.
  - c. EDA will review any documentary evidence submitted by the Recipient, and will notify the Recipient of its determination(s) in an "Audit Resolution Determination Letter," which will specify the

timeframe in which the Recipient may submit a written appeal. There will be no extension of this timeframe for appeal. The appeal is the last opportunity for the Recipient to submit written comments and documentary evidence that dispute the validity of the findings and determinations in the Audit Resolution Determination Letter.

- d. An appeal of the Audit Resolution Determination Letter does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on the debt. If the Audit Resolution Determination Letter is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.
- e. EDA will review an appeal submitted by the Recipient and notify the Recipient of its final determinations in an “Appeal Determination Letter.” After the opportunity to appeal has expired or after EDA has rendered its determinations on appeal, DOC will not accept any further documentary evidence from the Recipient. No other administrative appeals are available in the Department.

## H. **Payment of Debts.**

- 1. **Payment of Debts Owed the Federal Government.** Any debts determined to be owed the Federal government shall be paid promptly by the Recipient. In accordance with 15 C.F.R. § 21.4, a debt will be considered delinquent if it is not paid within fifteen (15) days of the due date, or if there is no due date, within thirty (30) days of the billing date. Failure to pay a debt by the due date, or if there is no due date, within thirty (30) days of the billing date, shall result in the imposition of late payment charges as noted below. In addition, failure to pay the debt or establish a repayment agreement by the due date, or if there is no due date, within thirty (30) days of the billing date, also will result in the referral of the debt for collection action, including referral to the Treasury Offset Program (*see* 31 C.F.R. § 285.5), and may result in the Department taking further action as specified in part I, section D.6. of these RLF Standard Terms and Conditions. Funds for payment of a debt must not come from other federally-sponsored programs. Verification that other federal funds have not been used will be made (e.g., during on-site visits and audits).
- 2. **Late Payment Charges.**
  - a. An interest charge shall be assessed on the delinquent debt as established by the Debt Collection Act of 1982, as amended (31 U.S.C. § 3701 *et seq.*). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury’s “Current Value of Funds Rate” (CVFR). *See* <http://www.fms.treas.gov/cvfr/index.html>. The U.S. Department of

the Treasury annually publishes the CVFR in the *Federal Register*. The assessed rate shall remain fixed for the duration of the indebtedness.

- b. A penalty charge shall be assessed on any portion of a debt that is delinquent for more than ninety (90) days, although the charge will accrue and be assessed from the date the debt became delinquent.
  - c. An administrative charge shall be assessed to cover processing and handling of the amount due.
  3. **Barring Delinquent Federal Debtors from Obtaining Federal Loans, Loan Guaranties or Loan Insurance.** Pursuant to 31 U.S.C. § 3720B, unless waived, the Department is not permitted to extend financial assistance in the form of a loan, loan guaranty, or loan insurance to any person delinquent on a non-tax debt owed to a federal agency. This prohibition does not apply to disaster loans.
  4. **Effect of Judgment Lien on Eligibility for Federal Grants, Loans or Programs.** Pursuant to 28 U.S.C. § 3201(e), unless waived by the Department, a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan which is made, insured, guaranteed or financed directly or indirectly by the United States, or to receive funds directly from the Federal government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.
- I. **Name Check Reviews.** A name check review shall be performed by the Office of the Inspector General (OIG) on key individuals associated with an applicant for an RLF Award, unless (1) the proposed award amount is \$100,000 or less; (2) the applicant has been an Recipient of financial assistance from the Department for three or more consecutive years without any adverse programmatic or audit finding; or (3) the applicant is a unit of a State or local government. *See Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements* (69 FR 78389, December 30, 2004).
1. **Results of Name Check Review.** The Department reserves the right to take any of the actions described in section I.2. below if any of the following occurs as a result of a name check review:
    - a. A key individual fails to submit the required Form CD-346, "Applicant for Funding Assistance;"
    - b. A key individual makes an incorrect statement or omits a material fact on the Form CD-346; or

- c. The name check reveals significant adverse findings that reflect on the business integrity or responsibility of the Recipient or key individual.
- 2. **Action(s) Taken as a Result of Name Check Review.** If any circumstance listed in section I.1. occurs, the Department, in its discretion, may take one or more of the following actions:
  - a. Suspend or terminate the Award;
  - b. Require the removal of any key individual from association with the management of or implementation of the Award; or
  - c. Make appropriate provisions or revisions as needed (in the special award conditions to the Award) with respect to the method of payment and/or financial reporting requirements.
- J. **Government-wide Debarment and Suspension (Non-Procurement).** The Recipient shall comply with the provisions of subpart C of 2 C.F.R. part 1326, “*Non-Procurement Debarment and Suspension*” (71 FR 76573, December 21, 2006), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in federal non-procurement transactions either through primary or lower-tier covered transactions.
- K. **Drug-Free Workplace.** The Recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (Pub. L. No. 100-690, title V, sec. 5153, as amended by Pub. L. No. 105-85, Div. A, title VIII, sec. 809, as codified at 41 U.S.C. § 702), and the Department’s implementing regulations at 15 C.F.R. part 29, “*Government-wide Requirements for Drug-Free Workplace (Financial Assistance)*” (68 FR 66534, November 26, 2003), which require the Recipient to take steps to provide a drug-free workplace.
- L. **Lobbying Restrictions.**
  - 1. **Statutory Provisions.** The Recipient shall comply with the provisions of 31 U.S.C. § 1352, and the Department’s implementing regulations found at 15 C.F.R. part 28, “*New Restrictions on Lobbying.*” These provisions generally prohibit the use of federal funds for lobbying the executive or legislative branches of the U.S. government in connection with an Award, and require the disclosure of the use of non-federal funds for lobbying.
  - 2. **Disclosure of Lobbying Activities.** Any Recipient receiving in excess of \$100,000 in federal funding shall submit a completed Form SF-LLL, “*Disclosure of Lobbying Activities,*” regarding the use of non-federal funds for lobbying. The Form SF-LLL shall be submitted within thirty (30) days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of

the information contained in any disclosure form previously submitted. The Recipient must submit the Form SF-LLL, including any received from sub-recipients, contractors, and subcontractors, to the Grants Officer.

