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# SOUTHWESTERN COMMISSION

## REVOLVING LOAN FUND

# 2013

*Operating Plan and Rules – Revised November 2013*

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# REVOLVING LOAN FUND OPERATING OVERVIEW

## Revolving Loan Fund Operating Overview

### SCOPE AND GOALS

The Southwestern Commission (The Commission or SWC) is the Development District serving the seven southwestern counties of North Carolina. The service area includes Cherokee, Clay, Graham, Haywood, Jackson, Macon and Swain Counties. Since its creation in 1965, a primary goal of the Southwestern Commission has been to develop, attract, expand, and maintain better economic and employment opportunities within its seven county service area.

An ancillary goal has been to develop and maintain occupational skill levels in the human resource base so that new job opportunities can be fully capitalized upon. The Commission's Revolving Loan Fund (RLF) is an economic development tool to assist The Commission in reaching these goals.

### FUNDING

RLF funding comes from the Economic Development Administration (EDA) and the Appalachian Regional Commission (ARC). Generally, RLF loans will be made consistent with the Comprehensive Economic Development Strategy (CEDS) adopted by the Policy Board of the Southwestern Commission. A copy of the most recent CEDS is included with this Operating Plan and available on the Commission's web site. Also, the North Carolina EDA required stipulations for loans are included in this plan.

### PURPOSE

The purpose of the Southwestern Commission's Revolving Loan Fund is to assist in the creation and/or retention of private sector jobs within its seven county service area by providing loan funds (gap financing) in conjunction with funds from conventional lending institutions, from other non-traditional, gap financing sources; and, from the borrowers' own equity financing. Loan funds will revolve perpetually, providing supplemental, short-term financing of business and industry proposals.

Economic activities supported by the RLF include those which result in creation or retention of private sector jobs, like:

1. Small business development, including the start-up or expansion of locally owned businesses,
2. Retention of existing commercial, manufacturing, agriculture and service industries jobs,
3. Re-development of blighted land and vacant facilities for productive use,
4. Revitalization of downtown business districts in keeping with design criteria established by a Downtown Revitalization Program (DRP) committee,
5. Modernization and rehabilitation of existing industrial or manufacturing facilities,
6. Support for the use of new technologies, growth industries, high-tech firms, and/or,
7. Development of businesses owned and operated by minorities, women, and members of other disadvantaged groups.

# REVOLVING LOAN FUND OPERATING OVERVIEW

## OPERATING HISTORY AND IMPLEMENTATION

In 1984, when the RLF was created, a capital market analysis was conducted by contacting area bankers, non-traditional lenders, and other financial “experts” to discover why adequate financing for businesses and industry is not generally available from the existing financial institutions. In 1984, financing problems were found to include:

- In many cases equity requirements are too high to be affordable / available to smaller businesses,
- Traditional lending institutions are reluctant to make long-term loans needed for new businesses or small business expansion,
- Equity requirements for the purchase of equipment are often too high for potential borrowers,
- The equity of a company/business is sufficient to obtain loans for buildings but not for equipment,
- Traditional lending institutions are reluctant to fund new ideas, new technologies and new industries whose feasibility is yet to be concretely demonstrated.

When the RLF Operating Plan’s 1<sup>st</sup> Revision was completed in 2002, additional factors limiting credit availability were found to include:

- The merger of banks and loss of the “small town bank” atmosphere results in lending decisions being made in regional headquarters,
- Regional banks are not as interested – compared to traditional small town banks -- in meeting the financing needs of small businesses.

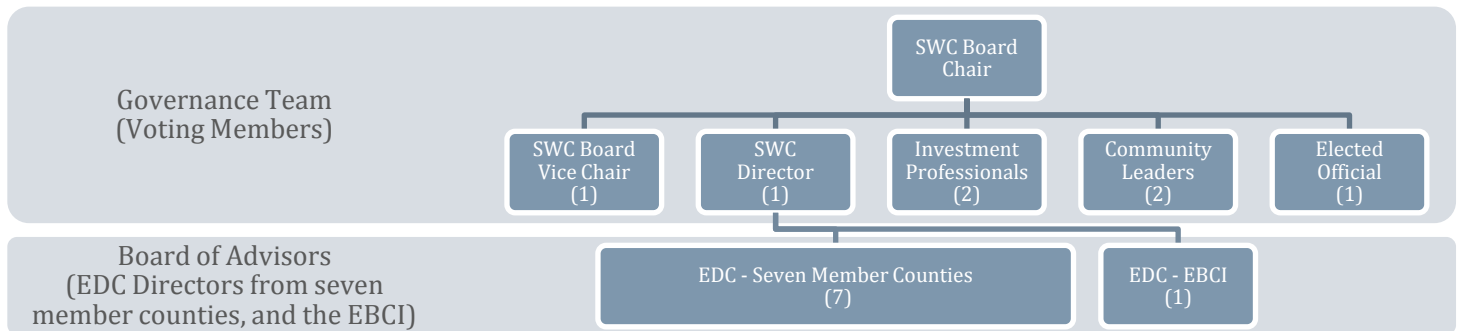
In 2005, concurrent with the RLF Operating Plan’s 2<sup>nd</sup> Revision, credit availability was relatively easy (perhaps, in retrospect, too easy) for large, higher risk investments; but smaller borrowers, ideas and businesses were being “squeezed out.”

