

words "Federal Reserve Board Labor Relations Panel" are added in their place.

#### List of Subjects in 12 CFR Part 269a

Federal Reserve System, Labor-management relations.

For the reasons set out in the preamble, 12 CFR part 269a is amended as set forth below:

#### PART 269a—DEFINITIONS

1. The authority citation for 12 CFR part 269a continues to read as follows:

**Authority:** Sec. 11, 38 Stat. 261 (12 U.S.C. 248).

##### § 269a.4 [Amended]

2. In § 269a.4, remove the reference to "§ 292.210" and add the reference to "§ 269b.210" in its place.

##### § 269.5 [Amended]

3. In § 269a.5, remove the reference to "§ 292.420 *et seq.*" and add the reference to "§ 269b.420 *et seq.*" in its place and remove the reference to "§ 292.442" and add the reference to "§ 269b.442" in its place.

By order of the Board of Governors of the Federal Reserve System, January 11, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 00-997 Filed 1-14-00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### Economic Development Administration

#### 13 CFR Parts 308 and 314

[Docket No. 991208327-9327-01]

RIN 0610-ZA12

#### Requirements for Economic Adjustment Grants-Revolving Loan Fund Projects and Property

**AGENCY:** Economic Development Administration (EDA), Department of Commerce (DoC).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Economic Development Administration (EDA) is amending its regulations consistent with recommendations of its Revolving Loan Fund Task Force, and comments received on EDA's interim-final rule to implement the comprehensive amendment to the Public Works and Economic Development Act of 1965, as amended by the Economic Development Administration Reform Act of 1998.

EDA has clarified and simplified requirements and incorporated into the

body of the rules, requirements unique to EDA for Revolving Loan Fund (RLF) projects previously appearing in Appendices A-D to 13 CFR part 308.

**DATES:** Effective date: January 18, 2000.

**Comment date:** Comments are due on or before March 20, 2000.

**ADDRESSES:** Send comments to Edward M. Levin, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, NW, Room 7005, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Edward M. Levin, Chief Counsel, Telephone Number 202-482-4687, fax 202-482-5671, e-mail [elevin@doc.gov](mailto:elevin@doc.gov)

#### SUPPLEMENTARY INFORMATION:

##### Background

The Economic Development Administration (EDA) was reauthorized for a five-year period by legislation enacted on November 13, 1998, creating stability and opportunities for EDA to better serve economically distressed communities across the country. On February 3, 1999, EDA published an interim-final rule, Economic Development Administration Regulation: Revision to Implement the Economic Development Reform Act of 1998, Pub. L. 105-393, (64 FR 5347-5486). The public was invited to submit comments on the interim-final rule for a period of sixty (60) days ending April 5, 1999. EDA had postponed the revision of the RLF requirements until recently so that the RLF Task Force recommendations and public comments could be incorporated.

##### RLF Task Force Recommendations

EDA's Revolving Loan Fund Task Force was established to consider contemporary issues of interest to the RLF community and to make recommendations for appropriate reforms and policies that resulted from such consideration. The solicitation of comments to the Task Force was widely publicized and included published articles in weekly and monthly newsletters and web sites of several national economic development organizations. The all-Federal Task Force, which included representatives from each of EDA's six regional offices and three other Federal Agencies, considered more than sixty comments and suggestions submitted by RLF operators and economic development organizations. Resulting Task Force recommendations involving the clarification of policies or regulatory changes, some of which were also suggested by those commenting on EDA's interim-final rule, are included in

this interim-final rule. These recommendations were that EDA:

1. Consider providing start-up technical assistance funding to train first time grantees and to cover the costs for administering borrower technical assistance programs associated with RLFs.

We have added a provision as new § 308.4(c)(2)(iv) to allow the use of in-kind local matching funds for such purposes.

2. Provide clear criteria for determining when RLFs graduate from a semi-annual to annual reporting status.

We have added specific requirements for graduating RLFs from a semi-annual to annual RLF reporting status, in new § 308.14(a).

3. Consider allowing loan loss reserves to be maintained by EDA RLFs.

Because EDA RLFs are capitalized by grant funds (rather than by a loan which must be repaid to the Agency), EDA believes that there is no need for RLF recipients to maintain a cash reserve against loan losses that may occur. However, EDA does agree that a loan loss reserve appearing as non-cash financial statement entries should be permitted. We have added this provision as new § 308.15(a)(2).

4. Provide more flexibility in EDA's effective utilization of funds policy (also known as the excess retention policy) so that smaller RLFs would be able to accumulate larger amounts of loan repayments to handle larger loans.

EDA has retained its basic rule, but has added a new § 308.19 clarifying the current authority to permit necessary and reasonable variances from this and other provisions that do not conflict with other legal requirements.