3. **Special Provisions relating to Indian Tribes.** As set out in 31 U.S.C. § 1352, there are special provisions applicable to Indian Tribes, tribal organizations or other Indian organizations eligible to receive federal contracts, grants, loans or cooperative agreements.
- M. **Freedom of Information Act (FOIA) and Privacy Act Requests.** The rules and procedures regarding public access to records or documents held by EDA are set out at 15 C.F.R. part 4.
- N. **Codes of Conduct and Sub-Award, Contract and Subcontract Provisions.**
1. **Code of Conduct for Recipients.** Pursuant to the certification in Form SF-424B, “*Assurances – Non-Construction Programs,*” paragraph 3, the Recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict-of-interest, or personal gain in the administration of this Award. *See also* part I, section N.3.b. and part II, section D. of these RLF Standard Terms and Conditions.
  2. **Applicability of Award Provisions to Sub-recipients.**
    - a. The Recipient shall require all sub-recipients, including lower-tier sub-recipients, to comply with the provisions of this Award, including applicable cost principles, and administrative and audit requirements. Different cost principles apply to for-profit contractors, non-profit organizations, educational institutions and units of government. Care must be exercised, therefore, in applying the correct cost principles depending on what type of entity the sub-recipient or contractor may be.
    - b. The Recipient is responsible for sub-recipient monitoring, including the following:
      - (i) *Award Identification* - At the time of the award, identifying to the sub-recipient the federal award information (e.g., *Catalog of Federal Domestic Assistance (CFDA)* title and number, grant award number, name of the granting federal agency) and applicable compliance requirements.
      - (ii) *During-the-Award Monitoring* - Monitoring the sub-recipient’s use of federal awards through reporting, on-site visits, regular contact, or other means to provide reasonable assurance that the sub-recipient administers the federal awards in compliance with laws,

regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

- (iii) *Sub-recipients' Audits* - Ensuring that any sub-recipient expending federal awards of \$500,000 or more during the sub-recipient's fiscal year has met the audit requirements of OMB Circular A-133, and that the required single or program-specific audit is completed within nine (9) months of the end of the sub-recipient's audit period. In addition, the Recipient is required to issue a management decision on audit findings within six (6) months after receipt of the sub-recipient's audit report, and ensure that the sub-recipient takes timely and appropriate corrective action on all audit findings. In cases of continued inability or unwillingness of a sub-recipient to complete and submit the required OMB Circular A-133 audit, the Recipient shall take appropriate action using sanctions. (*See* part I, section F. of these RLF Standard Terms and Conditions.)

### 3. **Competition and Codes of Conduct for Sub-Awards.**

- a. *Competition.* All sub-awards will be made in a manner to provide, to the maximum extent practicable, open and free competition. The Recipient must be alert to organizational conflicts-of-interest as well as other practices among sub-recipients that may restrict or eliminate competition. In order to ensure objective sub-recipient performance and eliminate unfair competitive advantage, sub-recipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such sub-awards.
- b. *Written Standards of Conduct.* The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of sub-awards. The written standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by any Interested Party (as defined in 13 C.F.R. § 300.3). No Interested Party shall participate in the selection, award, or administration of a sub-award supported by federal funds if a real or apparent conflict of interest would be involved. A conflict-of-interest generally exists when an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party's personal or financial interests. A conflict-of-interest also may exist where there is an appearance that an Interested Party's objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an Interested Party is unable to render impartial assistance, services or advice to the Recipient, a participant in the Project or to the Federal government. (*See* 13 C.F.R. § 302.17(a) and part II, section D. of these RLF Standard Terms and Conditions.)

4. **Applicability of Provisions to Sub-Awards, Contracts and Subcontracts.**

- a. The Recipient shall include the following notice in any request for applications or bids:

Applicants/bidders for a lower-tier covered transaction (except for goods and services under \$25,000 not requiring the consent of a DOC official) are subject to 2 C.F.R. part 1326, subpart C, “*Non-procurement Debarment and Suspension.*” In addition, applicants/bidders for a lower-tier covered transaction (for a sub-award, contract, or subcontract) greater than \$100,000 of federal funds at any tier are subject to 15 C.F.R. part 28, “*New Restrictions on Lobbying.*” Applicants/bidders should familiarize themselves with these provisions, including the certification requirements. Therefore, applications for a lower-tier covered transaction must include and complete without modification Form CD-512, “*Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions and Lobbying.*”

- b. The Recipient shall include a statement in all lower-tier covered transactions (for a sub-award, contract or subcontract), that the award is subject to subpart C of 2 C.F.R. part 1326, “*Non-procurement Debarment and Suspension.*”
- c. The Recipient shall include a statement in all lower-tier covered transactions (for a sub-award, contract or subcontract) exceeding \$100,000 in federal funds, that the sub-award, contract or subcontract is subject to 31 U.S.C. § 1352 and to the Department’s implementing regulations found at 15 C.F.R. part 28, “*New Restrictions on Lobbying.*” The Recipient shall further require the sub-recipient, contractor or subcontractor to submit a completed Form SF-LLL, “*Disclosure of Lobbying Activities,*” regarding the use of non-federal funds for lobbying. Form SF-LLL shall be submitted within fifteen (15) days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Form SF-LLL shall be submitted from tier to tier until received by the Recipient. The Recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within thirty (30) days following the end of the calendar quarter.

5. **Minority and Women-Owned Business Enterprises.** The Department encourages Recipients to utilize minority and women-owned firms and

enterprises in contracts under DOC Awards. The Minority Business Development Agency will assist Recipients in matching qualified minority owned enterprises with contract opportunities. For further information, contact:

U.S. Department of Commerce  
Minority Business Development Agency  
Office of Business Development  
1401 Constitution Avenue, NW  
Washington, D.C. 20230

Telephone: (202) 482-1940  
Website: [www.mbda.gov](http://www.mbda.gov)

6. **Sub-award and/or Contract to a Federal Agency.**
  - a. The Recipient, sub-recipient, contractor or subcontractor shall not sub-grant or sub-contract any part of the approved Project to any agency or employee of the Department or other federal bureau, agency or instrumentality, without the prior written approval of the Grants Officer.
  - b. Requests for approval of such action must be submitted to the Program Officer who shall review and make a recommendation to the Grants Officer. The Grants Officer shall make the final determination and will notify the Recipient in writing of the final determination.
7. **Other Federal Requirements Applicable to Sub-awards, Contracts or Subcontracts.** Recipients are responsible for ensuring, prior to awarding sub-awards, contracts or subcontracts, that prospective borrowers, consultants or contractors are aware of and comply with EDA's statutory and regulatory requirements regarding activities carried out with RLF loans. Recipients must develop loan agreements that include applicable federal requirements and adopt procedures diligently to correct instances of non-compliance, including the calling of loans if necessary. Loan documents and sub-award, contract or subcontract documents and procedures must protect and hold the Federal government harmless from and against all liabilities that may arise 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 Recipient or any of its predecessors on the property.

In administering the RLF, the Recipient must adopt procedures to comply and ensure that potential borrowers, consultants, or contractors comply

with all laws and regulations applicable under this Award. (*See also* 13 C.F.R. §§ 302.6 and 302.13.)