Eight years later in 2013, concurrent with the RLF Operating Plan’s 3<sup>rd</sup> revision:

- Most – if not all – the former barriers to credit for smaller businesses still exist, and are compounded by the fact that traditional, commercial lenders are so risk adverse that credit is exceedingly difficult to acquire; and,
- Only marginal credit available to the rapidly growing local agriculture and local foods sector; and,
- Credit for service-oriented businesses or social entrepreneurship efforts (many of which are specifically needed to address societal opportunities in Region A) is virtually impossible to obtain; and,
- General uncertainty among conventional lenders about the viability and credit-worthiness of businesses in what has come to be called the “asset-based” sector.

# GOVERNANCE STRUCTURE

## Governance Structure



The Governance structure of the RLF will consist of:

- 1) The Chair will be the active, voting Chairperson of the SWC Board of Directors.
- 2) The Governance team (voting membership in addition to Chair) will consist of:
  - a. The SWC Vice Chair,
  - b. The SWC Director,
  - c. Two regional investment or banking professionals who will aid in managing funds,
  - d. Two Community Leaders “at large” to represent the community,
  - e. One elected official to represent regional interests.
- 3) The Board of Advisors will consist of:
  - a. Seven county EDC Directors,
  - b. A representative from the Eastern Band of Cherokee Indians (EBCI), to be appointed by the Chief of the EBCI.

Any representative serving on the Governance Team, except the Chair, may appoint an appropriately skilled, duly-authorized representative to serve in their position. However, active participation from the Board of Advisors representatives is required in person.

### ROLE OF THE CHAIR

The Chair will generally convene the RLF Fund Governance Team and Board of Advisors in regular meetings as prescribed in the Operating Plan (monthly or quarterly depending on activity levels). The Chair serves as “tie breaker” as needed in any voting or governance issue. The Chair will oversee all fund decisions and governance, and will ensure compliance with the operating plan and any governing regulations (e.g., EDA regulations, ARC regulations, etc.). The Chair will be the internal and external “face” of the RLF Fund Governance Team and Board of Advisors, and will serve as designated speaker and media contact for all aspects of communications to and from the community. All external communications will be

# GOVERNANCE STRUCTURE

conducted in an open and transparent manner through the Chair. No other member may officially or unofficially act as an external speaker or representative of the Governing body.

## ROLE OF THE GOVERNANCE TEAM

The Governance team will serve as the voting body of the RLF Fund. They will vote regarding investment decisions and fund management decisions. They will arrange, consider, make and monitor all investments in candidate organizations or projects. They will be responsible for investment decisions and financial results, and for communicating these results (through the Chair) to the community in an open and transparent manner.

## INVESTMENT ADVISORY SUB-COMMITTEE

The Governance Team will appoint three members to serve as investment advisory sub-committee members. The investment advisory sub-committee will make recommendations regarding the investment of funds not currently deployed to candidate companies or projects.

## ROLE OF THE BOARD OF ADVISORS

It is the role of the Board of Advisors to counsel, prepare and present candidate companies or investment projects from their respective districts. They will present their candidates to the Governance team for consideration, and serve as the conduit for all communications, status updates, investments and advice/counsel which flows between the RLF committee and candidates. EDCs will aid the candidates in preparing status updates, investment and business results reporting and any other administrative tasks required.

## LOOKING AHEAD

Given the intent of this fund, it is particularly and timely that it be enhanced and expanded in order to provide funding and thus opportunities for business growth and social services developments in our region.

# OPERATING PARAMETERS

## Operating Parameters

The following are general operating parameters of the Revolving Loan Fund.

### 1) Eligible Borrowers

Eligible borrowers for RLF funds include sole proprietorships, partnerships, or for-profit corporations. Other eligible borrowers include public economic development institutions; e.g., industrial park commissions and private, for-profit developers.

### 2) Eligible Loans

The RLF will make direct loans only when it has been determined that credit is not otherwise available under terms and conditions that would permit accomplishment of the borrower's project. The RLF will not make loan guarantees. RLF participation in a project must not displace commercial lenders. The RLF Administrator is responsible for determining that a borrower meets this requirement.