5. Allow all EDA funds to be disbursed for new loans, while permitting loan repayments to accumulate.

EDA does not agree with the requested change. EDA's existing practice is consistent with Federal requirements concerning disbursement of grant funds. However, the allowance of in-kind local share for RLFs has required that EDA articulate new requirements for disbursing EDA funds for RLF projects. EDA has addressed all RLF disbursement related issues in newly added § 308.16.

6. Commenters suggested that part 308, Appendix A, Economic Adjustment Program Revolving Loan Fund *Plan Guidelines*; Appendix B, Economic Adjustment Program Revolving Loan Fund Grants *Standard Terms and Conditions*; Appendix C, Economic Adjustment Program Revolving Loan Fund Grants *Administrative Manual*; and Appendix D, Economic Adjustment

Program Revolving Loan Fund Grants *Audit Guidelines* be simplified and combined into a single user-friendly RLF manual and that requirements that are specific to EDA be incorporated into EDA's final rule.

We concur. Accordingly, we have removed Appendices A–D to part 308, and have incorporated requirements unique to EDA's RLF program into 13 CFR part 308.

The new condensed RLF manual to replace the *Plan Guidelines, Standard Terms and Conditions*, and *Administrative Manual* is anticipated to be forthcoming early in calendar year 2000. The *Audit Guidelines* are being incorporated into the Compliance Supplement to OMB Circular A–133.

### Comments on Regulatory Text

Several similar comments were received by the RLF Task Force on the Regulatory Text. Comments on regulatory text not otherwise addressed by the RLF Task Force (see above) were as follows:

A Commenter suggested that EDA make geographic eligibility criteria more flexible for regional use, noting that rural economic trade centers are often not eligible for EDA RLF grants even though they impact the adjacent jurisdictions.

EDA does not concur that additional flexibility is required. Existing regulations at § 300.2 and § 301.2 adequately address applicant eligibility and establish area eligibility criteria sufficient to qualify distressed places consistent with statutory requirements.

A commenter suggested that there be a reduction in the amount or percentage of non-Federal match needed to capitalize and recapitalize an RLF.

EDA does not concur since current requirements are consistent with EDA's statutory and regulatory requirements. Local share requirements are explained in 13 CFR 301.4(b) and new § 308.16(f).

A commenter suggested that RLFs be allowed to pledge RLF loans to regional banks in order to borrow additional funds and to guarantee another lender's loans. Another commenter suggested that EDA encourage and assist in secondary market transactions as a method of increasing an RLF's lending capacity, provided that such transactions would not be a replacement for RLF recapitalization grants.

EDA supports development of a secondary market for RLF loans. To further explore these issues, EDA is currently conducting an RLF secondary market (securitization) pilot project. Additional information on the pilot project can be found on EDA's Web Site, at <http://www.doc.gov/eda>.

A commenter suggested that EDA allow unlimited use of RLF program income for purposes such as local match for other grants, loan loss reserves (such as for USDA's Intermediary Relending Program) or equity contributions.

Although RLF recipients are provided wide latitude in using RLF income, which is defined in newly added § 308.8, EDA does not concur with the suggestion concerning unlimited use of RLF program income. Under 15 CFR parts 14 and 24, EDA applies the principle that program income should be used in furtherance of the purpose of the project, in this case, the EDA RLF project.

Limitations on the use of program income, consistent with 15 CFR parts 14 and 24 and longstanding EDA RLF practice, are in newly added § 308.12(a).

A commenter suggested that ceilings on administrative costs be revised or eliminated.

EDA has clarified these requirements by adding new § 308.14(c).

A commenter suggested limiting EDA's RLF reporting requirements to ten years.

While a 10 year rule does not apply to RLFs, EDA has clarified reporting requirements in new § 308.14.

Commenters suggested that EDA's property management regulations be revised to include provisions formerly found in appendices to part 308 which are unique to EDA. These provisions addressed suspension and termination of RLFs and the treatment of proceeds of liquidated RLF loans.

We concur and have changed §§ 314.4 and 314.10 accordingly.

A commenter suggested including personal guarantees as one of the required standard loan documents.

EDA concurs with this common and prudent lending practice and has included personal guarantees as a required standard loan document in a new § 308.15(b)(2)(vii).

### Savings Clause

The rights, duties, and obligations of all parties pursuant to parts, sections and portions thereof of the Code of Federal Regulations removed by this rule will continue in effect, except that EDA may waive administrative or procedural requirements of provisions removed by this rule.

### Executive Order 12866 and 12875

This rule has been determined to be significant for purposes of E.O. 12866, Regulatory Planning and Review. In addition, it has been determined that, consistent with the requirements of E.O. 12875, Enhancing Intergovernmental Partnership, this final rule will not

impose any unfunded mandates upon state, local, and tribal governments.

### Regulatory Flexibility Act

Since notice and an opportunity for comment are not required to be given for the rule under 5 U.S.C. 553 or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) no initial or final Regulatory Flexibility Analysis is required, and none has been prepared.

### Paperwork Reduction Act

This rule imposes no new information collection or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), as amended, and has been cleared under OMB's clearance process under OMB approval numbers 0610–0095 valid until August 31, 2002.