- O. **Property Management.** With respect to any property acquired or improved in whole or in part with EDA investment assistance under an Award, the Recipient shall comply with EDA's requirements at 13 C.F.R. part 314. Property acquired or improved in whole or in part by the Recipient under an Award may consist of real property or personal property, including intangible property such as money, notes and security interests.
1. **Recipient as Trustee and Successor Recipients.** When the Recipient fails in its fiduciary responsibilities or is unable or unwilling to perform as trustee of the grant funds, EDA may suspend or terminate this Award. In addition, EDA may transfer this Award to an eligible successor with jurisdiction over the Project area to administer it. If EDA transfers this Award, the Recipient remains responsible for complying with the Terms and Conditions of this Award for the period in which it is the Recipient, and any Successor Recipient holds the Project property with the same responsibilities as the Recipient under this Award. (*See* 13 C.F.R. §§ 314.2(a) and 314.3(d).)
  2. **Use of Proceeds upon Sale, Collection or Liquidation of RLF Loans.** In the event of a sale, collection, or liquidation of any RLF loan, any proceeds (minus late payment penalties, accrued interest and reasonable amounts associated with the cost of collection), up to the amount of the outstanding loan principal, must be returned to the RLF for re-lending. Any net proceeds from a loan sale, collection or liquidation above the outstanding loan principal is considered RLF Income and must either be added to the RLF Capital base for lending or used to cover eligible and reasonable costs for administering the RLF in accordance with the rules for use of RLF Income. The net transaction proceeds must be used to make additional loans as part of the RLF grant. (*See* 13 C.F.R. § 307.12(a).)
  3. **Sale or Securitization of Loans to Raise New Funds.** With EDA's consent, a Recipient may enter into a Sale or a Securitization of all or a portion of its RLF loan portfolio, provided the requirements set out in 13 C.F.R. § 307.19 are satisfied. The Recipient must use all proceeds from any Sale or Securitization (net of reasonable transaction costs) to make additional RLF loans.
  4. **Termination of RLF Award.** EDA may approve a request from the Recipient to terminate this Award. The Recipient must compensate the Government for the Federal Share of the RLF property, including the current value of all outstanding RLF loans. However, with EDA's prior approval, upon a showing of compelling circumstances, the Recipient may use for other economic development activities a portion of RLF property

that EDA determines is attributable to RLF Income, provided that the amount of such RLF Income (or program income) does not exceed the Federal Share. (*See* 13 C.F.R. § 307.21(b).)

When EDA approves the termination of an RLF grant, EDA may assign or transfer assets of the RLF to an RLF Third Party (defined in 13 C.F.R. § 307.8) for liquidation. The RLF Third Party may be an Eligible Applicant (as defined in 13 C.F.R. § 300.3) or a for-profit organization not otherwise eligible for EDA investment assistance. EDA will have sole discretion in choosing the RLF Third Party, may enter into an agreement with the RLF Third Party to liquidate the assets of one or more RLFs or Recipients, and may allow the RLF Third Party to retain a portion of the RLF assets as reasonable compensation for services rendered in the liquidation. *See* 13 C.F.R. § 307.20(c). The proceeds resulting from any liquidation upon termination shall be distributed in accordance with 13 C.F.R. § 307.20(d). *See also* part I, section D.6.f. of these RLF Standard Terms and Conditions.

- P. **Environmental Requirements.** Environmental impacts must be considered by federal decision-makers in their decisions whether or not to (1) approve a proposal for federal assistance; (2) approve the proposal with mitigation; or (3) approve a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate a planning process with an early consideration of potential environmental impacts that Project(s) funded with federal assistance may have on the environment. The Recipient and any sub-recipients must comply with all environmental standards, to include those proscribed under the following statutes and Executive Orders, and shall identify to the awarding agency any impact the Award may have on the environment. In some cases, the Grants Officer can withhold award funds under a special award condition requiring the Recipient to submit additional environmental compliance information sufficient to enable the Department to make an assessment on any impacts that a Project may have on the environment. *See also* part III, section B.1. of these RLF Standard Terms and Conditions.

1. **The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4327).**

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality's (CEQ) implementing regulations (40 C.F.R. parts 1500-1508) require that an environmental analysis be completed for all major federal actions significantly affecting the environment. NEPA applies to the actions of federal agencies and may include a federal agency's decision to fund non-federal projects under grants and cooperative agreements. Recipients of federal assistance are required to identify to the awarding agency any impact an award will have on the

quality of the human environment, and assist the agency to comply with NEPA. Recipients also may be requested to assist the Department in drafting an environmental assessment, if the Department determines an assessment is required.

2. **Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands, May 24, 1977).**

Recipients must identify proposed actions in federally defined floodplains and wetlands to enable the agency to make a determination whether there is an alternative to minimize any potential harm.

3. **Clean Air Act, Clean Water Act and Executive Order 11738.**

Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. § 7401 *et seq.*), Clean Water Act (42 U.S.C. § 1251 *et seq.*) and Executive Order 11738, and shall not use a facility on the Environmental Protection Agency's (EPA) List of Violating Facilities in performing any Award that is nonexempt under 40 C.F.R. § 15.5, and shall notify the Program Officer in writing if it intends to use a facility that is on EPA's List of Violating Facilities or knows that the facility has been recommended to be placed on the List.

4. **The Flood Disaster Protection Act of 1973 (42 U.S.C. § 4002 *et seq.*).**

Flood insurance, when available, is required for federally-assisted construction or acquisition in flood-prone areas.

5. **The Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq.*).**

Recipients must identify any impact or activities which may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to the protected species or habitat occur from actions under federal assistance awards and conduct the required reviews under the Endangered Species Act, as applicable.

6. **The Coastal Zone Management Act, as amended (16 U.S.C. § 1451 *et seq.*).**

Funded Projects must be consistent with a coastal State's approved management program for the coastal zone.

7. **The Coastal Barriers Resources Act (16 U.S.C. § 3501 *et seq.*).**

Restrictions are placed on federal funding for actions within a Coastal Barrier System.

8. **The Wild and Scenic Rivers Act, as amended (16 U.S.C. § 1271 *et seq.*).**

This Act applies to Awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

9. **The Safe Drinking Water Act of 1974, as amended (42 U.S.C. §§ 300f-j).**

This Act precludes federal assistance for any project that EPA determines may contaminate a sole source aquifer so as to threaten public health.

10. **The Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. § 6901 *et seq.*).**

This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that Recipients of federal funds give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

11. **The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the Superfund Amendments and Reauthorization Act of 1986, and the Community Environmental Response Facilitation Act of 1992, as amended (42 U.S.C. § 9601 *et seq.*).**

These requirements address responsibilities of hazardous substance releases, threatened releases and environmental cleanup. There is also a requirement to impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards.

12. **Environmental Justice in Minority Populations and Low Income Populations (Executive Order 12898, February 11, 1994).**

Executive Order 12898 identifies and addresses adverse human health or environmental effects of programs, policies and activities on low income and minority populations.

**Q. Miscellaneous Requirements.**

**1. Criminal and Prohibited Activities.**

- a. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812) provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal government for money (including grants, loans or other benefits).
- b. The Criminal False Claims Act and the False Statements Act (18 U.S.C. §§ 287 and 1001) provide for criminal prosecution of a person who knowingly makes or presents any false, fictitious, or fraudulent statements or representations or claims against the United States. Such person shall be subject to imprisonment of not more than five (5) years and shall be subject to a fine.
- c. The Civil False Claims Act (31 U.S.C. § 3729) provides that suits under this Act can be brought by the Federal government, or a person on behalf of the Federal government, for false claims under federal assistance programs.
- d. The Copeland “Anti-Kickback” Act (18 U.S.C. § 874 and 40 U.S.C. § 276c), prohibits a person or organization engaged in a federally-supported Project from enticing an employee working on the Project from giving up a part of his compensation under an employment contract.

**2. Foreign Travel.**

- a. The Recipient shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 – 301-10.143.
- b. The Fly America Act requires that federal travelers and others performing Federal government-financed foreign air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency’s mission.
- c. Use of foreign air carriers may also be used only if bilateral agreements permit such travel pursuant to 49 U.S.C. § 40118(b). The Department is not aware of any bilateral agreements which meet these requirements. Therefore, it is the responsibility of the Recipient to provide the Grants Officer with a copy of the applicable bilateral agreement if use of a foreign carrier under a bilateral agreement is anticipated.