For each loan, the eligible borrower must agree to create new jobs and/or save existing jobs within a two (2) year period. Eligible loan purposes include direct loans for:

- a. Machinery, equipment and other fixed asset acquisition including transportation/delivery and installation costs; live animal stock – e.g., for meat production -- that can be sufficiently collateralized and insured.
- b. New construction, alteration, modification, repair and renovation of existing facilities, demolition, and site preparation;
- c. Land acquisition that is an integral part of a project where the dominant funding requirement is for building acquisition or construction;
- d. Working capital

### 3) Ineligible Borrowers

Ineligible borrowers for RLF funds include the Southwestern Commission (or its subsidiaries), land banking/real estate investment companies, speculative building and development companies, passive investment companies, lending institutions, non-profit or governmental organizations and, as a general rule, non-franchise restaurants.

### 4) Ineligible Loans

The RLF cannot make loans for the following:

# OPERATING PARAMETERS

- a. Land acquisition only;
- b. Relocation of existing jobs from other labor areas;
- c. Creation of highly seasonal jobs;
- d. Equity position of the RLF in private businesses;
- e. Subsidization of interest payment on existing loans;
- f. Refinancing of existing loan from other lenders or debt consolidation;
- g. Provision of mandatory equity contribution required of borrowers for other Federal loan programs;
- h. Establishment of revolving lines of credit for borrowers;
- i. Loans to any non-profit or governmental organizations;
- j. Loans to itself (the Commission) or to a subsidiary;
- k. Loans made outside the seven county service area.
- l. Loans that create a potential conflict-of-interest or appearance of one for any officer or employee of the Southwestern Commission, any current member of the RLF Loan Advisory Committee, or anyone or otherwise participates in decisions on RLF loans, and people related to them by blood, marriage, or law. Former members of the Board, former members of the staff and former members of the Loan Review Committee are barred from receiving RLF assistance for one year from the date of termination of their service. Loan activities that directly benefit these individuals or people related to them by blood, marriage, or law is prohibited for one year from the date of termination of service of such related person.

## 5) Typical Loan:

The total project cost of a RLF loan is unlimited; however, the maximum Commission RLF participation is limited to \$200,000. The minimum RLF participation is \$25,000. Guidelines differ somewhat for EDA RLF funded projects and ARC RLF funded projects. A “typical” EDA RLF funded project will consist of 51 <sup>2</sup>/<sub>3</sub>% first lien position from the private sector, 33 <sup>1</sup>/<sub>2</sub>% second lien position from the RLF and 15% equity from the borrower. Generally, the ARC RLF amount is limited to 50% of the total project cost except that ARC RLF loans in ARC designated distressed counties may be made for up to 80% of project costs. Loans are limited to 30% of project costs in ARC designated competitive counties and not available in attainment counties.

## 6) Regional ARC Status Designations

The ARC designations for the seven counties in the SWC region, effective January 1, 2014 are:

Cherokee – regular    Clay – regular    Graham –distressed    Haywood - regular

Jackson – regular    Macon – regular    Swain – distressed



# OPERATING PARAMETERS

## 7) Job Creation Requirements

A requirement for lending RLF funds is that at least one (1) job is required to be created/retained for every \$25,000 in RLF funds. The borrower will have two years from the date of loan closing to create/retain the committed number of jobs or a pro-rata amount of the RLF loan must be returned to the RLF fund.

## 8) Equity Requirements

Generally, a borrower will be expected to provide fifteen percent (15%) equity contribution to the venture. In some instances, equity contributions may be as low as five percent (5%). Any one borrower may have outstanding no more than \$200,000 through multiple loans

## 9) Lending Policies:

The RLF financing policies that will be used to address the financing problems and gaps in the area include the following:

- a. On a project-by-project basis, RLF funds will be made available for the shortest feasible term and as the smallest feasible portion of entire funds needed.
- b. Working capital loans will be limited to thirty percent of the total RLF portfolio. Generally, they will be for a three to five year term.
- c. The RLF will have a solid but flexible payback policy. After evaluation of specific circumstances, the RLF Advisory Committee may approve a temporary moratorium on loan payment.
- d. The minimum interest rate charged will be four (4) points below prime (probably need to add "or 4%, whichever is lower.")
- e. In the determination of collateral requirements, the RLF will consider the merits and potential economic benefits of each request. The RLF may secure a first, second, or third lien on available collateral. The lien position of the RLF may be subordinate and inferior to lien or liens securing other loans made in connection with a project.
- f. When the purpose of a loan is for working capital, the RLF will normally obtain collateral such as liens on inventories, accounts receivable, fixed assets and/or other available assets of the borrower. Such liens will be properly recorded as prescribed by applicable state and local Uniform Commercial Code (UCC) laws. Ordinarily, RLF funds will not be used to take a subordinate lien position or other Federal, State or Local loan programs participating in the project.
- g. The RLF will ordinarily require security in the form of the assignment of patents and licenses; the acquisition of hazard, liability and other forms of insurance including flood insurance, as appropriate, performance bonds, and such other additional security as is deemed necessary to mitigate the RLF's exposure. Southwestern Commission, as administrator of the RLF, must be shown as a lender loss payee/mortgagee by endorsement on insurance.