### Administrative Procedure Act and Regulatory Flexibility Act

*Executive Order 12612 (Federalism Assessment)*

This action has been reviewed in accordance with the principles and criteria contained in E.O. 12612. It has been determined that this final rule does not have significant Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in E.O. 12612.

### List of Subjects

*13 CFR Part 308*

Business and industry, Community development, Community facilities, Grant programs-business, Grant programs-community development, American Indians, Manpower training programs, Mortgages, Research, Technical assistance.

*13 CFR Part 314*

Community development, Grant programs-community development.

For the reasons set forth in the preamble, 13 CFR Chapter III, parts 308 and 314 are amended to read as follows:

### PART 308—REQUIREMENTS FOR ECONOMIC ADJUSTMENT GRANTS

1. The authority citation for part 308 continues to read as follows:

**Authority:** 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

2. Part 308 is amended by designating §§ 308.1 through 308.6 as Subpart A and adding a heading for Subpart A to read as follows:

**Subpart A—General**

3. Section 308.3 is amended by removing paragraph (c).

4. Section 308.4 is amended by revising paragraph (c)(2)(ii) and (iii) and adding paragraph (c)(2)(iv) to read as follows:

**§ 308.4 Selection and evaluation factors.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) The types of financing activities anticipated;

(iii) The capacity of the RLF organization to manage lending, create networks between the business community and other financial providers, and contribute to the adjustment strategy; and

(iv) Use of in-kind match. When in-kind match is included in a project, such match will be used for borrower technical assistance or general RLF administrative costs (e.g. the training of new RLF staff).

\* \* \* \* \*

5. Appendices A–D to part 308 are removed.

6. Subpart B is added to read as follows:

**Subpart B—Special Requirements for Revolving Loan Fund Projects and Uses of Grant Funds.**

308.7 Revolving Loan Funds established for business lending.

308.8 Definitions.

308.9 Revolving Loan Fund Plan.

308.10 Pre-loan requirements.

308.11 Lending areas and modification of lending areas.

308.12 Revolving Loan Fund income.

308.13 Records and retention.

308.14 Revolving Loan Fund semi-annual and annual reports.

308.15 Prudent management of Revolving Loan Funds.

308.16 Disbursement of funds to Revolving Loan Funds.

308.17 Effective utilization of Revolving Loan Funds.

308.18 Uses of capital.

308.19 Variances.

**§ 308.7 Revolving Loan Funds established for business lending.**

EDA grants to capitalize or recapitalize Revolving Loan Funds are most commonly used for business lending, but may also be established for public infrastructure lending or other authorized purposes involving lending. The RLF requirements in this subpart B are applicable to RLFs established for business lending. Appropriate modifications of these requirements will be addressed in special award conditions to accommodate non-business RLF awards.

**§ 308.8 Definitions.**

As used in this part:

*Closed loan* means any loan for which all required documentation has been executed, received, and reviewed.

*Guaranteed loan* means a loan made and serviced by a lending institution under the agreement that a third party (e.g., a governmental agency) will purchase the guaranteed portion if the borrower defaults.

*Program income* means gross income received by the grant RLF recipient or the sub-recipient directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. Program income includes principal repayments and RLF income.

*Prudent lending practices* means generally accepted underwriting and lending practices for public loan programs based on sound judgment to protect Federal and lender interests. Such 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 security interests in RLF collateral.

*Recapitalization grants* are additional grant funds awarded to increase the capital base of an RLF.

*RLF capital* includes the funds which capitalized the RLF plus such earnings and fees generated by RLF activities as may be added to the RLF capital base to be used for lending. The original sources of capital for EDA RLFs are normally comprised of EDA grant funds and local cash matching share.

*RLF income* means interest earned on outstanding loan principal, interest earned on accounts holding RLF funds not needed for immediate lending, all loan fees and loan-related charges received from RLF borrowers, and other income generated from RLF operations. The RLF recipient may use RLF income only to capitalize the RLF and/or to cover eligible and reasonable costs necessary to administer the RLF, unless otherwise provided for in the grant agreement or approved in writing by EDA. RLF income excludes principal repayments.

*Secondary market* includes those entities that purchase an interest in a loan from an original lender.

*Securitization* refers to the technique of securing an investment of new capital with the stream of income generated by one or more (usually a large group of) existing loans. EDA broadly defines securitization transactions to include techniques such as the sale of loans,

pledging the future income stream of a loan, and similar activities, to access investor capital to increase available funds for lending.

**§ 308.9 Revolving Loan Fund Plan.**

RLF recipients must manage RLFs in accordance with an RLF Plan (Plan) as described in this part. For RLF recipients other than states, the Plan must be submitted to and approved by EDA and passed by resolution of the organizations' governing board prior to the grant award; political subdivisions of states may be exempted from this requirement with EDA approval.

(a) *Format and content.* (1) The title page of the Plan should show the RLF recipient organization's name and the date the Plan was adopted.