- d. If a foreign air carrier is anticipated to be used, the Recipient must receive prior approval from the Grants Officer. When requesting such approval, the Recipient must provide a justification in accordance with the guidance provided in 41 C.F.R. § 301-10.142, which requires the Recipient to provide a “certification” to the Grants Officer with the following: name; dates of travel; the origin and destination of travel; a detailed itinerary of travel, the name of the air carrier and flight number for each leg of the trip; and a statement explaining why the Recipient meets one of the exceptions to the applicable regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the Recipient must provide the Grants Officer with a copy of the agreement. The Grants Officer shall make the final determination and notify the Recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the Recipient not being reimbursed for any transportation costs for which the Recipient improperly used a foreign air carrier.
3. **American-Made Equipment and Products.** Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this Award.
4. **Intellectual Property Rights.**
  - a. *Inventions.* The intellectual property rights to any invention made by a Recipient under a DOC Award are determined by the Bayh-Dole Act, as amended (Pub. L. No. 96-517), and codified in 35 U.S.C. § 200 *et seq.*, except as otherwise required by law. The specific rights and responsibilities are described in more detail in 37 C.F.R. part 401, and in the particular, in the standard patent rights clause in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this Award.
    - (i) *Ownership.*
      - (a) *Recipient.* The Recipient has the right to own any invention it makes (conceived or first reduced to practice) or made by its employees. The Recipient may not assign its rights to a third party without the permission of the Department unless it is to a patent management organization (i.e., a university’s research foundation.) The Recipient’s ownership rights are subject to the Federal government’s nonexclusive paid-up license and other rights.
      - (b) *Department.* If the Recipient elects not to own or does not elect rights or file a patent application within the time limits set forth in the standard patent rights clause, the Department may request an assignment of all rights, which is normally subject to a limited royalty free non-exclusive license for the Recipient. The Department owns any invention made

solely by its employees but may license the Recipient in accordance with the procedures in 37 C.F.R. part 404.

(c) *Inventor/Employee*. If neither the Recipient nor the Department is interested in owning an invention by a Recipient employee, the Recipient, with the written concurrence of the Department's Patent Counsel, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 C.F.R. § 401.9.

(d) *Joint Inventions*. Inventions made jointly by a Recipient and a Department employee will be owned jointly by the Recipient and DOC. However, the Department may transfer its rights to the Recipient as authorized by 35 U.S.C. § 202(e) and 37 C.F.R. § 401.10 if the Recipient is willing to patent and license the invention in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-50 if there is one Recipient and Department employee). The agreement will be prepared by the Department's Patent Counsel and may include other provisions, such as a royalty free license to the Federal government and certain other entities. The Recipient also is authorized to transfer its rights to the Federal government, which can agree to share royalties similarly as described above (35 U.S.C. § 202(e)).

(ii) *Responsibilities --iEdison*. The Recipient has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The Recipient is expected to comply with all the requirements of the standard patent rights clause and 37 C.F.R. part 401. Recipients of DOC Awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at [www.iedison.gov](http://www.iedison.gov). Recipients may obtain a waiver of this electronic submission requirement by providing DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.

- b. *Patent Notification Procedures*. Pursuant to Executive Order 12889, the Department is required to notify the owner of any valid patent covering technology whenever the Department or its Recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the Recipient uses or has used patented technology under this Award without a license or permission from the owner, the Recipient must notify the Grants Officer:

However, this notice does not necessarily mean that the Government authorizes and consents to any copyright or patent infringement occurring under the financial assistance.

- c. *Data, Databases and Software.* The rights to any work produced or purchased under a DOC Award are determined by 15 C.F.R. §§ 14.36 or 24.34, as applicable. Such works may include data, databases or software. The Recipient owns any work produced or purchased under a DOC Award subject to the Department's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Federal government purposes.
  - d. *Copyright.* The Recipient may copyright any work produced under a DOC Award subject to the Department's royalty-free non-exclusive and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Federal government purposes. Works jointly authored by the Department and Recipient employees may be copyrighted but only the part authored by the Recipient is protected under 17 U.S.C. § 105, which provides that works produced by Federal government employees are not copyrightable in the United States. If the contributions of the authors cannot be separated, the copyright status of the joint work is questionable. On occasion, the Department may ask the Recipient to transfer to the Department its copyright in a particular work when the Department is undertaking the primary dissemination of the work. Ownership of copyright by the Federal government through assignment is permitted under 17 U.S.C. § 105.
5. **Increasing Seat Belt Use in the United States.** Pursuant to Executive Order 13043, Recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented or personally-owned vehicles.
  6. **Research Involving Human Subjects.**
    - a. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. part 27, *Protection of Human Subjects*. No research involving human subjects is permitted under this Award unless expressly authorized by special award condition, or otherwise authorized in writing by the Grants Officer.
    - b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
    - c. The Department's regulations at 15 C.F.R. part 27 require that Recipients maintain appropriate policies and procedures for the protection of human

subjects. In the event it becomes evident that human subjects may be involved in carrying out the purpose(s) of this Award, the Recipient shall submit appropriate documentation to the Program Officer for approval. This documentation may include:

- (i) Documentation establishing approval of the Project by an institutional review board (IRB) approved for government-wide use under Department of Health and Human Services guidelines (*see* 15 C.F.R. § 27.103);
  - (ii) Documentation to support an exemption for the Project under 15 C.F.R. § 27.101(b);
  - (iii) Documentation to support deferral for an exemption or IRB review under 15 C.F.R. § 27.118;
  - (iv) Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- d. No work involving human subjects may be undertaken, conducted, or costs incurred or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred or charged to the Project for protocol or instrument development related to human subjects research.
7. **Federal Employee Expenses.** Federal agencies are generally barred from accepting funds from a Recipient to pay transportation, travel, or other expenses for any federal employee unless specifically approved in the terms of the Award. Use of Award funds (federal or non-federal) or the Recipient's provision of in-kind goods or services, for the purposes of transportation, travel, or any other expenses for any federal employee may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for federal employees, from Recipients or applicants regardless of the source.
8. **Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.** Pursuant to Executive Order 13202, "*Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects*," unless the Project is exempted under section 5(c) of the Order, bid specifications, Project-related agreements, or other controlling documents for construction contracts awarded by Recipients or any construction manager acting on their behalf, shall not:

- a. Include any requirement or prohibition on bidders, offerors, contractors, or subcontractors about entering into or adhering to agreements with one or more labor organizations on the same or related construction Project(s); or
  - b. Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction Project(s).
9. **Minority Serving Institutions (MSIs) Initiative.** Pursuant to Executive Orders 13256 (President's Board of Advisors on Historically Black Colleges and Universities), 13230 (President's Advisory Commission on Educational Excellence for Hispanic Americans), and 13270 (Tribal Colleges and Universities), the Department is strongly committed to broadening the participation of MSIs in its financial assistance programs. The Department's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from federal financial assistance programs. The Department encourages all applicants and Recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the U.S. Department of Education's website.
10. **Research Misconduct.** Scientific or research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. It does not include honest errors or differences of opinion. The Recipient organization has the primary responsibility to investigate allegations and provide reports to the Federal government. Funds expended on an activity that is determined to be invalid or unreliable because of scientific misconduct may result in a disallowance of costs for which the institution may be liable for repayment to the awarding agency. The Office of Science and Technology Policy at the White House published in the *Federal Register* on December 6, 2000 a final policy that addressed research misconduct (65 FR 76260). The policy was developed by the National Science and Technology Council. The Department requires that any allegation be submitted to the Grants Officer, who also will notify the OIG of such allegation. Generally, the Recipient organization shall investigate the allegation and submit its findings to the Grants Officer. The Department may accept the Recipient's findings or proceed with its own investigation. The Grants Officer shall inform the Recipient of the Department's final determination.
11. **Publications, Videos and Acknowledgment of Sponsorship.** Publication of the results or findings of a research project in appropriate professional journals and production of video or other media is

encouraged as an important method of recording and reporting scientific information. It is also a constructive means to expand access to federally-funded research. The Recipient is required to submit a copy to the funding agency and when releasing information related to a funded Project include a statement that the Project or effort undertaken was or is sponsored by DOC. The Recipient also is responsible for ensuring that every publication of material (including Internet sites and videos) based on or developed under an Award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer: “This [report/video] was prepared by [Recipient name] under [Award number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce.” This disclaimer also applies to videos produced under DOC Awards.

12. **Care and Use of Live Vertebrate Animals.** Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. No. 89-544), as amended (7 U.S.C. § 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and the implementing regulations at 9 C.F.R. parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. § 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); Non-indigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. § 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling and treatment of warm blooded animals held for research, teaching, or other activities supported by federal financial assistance. No research involving vertebrate animals is permitted under any DOC Award unless authorized by the Grants Officer.
  
13. **Homeland Security Presidential Directive – 12.** If the performance of this Award requires the Recipient to have physical access to federal premises for more than 180 days or access to a federal information system, personal identity verification procedures must be implemented. Any items or services delivered under this Award shall comply with the Department’s personal identity verification procedures that implement Homeland Security Presidential Directive -12, FIPS PUB 201, and OMB Memorandum M-05-24. The Recipient shall insert this clause in all sub-awards or contracts when the sub-award recipient or contractor is required to have physical access to a federally-controlled facility or access to a federal information system.

14. **Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.**
- a. This clause applies to the extent that this Award involves access to export-controlled information or technology.
  - b. In performing this Award, the Recipient may gain access to export-controlled information or technology. The Recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The Recipient shall establish and maintain throughout performance of this Award effective export compliance procedures at non-DOC facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual and electronic access to export-controlled information and technology.
  - c. *Definitions.*
    - (i) Deemed Export. The Export Administration Regulations (EAR) define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is “deemed” to be an export to the home country of the foreign national. *See* 15 C.F.R. § 734.2(b)(2)(ii).
    - (ii) Export-controlled information and technology. Export-controlled information and technology subject to the EAR (15 C.F.R. §§ 730-774), implemented by the Department’s Bureau of Industry and Security, or the International Traffic In Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), implemented by the Department of State, respectively. This includes but is not limited to dual-use items, defense articles and any related assistance, services, software or technical data as defined in the EAR and ITAR.
  - e. The Recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this Award, to ensure that access is restricted, or licensed, as required by applicable federal laws, Executive Orders or regulations.
  - f. Nothing in the terms of this Award is intended to change, supersede or waive the requirements of applicable federal laws, Executive Orders or regulations.
  - g. The Recipient shall include this clause, including this paragraph (f), in all lower-tier transactions (sub-awards, contracts, and subcontracts) under this Award that may involve access to export-controlled information technology.

## PART II

### RLF RECIPIENTS' MANAGEMENT AND ADMINISTRATIVE REQUIREMENTS

Part II of these RLF Standard Terms and Conditions sets out the Recipient's duties to administer and manage this Award.

- A. **Revolving Loan Fund (RLF) Plan Requirements.** The Recipient must develop and manage its RLF in accordance with an RLF Plan as described in this section and in 13 C.F.R. § 307.9, and submit the RLF Plan (or Plan) to EDA for approval. The RLF Plan must serve as the Recipient's internal operating tool and set out administrative procedures for operating the RLF consistent with "Prudent Lending Practices," as defined in 13 C.F.R. § 307.8.
1. **Format and Content.** The required content and recommended format for the RLF Plan is as follows:
    - a. The title page of the Plan should show the Recipient organization's name and the date the Plan was adopted.
    - b. Part I of the Plan titled *Revolving Loan Fund Strategy* must summarize (i) the Comprehensive Economic Development Strategy (CEDS) for the region in which the RLF Project is located and (ii) business development objectives, and describe the RLF's financing strategy, policy and portfolio standards. Organization of the material and the level of detail provided in Part I may be varied to improve the narrative flow, provided the substantive content is adequately covered.
    - c. Part II of the Plan titled *Operational Procedures* must serve as the internal operating manual for the Recipient. In administering the RLF, the Recipient must adopt procedures to comply, and ensure that potential borrowers comply, with applicable laws and regulations including but not limited to 13 C.F.R. part 307.
  2. **Evaluation of RLF Plans.** EDA will use the following criteria to evaluate RLF Plans. The Plan must:
    - a. Be consistent with the CEDS or EDA-approved strategy for the Region;
    - b. Identify the strategic purpose of the RLF and the considerations influencing the selection of its financing strategy and lending criteria, including:
      - (i) An analysis of the local capital market and the financing needs of the targeted businesses; and

(ii) Financing policies and portfolio standards which are consistent with EDA's policies and requirements;

- c. Demonstrate an adequate understanding of commercial loan portfolio management procedures, including loan processing, underwriting, closing, disbursement, collection, monitoring, and foreclosure. It also must provide sufficient administrative procedures to prevent conflicts-of-interest and to ensure accountability, safeguarding of RLF assets and compliance with federal and local laws.

(See 13 C.F.R. § 307.9(b).)

3. **RLF Plan Modifications.** Economic development often requires the implementation of new approaches to help stimulate stagnant economies. EDA reserves the right to request changes to an RLF Plan at any time. Such changes may be required for the RLF to remain supportive of updates made to a Regional CEDS. Modification of the RLF Plan also may be necessary to ensure effective use of the RLF as a strategic financing tool. An Recipient must request and obtain EDA approval prior to any modifications of the Plan. (See 13 C.F.R. § 307.9(c).)

**B. Modifications of Lending Areas and Consolidation of RLF Awards.** The Recipient must make loans to implement and assist economic activity only within its EDA-approved lending area, as set forth and defined in the RLF Award and the RLF Plan. The Recipient may request permission from EDA to consolidate (or merge) eligible RLF Awards in accordance with required documentation and procedures. Any request to add an additional lending area or to consolidate two (2) or more EDA-funded RLF Awards must satisfy the following requirements:

1. 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 and subject to the conditions set out in 13 C.F.R. § 307.18(a).
2. A Recipient with more than one (1) EDA-funded RLF Award may consolidate two (2) or more EDA-funded RLFs into one (1) surviving RLF with EDA's prior written approval, provided the conditions set out in 13 C.F.R. § 307.18(b)(1) are satisfied.
3. Two (2) or more Recipients may consolidate their EDA-funded RLFs into one (1) surviving RLF with EDA's prior written approval, provided the conditions set out in 13 C.F.R. § 307.18(b)(2) are satisfied.