## OPERATING PARAMETERS

- h. RLF loans to closely-held corporations, partnerships, or proprietorships dependent for their continuing success on certain individuals ordinarily will be required to provide and assign to Southwestern Commission life insurance on these key people.
- i. Personal guarantees from a borrower's principal owners (partnerships and proprietorships) and their spouses, to the extent permitted by law, making them jointly and severally liable for the loan, will be required. In case of a corporate borrower, in addition to corporate asset, members of the Board of Directors holding twenty percent or more of the corporation's outstanding common stock or twenty percent or more of the corporation's voting stock and their spouses (if held jointly), will guarantee loans.
- j. Should it be determined that it is necessary or desirable to take actions to protect or further the interests of the RLF, Southwestern Commission shall act to sell, collect, liquidate or otherwise recover on loans extended by the RLF in accordance with the legal rights of the Commission, other lenders, and the RLF borrower.
- k. Southwestern Commission may modify the terms under which RLF financing has been extended to enhance the ability of the RLF to achieve program objectives.

# ECONOMIC DEVELOPMENT ASSOCIATION REQUIREMENTS

## Economic Development Association Requirements

Because the United States Economic Development Foundation (EDA) provides funding support to the SWC Revolving Loan Fund through the Appalachian Regional Council (ARC), the following requirements are mandatory and compliance is a standard requirement for any loan funds.

**Preface:** Within RLF Plans, EDA Regulations should work “hand in glove” with local policies, strategies and objectives to guide the management of RLF funds. To this end, the SWC RLF Operating Plan includes the EDA Regulations indicated below, which are included exactly as written in Chapter 307.7 Subpart B: Special Requirements for Revolving Loan Funds and Use of Grant Funds.

### SECTION I: REVOLVING LOAN FUND STRATEGY

**Name of organization:** The Southwestern North Carolina Planning and Economic Development Commission (Southwestern Commission or “SWC”)

#### **List of Counties Comprising the Lending Territory:**

Cherokee – regular

Clay - regular

Graham –distressed

Haywood – regular

Jackson – regular

Macon – regular

Swain – distressed

#### **Description of Comprehensive Economic Development Strategy**

The SWC 2012 Comprehensive Economic Development Strategy (CEDS) lists the following goals for the region’s economic development:

The EDD’s advisory committee created the following overarching goals in 2012 based on discussions facilitated by the Southwestern Commission with input from regional economic development professionals.

**Goal 1:** Promote the orderly expansion and upgrade of housing and other support facilities to accommodate the region’s expanding economic needs

**Goal 2:** Provide a comprehensive package of business development resources to the region’s established and emerging businesses

# ECONOMIC DEVELOPMENT ASSOCIATION REQUIREMENTS

**Goal 3:** Expand the region's capacity to inventory and market vacant sites and buildings for economic development

**Goal 4:** Create, maintain and expand data and information collection capacity for regional analysis and investment performance evaluation

**Goal 5:** Evaluate and enhance the agricultural economy while promoting prime farmland soil protection strategies

**Goal 6:** Foster, facilitate and promote coordinated regional economic and workforce development initiatives

**Goal 7:** Attract and incentivize new businesses and industries to the region to expand the economy

**Goal 8:** Align educational offerings and workforce development programs with the evolving needs of the marketplace focused on existing, emerging and expanding businesses

**Goal 9:** Expand 21<sup>st</sup> Century telecommunications infrastructure throughout the region enabling the Region to connect to the global economy

**Goal 10:** Maintain and upgrade the Region's multimodal transportation network with a focus on resolving our east/west transportation corridor challenge coupled with safety improvements

**Goal 11:** Support grassroots community driven initiatives to improve and revitalize our town centers to stimulate economic activity

**Goal 12:** Create a framework for the redevelopment of underutilized mills and other current vacant manufacturing sites

**Goal 13:** Develop a framework and an evaluation methodology for the prioritization of future regional investments

## **Business Development Objectives**

### **RLF Financing Strategy**

307.15 Prudent management of Revolving Loan Funds.

(A) Accounting principles.

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

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

(B) Loan and accounting system documents.