(2) Part I of the Plan, titled Revolving Loan Fund Strategy, summarizes the area CEDS and business development objectives, and describes the RLF's financing strategy, policy and portfolio standards. Organization of the material and the level of detail provided in the subsections of Part I may be varied to improve the narrative flow, provided the substantive content is adequately covered.

(3) Part II of the Plan, titled Operational Procedures, serves as the internal operating manual for the RLF.

(b) *Evaluation of Plans.* EDA will use the following criteria in evaluating Plans:

(1) The Plan must flow from and be consistent with the EDA-approved CEDS for the area.

(2) The Plan must be an internally consistent, coherent statement of the strategic purpose of the particular RLF and the various considerations influencing the selection of its financing strategy, policies, and loan selection criteria encompassing:

(i) A financing strategy that demonstrates a knowledgeable analysis of the local capital market and the financing needs of the targeted businesses; and

(ii) Financing policies and portfolio standards that are consistent with EDA policies and requirements.

(3) The strategic objectives defined must be sufficiently meaningful, though not necessarily quantified, so that progress toward them can be assessed over time.

(4) The administrative procedures for operating the RLF must be consistent with generally accepted prudent lending practices for public lending institutions.

**§ 308.10 Pre-loan requirements.**

(a) RLF recipients must adopt procedures to review the impacts of prospective loan proposals on the

physical environment. The Plan must provide for the disapproval of any loan project that adversely (without mitigation) impacts flood plains, wetlands, significant historic or cultural properties, drinking water resources, or nonrenewable natural resources. In administering the RLF, the RLF recipient must adopt procedures to comply, and ensure that potential borrowers comply, with applicable laws and regulations including, but not limited to §§ 316.1, 316.3, 316.7, 316.8, 316.15, and 317 of this chapter.

(b) RLF recipients are responsible for ensuring compliance with the applicable requirements of this chapter prior to providing any loan assistance under the RLF. RLF recipients are responsible for ensuring 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 recipients must develop loan agreements that include applicable Federal requirements to ensure compliance. RLF recipients must adopt procedures to diligently correct instances of non-compliance, including the calling of loans, if necessary. RLF recipient loan documents and procedures must protect and hold the Government harmless from and against all liabilities that the Government may incur 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 RLF recipient or any of its predecessors on the property.

#### **§ 308.11 Lending areas and modification of lending areas.**

(a) The economic activity and benefits of RLF loans must be located within the eligible areas identified in the grant award. The determination of eligibility of a new area will be made in accordance with § 301.2 of this chapter.

(1) Where such RLFs have a grant condition that permits new areas that subsequently become eligible to be added to the lending area, may add such areas with EDA approval. RLFs that were awarded assistance (RLF capitalization or recapitalization) before February 11, 1999, whether fully disbursed or not, and fully disbursed RLFs that were awarded assistance (RLF capitalization or recapitalization) on or after February 11, 1999.

(2) In the case of existing RLFs that are not fully disbursed that were

awarded assistance (RLF capitalization or recapitalization) on or after February 11, 1999, the area proposed to be added must also be eligible to receive an EDA grant rate equal to or greater than that of the original grant.

(b) Whenever an area is added, modification to the RLF Plan incorporating the new area and outlining the RLF lending strategy is required. Once approved, area eligibility is retained indefinitely.

#### **§ 308.12 Revolving Loan Fund income.**

(a) RLF income can be used to pay for eligible and reasonable administrative costs for the project. RLF recipients are 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 an 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 area's) commitment to the RLF, and the anticipated demand for RLF loans.

(b) RLF income that is not used for administrative costs during the selected twelve-month reporting period in which it is earned, must be added to the RLF capital base for lending purposes at the end of the twelve-month reporting period. Only RLF income earned during a current period may be used for current administrative expenses. RLF income may not be withdrawn from an RLF in a subsequent period for any uses, other than lending, without the written consent of EDA.

(c) In accounting for RLF income, any net proceeds from the sale, collection, or liquidation of a defaulted loan, up to the amount of the unpaid principal, will be treated as repayments of RLF principal and placed in the RLF for lending purposes only. Any proceeds in excess of the unpaid principal will be treated as RLF income.

(d) RLF recipients must comply with applicable OMB cost principles and with RLF Audit Guidelines (as found in OMB Circular A-133, Single Audit Act Requirements for State and Local Governments, Indian tribal governments, Institutions of Higher Education and Other Nonprofit Organizations or the Compliance Supplement, as appropriate) when charging costs against RLF income.

(e) When a RLF recipients uses RLF income to cover all or part of RLF administrative costs it must complete an RLF Income and Expense Statement required under § 308.14(c) of this chapter.

#### **§ 308.13 Records and retention.**

(a) *Loan files and related documents and records.* Loan files and related documents and records must be retained by RLF recipients over the life of the loan and for a three year period from the date of final disposition of the loan. The date of final disposition of the loan is defined as the date of:

(1) Full payment of the principal, interest, fees, penalties, and other costs associated with the loan; or

(2) Final settlement or write-off of any unpaid amounts associated with the loan.