**C. Prudent Lending Practices.** The Recipient is expected to administer the RLF in accordance with "Prudent Lending Practices," defined in 13 C.F.R. § 307.8 as "generally accepted underwriting and lending practices for public loan programs, based on sound judgment to protect federal and lender interests." Prudent

Lending Practices cover loan processing, documentation, loan approval, collections, servicing, administrative procedures, collateral protection, and recovery actions. Prudent lending practices include compliance with local laws and filing requirements to perfect and maintain a security interest in RLF collateral.

1. **Accounting Principles.**

- a. RLFs must 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, *Audits of States, Local Governments, and Non-Profit Organizations*, and the related *Compliance Supplement*.
- b. In accordance with GAAP, a loan loss reserve may be reflected in the Recipient’s financial statements to show the fair value of an RLF’s loan portfolio, provided it is an unfunded loan loss reserve.

(See 13 C.F.R. § 307.15(a).)

2. **Pre-Disbursement and Loan and Accounting System Requirements.**

- a. Prior to any disbursement of EDA funds, the Recipient must provide to EDA:
  - (i) Evidence of fidelity bond coverage for persons authorized to handle funds under this 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 duration of the RLF’s operation; and
  - (ii) Certification in accordance with 13 C.F.R. § 307.15(b)(1) that the Recipient’s accounting system is adequate to identify, safeguard and account for all RLF Capital (as defined in 13 C.F.R. § 307.8), outstanding RLF loans and other RLF operations. This certification must occur within sixty (60) days prior to the initial disbursement of EDA funds under this Award. (See 13 C.F.R. § 307.11(a).)
- b. Prior to the disbursement of any EDA grant funds, the Recipient must certify that standard RLF loan documents reasonably 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 Award and applicable State and local laws. The standard loan documents must include, at a minimum, the:

- (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 (for officers or owners of corporate borrowers, as applicable).

(See 13 C.F.R. § 307.15(b)(2).)

3. **Interest Rates.** A Recipient can make loans and may guarantee loans to eligible borrowers at interest rates and under conditions determined by the 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 lesser of the current money center prime rate quoted in the Wall Street Journal, or the maximum interest rate allowed under State law. In no event may 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 Recipient to implement its financing strategy. (See 13 C.F.R. § 307.15(c).)
4. **Private Leveraging.**
- a. RLF loans must be used to leverage private investment of at least two dollars for every 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 portion and ninety (90) percent of the guaranteed portions of U.S. Small Business Administration's 7(A) loans and 504 debenture loans.
- b. Private investments will not include accrued equity beyond the current twelve-month period in a borrower's assets.

(See 13 C.F.R. § 307.15(d).)

**D. Conflicts-of-Interest Rules.**

1. An “Interested Party” is defined in 13 C.F.R. § 300.3 as “any officer, employee or member of the board of directors or other governing board of the Recipient, including any other parties that advise, approve, recommend or otherwise participate in the business decisions of the Recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders.” An Interested Party also includes the Interested Party’s “Immediate Family” (defined in 13 C.F.R. § 300.3 as a person’s spouse, parents, grandparents, siblings, children and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person) and other persons directly connected to the Interested Party by law or through a business organization. In addition, “Immediate Family” includes a person’s “significant other” or partner in a domestic relationship with an “Interested Party.”

The Recipient must establish safeguards to prohibit an Interested Party from using its position for a purpose that constitutes or presents the appearance of personal or organizational conflicts-of-interest or of personal gain. (*See* 13 C.F.R. § 302.17(a) and (b), 15 C.F.R. §§ 14.42 and 24.36(b)(3), and Forms SF-424B (*Assurances – Non-Construction Projects*) and SF-424D (*Assurances – Construction Projects*)).

2. An Interested Party must not receive any direct or indirect, financial or personal benefits in connection with this Award or its use for payment or reimbursement of costs by or to the Recipient. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a sub-award. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It also could result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field. (*See* 13 C.F.R. § 302.17(b).)
3. In addition to the rules set forth in 13 C.F.R. § 302.17(a) and (b), the Recipient must adhere to these special conflicts-of-interest rules set out in 13 C.F.R. § 302.17(c):
  - a. An Interested Party of a Recipient of an RLF Award will not receive, directly or indirectly, any personal or financial benefits resulting from the disbursement of RLF loans.
  - b. A Recipient will not lend RLF funds to an Interested Party.
  - c. Former board members of a Recipient and members of his or her Immediate Family will not receive a loan from the RLF for a period of two

(2) years from the date that the board member last served on the RLF's board of directors.

(See also part I, section N.3. of these RLF Standard Terms and Conditions.)

**E. Effective Utilization of Revolving Loan Funds.**

**1. Capital Utilization Standard.**

a. During the "Revolving Phase" (defined at 13 C.F.R. § 307.8 as the stage of the RLF's business lending activities that commences immediately after all grant funds have been disbursed to the Recipient), the Recipient must manage its repayment and lending schedules to provide that at all times at least seventy-five (75) percent of the RLF Capital is loaned or committed. RLF Income earned during a reporting period is not included as RLF Capital when calculating the capital utilization percentage. The following exceptions apply:

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

In the event that EDA sets a higher capital utilization rate, the Recipient shall have ninety (90) days to amend its RLF Plan accordingly.

b. 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 out and the applicable capital utilization percentage is referred to as "excess funds." (See 13 C.F.R. § 307.16(c).)

**2. Sequestration of Excess Funds.**

a. *Sequestration Required.* If the Recipient fails to satisfy the applicable capital utilization percentage requirement for two (2) consecutive reporting intervals, EDA will require the Recipient to deposit the excess funds in an interest-bearing account separate from the EDA funds account. If EDA requires sequestration, the Recipient must submit to EDA:

- (i) A letter certifying that a separate, interest-bearing account has been set up for the purposes of sequestering excess funds; specifying the applicable EDA award number(s), the amount deposited, the account number, and the name, address and telephone number of the bank; and certifying that the Recipient will remit quarterly any interest payments to EDA; and
- (ii) A copy of the deposit receipt evidencing that a separate, interest-bearing account was set up for the amount certified in the letter.

This documentation is required regardless of whether the Recipient is establishing the account for the first time or depositing additional grant funds. The Recipient must obtain EDA's written authorization to withdraw any sequestered funds. (*See* 13 C.F.R. § 307.16(c)(2)(i).)

- b. *Sequestration Not Required.* EDA will not require sequestration of excess funds if:
  - (i) The amount to be sequestered is less than \$5,000.00; or
  - (ii) 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 six (6) months, and the Grants Officer signs and approves this plan. Six-month compliance extensions are solely at the Grant Officer's discretion.

- 3. **Remittance of Interest on Sequestered Funds.** The portion of the interest earned on the account holding sequestered funds that is attributable to the EDA share of the Award must be remitted quarterly to EDA within thirty (30) days of the end of each quarter (for EDA's purposes, quarters end on March 31, June 30, September 30 and December 31) to the following address:

Bank of America  
 Economic Development Administration  
 Lockbox Services Atlanta Government  
 P.O. Box 100462  
 Atlanta, GA 30384

Checks must be made payable to "Economic Development Administration." The Award number and the words "Interest on Excess Funds" shall be clearly written on the face of the check. Additionally, a brief memorandum accompanying the check must include:

- a. A statement that the payment being remitted to EDA represents interest earned on EDA's portion of sequestered funds; and

- b. A calculation showing how EDA’s share of the interest was determined.