# ECONOMIC DEVELOPMENT ASSOCIATION REQUIREMENTS

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

(2) Prior to the disbursement of any EDA funds, the RLF Recipient shall certify that standard RLF loan documents reasonably necessary or advisable for lending are in place and that these documents have been reviewed by its legal counsel for adequacy and compliance with the terms and conditions of the Grant and applicable State and local law. The standard loan documents must include, at a minimum, the following:

- (i) Loan application;
- (ii) Loan agreement;
- (iii) Board of directors' meeting minutes approving the RLF loan;
- (iv) Promissory note;
- (v) Security agreement(s);
- (vi) Deed of trust or mortgage (as applicable);
- (vii) Agreement of prior lien holder (as applicable); and
- (viii) Signed bank turn-down letter demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. EDA will permit the RLF Recipient to accept alternate documentation only if such documentation is allowed in the Recipient's EDA-approved RLF Plan.

## (C) Interest rates—

### **RLF Financing Policies**

(1) General rule. An RLF Recipient may make loans to eligible borrowers at interest rates and under conditions determined by the RLF Recipient to be appropriate in achieving the goals of the RLF. The minimum interest rate an RLF Recipient may charge is four (4) percentage points below the lesser of the current money center prime interest rate quoted in the Wall Street Journal, or the maximum interest rate allowed under State law. In no event shall the interest rate be less than the lower of four (4) percent or 75 percent of the prime interest rate listed in the Wall Street Journal.

(2) Exception. Should the prime interest rate listed in the Wall Street Journal exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of the RLF Recipient to implement its financing strategy.

## (D) Private leveraging.

(1) RLF loans must leverage private investment of at least two dollars for every one dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF's operation. To be classified as leveraged, private investment must be made within twelve (12) months of approval of an RLF loan, as part of the same business development project, and may include:

- (i) Capital invested by the borrower or others;

# ECONOMIC DEVELOPMENT ASSOCIATION REQUIREMENTS

(ii) Financing from private entities; or

(iii) The non-guaranteed portions and ninety (90) percent of the guaranteed portions of the U.S. Small Business Administration's 7(A) loans and 504 debenture loans.

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

(E) RLF certification course. EDA may establish a mandatory RLF certification program to enhance RLF Recipients' ability to administer RLF Grants in a prudent manner. If so required by EDA, the RLF Recipient must satisfactorily complete this program, and may consider the cost of attending the certification courses as an administrative cost, provided the requirements set forth in § 307.12 are satisfied.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62868, Oct. 22, 2008; 75 FR 4264, Jan. 27, 2010]

## **307.17 Uses of capital.**

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

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

(1) Acquire an equity position in a private business;

(2) Subsidize interest payments on an existing RLF loan;

(3) Provide for borrowers' required equity contributions under other Federal Agencies' loan programs;

(4) 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;

(5) Provide RLF loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposit or any investment unrelated to the RLF; or

(6) Refinance existing debt, unless:

(i) The RLF Recipient sufficiently demonstrates 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 shall 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

# ECONOMIC DEVELOPMENT ASSOCIATION REQUIREMENTS

portion of the outstanding RLF loan within eighteen (18) months following the date of refinancing.

(C) Compliance and Loan Quality Review. To ensure that the RLF Recipient makes eligible RLF loans consistent with its RLF Plan or such other purposes approved by EDA, EDA may require an independent third party to conduct a compliance and loan quality review for the RLF Grant every three (3) years. The RLF Recipient may undertake this review as an administrative cost associated with the RLF's operations provided the requirements set forth in § 307.12 are satisfied.

(D) Use of In-Kind Contributions. In- Kind Contributions may satisfy Matching Share requirements when specifically authorized in the terms and conditions of the RLF Grant and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs.

[73 FR 62868, Oct. 22, 2008 as amended at 75 FR 4265, Jan. 27, 2010]

## **RLF Portfolio Standards**

(E) Private leveraging.

(1) RLF loans must leverage private investment of at least two dollars for every one dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF's operation. To be classified as leveraged, private investment must be made within twelve (12) months of approval of an RLF loan, as part of the same business development project, and may include:

- (i) Capital invested by the borrower or others;
- (ii) Financing from private entities; or
- (iii) The non-guaranteed portions and ninety (90) percent of the guaranteed portions of the U.S. Small Business Administration's 7(A) loans and 504 debenture loans.