(b) *Administrative records.* RLF recipients must:

(1) Maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF income expended for eligible RLF administrative costs.

(2) Retain records of administrative costs incurred for activities and equipment relating to the operation of the RLF for three years from the actual submission date of the last semi-annual or annual report which covers the period that such costs were claimed, or for five years from the date the costs were claimed, whichever is less.

(3) Make any retained records, even those retained for longer than the period described, available for inspection. The record retention periods, described in this § 308.13, are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement. In any event, EDA will not question claimed administrative costs that are more than three years old, unless fraud is an issue.

#### **§ 308.14 Revolving Loan Fund semi-annual and annual reports.**

(a) *Frequency of reports.* All RLF recipients, including existing RLFs that receive recapitalization grants, must submit semi-annual reports until they qualify or requalify for "Annual Report" status. RLF recipients may apply for "Annual Report" status if:

(1) All grant funds have been disbursed for at least one year;

(2) Accurate semi-annual reports have been submitted on-time for the preceding two years;

(3) Required periodic audits have been completed and submitted to EDA for the most recent audit period within the last two years; and

(4) EDA determines that the RLF is in compliance with all applicable RLF requirements.

(b) *Report contents.* RLF recipients must certify as part of the semi-annual or annual report to EDA that the RLF is being operated in accordance with the Plan referenced in § 308.9 of this part.

RLF recipients must request EDA approval of modifications to the Plan at any time there is evidence that such modifications are needed to ensure effective use of the RLF as a strategic financing tool.

(c) *RLF income statement.* (1) RLF recipients using RLF income equivalent to 50 percent or more or at least \$100,000 of RLF income for RLF administrative expenses during the selected twelve month period, must submit a completed RLF Income and Expense Statement per § 308.12(e) to the appropriate EDA Regional Office within 90 days of either September 30 or the RLF recipient's fiscal year end, whichever period is selected by the RLF recipient. RLF recipients using less than 50 percent and less than \$100,000 of RLF income for administrative expenses in the twelve-month period will retain the RLF Income and Expense Statement for three years. RLF recipients are required to make this statement available to EDA personnel upon request.

(2) *Performance Measures.* RLF recipients will submit to EDA as part of the semi-annual or annual report, the information identified as the Core Performance Measures in the special conditions accompanying the grant award. EDA will advise RLF recipients in writing, within a reasonable time for submission, in the event there are any modifications in the information required to be submitted.

#### § 308.15 Prudent management of Revolving Loan Funds.

(a) *Accounting principles.* (1) RLFs are expected to be operated in accordance with the generally accepted accounting principles (GAAP) and the provisions outlined in OMB Circular A-133 and Compliance Supplements as applicable.

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

(b) *Loan and accounting system documents.* (1) RLF recipients are required to provide certification by an independent accountant familiar with the RLF recipient's accounting system that its accounting system is adequate to identify, safeguard, and account for all RLF funds, including RLF income.

(2) RLF recipients are required to certify that standard RLF loan documents necessary for lending are in place and that these documents have been reviewed by its legal counsel for adequacy and compliance with the terms and conditions of the grant and applicable state and local laws. The

standard loan documents must include, at a minimum, the following:

- (i) Loan application,
- (ii) Loan agreement,
- (iii) Promissory note,
- (iv) Security agreement(s),
- (v) Deed of Trust or Mortgage (as applicable),
- (vi) Agreement of prior lien holder (as applicable), and
- (vii) Personal Guaranty Agreement (for officers or owners of corporate borrowers, as applicable).

(c) *Interest rates.* A RLF recipient can make loans and loan guarantees to eligible borrowers at interest rates and under conditions determined by the RLF recipient to be most appropriate in achieving the goals of the RLF. However, the minimum interest rate an RLF can charge is four (4) percentage points below the current money center prime rate quoted in the Wall Street Journal or the maximum interest rate allowed under state law, whichever is lower. In no event may the interest rate be less than four (4) percent. However, should the prime interest rate exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of the RLF recipient to implement its financing strategy.

(d) *Private leveraging.* (1) RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. This leveraging requirement applies to the portfolio as a whole, rather than to individual loans and is effective for the life of the RLF. Private investment, to be classified as leveraged, must be made concurrently with an RLF loan as part of the same business development project and may include:

- (i) Capital invested by the borrower or others,
- (ii) Financing from private entities, or
- (iii) The unguaranteed portion and 90 percent of the guaranteed portions of SBA 7(a) and SBA 504 debenture loans.

(2) Private investments do not include equity build-up in a borrower's assets or prior capital investments by a borrower unless the investment is made within nine months of the RLF loan and is recognized by the RLF recipient.