The Recipient must submit a copy of this memorandum and evidence of interest payment remittance (a copy of the check, wire transfer or direct deposit of funds) to the Regional Office.

4. **Persistent Noncompliance.** Generally, EDA will allow the Recipient a reasonable period of time to lend excess funds and achieve the applicable capital utilization percentage. However, if the 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. (*See* 13 C.F.R. § 307.16(c)(2)(ii).)

- F. **Financial Accountability in the Administration of an RLF.** The Recipient is responsible for the administrative costs associated with operating the RLF. Evidence of sufficient and reliable sources of funds to cover RLF administrative expenses is a key factor in Project selection. As grant funds are disbursed for loans and the RLF begins to generate income from lending activities, such income (referred to as “RLF Income” and defined in 13 C.F.R. § 307.8), as distinguished from interest payments remitted to EDA pursuant to 13 C.F.R. § 307.16(c)(2)(i), may be used to cover eligible, reasonable and documented administrative costs necessary to administer the RLF, unless otherwise provided for in the Award or approved in writing by EDA. A Recipient may use RLF Income only to capitalize the RLF for financing activities and to cover eligible and reasonable administrative expenses.

Recipients are responsible for the administrative costs associated with operating an RLF. Evidence of sufficient and reliable sources of funds to cover RLF administrative expenses is a key factor in Project selection. As grant funds are disbursed for loans and an RLF begins to generate income from lending activities, such income (referred to as “RLF Income” and defined in 13 C.F.R. § 307.8), as distinguished from interest payments remitted to EDA pursuant to 13 C.F.R. § 307.16(c)(2)(i), may be used to cover eligible, reasonable and documented administrative costs necessary to administer the RLF, unless otherwise provided for in the Award or approved in writing by EDA. The Recipient may use RLF Income only to capitalize the RLF for financing activities and to cover eligible and reasonable administrative expenses.

1. **General Requirements for RLF Income.** RLF Income must be placed into the RLF Capital base for the purpose of making loans or paying for eligible and reasonable administrative costs associated with the RLF’s operations. RLF Income may fund reasonable administrative costs, provided:
  - a. The RLF Income and the administrative costs are incurred in the same twelve-month (12) reporting period;

- b. RLF Income that is not used for administrative costs during the twelve-month (12) reporting period is made available for lending activities;
- c. RLF Income is not withdrawn from the RLF Capital base in the subsequent reporting period for any purpose other than lending without the prior written consent of EDA; and
- d. The Recipient completes an *Income and Expense Statement* as required under 13 C.F.R. § 307.14(c).

(See 13 C.F.R. § 307.12(a).)

2. **Compliance Guidance.** When charging costs against RLF Income, the Recipient must comply with applicable federal costs principles and audit requirements as found in:

- a. 2 C.F.R. part 225 (OMB Circular A-87 for State, local and Indian tribal governments);
- b. 2 C.F.R. part 230 (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 such Circular);
- c. 2 C.F.R. part 220 (OMB Circular A-21 for educational institutions); and
- d. OMB Circular A-133 (and the related *Compliance Supplement*) for Single Audit Act requirements for States, local governments and non-profit organizations.

(See 13 C.F.R. § 307.12(b).)

3. **Priority of Payments on Defaulted RLF Loans.** When a Recipient receives proceeds on a defaulted RLF loan that is not subject to liquidation pursuant to 13 C.F.R. § 307.20, such proceeds shall be applied in the following order of priority:

- a. First, towards any costs of collection;
- b. Second, towards outstanding penalties and fees;
- c. Third, towards any accrued interest to the extent due and payable; and
- d. Fourth, towards any outstanding principal balance.

(See 13 C.F.R. § 307.12(c).)

The Recipient is 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 the 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 region's) commitment to the RLF and the anticipated demand for RLF loans.

4. **Default Rates.** If an RLF loan's default rate exceeds fifteen (15) percent, EDA may request additional information from the Recipient, including but not limited to:
  - a. A narrative, signed by the Chair of the RLF administrative board, outlining actions taken to address the non-performing portion of the RLF loan portfolio;
  - b. Detailed information for each non-performing loan (e.g., borrower's name, loan closing date, outstanding loan balance, number of days delinquent, collateral, actions taken to collect loan payments, the percentage of the loan likely to be collected, dollar amount expected to be collected, expected date of collection, current status);
  - c. An EDA-approved corrective action plan; and
  - d. An amended RLF Plan consistent with the EDA-approved corrective action plan.

Failure to submit an acceptable corrective action plan within 120 days of receiving EDA's request, failure to comply with an EDA-approved corrective action plan, or failure to allow EDA to conduct an on-site visit upon request may result in termination of the Award.

#### G. **Records and Retention.**

1. **Closed Loan Files and Related Documents.** The Recipient must maintain Closed Loan files and all related documents, books of account, computer data files and other records over the term of the Closed Loan and for a three-year (3) period from the date of final disposition of the Closed Loan. The date of final disposition of a Closed Loan is the date:
  - a. Principal, interest, fees, penalties, and all other costs associated with the Closed Loan have been paid in full; or
  - b. Final settlement or discharge and cessation of collection efforts of any unpaid amounts associated with the Closed Loan have occurred. (*See* 13 C.F.R. § 307.13(a).)
2. **Administrative Records.** The Recipient must at all times:
  - a. Maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs.
  - b. Retain records of administrative costs incurred for activities and equipment relating to the operation of the RLF for three (3) years from the actual submission date of the last semi-annual or annual report that covers

the period that such costs were claimed, or for five (5) years from the date the costs were claimed, whichever is more.

- c. Make available for inspection any retained records, including those retained for longer than the required period. *See* record retention and access requirements set out at 15 C.F.R. §§ 14.53 or 24.42, as applicable.

H. **RLF Semi-Annual Report, Annual Report and Income and Expense Statement.**

- 1. **Frequency of Reports.** All Recipients, including those receiving Recapitalization Grants (defined in 13 C.F.R. § 307.8) for existing RLFs, must submit semi-annual reports on Form ED-209S (or any successor form). EDA may approve the submission of an annual report on Form ED-209A (or any successor form) for a semi-annual report upon written request by the Recipient if the following conditions have been met:
  - a. At least one (1) year has passed from the date that the RLF has loaned an aggregate amount equal to its initial RLF Capital base;
  - b. The Recipient has timely submitted accurate semi-annual reports for the preceding two (2) years;
  - c. The Recipient has ensured completion and submission to EDA of required periodic audits for the most recent audit period within the preceding two (2) years; and
  - d. EDA determines that the RLF is in compliance with all applicable RLF requirements. (*See* 13 C.F.R. § 307.14(a).)

If the Recipient fails to submit the annual report on time, it may be required to return to semi-annual reporting.

- 2. **RLF Plan Certification.** The Recipient must certify as part of its semi-annual or annual report to EDA that the RLF is operating in accordance with the applicable RLF Plan. The Recipient also must describe (and propose pursuant to 13 C.F.R. § 307.9) any modifications to the RLF Plan to ensure effective use of the RLF as a strategic financing tool. (*See* 13 C.F.R. § 307.14(b).)
- 3. **RLF Income and Expense Statement.** A Recipient using either fifty (50) percent or more (or more than \$100,000) of RLF Income for administrative costs in the twelve-month (12) reporting period must submit a completed *Income and Expense Statement* on Form ED-209I (or any successor form) annually to the appropriate Regional Office within ninety (90) days of the end of the fiscal year. A Recipient using less than fifty (50) percent and less than \$100,000 of RLF Income for administrative costs in the twelve-month (12) reporting period must prepare and retain for four (4) years a completed *Income and Expense*

*Statement* for the applicable fiscal year, which shall be made available to EDA upon request. (See 13 C.F.R. § 307.14(c).)

Failure to submit semi-annual reports, annual reports, or the *Income and Expense Statement* in a timely manner may result in termination of the Award.

4. **Performance Measures.** As part of the semi-annual or annual report, the Recipient must submit to EDA the information identified as the “Core Performance Measures” in the special award conditions of the Award. EDA will advise the Recipient within a reasonable time of any required modifications to the information submitted. (See 13 C.F.R. § 307.14(d).)

## PART III

### LENDING RESTRICTIONS AND BORROWER REQUIREMENTS

- A. **Uses of Capital.** The Recipient must use RLF Capital for the purpose of making loans that are consistent with an approved RLF Plan or such other purposes approved by EDA. To ensure that grant funds are used as intended, each loan agreement must clearly state the purpose of each loan. (*See* 13 C.F.R. § 307.17(a).)
1. **Restrictions on Use of RLF Capital.** RLF Capital shall not be used to:
    - a. Acquire an equity position in a private business;
    - b. Subsidize interest payments on an existing loan;
    - c. Provide for borrowers' required equity contributions under other Federal Agencies' loan programs;
    - d. Enable borrowers to acquire an interest in a business, either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF;
    - e. Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit or any investments unrelated to the RLF;
    - f. Refinance existing debt, unless:
      - (i) The Recipient sufficiently documents in the loan documentation a "sound economic justification" for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower will not, without other indicia, constitute a sound economic justification; or
      - (ii) RLF Capital will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. RLF Capital may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF's costs plus a reasonable portion of the outstanding RLF loan within eighteen (18) months following the date of refinancing.

(See 13 C.F.R. § 307.17(b).)

2. **Credit Not Otherwise Available.** The Recipient must determine and clearly demonstrate in the loan documentation for each RLF loan that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. (See 13 C.F.R. § 307.17(c).)
3. **Loan Guaranty Agreements.** The Grants Officer must provide written approval for the use of RLF Capital for guaranteeing other loans. Therefore, the Recipient must contact the appropriate Regional Office for such a request.

**B. Pre-Loan Requirements for RLF Recipients and RLF Borrowers.**

1. **Environmental Impact.** The Recipient must adopt procedures to review the impacts of prospective loan proposals on the physical environment. The RLF Plan must provide for compliance with applicable environmental laws and regulations, including but not limited to 13 C.F.R. parts 302 and 314. The Recipient also must adopt procedures to comply, and ensure that potential borrowers comply, with applicable environmental laws and regulations. (See 13 C.F.R. § 307.10(a) and part I, section P. of these RLF Standard Terms and Conditions.)
2. **Protection of RLF Assets.** The Recipient must ensure 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 loan agreements must include applicable federal requirements to ensure compliance, and the Recipient must adopt procedures to diligently correct instances of non-compliance, including loan call stipulations. (See 13 C.F.R. § 307.10(b).)
3. **Hold Harmless Provision.** All RLF loan documents and procedures must protect and hold the Federal government harmless from and against all liabilities that the Federal government may incur as a result of providing an Award to assist (directly or indirectly) in site preparation or construction, as well as the direct or indirect renovation or repair of any facility or site. These protections applies to the extent that the Federal government may become potentially liable as a result of ground water, surface, soil or other natural or man-made conditions on the property caused by operations of the Recipient or any of its borrowers, predecessors or successors. (See 13 C.F.R. § 307.10(c).)
4. **Non-Discrimination Requirements.** The Recipient agrees to comply with the following statutory provisions:

- a. Section 601 of title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*) (proscribing discrimination on the basis of race, color, or national origin), and the Department's implementing regulations found at 15 C.F.R. part 8;
  - b. 42 U.S.C. § 3123 (proscribing discrimination on the basis of sex in investment assistance provided under PWEDA) and 42 U.S.C. § 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program), and the Department's implementing regulations found at 15 C.F.R. §§ 8.7 - 8.15;
  - c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) (proscribing discrimination on the basis of disabilities), and the Department's implementing regulations found at 15 C.F.R. part 8b;
  - d. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) (proscribing discrimination on the basis of age), and the Department's implementing regulations found at 15 C.F.R. part 20; and
  - e. Other federal statutes, regulations and Executive Orders, as applicable. *See also* part I, section E. of these RLF Standard Terms and Conditions.
5. **Wage Rate Requirements of the Davis-Bacon Act.** In accordance with section 602 of PWEDA (42 U.S.C. § 3212), all laborers and mechanics employed by contractors or subcontractors on construction-related Projects receiving investment assistance under PWEDA shall be paid wages not less than those prevailing on similar construction in the locality, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, *United States Code*. (*See* 13 C.F.R. § 302.13.) Therefore, the Recipient and any borrower, contractor or subcontractor must comply with Davis-Bacon prevailing wage rates where RLF funds under this Award are used for construction work financed in whole or in part with such RLF funds.

## APPENDIX

### THE FOLLOWING REFERENCE MATERIALS ARE AVAILABLE FROM EDA:

- 13 C.F.R. chapter III (EDA's regulations)
- 15 C.F.R. part 14, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit and Commercial Organizations*
- 15 C.F.R. part 24, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*
- OMB Circular A-133, *Audits of States, Local Governments and Nonprofit Organizations*, and the related *Compliance Supplement*
- OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*
- 2 C.F.R. part 220 (codifying OMB Circular A-21, *Cost Principles for Educational Institutions*)
- 2 C.F.R. part 225 (codifying OMB Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments*)
- 2 C.F.R. part 230 (codifying OMB Circular A-122, *Cost Principles for Nonprofit Organizations*)
- 2 C.F.R. part 1326, *Non-Procurement Debarment and Suspension*
- 15 C.F.R. part 4, *Disclosure of Government Information*
- 15 C.F.R. part 27, *Protection of Human Subjects*
- 15 C.F.R. part 28, *New Restrictions on Lobbying*
- 15 C.F.R. part 29, *Government-wide Requirements for Drug-Free Workplace (Financial Assistance)*
- 48 C.F.R. part 31, *Contract Cost Principles and Procedures*

### THE FOLLOWING FORMS ARE AVAILABLE FROM EDA:

Form SF-269 – Financial Status Report

Form SF-270 - Request for Advance or Reimbursement (with Instructions)

Form SF-272 - Federal Cash Transaction Report

Form ED-209A - Annual Report for RLF Grants (with Instructions)

Form ED-209S - Semiannual Report for RLF Grants (with Instructions)

Form ED-209I - RLF Income and Expense Statement (with Instructions)