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

(F) RLF certification course. EDA may establish a mandatory RLF certification program to enhance RLF Recipients' ability to administer RLF Grants in a prudent manner. If so required by EDA, the RLF Recipient must satisfactorily complete this program, and may consider the cost of attending the certification courses as an administrative cost, provided the requirements set forth in § 307.12 are satisfied.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62868, Oct. 22, 2008; 75 FR 4264, Jan. 27, 2010]

## **SECTION II: OPERATIONAL PROCEDURES**

### **Organization Structure**

- Composition/Role of governing body and RLF board
- Include policy that members of governing body are not also members of RLF board and vice versa (violation of internal controls/conflict of interest)

# ECONOMIC DEVELOPMENT ASSOCIATION REQUIREMENTS

## **302.17 EDA's conflict of interest regulation**

### 302.17 Conflicts of interest.

(A) General. It is EDA's and the Department's policy to maintain the highest standards of conduct to prevent conflicts of interest in connection with the award of Investment Assistance or its use for reimbursement or payment of costs (e.g., procurement of goods or services) by or to the Recipient. 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 may also exist where there is an appearance that an Interested Party's objectivity in performing his or her responsibilities under the Project is impaired. For example, an appearance of impairment of 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. Additionally, a conflict of interest may result from non-financial gain to an Interested Party, such as benefit to reputation or prestige in a professional field.

(B) Prohibition on direct or indirect financial or personal benefits.

(1) An Interested Party shall not receive any direct or indirect financial or personal benefits in connection with the award of Investment Assistance or its use for payment or reimbursement of costs by or to the Recipient.

(2) An Interested Party shall also not, directly or indirectly, solicit or accept any gift, gratuity, favor, entertainment or other benefit having monetary value, for himself or herself or for another person or entity, from any person or organization which has obtained or seeks to obtain Investment Assistance from EDA.

(3) Costs incurred in violation of any conflicts of interest rules contained in this chapter or in violation of any assurances by the Recipient may be denied reimbursement.

(4) See § 315.15 of this chapter for special conflicts of interest rules for Trade Adjustment Assistance Investments.

(C) Special rules for Revolving Loan Fund ("RLF") Grants. In addition to the rules set forth in this section:

(1) An Interested Party of a Recipient of an RLF Grant shall not receive, directly or indirectly, any personal or financial benefits resulting from the disbursement of RLF loans;

(2) A Recipient of an RLF Grant shall also not lend RLF funds to an Interested Party; and

(3) Former board members of a Recipient of an RLF Grant and members of his or her Immediate Family shall not receive a loan from such RLF for a period of two (2) years from the date that the board member last served on the RLF's board of directors.

[71 FR 56675, Sept. 27, 2006, as amended at 73FR 62866, Oct. 22, 2008]

## **Interest Rate**

307.15 contains EDA interest rate regulation

(D) Interest rates—



# ECONOMIC DEVELOPMENT ASSOCIATION REQUIREMENTS

- (1) General rule. An RLF Recipient may make loans to eligible borrowers at interest rates and under conditions determined by the RLF Recipient to be appropriate in achieving the goals of the RLF. The minimum interest rate an RLF Recipient may charge is four (4) percentage points below the lesser of the current money center prime interest rate quoted in the *Wall Street Journal*, or the maximum interest rate allowed under State law. In no event shall the interest rate be less than the lower of four (4) percent or 75 percent of the prime interest rate listed in the *Wall Street Journal*.
- (2) *Exception*. Should the prime interest rate listed in the *Wall Street Journal* exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of the RLF Recipient to implement its financing strategy.

## Revolving Loan Income

### § 307.12 Revolving Loan Fund Income.

(A) *General requirements*. 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 administrative costs, provided:

- (1) Such RLF Income and the administrative costs are incurred in the same six-month (6) Reporting Period;
- (2) RLF Income that is not used for administrative costs during the six month (6) Reporting Period is made available for lending activities;
- (3) RLF Income shall not be withdrawn from the RLF Capital base in a subsequent Reporting Period for any purpose other than lending without the prior written consent of EDA; and
- (4) The RLF Recipient completes an RLF Income and Expense Statement (the "*Income and Expense Statement*") as required under § 307.14(c).

(B) *Compliance guidance*. When charging costs against RLF Income, RLF Recipients must comply with applicable federal cost principles and audit requirements as found in:

- (1) 2 CFR part 225 (OMB Circular A-87 for State, local, and Indian tribal governments), 2 CFR 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), and 2 CFR part 220 (OMB Circular A-21 for educational institutions); and
- (2) OMB Circular A-133 for Single Audit Act requirements for States, local governments, and non-profit organizations and the Compliance Supplement, as appropriate.

(C) *Priority of payments on defaulted RLF loans*. When an RLF Recipient receives proceeds on a defaulted RLF loan that is not subject to liquidation pursuant to § 307.20, such proceeds shall be applied in the following order of priority:

- (1) *First*, towards any costs of collection;
- (2) *Second*, towards outstanding penalties and fees;
- (3) *Third*, towards any accrued interest to the extent due and payable; and
- (4) *Fourth*, towards any outstanding principal balance.