(e) *Conflict of interest.* (1) No officer, employee, or member of the RLF recipient's Board of Directors, or other Board (hereinafter referred to as "other board") that advises, approves, recommends or otherwise participates in decisions concerning loans or the use of RLF grant funds, or person related to the officer, another employee, or any member of the Board by immediate family, law, or business arrangement,

may receive any benefits resulting from the use of the RLF loan or grant funds. In addition, the RLF recipient may not lend RLF funds to an employee of the RLF recipient or any member of the RLF recipient's Board of Directors, or a member of any other Board. Immediate family is defined as parents, grandparents, siblings, children and grandchildren, but does not include more distant relatives, including cousins, unless they live in the same household. Exception: A benefit or loan may be conferred if the officer, employee, or Board member affected first discloses to the RLF recipient on the public record the proposed or potential benefit and receives the RLF recipient's written determination that the benefit involved is not so substantial as to reflect adversely upon or affect the integrity of the RLF recipient's decision process or the services of the officer, employee or board member.

(2) An officer, employee or board member of the RLF recipient will not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment or any other thing of monetary value, for himself or for another person, from any person or organization seeking to obtain a loan or any portion of the grant funds.

(3) Former board members and/or officers are ineligible to apply for or receive an RLF loan for a period of one year from the date of termination of his/her services. Exception: A benefit or loan may be conferred if the officer, or Board member affected first discloses to the RLF recipient on the public record the proposed or potential benefit and receives the RLF recipient's written determination that the benefit involved is not so substantial as to reflect adversely upon the integrity of the RLF recipient's decision process.

#### § 308.16 Disbursement of funds to Revolving Loan Funds.

(a) *Timing of request for disbursement.* A RLF recipient must request disbursements from EDA only at the time and in the amount immediately needed to close a loan or disburse funds to a borrower. Grant funds must be requested only for immediate use, *i.e.*, when the intent is to disburse the funds within 14 days of receipt.

(b) *Amount of disbursement.* As each new loan is made, the grant RLF recipient may request a disbursement of grant funds only for the difference, if any, between the amount of funds available for relending (from repayments of loan principal and RLF income) and the amount of the new loan, less an amount for local matching funds as may be required to be disbursed concurrent with the grant.

However, RLF income received during the grant period may be held to cover eligible administrative expenses and need not be disbursed in order to draw additional grant funds.

(c) *Interest-bearing accounts.* All RLF grant funds disbursed by EDA to reimburse RLF recipients for loan obligations already incurred must be held in interest bearing accounts by RLF recipients until disbursed to the borrower.

(d) *Pre-disbursement requirements.* RLF recipients are required to provide:

(1) Evidence to EDA that they have fidelity bond coverage for persons authorized to handle funds under the grant award in an amount sufficient to protect the interests of EDA and the RLF. Note that such insurance coverage must exist at all times during the life of the RLF; and

(2) Certification in accordance with § 308.15(b)(1) of this part.

(e) *Delays.* (1) If grant funds are requested and the loan disbursement is subsequently delayed, a RLF recipient may hold the funds up to 30 days from the date of receipt. In the event that a loan disbursement is delayed beyond 30 days from the date of receipt of the Federal disbursement, the undisbursed funds must be returned to the Government for credit to the RLF recipient's account. Returned funds will be available to the RLF recipient for future draw down. When returning prematurely drawn funds, checks should identify on their face the name of the grantor agency—"EDA" followed by the grant award number and the words "Premature Draw."

(2) The interest earned on prematurely withdrawn funds must be returned to the Government (with the exception of \$100 per year which may be retained for administrative expenses by states, local governments and Indian tribes in accordance with 15 CFR Part 24, and \$250 for those subject to 15 CFR Part 14 as appropriate) and should be remitted promptly, but no less frequently than quarterly. All checks submitted should state "EDA" on their face and the award number followed by the word "INTEREST" in order to identify the check in question as remittance of interest income.

(f) *Local share.* (1) When some portion of the local share of the RLF project is cash, it may only be used for lending. If the RLF project has an all-cash matching share, EDA's funds will be disbursed as needed for loan closing. The cash matching funds must be used either in proportion to the EDA funds, or at a faster rate than EDA funds.

(2) When an RLF project has a combination of in-kind and cash

matching 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 20 percent of the Federal funds may not be disbursed until all local in-kind match has been expended. The full amount of the local cash matching share will be expected to remain for use in the RLF.

(3) Upon repayment, local cash share funds are treated the same as EDA funds. Repayments of principal must be placed in the RLF for relending and interest payments must be used either for relending or for eligible RLF administrative costs. The local cash matching share must be available when needed for lending and must be under the control of the RLF recipient for the duration of the RLF for use in accordance with the terms of the grant.

#### § 308.17 Effective utilization of Revolving Loan Funds.

(a) *Loan closing and disbursement schedule.* (1) RLF loan activity must be sufficient to draw down grant funds in accordance with the time schedule for loan closings and disbursements to eligible RLF borrowers as prescribed in the award conditions. The time schedule requires that the initial round of lending (*i.e.*, the grant disbursement phase) be completed within three years of the grant award.