# ECONOMIC DEVELOPMENT ASSOCIATION REQUIREMENTS

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62867, Oct. 22, 2008]

## **Priority of Payment on Defaulted Loans**

307.12 regulation language to be folded into RLF Plan

### **Loan Documentation**

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

- (i) Loan application;
- (ii) Loan agreement;
- (iii) Board of directors' meeting minutes approving the RLF loan;
- (iv) Promissory note;
- (v) Security agreement(s);
- (vi) Deed of trust or mortgage (as applicable);
- (vii) Agreement of prior lien holder (as applicable); and
- (viii) Signed bank turn-down letter demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed.

EDA will permit the RLF Recipient to accept alternate documentation only if such documentation is allowed in the Recipient's EDA-approved RLF Plan.

## **Environmental Considerations**

### **307.10 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 compliance with applicable environmental laws and other regulations, including but not limited to parts 302 and 314 of this chapter. The RLF Recipient must also adopt procedures to comply, and ensure that potential borrowers comply, with applicable environmental laws and regulations.

(B) RLF Recipients 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 shall include applicable Federal requirements to ensure compliance and RLF Recipients must adopt procedures to diligently correct instances of non-compliance, including loan call stipulations.

(C) 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 RLF Grant 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 apply 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 RLF Recipient or any of its borrowers, predecessors or successors.

# ECONOMIC DEVELOPMENT ASSOCIATION REQUIREMENTS

## **RLF Semi Annual Reporting**

### **307.14 Revolving Loan Fund semi-annual report and Income and Expense Statement.**

(A) *Frequency of reports.* All RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, must complete and submit a semi-annual report in electronic format, unless EDA approves a paper submission.

(B) *Report contents.* RLF Recipients must certify as part of the semi-annual report to EDA that the RLF is operating in accordance with the applicable RLF Plan. RLF Recipients also must describe (and propose pursuant to § 307.9) any modifications to the RLF Plan to ensure effective use of the RLF as a strategic financing tool.

(C) *RLF Income and Expense Statement.*

An RLF Recipient using either fifty (50) percent or more (or more than \$100,000) of RLF Income for administrative costs in a six-month (6) Reporting Period must submit to EDA a completed Income and Expense Statement (Form ED-209I or any successor form) for that Reporting Period in electronic format, unless EDA approves a paper submission.

[73 FR 62867, Oct. 22, 2008, as amended at 75 FR 4264, Jan. 27, 2010]

## **Records and Retention**

### **307.13 Records and retention.**

(A) *Closed Loan files and related documents.*

The RLF Recipient shall 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 such Closed Loan. The date of final disposition of a Closed Loan is the date:

- (1) Principal, interest, fees, penalties and all other costs associated with the Closed Loan have been paid in full; or
- (2) Final settlement or discharge and cessation of collection efforts of any unpaid amounts associated with the Closed Loan have occurred.

(B) *Administrative records.* RLF Recipients must at all times:

- (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 expenses 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 report that covers the Reporting Period in which such costs were claimed.
- (3) Make available for inspection retained records, including those retained for longer than the required period. The record retention periods described in this section are minimum periods and such prescription does not limit any other record retention requirement of law or agreement. In no event will EDA question claimed administrative costs that are more than three (3) years old, unless fraud is at issue.

# ECONOMIC DEVELOPMENT ASSOCIATION REQUIREMENTS

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62867, Oct. 22, 2008]

## **Loan Write off Policy**

EDC requires that the Operating Plan should include a well thought out, progressive approach to managing loans in default to the point of write off and submission of a 1099C to IRS and borrower. This management and write off policy follows:

## **Late Payment Follow-up Procedures**

- a. Upon being advised that a payment due was not made, SWC RLF staff will contact the borrower promptly to determine the problem, if any exists.
- b. The loan servicer will send a written notice of delinquent payment 5 working days after due date with notification of late penalty, and will notify the SWC RLF staff in writing.
- c. RLF staff will send a second written notice 30 days after the due date.
- d. RLF staff will send a third written notice 60 days after the due date.
- e. RLF staff will send a fourth written notice 90 days after the due date.
- f. During the first 30 days of delinquency, written and oral communication, as well as site visits by RLF staff will be utilized to resolve the delinquency.
- g. If, after 90 days a delinquency still exists and the loan has not been renegotiated or brought current, the loan will generally be determined to be in default and recovery of the security will commence.
- h. Any renegotiation of loan terms to remedy a default must be approved the SWC RLF staff and committee.
- i. If at any time during this 90-day period, the Chairperson or Committee believes that the borrower cannot or will not bring the loan current, with Committee approval, RLF staff can declare the loan in default and begin recovery against collateral, if deemed appropriate.

## **Collection Procedures**

The SWC RLF staff will work to exercise all rights and privileges of a lender in order to collect the proceeds on delinquent loans. To ensure that the delinquent loan is collected in an appropriate, efficient, and timely manner, staff will:

- a. Prepare a plan of action with guidance by the Loan Administrative Board for collecting the loan and taking action against the collateral.
- b. Make sure all required loan documentation is in order.
- c. Consult with the City Attorney on all default notices and collection efforts and to ensure that no laws or regulations will be violated by the collection effort and that all legally required actions are taken.
- d. Contact all other co-lenders as appropriate.
- e. List defaulted or chronically delinquent loans with credit bureaus.
- f. Notify the guarantors of the default and put them on notice that they are expected to make payment, in full, upon demand.
- g. Begin collection procedures and/or asset liquidation process.

# ECONOMIC DEVELOPMENT ASSOCIATION REQUIREMENTS

## **Write-off Policy and Procedures**

Loans with an outstanding balance that have been placed in default and remain outstanding after 180 days will generally be written off. However, collection efforts will continue until determined not to be cost effective or prospects for recovery no longer exist. A reasonable loss through defaults will be considered without establishing a loan loss reserve. All write-offs must be directed from the Committee to the SWC for approval and signoff.

## **OTHER**

The RLF will conduct an annual collateral valuation, and a subsequent evaluation to determine whether or not the RLF loan portfolio is over capitalized or undercapitalized.

# LOAN ADMINISTRATION

## Loan Administration

Southwestern Commission will not normally charge loan origination fees or loan closing costs. Those costs are considered a part of loan administration and will be funded from program income.

The RLF Advisory Committee will review and evaluate all loan applications. It will make recommendation on each loan application to the Policy Board of Southwestern Commission. No RLF loans will be made without the favorable recommendation of the RLF Loan Advisory Committee. The Policy Board makes the final decision on loan approval.

RLF Advisory Committee meetings are scheduled on an as-needed basis and no more often than six times a year. Advisory Committee meetings are scheduled in the same months as and one-two weeks before the Commission's Policy Board holds its meetings.

The Development District has the staff skills in the areas of business finance, marketing, loan packaging, loan processing and loan servicing to effectively administer/operate the Revolving Loan Fund. Only legal services will be acquired from outside the Commission organization.

District staff, primarily the RLF Administrator, will be responsible for publicizing the availability of the Revolving Loan Fund program through the news media, flyers, and promotional brochures. District staff will meet periodically with economic developers, bankers, other non-traditional lenders, small business centers, and local government officials to publicize the program.

District staff will be responsible for reviewing and packaging loans for submission to the Loan Advisory Committee. Loan packaging will consist of the following:

1. Meeting and interviewing potential applicants to gain an understanding of the project and its parameters, the principals and the potential structure of the deal. The purpose of the interview is to give the potential applicant specific information about the RLF program. To determine if the project is feasible, and to determine whether the proposed project meets goals of the RLF program.
2. Applicants which are determined to be eligible for RLF assistance will be given an RLF application and brochure which contains an outline of eligible projects, eligible applicants, and loan guidelines. An RLF application and brochure are included in the Attachments. An RLF application must be complete with all required documentation before it is submitted to the RLF Loan Advisory Committee.
3. Completed RLF application packages are submitted to the RLF Loan Advisory Committee for review and recommendation for approval/disapproval.

A loan application flow chart is included in the Appendix of this document.

District staff, primarily the RLF Administrator, is responsible for the administration, monitoring, and servicing of the loan from loan disbursement through full payment. Staff will make periodic visits to the borrower's business, monitor the loan agreement for defaults in covenants and maintain an awareness of

# LOAN ADMINISTRATION

current and other borrowers. Loans are considered delinquent as defined in the executed Promissory Note. Delinquencies in payments will be addressed by mail, telephone or personal visits from the staff. Delinquencies may be resolved by loan restructuring, moratorium on payments or other techniques as recommended by the RLF Advisory Committee. Unresolved delinquencies will be declared in loan default and turned over to the RLF attorney. The attorney will recommend and carry out appropriate courses of action, including foreclosure.

A portion of program income, the income received as a result of RLF lending activities, may be used to cover reasonable and necessary administrative cost of the RLF program. The remaining program income will be added to the RLF capital base. All repayments of RLF grant principal must be returned to the RLF for subsequent lending. Proceeds from the sale, collection or liquidation of loan collateral will also be returned to the RLF for lending. The reasonable costs of collection or action to recover a loan are treated as administrative expense. Any proceeds from the sales of collateral assets above the original unpaid amount of the loan are treated as program income.

As a requirement of receiving an RLF loan, recipients are required to report their business results, using a pre-agreed-upon format, on a regular quarterly basis, to SWC staff. Staff will review the information with the loan recipient, and include a summary of loan results/status in regular quarterly updates to the advisory committee and other SWC leadership. See SWC staff for reporting requirements.

# CONTACT INFORMATION

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# APPENDIX - LOAN APPLICATION AND APPROVAL PROCESS FLOW CHART

Appendix - Loan Application and Approval Process Flow Chart