(2) If a RLF recipient substantially fails to meet the prescribed time schedules for loan closings and disbursements, EDA may terminate the undisbursed balance of the award. Exceptions may be granted where:

(i) Funds are needed to close and disburse funds on loans approved prior to the deadline and will be disbursed within 45 days of the deadline,

(ii) Funds are needed to meet continuing disbursement obligations on loans closed prior to the deadline, or

(iii) EDA has approved a time schedule extension.

(b) *Time schedule extension.* (1) RLF recipients are responsible for contacting EDA as soon as conditions become known that may materially affect their ability to meet the approved time schedules. RLF recipients must submit a written request to EDA for continued use of grant funds beyond a missed deadline. Extension requests must provide good reason for the delay and demonstrate that:

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

(ii) The 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;

(iv) The achievement of a new proposed time schedule is reasonable; and

(v) An explanation why no further delays are foreseen.

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

(c) *Capital Utilization Standard.* (1) During the revolving phase, RLF recipients must manage their repayment and lending schedules such that at least 75 percent of the RLF's capital is loaned out or committed at all times. RLF income earned during a current reporting period is not included as RLF capital when calculating the capital utilization percentage. Exception:

(i) RLF recipients that anticipate making large loans relative to the size of the capital base, may propose RLF Plans that call for holding more than 25 percent.

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

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

(i) *Sequestration of excess funds.* If the capital utilization standard is not met for two consecutive reporting intervals, EDA may require the RLF recipient to deposit "excess funds" in an interest bearing account; the portion of the interest earned on that account, attributable to the EDA grant, will be remitted to the U.S. Treasury. EDA approval is required to withdraw sequestered funds.

(ii) *Persistent noncompliance.* A RLF recipient will normally be provided a reasonable period of time to lend "excess funds" and achieve the standard. However, if a RLF recipient fails to achieve the standard after a reasonable period of time as determined by EDA, the grant may be subject to sanctions for suspension and/or termination.

#### § 308.18 Uses of capital.

Generally, eligible loans to borrowers include loans for fixed assets, the acquisition of equipment, working capital, or other authorized uses. The EDA grant and the local cash matching funds will be used only for the purpose of making loans under an RLF. To

preclude borrowers from using RLF funds inappropriately, the purpose of each RLF loan should be clearly stated in the loan agreement. RLFs established for business lending must conform to the following:

(a) *Loan guarantees.* Prior to full disbursement of grant funds, the RLF recipient may not use the RLF to guarantee loans made by other lenders. In the revolving phase, after the full disbursement of grant funds, the RLF may be used to guarantee loans of private lenders provided the RLF recipient has obtained EDA's prior written approval of its proposed loan guarantee activities. The Plan for any loan guarantee activities should include the following information:

(1) The maximum guarantee percentage that will be offered;

(2) A certification from the RLF attorney that the guarantee agreement is valid under state law. At a minimum, the guarantee agreement must address the following:

- (i) The maximum reserve requirement;
- (ii) The rights and duties of each party in regard to loan collections, servicing, delinquencies and defaults;
- (iii) Foreclosures;
- (iv) Bankruptcies;
- (v) Collateral disposition and the call provisions of the guarantee; and
- (vi) Interest income and loan fees, if any, which will accrue to the RLF.

(b) *Restrictions on RLF capital.* RLF capital may not be used to:

- (1) Acquire an equity position in a private business;
- (2) Subsidize interest payments on an existing loan;
- (3) Provide the equity contribution required of borrowers under other Federal loan programs;
- (4) Enable an RLF borrower to acquire an interest in a business, either through the purchase of stock or through the acquisition of assets, unless the need for RLF financing is sufficiently justified and documented in the loan write-up. Acceptable justification could include acquiring a business to substantially save it from imminent foreclosure, or acquiring it to facilitate a significant expansion or increased investment. In any case, the resulting economic benefits should be clearly consistent with the strategic objectives of the RLF;
- (5) Provide loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposit, or other investments not related to the objectives of the RLF;

(6) Refinance existing debt unless:

(i) There is sound economic justification and the RLF recipient sufficiently documents in the loan

write-up that the RLF is not replacing private capital solely for the purpose of reducing the risk of loss to an existing lender(s) or to lower the cost of financing to a borrower, or

(ii) An RLF uses RLF income sources and/or recycled RLF funds to purchase the rights of a prior lien holder during an in-process foreclosure action in order to preclude a significant loss on an RLF loan. This action may be undertaken only if there is a high probability of receiving compensation within 18 months from the sale of assets sufficient to cover an RLF's expenses plus a reasonable portion of the outstanding loan obligation; or

(7) Finance any activity that serves to relocate jobs from one commuting area to another. (Commuting area is that area defined by the distance people travel to work in the locality of the project receiving RLF financial assistance.) An RLF's standard loan agreement must include a provision for calling the loan if it is determined that:

- (i) The business used the RLF loan to relocate jobs from another commuting area, or
- (ii) The activity financed was subsequently moved to a different commuting area to the detriment of local workers.

(c) *Credit otherwise available.* Unless otherwise provided for in the grant agreement or modified in writing by EDA, a borrower is not eligible for RLF financing if credit is otherwise available on terms and conditions that permit the completion or successful operation of the project activity to be financed. The RLF recipient is responsible for determining that each borrower meets this requirement and for documenting the basis for its determination in the loan write-up.

#### § 308.19 Variances.

EDA may approve variances to the requirements of subpart B of this part provided they:

- (a) Are consistent with the goals of the Economic Adjustment Program and with an RLF's strategy,
- (b) Are necessary and reasonable for the effective implementation of the RLF,
- (c) Are economically and financially sound,
- (d) Do not conflict with applicable legal requirements, and
- (e) Do not change the scope of the award after the period of availability of the funds for obligation has expired.

#### PART 314—PROPERTY

1. The authority citation for part 314 continues to read as follows:

**Authority:** 42 U.S.C. 3211; 19 U.S.C. 2341–2355; 42 U.S.C. 6701; 42 U.S.C. 184;

Department of Commerce Organization Order 10–4.

2. Section 314.4 is amended by adding paragraph (c) to read as follows:

#### § 314.4 Unauthorized use.

\* \* \* \* \*

(c) *RLF grant projects.* (1) EDA may suspend or terminate any RLF grant for cause based on, but not limited to, the following:

- (i) Failure to make loans in accordance with the RLF Plan, including the time-schedule for loan closings;
- (ii) Failure to obtain prior EDA approval for such changes to the RLF Plan, including provisions for administering the RLF;
- (iii) Failure to submit progress, financial or audit reports as required by the terms and conditions of the grant agreement;
- (iv) Failure to comply with prohibitions against conflict-of-interest for any transactions involving the use of RLF funds; or
- (v) Failure to operate the RLF in accordance with the RLF Plan and the terms and conditions of the grant agreement.

(2) Whenever an RLF recipient fails in its fiduciary responsibilities or is unable or unwilling to perform as trustee of the grant, EDA may suspend, terminate or transfer the grant to an eligible successor with jurisdiction over the project area, to administer it as such trustee (replacement grantee).

(3) Whenever EDA terminates any RLF grant for cause, in whole or in part, it has the right to recover residual funds and assets of the RLF grant in accordance with the legal rights of the parties.

(4) If there is a partial termination of an RLF grant, the full amount of the original non-federal matching share is expected to be retained in the RLF for lending purposes unless otherwise provided for in the grant agreement or agreed to in writing by EDA.

3. Section 314.10 is amended by adding paragraph (c) to read as follows:

#### § 314.10 Revolving Loan Funds.

\* \* \* \* \*

(c) In the event of the sale, collection, or liquidation of RLF loans, any proceeds, net of repaid principal and reasonable administrative costs incurred, up to the amount of the outstanding loan principal, must be returned to the RLF for relending. Any net proceeds from loan sales 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 costs for administering the RLF in accordance with the rules for use of RLF income. The net transaction proceeds must be used for additional loans as part of the RLF project.

Dated: January 10, 2000.

**Chester J. Straub, Jr.,**

*Acting Assistant Secretary for Economic Development.*

[FR Doc. 00-898 Filed 1-14-00; 8:45 am]

BILLING CODE 3510-24-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR part 71

[Airspace Docket No. 99-ASW-32]

#### Revision of Class D Airspace; Hobbs, NM

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This amendment revises the Class D airspace at Hobbs, NM. The need to clarify the legal description of the Hobbs, NM Class D airspace in order to prevent confusion among users of the airspace has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations in the vicinity of Hobbs, NM.

**DATES:** Effective 0901 UTC, April 20, 2000.

Comments must be received on or before March 3, 2000.

**ADDRESSES:** Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99-AWS-32, Fort Worth, TX 76193-0520.

The official docket may be examined in the Office in the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort

Worth, TX 76193-0520, telephone 817-222-5593.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR part 71 revises the Class D airspace at Hobbs, NM. Upon a comparison of the description of the Hobbs, NM Class D airspace as described in Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999 and the Albuquerque Sectional Aeronautical Chart, dated November 4, 1999, the FAA discovered a discrepancy in the Hobbs, NM Class D airspace. This rule clarifies the legal description of the Hobbs, NM Class D airspace in order to prevent confusion among users of the airspace. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations in the vicinity of Hobbs, NM.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR § 71.1. The Class D airspace designation listed in this document will be published subsequently in the order.

#### The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

#### Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to

comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99-AWS-32." The postcard will be date stamped and returned to the commenter.

#### Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, it is determined that this final rule will not have federalism implications under Executive Order 13232.

Further, the FAA have determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that requires frequently and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) If promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves