

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

378



**FROM:** Economic Development Agency

**SUBMITTAL DATE:**  
August 23, 2016

**SUBJECT:** Ratify and Approve the Financial Assistance Award from the U.S. Department of Commerce Economic Development Administration to Establish a Revolving Loan Fund, Accept the Allocation of Funds, Commit Matching Funds, and Approve Resolution No. 2016-026 Establishing a County of Riverside Revolving Loan Fund Program, All Districts, [\$1,528,633] Federal USED A Grant funds, 80%, EDA-Economic Development Funds 20%; Not A Project Under CEQA

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Find that the Revolving Loan Fund and the County of Riverside Revolving Loan Fund Program are not projects under the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15378 (b)(4);
2. Find that the Revolving Loan Fund is Categorically Excluded under the National Environmental Policy Act (NEPA) in accordance with Economic Development Administration Directive 17.02-2.02.(j) for the U.S. Department of Commerce's Economic Development Administration;

(Continued)

Robert Field  
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
<b>COST</b>	\$ 825,900	\$ 702,733	\$ 1,528,633	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0	
<b>SOURCE OF FUNDS:</b> \$1,222,906 Federal USED A Grant funds, 80%; \$305,727 EDA- Economic Development funds 20%				<b>Budget Adjustment:</b> Yes For Fiscal Year: 2015/16 - 2018/19	

**C.E.O. RECOMMENDATION:**

APPROVE

BY:   
Rohini Dasika

County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

3)

On motion of Supervisor Ashley, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley  
Nays: None  
Absent: None  
Date: August 23, 2016  
xc: EDA, Auditor

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

Prev. Agn. Ref.:

District: All

Agenda Number:

3-32

FORM APPROVED COUNTY COUNSEL  
BY:   
GREGORY P. PRIAMOS  
DATE

Departmental Concurrence

FISCAL PROCEDURES APPROVED  
PAUL ANGULO, CPA, AUDITOR-CONTROLLER  
BY:   
Esteban Hernandez

A-30  
 4/5 Vote  
 Positions Added  
 Change Order

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

Economic Development Agency

**FORM 11:** Ratify and Approve the Financial Assistance Award from the U.S. Department of Commerce Economic Development Administration to Establish a Revolving Loan Fund, Accept the Allocation of Funds, Commit Matching Funds, and Approve Resolution No. 2016-026 Establishing a County of Riverside Revolving Loan Fund Program, All Districts, [\$1,528,633] Federal USED A Grant funds, 80%, EDA-Economic Development Program Funds 20%; Not A Project Under CEQA

**DATE:** August 23, 2016

**PAGE:** 2 of 6

**RECOMMENDED MOTION:** (Continued)

3. Ratify and Approve the attached Financial Assistance Award from the U.S. Department of Commerce's Economic Development Administration (USED A) to establish a Revolving Loan Fund in the County, and accept the grant thereunder in the amount of \$1,222,906 (USED A Revolving Loan Fund Grant) and any future amendments that add grant funds;
4. Approve the attached Special Award Conditions USED A, Revolving Loan Fund Financial Assistance Award Standard Terms and Conditions, and Department of Commerce Financial Assistance Standard Terms and Conditions;
5. Approve the attached County of Riverside Economic Development Agency Revolving Loan Fund Administrative Plan, Policies and Procedures (RLF Policies and Procedures) and authorize the Assistant County Executive Officer/EDA, or designee, to make any modifications to the RLF Policies and Procedures as required by the USED A, subject to approval by County Counsel;
6. Approve the allocation of County of Riverside Economic Development Agency-Economic Development funds in the amount of \$305,727 to be used as a non-federal matching share for eligible project expenses incurred in connection with the Revolving Loan Fund as required by the USED A;
7. Approve and direct the County of Riverside Auditor-Controller to activate Fund 21150 USED A Grant, record interest earnings on the County's non-federal match amount and any other funds deposited in this fund as required by the USED A Revolving Loan Fund Grant terms and conditions and make budget adjustment to estimated revenues and appropriations to Fund 21150 in the amount of \$825,900 per Schedule A;
8. Approve and adopt Resolution No. 2016-026, establishing the County of Riverside Economic Development Agency Revolving Loan Fund Program (Revolving Loan Fund Program);
9. Authorize the Assistant County Executive Officer/EDA, or his designee, to approve, issue and modify loans derived from the Revolving Loan Fund in a maximum cumulative total amount not to exceed \$75,000, in accordance with Resolution No. 2016-026, the RLF Policies and Procedures and USED A Revolving Loan Fund Grant terms and conditions, subject to approval by County Counsel; and
10. Authorize the Assistant County Executive Officer/EDA, or his designee, to take all necessary steps to implement the Revolving Loan Fund and Revolving Loan Fund Program including, but not limited to, drafting, negotiating, and executing, subsequent essential and relevant documents, including, but not limited to the Revolving Loan Fund loan documents for borrowers such as loan applications, loan agreements, promissory notes, deeds of trust, security agreements, and other agreements required by the USED A, subject to approval by County Counsel.

**BACKGROUND:**

**Summary**

(Commences on Page 3)

# **SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

Economic Development Agency

**FORM 11:** Ratify and Approve the Financial Assistance Award from the U.S. Department of Commerce Economic Development Administration to Establish a Revolving Loan Fund, Accept the Allocation of Funds, Commit Matching Funds, and Approve Resolution No. 2016-026 Establishing a County of Riverside Revolving Loan Fund Program, All Districts, [\$1,528,633] Federal USED A Grant funds, 80%, EDA-Economic Development Program Funds 20%; Not A Project Under CEQA

**DATE:** August 23, 2016

**PAGE:** 3 of 6

## **BACKGROUND:**

### **Summary**

In an effort to promote economic development and stimulate job growth, County of Riverside (County) Economic Development Agency (EDA) staff applied for and were awarded a grant in the amount of \$1,222,906 (USED A Grant) from the U.S. Department of Commerce's Economic Development Administration (USED A) to administer a commercial Revolving Loan Fund (RLF) for eligible businesses in the County. The USED A Grant terms are set forth in the attached Financial Assistance Award Form from the USED A, Special Award Conditions USED A, Revolving Loan Fund Financial Assistance Award Standard Terms and Conditions, and Department of Commerce Financial Assistance Standard Terms and Conditions. In accordance with the USED A Grant terms and conditions, provided the County accepts the USED A Grant, the County is required to provide match funds in the amount of \$305,727 (County Match) to be used for eligible project expenses. The USED A Grant and the County Match will be used to capitalize the RLF. The USED A Grant and County Match will provide a total project budget of \$1,528,633 to provide loans to local small businesses. The USED A Grant and County Match funds cannot be used to pay administrative expenses for the operation of the RLF. The period of performance under the USED A Grant is from September 25, 2015 to September 30, 2018. If accepted, the County shall be required to make loans at such a rate that no less than 100% of the USED A Grant plus the County Match are disbursed to business entities by September 30, 2018.

The attached proposed County of Riverside Economic Development Agency Revolving Loan Fund Administrative Plan, Policies and Procedures (RLF Plan) outlines how the County RLF shall be operated consistent with the USED A Grant, the USED A Financial Assistance Award, Special Award Conditions USED A, Revolving Loan Fund Financial Assistance Award Standard Terms and Conditions, and Department of Commerce Financial Assistance Standard Terms and Conditions. The RLF Plan shall also be approved by the USED A as a condition of the grant. Any loan of USED A Grant funds and County Match funds shall be evidenced and secured by loan documents approved by the USED A and County Counsel.

The proposed Financial Assistance Award Form from the USED A was delayed due to internal administrative processes and the procedures for securing and committing the County Match portion. EDA staff recommends the Board ratify and approve the Financial Assistance Award Form from the USED A, including the related terms and conditions, and accept the USED A Grant.

After initial capitalization of the RLF, the RLF capital base (consisting of the USED A Grant funds, County Match, interest earned on outstanding loan principal and RLF accounts holding RLF funds, and other income generated from RLF operations) will continue in existence as long as loans are outstanding and repayments to the RLF are made available to make new loans. The RLF will allow the County to issue commercial loans to small businesses ranging from \$25,000 to \$382,000. The objective is to provide assistance to the business community that has experienced challenges in accessing conventional financing through banking industry programs, which implement more stringent underwriting standards. It is anticipated that 10 to 15 businesses will be assisted with loans derived from the RLF which will in turn create a minimum of 35 jobs within the County in accordance with USED A grant requirements.

(Continued)

# **SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

Economic Development Agency

**FORM 11:** Ratify and Approve the Financial Assistance Award from the U.S. Department of Commerce Economic Development Administration to Establish a Revolving Loan Fund, Accept the Allocation of Funds, Commit Matching Funds, and Approve Resolution No. 2016-026 Establishing a County of Riverside Revolving Loan Fund Program, All Districts, [\$1,528,633] Federal USED A Grant funds, 80%, EDA-Economic Development Program Funds 20%; Not A Project Under CEQA

**DATE:** August 23, 2016

**PAGE:** 4 of 6

## **BACKGROUND:**

### **Summary** (Continued)

In order to facilitate implementation of small business loans, increase the efficiency of the RLF, and save administrative costs, EDA staff requests that the Board delegate to the Assistant County Executive Officer/EDA, or designee, the authority to approve, issue and modify loans derived from the RLF in a maximum cumulative total amount not to exceed \$75,000 (including any modifications), in accordance with the RLF Plan, the USED A Financial Assistance Award, Special Award Conditions USED A, Revolving Loan Fund Financial Assistance Award Standard Terms and Conditions, and the Department of Commerce Financial Assistance Standard Terms and Conditions, subject to approval by County Counsel. This will allow the USED A Grant and County Match funds to be dispersed expeditiously, but with adequate review and compliance with applicable terms, conditions and federal regulations.

The financial assistance provided through the RLF is deemed an economic development subsidy and is subject to the notice, public hearing and reporting requirements set forth in California Government Code Section 53083. As such, prior to issuance of a RLF loan in the amount of \$100,000 or greater, the County will be required to hold a public hearing and provide information about the subject loan to the public via the County's website (i.e., identity of party receiving assistance, amount of loan, public purpose, projected tax revenue to County, number of jobs created). In addition, no later than 5 years after the action issuing the RLF loan, the County will be required to issue a report to the public containing the information required under Section 53083, as well as compliance with additional public hearing requirements.

EDA staff also recommends the Board approve the establishment of the County of Riverside Economic Development Agency Revolving Loan Fund Program (County RLF Program), a general commercial loan program to assist small businesses in obtaining access to capital, such as the USED A Grant and County Match. The establishment of the County RLF Program is set forth in the attached proposed Resolution No. 2016-026. If established, the County RLF Program will participate in the RLF.

The RLF and proposed County RLF Program were reviewed and determined not to fall within the definition of a project under the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15378 (b) (4). The RLF and proposed County RLF Program (collectively the Activities) create a government funding mechanism which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. The Activities just allow the County to provide commercial loans to small businesses. No specific projects have been identified and committed in connection with the approval of the RLF and RLF Program. Each loan derived from the RLF and/or issued in connection with the RLF program will be subject to separate CEQA and/or National Environmental Policy Act (NEPA) environmental review, as applicable, prior to taking any choice limiting action or discretionary action on those specific loans. Additionally, accepting the award of the USED A Grant funds and establishing the County RLF are categorically excluded activities under NEPA pursuant to Economic Development Administration Directive 17.02-2.02.(j). The actions to be undertaken to establish the RLF do not individually or cumulatively have a significant effect on the human environment, they only have financial impacts.

(Continued)

# **SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

Economic Development Agency

**FORM 11:** Ratify and Approve the Financial Assistance Award from the U.S. Department of Commerce Economic Development Administration to Establish a Revolving Loan Fund, Accept the Allocation of Funds, Commit Matching Funds, and Approve Resolution No. 2016-026 Establishing a County of Riverside Revolving Loan Fund Program, All Districts, [\$1,528,633] Federal USED A Grant funds, 80%, EDA-Economic Development Program Funds 20%; Not A Project Under CEQA

**DATE:** August 23, 2016

**PAGE:** 5 of 6

## **BACKGROUND:**

### **Summary** (Continued)

EDA staff recommends (i) ratification and approval of the Financial Assistance Award Form from the USED A, Special Award Conditions USED A, Revolving Loan Fund Financial Assistance Award Standard Terms and Conditions, and Department of Commerce Financial Assistance Standard Terms and Conditions, (ii) acceptance of the USED A Grant, (iii) allocation of the County Match, (iv) approval of the RLF Plan, and (v) adoption of Resolution No. 2016-026. County Counsel has approved as to form the Financial Assistance Award Form, RLF Plan, and Resolution No. 2016-026.

### **Impact on Citizens and Businesses**

By administering the Revolving Loan Fund and operating the County RLF Program, which results in access to capital by local businesses, the County is encouraging private sector job growth for citizens, promoting public-private partnerships, an increase in sales and property taxes, and providing an incentive to attract new businesses.

## **SUPPLEMENTAL:**

### **Additional Fiscal Information**

The proposed RLF will be funded by USED A Grant funds and the County Match funds, which will come from EDA Economic Development Program funds. Fund 21150 will be activated and retain the existing title of USED A Grant. The Grant funds and the County Match funds, in the amount of \$305,727, will be deposited into this special revenue fund, which will also earn interest as required by the USED A Grant regulations.

### **Attachments:**

- Financial Assistance Award Form from the USED A
- Special Award Conditions USED A
- Revolving Loan Fund Financial Assistance Award Standard Terms and Conditions
- Department of Commerce Financial Assistance Standard Terms and Conditions
- County of Riverside Economic Development Agency Revolving Loan Fund Administrative Plan, Policies and Procedures
- Resolution No. 2016-026

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

Economic Development Agency

**FORM 11:** Ratify and Approve the Financial Assistance Award from the U.S. Department of Commerce Economic Development Administration to Establish a Revolving Loan Fund, Accept the Allocation of Funds, Commit Matching Funds, and Approve Resolution No. 2016-026 Establishing a County of Riverside Revolving Loan Fund Program, All Districts, [\$1,528,633] Federal USEDA Grant funds, 80%, EDA-Economic Development Program Funds 20%; Not A Project Under CEQA

**DATE:** August 23, 2016

**PAGE:** 6 of 6

**Schedule A**

Increase estimated revenues:

21150-1900100000-767280	Fed-Federal Revenue	\$520,173
21150-1900100000-778200	Interfnd-Miscellaneous	<u>\$305,727</u>
		\$825,900

Increase appropriations:

21150-1900100000-527780	Special Program Expense	\$825,900
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MINUTES OF THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



**3-32**

(1)

On motion of Supervisor Jeffries, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the recommendation from Economic Development Agency regarding Ratify and Approval of the Financial Assistance Award from the U.S. Department of Commerce's Economic Development Administration (USEDA) to Establish a Revolving Loan Fund; Acceptance of the Allocation of Funds, Commit Matching Funds; Adoption of Resolution No. 2016-026, Establishing the County of Riverside Economic Development Agency Revolving Loan Fund Program; and Approval of Budget Adjustments; CEQA Exempt is approved as recommended.

(2)

On Motion of Supervisor Benoit, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter be reconsidered.

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on August 23, 2016 of Supervisors Minutes.

WITNESS my hand and the seal of the Board of Supervisors  
Dated: August 23, 2016  
Kecia Harper-Ihem, Clerk of the Board of Supervisors, in  
and for the County of Riverside, State of California.

(seal)

By: *Kecia Harper-Ihem* Deputy

AGENDA NO.  
3-32

xc: EDA

2  
3 **RESOLUTION NO. 2016-026**

4 **A RESOLUTION OF THE BOARD OF SUPERVISORS**  
5 **OF THE COUNTY OF RIVERSIDE ESTABLISHING**  
6 **THE COUNTY OF RIVERSIDE ECONOMIC DEVELOPMENT AGENCY**  
7 **REVOLVING LOAN FUND PROGRAM**

8 WHEREAS, the County of Riverside, a political subdivision of the State of California  
9 (“COUNTY”) desires to help stimulate economic development and create and retain jobs within  
10 its jurisdiction;

11 WHEREAS, the COUNTY is committed to strengthening its local economy with a focus  
12 on providing assistance to small business owners who were impacted by the recent recession;

13 WHEREAS, access to capital continues to be one of the biggest challenges faced by  
14 small businesses in the COUNTY as such one of the COUNTY’S main economic initiatives is  
15 to accelerate and grow small businesses by creating access to new sources of capital to  
16 business owners that experience difficulty securing conventional business loans;

17 WHEREAS, the Board of Supervisors (Board) desires to establish the County of  
18 Riverside Economic Development Agency Revolving Loan Fund Program (Revolving Loan  
19 Fund Program), a general lending program that will assist small businesses in obtaining access  
20 to capital to expand and grow their operations, acquire real property, construct tenant  
21 improvements and renovations, purchase necessary fixtures and equipment, provide access to  
22 short term capital, and other eligible activities;

23 WHEREAS, the Revolving Loan Fund Program is an effective funding approach with  
24 long term value since funds repaid by an initial business recipient will be used to fund future  
25 business applicants;

26 WHEREAS, in an effort to promote economic development and stimulate job growth,  
27 the COUNTY Economic Development Agency (“EDA”) staff applied for, and were awarded, on  
28 behalf of the COUNTY, a grant in the amount of \$1,222, 906 (“USED A Grant”) from the U.S.



1 Department of Commerce's Economic Development Administration ("USEDA") to establish a  
2 commercial Revolving Loan Fund ("RLF") for eligible businesses in the COUNTY;

3 WHEREAS, in accordance with the USED A Grant terms, the COUNTY is required to  
4 provide match funds in the amount of \$305,727 ("County Match") to be used for eligible project  
5 expenses. The RLF will provide a total project budget of \$1,528,633 to provide loans to local  
6 small businesses;

7 WHEREAS, the Board desires to initially capitalize the Revolving Loan Fund Program  
8 using funds derived from the RLF in the amount of \$1,528,633;

9 WHEREAS, the Revolving Loan Fund Program will be administered and operated  
10 pursuant to the County of Riverside Economic Development Agency Revolving Loan Fund  
11 Administrative Plan, Policies and Procedures, a copy of which is attached hereto as Exhibit "A"  
12 and incorporated herein by this reference;

13 WHEREAS, commercial loans issued to small businesses under the Revolving Loan  
14 Fund Program will range from \$25,000 up to the maximum total amount of \$382,000;

15 WHEREAS, County staff anticipates that approximately 10-15 small businesses will be  
16 assisted with commercial loans from the RLF which may lead to the creation of approximately  
17 35 jobs within the County;

18 WHEREAS, to increase the efficiency of the County's proposed Revolving Loan Fund  
19 Program and assist the COUNTY in achieving its objective of increased business expansion,  
20 the Board desires to Authorize the Assistant County Executive Officer/EDA, or designee, to  
21 approve, issue and modify commercial loans derived from the RLF provided the following  
22 conditions are satisfied, (i) the maximum cumulative total amount of such commercial loan does  
23 not to exceed \$75,000, (ii) the individual or entity receiving such loan operates a small business  
24 within the County of Riverside and satisfies the terms, conditions and underwriting criteria set  
25 forth in the County of Riverside Economic Development Agency Revolving Loan Fund  
26 Administrative Plan, Policies and Procedures, (iii) the recipient small business will create and  
27 retain at least one-full time employee per \$35,000 of loaned funds, (iv) the loan is documented  
28 in a loan agreement, evidenced by a promissory note with a term of no more than 5 years on

1 working capital loans, 7 years on equipment and 10 years on real estate requiring equal periodic  
2 payments, and secured by a deed of trust, or other security instrument, first approved as to form  
3 by County Counsel, and (v) the loan complies with the RLF Financial Assistance Award from the  
4 USEDA dated September 25, 2015, including, all attachments thereto, which include, but are  
5 not limited to Special Award Conditions USEDA, Revolving Loan Fund Financial Assistance  
6 Award Standard Terms and Conditions, and Department of Commerce Financial Assistance  
7 Standard Terms and Conditions, as verified by County Counsel.

8 WHEREAS, the RLF and Revolving Loan Fund Program were reviewed and determined  
9 not to fall within the definition of a project under the California Environmental Quality Act  
10 (CEQA) pursuant to State CEQA Guidelines Section 15378 (b) (4). The RLF and Revolving Loan  
11 Fund Program (collectively the "Activities") create a government funding mechanism which does  
12 not involve any commitment to any specific project which may result in a potentially significant  
13 physical impact on the environment. The Activities just allow the County to provide commercial  
14 loans to small businesses. No specific projects have been identified and committed in  
15 connection with the approval of the RLF and Revolving Loan Fund Program. Each loan derived  
16 from the RLF and/or issued in connection with the Revolving Loan Fund Program will be subject  
17 to separate CEQA and/or National Environmental Policy Act (NEPA) environmental review, as  
18 applicable, prior to taking any choice limiting action or discretionary action on those specific  
19 loans; and

20 WHEREAS, the Revolving Loan Fund Program will benefit local small businesses and is  
21 in the best interest of the County of Riverside.

22 **NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED** by the  
23 Board of Supervisors of the County of Riverside ("Board"), in regular session assembled on  
24 August 23, 2016, at 9:00 a.m., in the meeting room located on the 1<sup>st</sup> Floor of the County  
25 Administrative Center, 4080 Lemon Street, Riverside, California, as follows:

- 26 1. The Recitals set forth above are true and correct and incorporated herein by this  
27 reference.
- 28 2. The Board hereby establishes the County of Riverside Economic Development Agency

1 Revolving Loan Fund Program which will be capitalized using funds derived from the  
2 United States Department of Commerce's Economic Development Administration grant  
3 award in the amount of \$1,222,906 from its Economic Adjustment Assistance Program  
4 plus the County Match in the amount of \$305,727, for a total budget of \$1,528,633, and  
5 shall operate within the County of Riverside and benefit eligible small businesses  
6 located within the County of Riverside.

7 3. The Board hereby approves the County of Riverside Economic Development Agency  
8 Revolving Loan Fund Administrative Plan, Policies and Procedures, a copy of which is  
9 attached hereto as Exhibit "A" and incorporated herein by this reference. The County of  
10 Riverside Economic Development Agency Revolving Loan Fund Program shall be  
11 operated and administered in accordance with the attached County of Riverside  
12 Economic Development Agency Revolving Loan Fund Administrative Plan, Policies and  
13 Procedures.

14 4. The Board hereby delegates to the Assistant County Executive Officer/EDA, or  
15 designee, the authority to approve, issue and modify commercial loans derived from the  
16 RLF provided the following conditions are satisfied, (i) the maximum cumulative total  
17 amount of such commercial loan does not to exceed \$75,000, (ii) the individual or entity  
18 receiving such loan operates a small business within the County of Riverside and  
19 satisfies the terms, conditions and underwriting criteria set forth in the County of  
20 Riverside Economic Development Agency Revolving Loan Fund Administrative Plan,  
21 Policies and Procedures, (iii) the recipient small business will create and retain at least  
22 one-full time employee per \$35,000 of loaned funds, (iv) the loan is documented in a  
23 loan agreement, evidenced by a promissory note with a term of no more than 5 years  
24 on working capital loans, 7 years on equipment and 10 years on real estate, requiring  
25 equal periodic payments, and secured by a deed of trust, or other security instrument,  
26 first approved as to form by County Counsel, and (v) the loan complies with the RLF  
27 Financial Assistance Award from the USEDA dated September 25, 2015, including, all  
28 attachments thereto, which include, but are not limited to Special Award Conditions

FORM APPROVED COUNTY COUNSEL  
BY: *[Signature]*  
DATE: 8-1-16  
JHAILA & BRQWING

1 USEDA, Revolving Loan Fund Financial Assistance Award Standard Terms and  
2 Conditions, and Department of Commerce Financial Assistance Standard Terms and  
3 Conditions, as verified by County Counsel.

4 5. The Board hereby finds that the RLF and Revolving Loan Fund Program are  
5 determined not to fall within the definition of a project under the California  
6 Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15378  
7 (b) (4). The RLF and Revolving Loan Fund Program (collectively the "Activities") create  
8 a government funding mechanism which does not involve any commitment to any  
9 specific project which may result in a potentially significant physical impact on the  
10 environment. The Activities just allow the County to provide commercial loans to small  
11 businesses. No specific projects have been identified and committed in connection with  
12 the approval of the RLF and Revolving Loan Fund Program. Each loan derived from the  
13 RLF and/or issued in connection with the Revolving Loan Fund Program will be subject  
14 to separate CEQA and/or National Environmental Policy Act (NEPA) environmental  
15 review, as applicable, prior to taking any choice limiting action or discretionary action on  
16 those specific loans.

17 6. The Board hereby authorizes the Assistant County Executive Officer/EDA, or designee,  
18 to sign all documents necessary and appropriate to carry out and implement the County  
19 of Riverside Economic Development Agency Revolving Loan Fund Program and RLF  
20 and to administer the County's obligations, responsibilities, and duties to be performed  
21 under the County of Riverside Economic Development Agency Revolving Loan Fund  
22 Administrative Plan, Policies and Procedures and RLF Financial Assistance Award from  
23 the USEDA dated September 25, 2015, including, all attachments thereto, which  
24 include, but are not limited to Special Award Conditions USEDA, Revolving Loan Fund  
25 Financial Assistance Award Standard Terms and Conditions, and Department of  
26 Commerce Financial Assistance Standard Terms and Conditions, subject to approval  
27 by County Counsel.

7. The Board hereby finds that this Resolution shall take effect upon its adoption.

1 PASSED, APPROVED AND ADOPTED THIS 23rd day of August, 2016.

2  
3 ROLL CALL:

4 Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley  
5 Nays: None  
6 Absent: None

7 The foregoing is certified to be a true copy of a resolution duly  
8 adopted by said Board of Supervisors on the date therein set forth.

9 KECIA HARPER-IHEM, Clerk of said Board

10 By 

11 Deputy

EXHIBIT A

REVOLVING LOAN FUND ADMINISTRATIVE PLAN,  
POLICIES AND PROCEDURES

(behind this page)

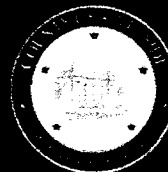


**RIVERSIDE**  
**C O U N T Y**  
*Moving Business Forward*

COUNTY OF RIVERSIDE  
ECONOMIC DEVELOPMENT AGENCY  
**REVOLVING LOAN FUND PROGRAM**

**REVOLVING LOAN FUND  
ADMINISTRATIVE PLAN**

**POLICIES AND PROCEDURES**



# TABLE OF CONTENTS

	Page
<b>INTRODUCTION</b>	<b>1</b>
<b>PART I. REVOLVING LOAN FUND STRATEGY</b>	<b>1</b>
<b>A. ECONOMIC ADJUSTMENT PROGRAM OVERVIEW</b>	<b>1</b>
1. Economic Adjustment Dislocation	1
2. Economic Adjustment Strategy	3
3. RLF Impact and Area Resources	3
4. Implementation Programs and Activities	4
5. Organizational Structure	4
<b>B. BUSINESS DEVELOPMENT STRATEGY</b>	<b>5</b>
1. Overview and Objectives	5
2. Target Business Characteristics	6
3. Types of Assistance	6
4. Programs and Activities	6
<b>C. FINANCING STRATEGY</b>	<b>7</b>
1. Financing Needs and Opportunities	7
2. Local Capital Market	8
3. RLF Financing Niche	8
<b>D. FINANCING POLICY</b>	<b>8</b>
1. Loan Related Fee	8
2. Interest Rate	8
3. Collateral and Equity	9
4. Standard Repayment Terms	9
6. Loan Size	10
<b>E. PORTFOLIO STANDARDS AND TARGETS POLICY</b>	<b>10</b>
1. Business Types	10
2. Loan Purpose	10
3. Leveraging	11
4. Cost Per Job	11
<b>F. LOAN SELECTION CRITERIA POLICY</b>	<b>11</b>
1. Eligible Applicants	12
2. Eligible Projects	13
3. Ineligible Loan Activities	13
4. Application Requirements	14
5. Loan Processing and Approval Process	14
<b>G. PERFORMANCE ASSESSMENT POLICY</b>	<b>15</b>
1. Annual Loan Portfolio Review	15
2. Reviewing and updating RLF Plan	15



3. RLF Loan Portfolio Sales and Securitizations	16
<b>PART II. REVOLVING LOAN FUND OPERATIONAL PROCEDURES</b>	<b>16</b>
<b>A. ORGANIZATIONAL STRUCTURE</b>	<b>16</b>
1. Administration	16
2. RLF Loan Review Committee	16
3. Conflict of Interest Policy	17
4. Staff Capacity	19
<b>B. LOAN PROCESSING PROCEDURES</b>	<b>20</b>
1. Standard Loan Application Requirements	20
2. Credit Reports	21
3. Appraisal Reports	21
4. Environmental Reviews	21
5. Historical Buildings Reviews	21
6. Collateral and Equity Requirements	22
7. Loan Write-Up	22
8. Loan Approval	23
9. Appeal of Denial	23
<b>C. LOAN CLOSING AND DISBURSEMENT PROCEDURES</b>	<b>24</b>
1. General Closing Requirements	24
2. Loan Disbursements	24
<b>D. LOAN SERVICING PROCEDURES</b>	<b>24</b>
1. Loan Payment and Collection	24
2. Loan Monitoring	25
3. Late Payment Follow-up	25
4. Loans Over 90 Days in Arrears	25
5. Default Loan Monitoring	26
6. Loan Restructuring	26
7. Write-off	26
<b>E. ADMINISTRATIVE PROCEDURES</b>	<b>27</b>
1. Accounting	27
2. Reporting	27
3. Audits	27
4. Loan Files and Loan Closing Documents	27
5. County Reporting Requirements	28
<b>F. Funding for Administrative Costs</b>	<b>28</b>
<b>G. Capital Management Strategy</b>	<b>28</b>
1. Ongoing Recapitalization	28
2. Excess Retention Policy	28
<b>H. Miscellaneous Procedures</b>	<b>29</b>
1. Non Discrimination Requirements	29

2. Environmental Considerations	29
3. Flood Hazard Insurance	30
4. Access for Handicapped	30
5. Relocation	30
6. Davis-Bacon Act	31
7. Additional Requirements	31



# **INTRODUCTION.....**

The County of Riverside (County) is committed to strengthening its local economy with a focus on providing assistance to small business owners who were particularly impacted by the Great Recession. Scarce access to capital continues to be one of the biggest challenges faced by small businesses in the county.

One of the County's main economic initiatives is focused on accelerating and growing small businesses by creating access to new sources of capital for businesses owners that are experiencing difficulty securing conventional business loans. To that end, the Revolving Loan Fund (RLF) Program is being established to provide businesses access to affordable capital for real property acquisition, building improvements and renovations, equipment purchases, short-term working capital, and other eligible activities.

The County has allocated \$305,721 towards establishing a revolving loan fund for a small business loan program. These funds will provide the required match for the U.S. Department of Commerce, Economic Development Administration (USEDA) Grant award of \$1,222,906. The USED A Grant and the County Match will be used to capitalize the RLF. The USED A Grant and County Match will provide a total project budget of \$1,528,633 to provide loans to local small businesses.

## **PART I. REVOLVING LOAN FUND STRATEGY**

### **A. ECONOMIC ADJUSTMENT PROGRAM OVERVIEW**

The County proposes to create a RLF as a general lending program that will assist small businesses in obtaining access to capital enabling them to fund expansion plans.

#### **1. Economic Adjustment Dislocation**

Riverside County has lagged behind other coastal counties in recovery from recession. A major barrier to small business expansion is the inability of businesses to access capital. Riverside County is the fourth largest county in California in of population. Riverside County, along with San Bernardino County, comprises the Inland Empire, one of the fastest growing metropolitan areas in the nation from 1997 to 2006. The recession had an outsized impact on the region, but general economic improvements have been observed over the last three years. Riverside County has a population of 2.3 million people and a total of 577,200 wage and salary jobs. The income per capita is \$33,159, and the average salary per worker is \$51,815. In 2013, total employment increased by

2.7 percent across Southern California. Riverside County added a total of 18,300 jobs, representing a growth rate of 3.3 percent. The unemployment rate also improved, falling from 12.1 percent in 2012 to 10.3 percent in 2013. In 2013, job growth was strongest in education and healthcare (+5,800 jobs), leisure and hospitality (+3,800 jobs), wholesale and retail trade (+2,800 jobs), and professional and business services (+2,300 jobs).

The only sectors to lose jobs were agriculture (-300 jobs) and information (-100 jobs). In 2013, the Riverside County population increased by 0.8 percent – the smallest increase on record. Population growth will accelerate over the next five years, but will remain well below the levels observed in the mid-2000s.

The Riverside County economy will continue to expand in 2015. Over the longer-term forecast, the Inland Empire will experience greater growth than the coastal counties, due largely to the availability of land at lower costs.

## Forecast Highlights

- The labor market strengthened in 2014 as employment increased by approximately 1.9 percent. From 2014 to 2019, total employment is projected to grow at an annual average rate of 2.3 percent.
- Average salaries are currently below the California state average, and will remain so over the foreseeable future. In Riverside County, inflation-adjusted salaries are forecasted to rise by an average of 1.3 percent per year between 2014 and 2019.
- From 2014 to 2019, employment growth is projected to be broad-based. Almost every sector will increase by at least 10 percent, with the only exceptions being manufacturing, information, government, and agriculture.
- The largest employment increases over the 2014-2019 period will be observed in professional and business services (+14,700 jobs), education and healthcare (+11,800 jobs), leisure and hospitality (+11,600 jobs), and wholesale and retail trade (+11,600 jobs).
- The population is expected to increase by 1.0 percent in 2014. Annual growth in the 2014-2019 period is expected to average 1.5 percent.
- Net migration will gradually increase. An average of 15,900 net migrants are expected to enter the county each year between 2014 and 2019.
- Real per capita income is expected to rise by 3.5 percent in 2014, and increase by an average of 1.7 percent per year between 2014 and 2019.
- Total taxable sales are expected to increase by an average of 3.4 percent per year over the next five years.
- Industrial production is expected to rise by 4.4 percent in 2014. From 2014 to 2019, the growth rate of industrial production is expected to average 3.6 percent per year.



## **2. Economic Adjustment Strategy**

The objectives of the Riverside County Revolving Loan Fund Program are to assist eligible businesses create and retain employment opportunities and increase capital investment by:

- Providing financial assistance to targeted businesses who are facing challenges in securing capital.
- Leveraging private sector funding to increase financing for business creation, expansion and retention.
- Provide financing in areas where high unemployment and poverty are more prevalent than other parts of the county.
- Support self-employment and entrepreneurship.

## **3. Area Resources**

Riverside County shares borders with Los Angeles, Imperial, Orange, San Diego, and San Bernardino counties and spreads from within 14 miles of the Pacific Ocean to the Colorado River. Because of its strategic location, the county offers superior transportation and logistical advantages by providing timely access to domestic and global markets. The county is within a 60 mile radius of world-class air, land, rail and sea facilities for commercial shipping and cargo. The county also has an expanding transportation network. Through 2016, Riverside County will invest almost \$2 billion in transportation investments.

A key component of this county's and region's success lies in the education system from its K-12 system through its many community colleges and universities. This system produces a network of highly-skilled graduates specializing in entrepreneurship, engineering, and healthcare. In August 2013, the University of California, Riverside welcomed its inaugural class of students to the first new University of California medical school in over 40 years.

Riverside County offers businesses the unique combination of location within a marketplace of 22 million Southern California customers, easy access to main east/west and north/south transportation routes, an available trained workforce, a reasonable cost of living and business-friendly environment, a global perspective and the lowest net cost of doing business in Southern California.

## **4. Implementation Programs and Activities**

County will be responsible for the implementation of the following:

- a) **Marketing:** Staff will initiate contact with stakeholders in the county to provide RLF Program information and requirements.
- b) **Evaluation/Screening:** Staff will work to evaluate, screen and package prospective loan applicants.
- c) **Processing:** Staff will process individual loans, including filling out all the necessary forms, preparing lender packages, working with prospective borrowers and private lenders.
- d) **Closings:** Staff performs final review, orders UCC searches and files UCCs and Deeds of Trust, if applicable, and works with specific loan packages.
- e) **Disbursing and Servicing:** Staff will be directly responsible for disbursing and servicing of all loans. Required documentation for disbursements includes completed loan documents and recorded UCC files and Deeds of Trust, if applicable.
- f) **Accounting:** Agency Fiscal Department will be responsible for accounting.

## **5. Organizational Structure**

The County will be the responsible entity for the RLF. The Riverside County Economic Development Agency (Agency) will take lead for County in administering RLF. Under the umbrella of Agency there are many divisions including those responsible for the economic, community and affordable housing development programs of the County. Agency administers the Urban County CDBG program, Housing Authority of Riverside County and Workforce Development.

The Agency works to promote community revitalization attract new businesses; encourage job creation and retention and capital investment in the County.

The RLF capitalization of USED A grant funds, County match, and re-invested program income will be used to increase access to capital for businesses located in County.

The RLF will complement other County programs designed to create or retain private sector jobs by stimulating private sector investment and leveraging RLF funds.



## **B. Business Development Strategy**

### **1. Overview and Objectives**

The County's USEDA Comprehensive Economic Development Strategy was prepared and adopted by the County in 2011 as a part of its regular planning cycle process. Annual updates are completed and submitted to USEDA to reflect current conditions.

The strategy has built substantial economic development program capability involving public/private partnerships, active redevelopment efforts, and collaboration amongst partners.

Economic development activities funded through the RLF program are intended to meet the following objectives:

- To encourage the creation and retention of permanent jobs which provide a wage appropriate to the skills and experience of the local labor force.
- To encourage the leveraging of new private investment in the County in the form of fixed asset and working capital investments.
- To perpetuate a positive and proactive business climate that encourages the retention and expansion of existing businesses and helps to attract desirable new businesses.
- To lend monies at interest rates and loan maturities that encourages business development and facilitates reinvestment in the County, while providing for the recapitalization and growth of the RLF.

It is anticipated that instituting the program will stimulate an increase in small businesses acquiring much needed capital for diverse business activities which will result in the creation and retention of higher-paying jobs and increased capital investment. Additional goals include:

- Increasing the RLF fund by partnering with private sector lending institutions to leverage available financing for business creation and retention
- Provide financing in areas where high unemployment and poverty are more prevalent than other parts of the county
- Support self-employment and entrepreneurship

## 2. Target Business Characteristics

Financial assistance will be directed to provide an infusion of new capital for businesses having difficulty accessing commercial loans for eligible activities. Businesses eligible for consideration of financing will be commercial and industrial businesses, technology and manufacturing companies.

Examples Include:

- Firms with cash flow problems
- Firms considered too large for SBA regulations
- Firms ineligible for conventional financing
- RLF participation enables SBA participation

## 3. Types of Assistance

EDA staff shall be responsible for the day-to-day administration of the RLF program, including assisting applicants in completing applications, processing requests for financing, and, where necessary and appropriate, counseling and guiding loan applicants to other more appropriate technical and financial resources when the loan applicant has needs that cannot be met through the RLF program. Technical assistance will be provided in navigating County's entitlement and business license processes along with referrals to service providers to assist applicants in completing needed documentation for RLF Program.

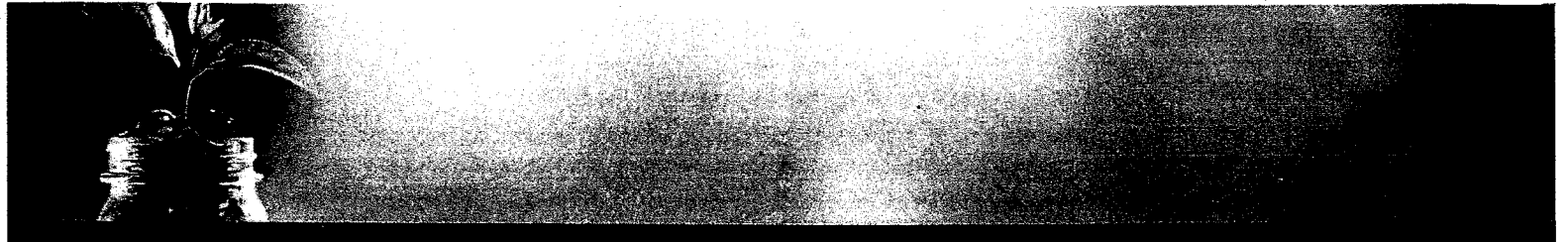
## 4. Other Programs and Activities

**Technical and Management Assistance:** A close relationship will be maintained with borrowers during the post-loan phase. Besides requiring semi-annual employment reports to verify the job assurances given during the pre-loan phase, the RLF will require financial statements annually from borrowers. In addition, the County will maintain relationships as appropriate with private lending institutions; community based economic development corporations, and other agencies providing financial and/or technical assistance to small businesses. Contacts and referrals will be made to these groups as appropriate.

**Loan Packaging and Referral Services:** Loan packaging services will not usually be provided unless a RLF loan is involved. Referrals will generally be made to other financial institutions and providers of assistance to businesses, as appropriate, when firms applying for assistance are not eligible or turned down.

**Linking Jobs to Long Term Unemployed:** Close contact will be maintained with Riverside County's Workforce Development Centers, a division under the county's





organization. Where funded firms or organizations need job training assistance or where there will be significant new hires, firms will be encouraged to contact the Workforce Development Center nearest their location.

EDA staff shall be responsible for marketing the RLF program to local businesses, explaining the RLF program and providing written information to prospective applicants. EDA has established links to other alternative, nontraditional microenterprise lenders to cross promote programs for the benefit of RLF applicants. In addition, close collaboration with Workforce Development Center will insure all applicants receive additional assistance for their day-to-day business activities.

The RLF will be part of the County's overall economic development program and will be identified as a financing program in conjunction with other existing loan programs. All of these programs support job creation and increased capital investment. The RLF is not subordinate to or a part of these other programs. Businesses seeking financing will be directed to the appropriate program based on a project needs assessment by staff.

## **C. Financing Strategy**

### **1. Financing Needs and Opportunities**

A successful technique for persuading companies to remain in a region and to expand their employment levels is to increase the availability of debt financing and working capital. Traditionally, the kind of long-term debt financing, especially working capital, required for the expansion of businesses has not been readily available. Most local lending institutions have been hesitant to carry business loans for periods longer than 3 years. Lending institutions have been willing to offer only short term financing. However, in building a new facility or renovating an old one, or obtaining working capital, businesses find short term financing prohibitively expensive in terms of its impact on company cash flow.

An additional source of financing for small and medium sized businesses is Small Business Administration (SBA) loans. Challenges arise, however, because lending criteria are stringent and hard asset collateralization is generally required by participating commercial banks and the SBA. Typically, real estate with adequate amounts of equity is required.

To supplement the demand for accessible capital, it has become necessary to develop public sector lending programs to complement and encourage private sector financing. For example, public sector lending programs can be used for those borrowers who are employing low-and moderate-income employees or who are building in CDBG areas.

Often banks will participate when a public lender or intermediary is involved that mitigates and dilutes risk.

## **2. Local Capital Market**

Although the local area's traditional lending institutions have loosened somewhat and are reaching out to small businesses, their lending criteria has not changed. The current lending situation continues to provide hurdles for small businesses that do not meet stringent lending requirements of most banks.

## **3. RLF Financing Niche**

To be eligible for assistance from the RLF a business must be located in Riverside County. The RLF will provide an immediate, flexible and accessible source of funding to be made available in conjunction with private lenders for existing firms that require loans for the acquisition, construction or renovation of real estate, inventory, working capital, machinery and equipment, and leasehold improvements. Consistent with the current USED A Administrative Manual, business buy-outs, and acquisition, construction or renovation of developer and investor real estate will be either restricted or not allowed.

The RLF will be open to general lending. It is expected that loans will be made in the range from \$25,000 to a maximum of 25 percent of the loan capital base or approximately \$382,000, with most loans falling in the range from \$150,000 to \$350,000.

## **D. Financing Policy**

### **1. Loan Related Fee**

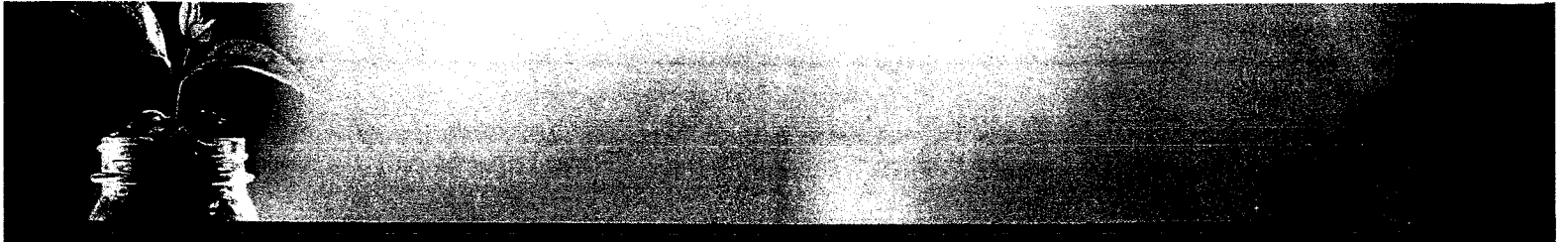
Loan fees will be assessed to all loan recipients. The EDA shall require a loan application fee of 1% percent of the RLF loan amount, with a \$500 minimum and a 1% maximum.

In addition, the EDA shall require the applicant to pay all of the costs incurred by the EDA for the RLF loan closing, including but not limited to appraisal, legal, environmental, title insurance, recording costs and filing fees. The fees may be included in the loan application as an eligible use of RLF loan proceeds. The maximum total fee will be two (2) points.

### **2. Interest Rates Policy**

Interest rates will generally be expected to be based on the prime rate with the interest rate established by the Loan Committee based on the recommendation of the Loan Officers. In no event will 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, or the maximum interest rate allowed under California State law.

However, should the prime interest rate listed in the Wall Street Journal exceed (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 County to implement its financing strategy. The RLF will operate with fixed interest rate schedules with shall be negotiated between the Loan Review Committee and the borrower after taking into account interest rates prevailing in the local commercial market, the term of the loan request, and the financial projections for the project. The Loan Review Committee will consider an interest rate in line with the business's internal rate of return. Interest rates will generally be below local financial institutions short-term rates.

### **3. Collateral & Equity**

Full collateral is not a requirement for financial assistance. However, some collateral must be available to secure each loan. Collateral requirements shall be determined on an individual basis by the EDA and may include: deeds of trust on land and buildings; liens on fixed and major movable equipment; liens on accounts receivable and inventory; liens on the corporate assets of affiliated businesses, when appropriate; corporate guarantee(s), as applicable; and assignments of leases, patents, and insurance, as deemed appropriate. Such liens and other security may be subordinate to existing liens of record and/or liens securing other loans involved in the project. The RLF will generally secure each loan to the maximum extent possible. Personal guarantees may be collateralized with the assets of the guarantor.

Unlimited personal guarantees from the principals of the business who have 20 percent ownership or more shall be required. Limited personal guarantees for the owners of the business who have less than 20 percent ownership may be required, where appropriate. In addition, junior deeds of trust on personal property may be required on projects with limited collateral.

The RLF program will require a cash equity injection of 10% of total project costs for each RLF loan. Consideration will be given for individuals that have made substantial equity commitments to the applicant business, as well as to individuals who do not have sufficient financial resources to contribute to the RLF project.

The RLF will maintain a minimum ratio of \$2 in private financing for every \$1 in RLF financing for its overall portfolio. The minimum ration will apply to individual borrowers unless a valid rationale is demonstrated.

### **4. Standard Repayment Terms**

The term for repayment will be generally based on the useful life of the assets being financed or the borrower's ability to repay. The useful lives are 3 to 5 years for working capital, 7 years for equipment and up to 10 years for real estate. If appropriate, shorter terms will be negotiated in order to increase the velocity of funds for recycling to other businesses.

A "Loan Exit Fee" of \$250.00 will be charged for loans that are retired earlier than their

stated maturity. This charge will be used to defray the additional time and expense incurred by staff and by the County.

From time to time the County is asked to subordinate the priority of its UCC filing/collateral, note and/or loan payments to other lenders. In general, it is the position of the County not to subordinate. However, the County does recognize that under certain limited situations subordination to another lender may be to the benefit of all parties. Restructuring of a RLF loan will be considered only to improve the repayment prospects of the borrower or to protect the interests of the RLF.

Prior approval from USEDA is required in order to subordinate a loan to a third party. Once approval from USEDA has been granted, the Loan Committee must review and approve all subordination of the County's UCC filings/collateral, note(s) and/or loan payments to other lenders.

Subordination by the County is viewed as an extension of credit. As an extension of credit, a fee of a maximum 1 percent on the current outstanding loan balance will be charged.

Subordinate liens positions will be considered to facilitate new capital injection. The RLF will take first position for any asset financed by the RLF.

## **5. Loan Size**

The amount of funds available for any single business enterprise may range from minimum of \$25,000 to a maximum of \$380,000 or 40% of the total project cost, whichever is less. Loan size will take into consideration participation of other public and private funding in order to determine loan size for each business.

## **E. Portfolio Standards and Targets Policy**


### **1. Business Types**

The RLF will target all new and existing business types in the county; sole proprietorships, limited liability companies, joint ventures and corporations. New companies include those businesses that have been in the start-up phases of operation for less than one year. Existing businesses are those companies that have been in operation for two or more years and have a track record of sales and positive earnings.

Financing of a start-up or a business acquisition will normally require a minimum equity investment (injection) of up to 20 percent.

### **2. Loan Purpose**

Business loans may be used for start-ups or second stage companies for expansion



including equipment, inventory, real estate, working capital, business purchase, and construction. The RLF, except as noted herein, will follow standard USEDA requirements for revolving loan fund programs, including reporting requirements and compliance with applicable Federal laws and regulations, Executive Orders and Office of Management and Budget Circulars, as amended.

### **3. Leveraging**

The portfolio will be leveraged by public and private investment by SBA, banks, insurance or investment companies and/or by equity injection by participating or parent companies. Private loans or equity injection will be monitored at the time of loan funding, with a minimum of 2:1 ratio requirement imposed upon the 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 12 months prior to or after approval of an RLF closing, as part of the same business development project and may include:

- Capital invested by the borrower or others
- Financing from private entities; or
- The non-guaranteed portion and ninety (90) percent of the guaranteed portions of U.S. Small Business Administration's 7 (A) loans and 504 debenture loans.
- Private investments shall not include accrued equity in a borrower's assets. In order to ensure that loan funds do not substitute for private funds, each loan applicant must demonstrate that sufficient funds are not available from private funding sources to fund the project or that the project is not financially feasible without subsidized financing.

### **4. Cost per Job**

Borrowers should not be so strong as to be able to obtain full financing from commercial and conventional lending institutions. The borrowing individual or entity also must demonstrate loan repayment ability. As a general rule, the program will be looking for one job created for each \$35,000 loaned from the RLF.

## **F. Loan Selection Policy**

### **1. Eligible Applicants**

RLF financing will be available to support the start-up and expansion of businesses that will help diversify the economy and that will create significant long-term permanent employment within the County of Riverside. Borrowers shall be approved based upon a reasonable assurance and determination of repayment ability and potential economic

benefits to the community.

Applications may be submitted by the authorized representatives of any eligible business wishing to establish a new operation or expand an existing operation in the County. Eligible businesses are defined to include commercial and industrial businesses, advanced technology companies, and manufacturing firms.

No member of the Board of Supervisor's; the EDA; or any other official, employee, or agent of the County who exercises decision-making functions or responsibilities in connection with the implementation of the RLF program is eligible for financial assistance under this program.

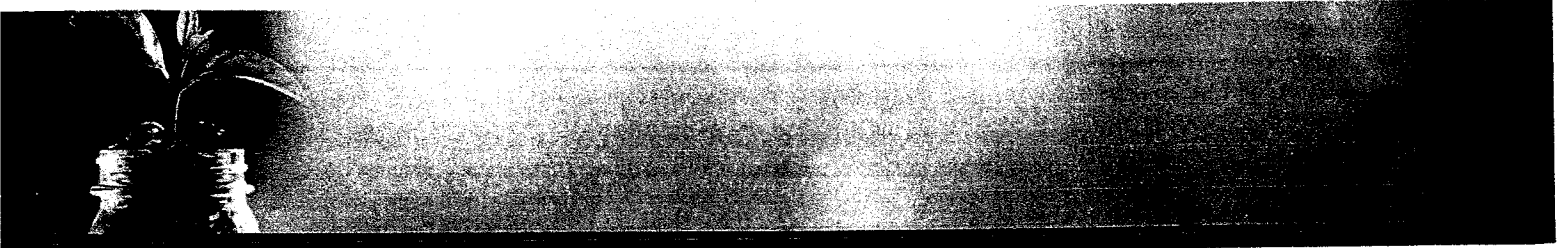
Applicants shall not be disqualified based on age, race, religion, color, handicap, sex, physical condition, development disability, sexual orientation or national origin.

The applicant must not be delinquent or in default on federal, state or local taxes or any existing private or publicly financed loan and will be required to sign an affidavit to that effect.

## **2. Eligible Projects**

Potential loan projects shall meet the general intent and purpose of the RLF. In evaluating applicants, the Loan Review Committee shall consider whether the project/loan:

- Meets the minimum leveraged ratio established for the RLF
- Presents a reasonable assurance of repayment of the loan
- Meets the targeting area and job creation/retention requirement
- RLF loans may be provided to eligible applicants for the following:
  - Land costs, including engineering, legal, grading, testing, site mapping and related costs associated with acquisition and preparation of land that increases capacity;
  - Building costs, including real estate, engineering, architectural, legal and related costs associated with acquisition, construction and rehabilitation of a building;
  - Machinery and equipment costs including delivery, installation, engineering, architectural, legal, insurance and related costs associated with acquisition and installation of machinery and equipment;
  - Infrastructure costs, such as seismic retrofitting for hazard mitigation;
  - Supplementary working capital when used in conjunction with the above, which can include payment of current liabilities (creditors) as part of working capital; and



■ Other activities that the EDA may identify as appropriate for the RLF Program  
Businesses receiving loans for fixed assets shall be required to obtain property-casualty insurance for property being financed, businesses receiving construction loans shall be required to have builder's risk insurance for the amount of the debt financing attendant to the project, and businesses purchasing real estate shall be required to have title insurance for the amount of RLF real estate financing attendant to the project. Flood insurance shall also be required for RLF loans secured by real property located in a flood zone. The EDA shall be listed as an additional insured on all property-casualty, builder's risk and flood insurance policies.  
Eligible working capital loans may be used for the following:

- Inventory
- Operating expenses

### **3. Ineligible Loan Activities**

RLF loans shall not be available for the following activities:

- Loans outside the County of Riverside;
- Subsidize interest payments on any existing RLF loan;
- Provide for borrowers' required equity contributions under other Federal Agencies' loan programs;
- Provide for 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 benefit must be clearly consistent with the strategic objectives of the RLF;
- Provide RLF loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposits, or any investments unrelated to the RLF;
- Loans that assist the relocation of jobs from or to another labor area are prohibited;
- Former Board of Supervisors, board members, county employees, committee and members of his or her Immediate Family will not receive a loan from the RLF for a period of two (2) years from the date that the board member last served on the RLF's board of directors.

- Loans inconsistent with Conflict of Interest regulations contained in the RLF Standard Terms and Conditions of the USED A grant agreement; and
- Other activities that EDA may identify as inappropriate for the RLF Program.

#### **4. Application Requirements**

To be eligible for funding, a proposed project shall meet the following minimum requirements;

- Compliance with all State, County and/or City zoning regulations, building codes and other applicable local and State ordinances;
- Compliance with all Federal, State and local regulations concerning historic properties and environmental matters; and
- EDA will refer loan applicants to technical assistance in such areas as business planning, marketing, accounting, cash management, and inventory control. When determined appropriate, the EDA will contract with a third-party provider for this technical assistance.
- The applicant shall demonstrate that the proposed project is viable and that the business has the economic ability to repay the funds.
- In order to apply for RLF assistance, a prospective borrower must submit the following materials to the Loan Officers:
  - **Basic Company Information.** Description of operations, type of business, present/future facilities, principals, business profile (history and forecasts), employment (current and/or projected).
  - **Financial Data.** Current personal financial statements of principals; the last three years' business financial statements and tax returns for established operations (not applicable for startup concerns and businesses operating for less than three years who should submit available financial information) including balance sheets, and income statement; interim business financial statements (less than 90 days old); and income and expense proforma, as required by staff.
  - **Project Data.** Amount of loan requested and description of all project costs; e.g. purchase price of land and building, cost of renovation by contractors, cost of equipment, working capital needs.

#### **5. Loan Processing and Approval process**

- **Initial Application.** The business applicant submits basic data and financial documents, including current personal and business financial statements, as





available, to staff for a preliminary credit and financial analysis.

- **Review.** Staff reviews applicant's eligibility for various loan programs. If qualified, applicant's information is processed accordingly. If ineligible for the RLF and other programs, application is rejected and possibly referred to other funding sources.
- **Loan Request.** If the request meets the criteria for program participation, staff will analyze the credit and prepare a credit memorandum.
- **Approval.** Staff will present the credit memorandum to the Loan Review Committee for review. The credit memorandum will analyze the business' financial operations, ability to service debt, and provide collateral. If the Loan Review Committee approves the request, staff will, if necessary, work cooperatively with any other participating agencies or financial institutions, if appropriate.
- **Loan Closing.** Upon approval by the Loan Review Committee, staff works with the business to fund and close the loan, assuring that loan agreements, notes and other documentation are executed properly.

## **G. Performance Assessment Policy**

### **1. Annual Loan Portfolio Review**

The County will review the performance of the RLF on a semi-annual basis and certify to USEDA, and other agencies as required that the RLF plan is consistent with the area's development strategy as defined in the CEDS and that the RLF is being operated in compliance with the policies and procedures contained in the RLF plan.

The RLF will assess performance by:

- Number of loans and amount of funds placed
- Number of performing loans (full repayment)
- Number of jobs created and/or retained
- Amount of capital investment

### **2. Reviewing and updating RLF Plan**

The RLF Plan will be amended and updated every 5 years, as appropriate, to conform to changes in economic conditions and the Comprehensive Economic Development Strategy.

### **3. RLF Loan Portfolio Sales and Securitizations**

With prior approval from USEDA, County may enter into a sale or a securitization of all or a portion of its RLF loan portfolio, provided County: (1) uses all the proceeds of any sale or a securitization to make additional RLF loans; and (2) requests USEDA to subordinate its interest in all or a portion of any RLF loan portfolio sold or securitized (42 USC 3149; and 13 CFR section 307.19).

## **II. OPERATIONAL PROCEDURES**

### **A. Organizational Structure**

#### **1. Administration**

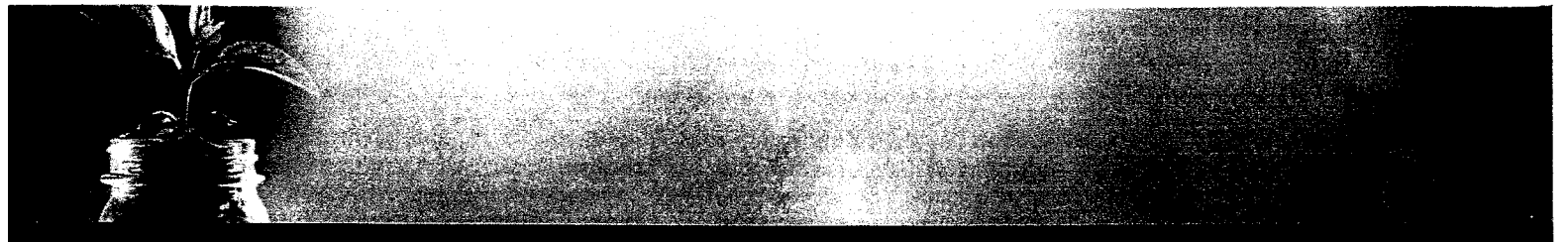
The County will administer the RLF and is a fully integrated agency and is responsible for economic development activities, capital improvement projects, CDBG management, public housing and administering many programs and projects for the County of Riverside. County has extensive experience managing grant funding and marketing, packaging and servicing loans under Redevelopment and through its housing programs.

The County is governed by the County Board of Supervisors. Administrative operations of The Economic Development Agency of the County of Riverside are under the management of the Executive Director.

County will administer the RLF on a day-to-day basis. All financial transactions, including deposit of funds, issuing of checks and collecting of program income, will be the responsibility of County. Loan Officers, Fiscal staff, and County Counsel will perform all services described in the Administrative Plan. County will be responsible for marketing, screening, processing, closings, servicing (including recovery of delinquent loans), accounting, and capital management functions as outlined in the Administrative Plan. Certain specific services, such as underwriting, may be contracted out to private partners with expertise in a given subject area for efficiency.

#### **2. RLF Loan Review Committee**

The Loan Review Committee will consist of five persons appointed by the Executive Director. The Loan Review Committee's responsibility will be to review and recommend loan applications for approval, review and recommend policy and make recommendations concerning RLF loans. The Loan Review Committee shall consist of two members from private sector finance industry and three members shall come from local government.



Vacancies, voting, and all related organizational and operational matters, including loan decisions, are made by majority vote of the Loan Review Committee. The Loan Review Committee will address additional loan policies, including special repayment terms, before any loans are made. A quorum for meetings of the Loan Review Committee will be three members, with one of the three in the quorum having financial or banking experience.

The Loan Review Committee is responsible for recommending approval of all loans, all major modifications or waivers and loan foreclosure actions. It is also responsible for recommending RLF loan policy, which shall be set by the Executive Director, or his designee. No County Supervisor, officer, employee, or member of County, or Loan Review Committee, or other person related to Loan Officer or Loan Review Committee, by blood, marriage, law or business arrangement shall receive any benefits resulting from the use of loan funds, unless the Loan Officer or Loan Review Committee member, affected first discloses to the Loan Review Committee on the public record the proposed or potential benefit and receives the Loan Review Committee's written determination that the benefit involved is not as substantial as to affect the integrity of the Loan Review Committee's decision process and or the services of the Loan Officer or Loan Review Committee member. The Loan Review Committee shall be guided by the conflict of interest policies as detailed in the County RLF Standard Terms & Conditions, as amended.

The Loan Review Committee may meet as needed to accomplish work necessary for loan program. Topics of meetings will include new loan requests, loan modifications and/or review of problem loans and recommend appropriate actions. Recommendations for approval of loans, modifications of terms and other actions may be taken by the Loan Review Committee without a formal meeting if approved by a majority of Loan Review Committee members by written confirmation.

In the event representatives from the financial community on the Loan Review Committee have a separate financial interest (excluding regular checking and savings accounts) in a loan applicant, such member will not participate in the deliberations regarding the loan applicant.

### **3. Conflict of Interest Policy**

The County of Riverside is a unit of local government who's Board of Supervisors (Board), Loan Officers, and Loan Review Committee members are chosen to provide a public benefit. These persons have a duty to conduct the affairs of the County in a manner consistent with the mission of the County of Riverside and not to advance their personal interests. This conflict of interest policy is intended to permit the County, Board, Loan Officers and Loan Review Committee members to identify, evaluate and address any real, potential or apparent conflict of interest that might, in fact or in appearance, call into question their duty to put the interests of the County ahead of their personal interests.

**Covered Persons:** This policy applies to all County, Board, Loan Officers and Loan Review Committee members and each Covered Person shall be required to acknowledge that they have read and are in compliance with this policy.

**Covered Transactions:** This policy applies to transactions between the County, Board, Loan Officer and Loan Review Committee members and a Covered Person, or between the County, Board, Loan Officers and Loan Review Committee members and another party with which the Covered Person has a significant relationship. A Covered Person is considered to have a significant relationship with another party if:

- a) The other party is a family member, including a spouse (or domestic partner or significant other), parent, sibling, child, stepchild, grandparent, and grandchild. This does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person.
- b) The other party is an entity in which the Covered Person has a material financial interest; or
- c) The Covered Person is an officer, director, trustee, partner, consultant or employee of the other party.

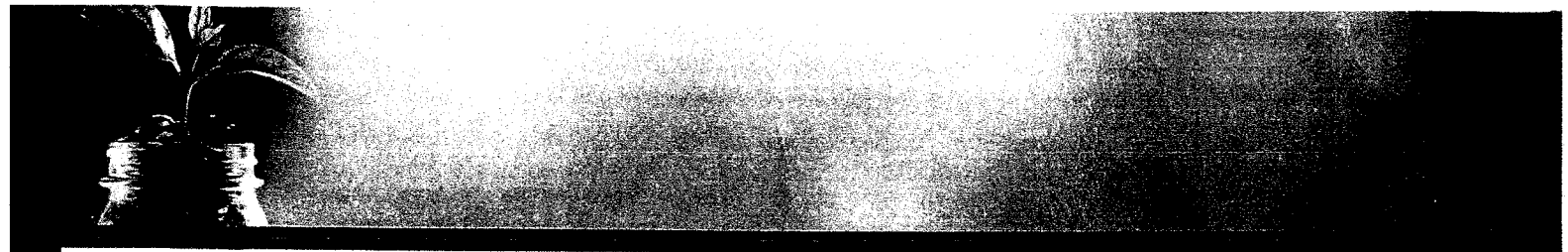
A Covered Transaction also includes any other transaction in which there may be an actual or perceived conflict of interest, including any transaction in which the interests of the Covered Person may be seen as competing or at odds with the interests of the County of Riverside and the RLF Program.

**Disclosure, Refrain from Influence and Recusal:** When a Covered Person becomes aware of a Covered Transaction, the individual has a duty to take the following actions:

- a) Immediately disclose the existence and circumstances of such Covered Transaction to the Loan Review Committee or Executive Director.
- b) Refrain from using their personal influence to encourage the Loan Review Committee to enter into the Covered Transaction; and
- c) Physically excuse themselves from any discussions regarding the Covered Transaction except to answer questions, including Loan Review Committee discussions and decisions on the subject.

**Standard for Approval of Covered Transactions:** The County may enter into a Covered Transaction where:

- a) Such Transaction does not constitute an act of self-dealing; and
- b) The Loan Review Committee determines, acting without the participation or influence of the Covered Person and based on comparable market data, that such



transaction is fair and reasonable to County. County shall document the basis for this determination in the minutes of the meeting at which the Covered Transaction is considered, and shall consult with the County's legal advisor as necessary to ensure that the Transaction does not constitute an act of self-dealing.

**Lending Activities:** The following conflict of interest policy shall apply specifically to County's loan program: No personal or private loans may be made by the Loan Review Committee to its members, or their immediate families as provided in 13 CFR 302.3 and in ORS 65.364. No member of the Loan Review Committee or their immediate families may be an officer, director, or owner of a small business concern receiving financial assistance from the County.

In addition to above and the rules set forth in 13C.F.R.302.17(a) and (b), the Recipient must adhere to these special conflicts-of-interest rules set out in 13 C.F.R. 302.17(c):

- An Interested Party of a Recipient of an RLF Award will not receive, directly or indirectly, any personal or financial benefits resulting from the disbursement of the RLF loans.
- A Recipient will not lend RLF funds to an Interested Party.
- Former board members of a Recipient and members of his or her Immediate Family will not receive a loan from the RLF for a period of two (2) years from the date that the board member last served on the RLF's board of directors.

#### **4. Staff Capacity**

The Loan Officers will consist of economic development staff that have been selected for program due to experience and knowledge with loan processing. The staff will originate, screen, process, structure, service and monitor all loans. The staff will also act as liaison with other funding agencies for borrowers. Professional legal, lending and accounting services will be available. The primary activities of the staff regarding the RLF will be as follows:

- Work with prospective borrowers to help them prepare and complete loan requests, perform loan and credit reviews and make final recommendations to Loan Review Committee
- For approved loans, ensure proper execution of documents, compliance with all appropriate regulations, timely loan closing and implementation of projects
- Monitor ongoing operations of loan recipients
- Manage loan servicing and accounting
- Manage loan collections with attorney, including asset liquidation if any

- Provide financial reports as needed for the RLF, including individual account status

Staff will make recommendations to the Loan Review Committee for final decisions. Professional legal and accounting services are available to whatever extent required.

## **B. Loan Processing Procedures**

### **1. Standard Loan Application Requirements**

Upon determination by a Loan Officer that an opportunity for a financing exists, Loan Officer shall contact the potential borrower and request the following information or documentation as may be required for consideration of their loan request:

- A maximum of three years of business and personal tax returns
- A maximum of three years of business financial statements which contain balance sheets and profit and loss statements
- Personal Financial Statement dated within the most recent quarter and not more than 3 months old (SBA 413 is acceptable) from all principals with more than 20% ownership
- Business Plan with financial projections for start-up businesses
- Proof of Hazard and Liability Insurance
- Accounts Receivable and Accounts Payable aging if applicable
- Schedule of debts including current outstanding balances, repayment schedules and due dates, and schedule of collateral
- Authorization to request business or personal credit reports as required

The Loan Officer is responsible for adding to the credit file checklist the following items as may be applicable:

- Appraisal and Credit Reports
- Environmental Reviews
- Standard Collateral Requirements
- Standard Equity Requirements
- Standard Insurance Requirements



- Public Benefit Requirements and required certifications or documentation

The Loan Officer is responsible for preparing the Credit Memorandum. The standard loan documentation will include, at a minimum, the (1) loan application, (2) loan agreement, (3) board of directors' meeting minutes approving the RLF loan, (4) promissory note, (5) security agreement(s), (6) deed of trust or mortgage (if applicable), (7) agreement of prior lien holder (if applicable), and (8) 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.

## **2. Credit Reports**

In connection with a RLF application a credit report for each principal of the small business will be required for underwriting purposes. An Authorization for Release of Information form will need to be completed and signed by applicant(s).

## **3. Appraisal Reports**

Appraisals may be required of real property or other fixed assets that are being used as collateral for the loan.

## **4. Environmental Reviews**

Environmental reviews will be required if loans involve the acquisition of real property or the alteration of the physical environment as in construction. In these cases all borrowers will:

- Complete an environmental questionnaire as may be required
- Permit a site inspection of the property and an environmental audit (Phase I or Phase II) by a qualified inspector selected by County as appropriate
- Provide such documentation as may be required

Environmental reviews shall comply with the intent of the National Environmental Policy Act of 1969, as amended, as implemented in regulations and as listed in County's RLF Standard Terms and conditions. Construction loans will comply with the California Environmental Quality Act (CEQA) as amended.

## **5. Historic Buildings Reviews**

All projects will comply through the Lender with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 USC 469a-I et seq.): (1) by consulting with the state's Historic Preservation Officer on the conduct of investigation, as necessary to identify properties listed in or eligible for inclusion in National Register

of Historic Placed that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and noting the Lender of the existence of any such properties; and (2) by complying with all requirements established by the Lender to avoid or mitigate adverse effects.

## **6. Collateral and Equity Requirements**

The RLF will obtain a perfected interest in a borrower's assets, including the outside assets of related parties as may be required. Loans may be secured with the following types of collateral: real property, machinery, equipment, inventory, accounts receivable, securities and personal guarantees, including collateralized personal guarantees.

A personal guarantee shall be obtained from all principals having a 20 percent or more ownership in the company being considered. Appropriate hazard and liability insurance shall be required and key man life insurance shall be considered depending upon the size and nature of the transaction and the health and ages of the principals. A Lender's Loss Payable endorsement naming RLF will normally be required, as appropriate, to protect the interests of the RLF.

Trust deeds will be obtained and supported by a lot book report or lender's title policy as appropriate. Liens on personal property will be perfected by UCC-1 filings and Security Agreements where fixed assets and/or soft assets are taken as collateral.

## **7. Loan Write-up**

The loan write-up, or Credit Memorandum, is a written summary signed by the Loan Officer member and presented to the Loan Review Committee. It fully describes the recommended loan transaction and is organized as follows:

- **Basic Information.** The date, the name of the company and the location of the business involved, including Supervisorial district.
- **Background.** The type of company, market conditions, current trends and pertinent detail about the principals and the company's products.
- **Economic. Impact** The effect of the loan and the public benefit to be expected.
- **Purpose.** What the loan will finance such as equipment purchase, working capital, and so on and the effect of that action on company operations.
- **Terms of Proposed Financing** The amount, term, interest rate, fees, collateral, guarantees and requirements of the RLF loan and related loans.
- **Uses and Sources of Funds.** (A tabular presentation.)
- **Identification of Problems.** (Environmental, management etc.)



- Cash Flow Repayment Analysis. (A tabular presentation with explanations and footnotes.)
- Estimated Annual Debt Service. (A tabular presentation.)
- Financial Statements. An analysis of the financial statements.
- Proforma Analysis. An analysis of the business proforma.
- Balance Sheet Analysis. (A tabular presentation.)
- Discussion of Collateral. An analysis of the collateral.
- Justification. Reasons for the RLF loan (i.e., how it is not substituting for private financing) including support documents, as appropriate.
- Recommendation. The recommendation of the Loan Officer member, including contingencies.

## **8. Loan Approval**

Recommendation for loan approval by the Loan Review Committee shall be in writing, signed by all participating Loan Review Committee members. Following Loan Review Committee recommendation for approval, loan package will be sent to Executive Director for review. Upon approval of Executive Director or his designee, loan documents are submitted to Executive Director for approval. Once approved a letter shall be sent to the applicant indicating approval and the terms and conditions of approved loan.

## **9. Appeal of Denial**

If the applicant does not agree with the Loan Review Committee determination to fail to recommend the loan, the applicant has the right to appeal the decision of the Loan Review Committee to a Sub-Committee comprised of three (3) board members for the following:

1. If the person/company feels that the Loan Review Committee did not have the necessary information to make the appropriate decision. Further consideration of the credit request is subject to receipt of additional information.
2. A person/Company may file an appeal in any case, wherein the person believes that the Loan Review Committee has failed to properly consider the person's application for loan assistance.

3. Applicant must file a written appeal within 30 days from date person received notification of Loan Review Committee's determination of denial of recommendation. Time limit may be extended on case-by- case basis, for good cause as stated on item 1 above.

The Loan Review Committee Shall:

- Cause the appeal committee to conduct a prompt review of the written appeal, regardless of form by the Sub Committee.
- Have a determination issued within 6 weeks of the date of appeal and a complete package.

## **C. Loan Closing and Disbursement Procedures**

### **1. General Closing Requirements**

Loan Officer will perform a final loan review, including credit reports, ordering UCC searches and filing UCCs and Deeds of Trust, as applicable, and will work with a closing attorney, if necessary, to perform all necessary functions related to closing specific loan packages. County staff will review the public benefit requirements and ensure that required documentation includes required employment certification and other forms needed to fulfill the public benefit requirements of the loan.

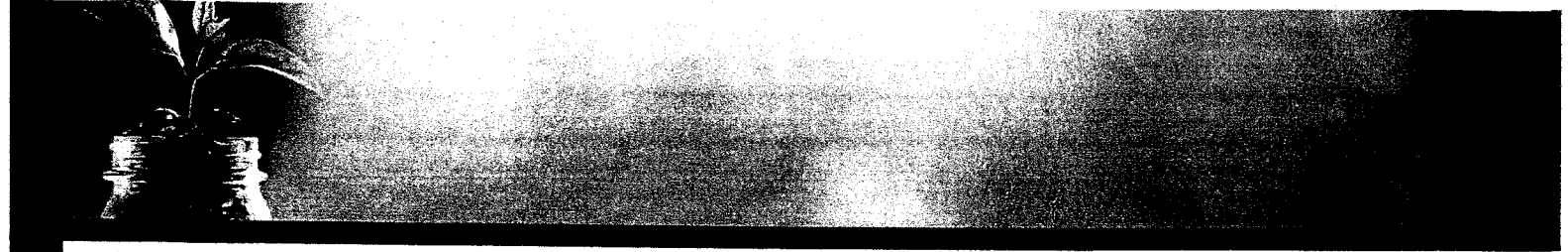
### **2. Loan Disbursement**

Borrower will comply with the use of funds as stated on the Loan agreement. Once the above documentation requirements are met, security interests are perfected and borrower's certification that the funds are to be used for the purpose intended, funds will be disbursed as directed by the Loan Review Committee recommendation action and in accordance with the loan agreement and instructions of the Loan Officer. Fixed asset loans may require the opening of a loan escrow for the perfection of collateral and the coordination of fund distribution. Working Capital loans will be funded in a single disbursement or on an agreed schedule depending upon the circumstances. Fixed asset loans will require backup documentation including invoices or bank statements, or other verifiable documentation.

## **D. Loan Servicing Procedures**

### **1. Loan Payment and Collection**

Direct Loans are set up in the Accounting Department in the Fiscal Division of County. Borrower be will provided specific instructions on where and how to submit loan payments.



Once received payments will be deposited in federally insured accounts in accordance with California Government Code on the same day as received, if received before 12 p.m., or the next business day.

## **2. Loan Monitoring**

Under the direction of the Loan Officer, each loan file will be monitored for compliance with public benefit requirements and for the proper and timely submission of financial data, reports, UCC renewals and insurance documents. Every six months, on July 1 and January 1, for the period of the loan a letter will be sent to the borrower requesting submission of job hiring and saving data in accordance with the loan agreement. Every twelfth month, a copy of the annual financial statement of the business will be requested and an appointment will be made for a site visit and inspection of collateral.

Borrowers are required to maintain adequate records and books of account in which complete entries will be made reflecting all of its business and financial activities, and to submit financial statements annually for the life of the loan.

A successful business will keep payments current and meet the above monitoring requirements without difficulty. Failure to comply with the above monitoring routine will result in the loan file being pulled, scheduling a site visit and determination of proper action.

## **3. Late Payment Follow-up**

If a payment not timely made remains overdue for a period of ten (10) days after the same becomes due and payable, Borrower, without notice or demand by County or any holder of the note, shall apply a late charge in the amount of five (5) percent of the delinquent payment owing. The loan is placed on the delinquent loan report, which is submitted to the Loan Officer on a monthly basis.

During the first 30 days of delinquency, the loan file will be pulled and returned to Loan Officer for oral communication with the borrower and for a determination of appropriate action. The loan will be placed on the Delinquency report.

During the second 30 days of delinquency the Loan Officer will visit the site, if this has not already been done, to inventory the collateral and to determine a plan to resolve the delinquency. A Borrower may request and the County may approve a deferral period during the life of the loan.

## **4. Loans Over 90 days in Arrears**

The Loan Officer will work to exercise all rights and privileges of the lender in order to collect the proceeds on delinquent loans. Loan Officer will:

- Make sure all loan documentation is in order
- Contact County Counsel to coordinate collection efforts
- Formally notify other lenders of the delinquency, as appropriate
- Formally notify the guarantors of the defaulted loan and put them on notice that they are expected to make payment
- Notify the Loan Review Committee
- When the Loan Officer determines that he has exercised all reasonable attempts at collection the loan file will be transferred to the Fiscal Division for liquidation action per the requirement of the County's Debt Collection Policy.

## **5. Default Loan Monitoring Procedures**

The Loan Officer can recommend to the Loan Review Committee that a loan be declared in default and that action should be taken to initiate recovery against collateral, if it appears that the threat to the collateral or to the repayment of the loan is immediate or the situation is rapidly deteriorating. The Loan Review Committee must approve foreclosure or necessary litigation. The Loan Review Committee shall be briefed and County Counsel consulted with respect to the possibility of a successful workout.


The file will be reviewed and the Loan Officer will recommend a liquidation plan. The plan will be presented to the Loan Review Committee and the Executive Director for approval. The liquidation officer will be responsible for all actions related to collection of past amounts due including disposition of collateral and negotiations of any "Offer in Compromise" (OIC). The OIC will require the approval of the Executive Director.

## **6. Loan Restructuring**

If the cash flows of the business are inadequate to make the scheduled payments, it may be necessary to alter the terms of the note in order to cure defaults. If there is no need to cure defaults, payment terms may be reached with amending the notes. Restructuring of loans include, but are not limited to; interest rate amendments, maturity date extensions, balloon payments. All loan modifications will be reviewed and approved by Loan Review Committee.

## **7. Write off**

Collection efforts will be continued until all collateral has been liquidated and all other actions have been exhausted. Loan Officer will recommend either returning the loan to the respective division for preparation of a charge off request, or forwarding the loan to



an outside collection agency for additional collection efforts. Loans deemed uncollectible will be returned to the respective division for preparation of the charge off request. Write off requests will be submitted to the Loan Review Committee and the Executive Director for approval.

## **E. Administrative Procedures**

### **1. Accounting**

County will maintain a separate bank account established for the RLF so that repayments and interest income are clearly identifiable and auditable and portfolio and cash are clearly distinguishable from any other loan programs. This includes both the USEDA and local share portions of the RLF. County will ensure that the RLF is operating in accordance with Generally Accepted Accounting Principles (GAAP).

### **2. Reporting**

County will submit financial and status reports to the EDA Regional Office semi-annually. The reports will be in a format acceptable to EDA. Semi-annual reports will be submitted by April 30th, covering RLF activity through March 31st, and October 31st covering activity through September 30th. Other reports or special reports will be submitted as required.

County will ensure that the RLF Portfolio is in compliance with applicable capital utilizations standards and sequestration requirements.

### **3. Audits**

County acknowledges that USEDA RLF funds are subject to an annual audit requirement and the full value of the RLF (outstanding loans and available cash) will be shown every year on the Recipient's Schedule of Federal Expenditures. County will ensure that the auditor performs the required federal audit procedures.

### **4. Loan Files and Loan Closing Documentation**

All original loan documents will be maintained in a fireproof file cabinet on the premises. Original loan documents requiring storage in fireproof facilities include: original notes, loan agreements, Loan Review Committee's meeting minutes approving the RLF loan, security agreement(s), deed of trust(s), title policy, collateral perfection documents and other original legal documents. Copies of the collateral documents will be kept in the loan files located in ordinary file cabinets located on the premises.

The loan files will contain the complete record of the individual loan including original applications and supporting documents and verifications, Credit memorandum and amendments thereto, public benefit documents and verifications, copies of the notes, deeds and other collateral, correspondence and checklists.

## **5. County Reporting Requirements**

Loan Officer shall maintain a separate file containing all original documents approving the application and all applications, approvals and documents relating to the loans. Files of all required reports will be maintained and kept current.

A portfolio report will be maintained that will document the outstanding balances of loans and the performance of the portfolio with respect to the guidelines set forth in Part I. This report is an operational report, which will guide the marketing practices of the loan officers in order to keep the ratios within desired limits. It will be updated monthly.

RLF loan payments and program income will be tracked and budgeted through the County's annual budget process. All funds will be accounted for within the normal operating requirements of the County and will be subject to all restrictions and practices required by the California Government Code.

## **F. Funding for Administration Costs**

Administrative costs for the RLF will be covered under existing programs of the County and will not come from grant funds or program income.

## **G. Capital Management Strategy**

### **1. Ongoing Recapitalization**

Ongoing recapitalization is provided by repayment of principal, interest and fees for outstanding loans.

### **2. Excess Retention Policy**

In considering the amount of funds retained on hand, the RLF program will be guided by USEDAs Excess Retention Policy, which sets the limit at 20 percent of total capital, including all funds available for lending. This policy will be closely observed, after initial funds have been disbursed. Excess funds will be invested in interest bearing accounts. All federal funds will be held in insured accounts; federal funds greater than \$100,000 will be held in collaterally insured accounts.



## **H. Miscellaneous Procedures**

In addition to the conditions and requirements of the application, the trust deed or other security instrument(s) and the promissory note, each borrower will be required to observe all applicable federal, state and local statutes and regulations. Applicable provisions will be included in each loan agreement.

A violation by any borrower of any of the federal requirements applicable to this RLF including, but not limited to, civil rights, environment, historic preservation, relocation, flood hazard, access for the handicapped and Loan Review Committee recommendations or wage laws, will be cause for default on the loan.

### **1. Civil Rights Consideration**

The RLF will comply with all Federal civil rights requirements that prohibit discrimination against employees or applicants for employment or providers of goods and services on the basis of race, color or national origin, sex, age, handicap, religion or as amended.

The RLF will aggressively outreach to minority communities for the initial and subsequent lending rounds to ensure equal opportunity in the award and performance of any loans to all persons without regard to race, color, sex, religion, national origin, ancestry, age, marital status, physical, mental disability or sexual preference.

### **2. Environmental Considerations**

Loan Officer with the assistance of appropriate staff, shall assess the significance of all environmental impacts of activities to be financed in compliance with the National Environmental Policy Act of 1969 and other Federal environmental mandates, as per the Assurances (SF 424D as revised) executed with the Economic Development Administration. No activity shall be financed which would result in a significant adverse environmental impact unless the impact is to be mitigated to the point of insignificance. When necessary to ensure compliance, any required mitigation shall be made part of the loan conditions.

No project shall be approved which would result in the alteration of or have an adverse impact on any wetland without prior consultation with the U.S. Department of the Interior, Fish and Wildlife Service, and, if applicable, obtaining a section 404 permit from the Army Corps of Engineers

Consistent with E.O. 11988, no project shall be approved which would result in new above ground development in a 100 year flood plain. This determination will be made by reviewing the proposed development against FEMA Flood Insurance Rate Maps. The State Historic Preservation Officer, (SHPO) shall be notified of each loan proposal that involves significant new construction or expansion and asked to submit comments on the effect of the proposed activity on historic and archaeological resources. The

RLF Administrator shall work with the SHPO and EDA in cases where the SHPO has recommended actions or has been determined an adverse impact.

All loan applicants shall be requested to provide information indicating whether or not there was hazardous materials such as EPA listed (see 40 CFR 300), hazard substances, leaking underground storage tanks, asbestos, polychlorinated biphenyls (PCB), or other hazardous materials on site that have been improperly handled and have the potential of endangering public health. If deemed necessary, loan applicants may be required to perform or provide evidence of a Phase I site assessment to identify possible sources of contamination, a Phase II site assessment to test soil and/or groundwater samples, and a Phase III site remediation involving mitigation of applicable contaminants. In cases where there are unresolved site contamination issues, the RLF Administrator shall work with the loan applicant and the appropriate state environmental agency office to resolve these outstanding issues.

### **3. Flood Hazard Insurance**

RLF loans will not be made for project activity located in a flood plain unless proof of flood hazard insurance is provided, as per the flood insurance purchase requirements of Section 102(1) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition, if the total cost of insurable construction and acquisition is \$10,000 or more for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance.


### **4. Access for Handicapped**

County will assure that any building or facility financed in whole or in part by funds provided under the Program will be designed, constructed or altered so as to assure ready access to and use of such building or facility by the physically handicapped, pursuant to Public Law 90-480, as amended (42 USC 415 1, et seq.)

### **5. Relocation**

Projects will not be funded if located outside the County of Riverside. Loans will be called if project activity is removed from the County of Riverside. All projects funded will comply with Section 2, of the Public Works and Economic Development Act, as amended, which states that under the provisions of this Act new employment opportunities should be created by developing and expanding new and existing facilities and resources rather than by merely transferring jobs from one labor area to another. It





shall be an event of default and the loan shall be called if it is determined that (1) the firm or organization used the RLF loan to relocate jobs from another commuting area or (2) the economic activity financed is moved outside the commuting area to the detriment of local workers.

## **6. Davis-Bacon Act Requirements**

All laborers and mechanics employed by contractors or subcontractors on construction, alteration, or repair, including painting and decorating projects financed in whole or in part by RLF loans shall be paid at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All projects undertaken with RLF loans must meet the requirements, and comply, as applicable, with the provisions of the Davis-Bacon Act as amended (42 USC 3212; 13 CFR section 302.13; Section 1606 of ARRA), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327333) regarding labor standards for federally-assisted construction subagreements.

## **7. Additional Requirements**

Projects will comply with all requirements by the federal sponsoring agency concerning special requirements of the law, program requirements, and other administrative requirements; will comply, where applicable, with the Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) and with the Anti-Kickback Acts, as amended (40 USC 276 (c); 18 USC 874); will comply, where applicable, with the earthquake Hazards Reduction Act of 1977 (Public Law 9520 124), as amended (40 USC 770'4, et seq.) and Executive Order 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction" for the design of newly constructed buildings.

County will follow the most current US Department of Commerce, Economic Development Administration Revolving Loan Fund Financial Assistance Standard Terms and Conditions (dated May 1, 2013), which includes Part I (General Requirements and Responsibilities), Part II (RLF Recipients' Management and Administrative Requirements), Part III (Lending Restrictions and Borrower Requirements) and all amendments thereafter.



**U. S. DEPARTMENT OF COMMERCE**  
Economic Development Administration  
915 Second Avenue, Room 1890  
Seattle, WA 98174  
Fax: 206.220.7669  
Voice: 206.220.7660

In reply refer to:  
Investment No.: 07-79-07282

SEP 25 2015

Mr. Joaquin Tijerina  
Economic Development Regional Manager  
County of Riverside  
Economic Development Agency  
1325 Spruce Street, Suite 110  
Riverside, CA 92507

Dear Mr. Tijerina:

I am pleased to inform you that the Department of Commerce's Economic Development Administration (EDA) has approved your application for a \$1,222,906.00 EDA investment to establish a Revolving Loan Fund.

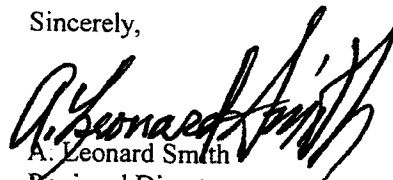
Enclosed are three signed copies of the Financial Assistance Award form. Your agreement to the terms and conditions of the award should be indicated by the signature of your principal official on each of the signed copies of the Financial Assistance Award form. Two of the executed copies should be returned to A. Leonard Smith, Regional Director Economic Development Administration, Seattle Regional Office 915 Second Avenue, Room 1890, Seattle, WA. 98174. If not signed and returned within 30 days of receipt, EDA may declare the Award null and void.

Please do not to make any commitments in reliance on this award until you have carefully reviewed and accepted the terms and conditions. Any commitments entered into prior to obtaining the approval of EDA in accordance with its regulations and requirements will be at your own risk.

EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA implements this mission by making strategic investments in the nation's most economically distressed communities that encourage private sector collaboration and creation of higher-skill, higher wage jobs. EDA investments are results driven, embracing the principles of technological innovation, entrepreneurship and regional development.

I share your expectations regarding the impact of this investment and look forward to working with you to meet the economic development needs of your community.

Sincerely,

  
A. Leonard Smith  
Regional Director

Enclosures  
cc: Wil Marshall, EDR, CA

GRANT  COOPERATIVE AGREEMENT

# FINANCIAL ASSISTANCE AWARD

FEDERAL AWARD ID NUMBER  
07 79 07282

RECIPIENT NAME  
Riverside County Economic Development Agency

PERIOD OF PERFORMANCE  
Date of Grants Officer's signature thru Sep 30, 2018

STREET ADDRESS  
1325 Spruce Street, Suite 110

FEDERAL SHARE OF COST  
\$ 1,222,906.00

CITY, STATE, ZIP CODE  
Riverside, California 92507

RECIPIENT SHARE OF COST  
\$ 305,727.00

AUTHORITY  
42 U.S.C. 3141, Section 201 of the Public Works and Economic Development Act of 1965 (Public Law 89-136), as amended by the Economic Development Administration Reauthorization Act of 2004 (Public Law 108-373)

TOTAL ESTIMATED COST  
\$ 1,528,633.00

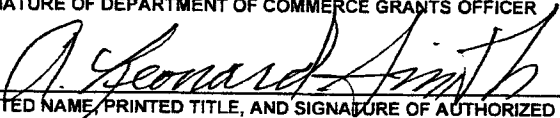
CFDA NO. AND NAME  
11.307 / Economic Adjustment Assistance Program

PROJECT TITLE  
Revolving Loan Fund

This Award Document (Form CD-450) signed by the Grants Officer constitutes an obligation of Federal funding. By signing this Form CD-450, the Recipient agrees to comply with the Award provisions checked below and attached. Upon acceptance by the Recipient, the Form CD-450 must be signed by an authorized representative of the Recipient and returned to the Grants Officer. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally withdraw this Award offer and de-obligate the funds.

- DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS (DECEMBER 2014)
- R & D AWARD
- FEDERAL-WIDE RESEARCH TERMS AND CONDITIONS, AS ADOPTED BY THE DEPT. OF COMMERCE
- SPECIAL AWARD CONDITIONS
- LINE ITEM BUDGET
- 2 CFR PART 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS, AS ADOPTED PURSUANT TO 2 CFR § 1327.101
- 48 CFR PART 31, CONTRACT COST PRINCIPLES AND PROCEDURES
- MULTI-YEAR AWARD. PLEASE SEE THE MULTI-YEAR SPECIAL AWARD CONDITION.
- OTHER(S): U.S. Department of Commerce Economic Development Administration Revolving Loan Fund Financial Assistance Award Standard Terms and Conditions (May 2013)

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER




A. Leonard Smith, Regional Director

DATE

9-25-2015

PRINTED NAME, PRINTED TITLE, AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

Heidi Marshall, Assistant Director 

DATE

10/22/15

SPECIAL AWARD CONDITIONS  
 U.S. DEPARTMENT OF COMMERCE  
 Economic Development Administration (EDA)

**Revolving Loan Fund Projects: Economic Adjustment Assistance Program**

<b>Project Title: Revolving Loan Fund</b>	
<b>Recipient Name: County of Riverside Economic Development Agency</b>	<b>Project Number: 07-79-07282</b>

1. This EDA Award supports the work described in the approved final scope of work that will be outlined in the most recent RLF Plan, which EDA will approve prior to first disbursement of funds, and will be incorporated by reference into this Award, as the *Authorized Scope of Work*. All work on this project should be consistent with this *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work in writing through an amendment memorialized through execution of a Form CD-451.

2. The Recipient Contact's name, title, address, and telephone number are:

Mr. Joaquin Tijerina Economic Development Regional Manager Phone: (760) 863-2529 Email: jtijerina@rivcoeda.org	County of Riverside Economic Development Agency 1325 Spruce Street, Suite 110 Riverside, California 92507
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3. The Grants Officer is authorized to award, amend, suspend, and terminate financial assistance awards. The Grants Officer is:

A. Leonard Smith Regional Director Fax: (206)220-7657	Economic Development Administration Seattle Regional Office 915 Second Avenue, Suite 1890 Seattle, WA 98174
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4. The Federal Program Officer (Area Director) oversees the programmatic aspects of this Award. The Federal Program Officer is:

Kristine Skrinde Area Director Phone: (206)220-7700 FAX: (206)220-7669 Email: KSkrinde@eda.gov	Economic Development Administration Seattle Regional Office 915 Second Avenue, Suite 1890 Seattle, WA 98174
--	--

5. The Project Officer is responsible for day-to-day administration and liaison with the Recipient and receives all reports and payment requests. The Project Officer is:

Bill O'Neil Community Planner Phone: (206) 220-7732 FAX: (206) 220-7669 Email: boneil@eda.gov	Economic Development Administration Seattle Regional Office 915 Second Avenue Suite 1890 Seattle, WA 98174
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6. **ADDITIONAL INCLUDED DOCUMENTS:**

In addition to the regulations, documents, or authorities incorporated by reference on the Financial Assistance Award form (CD-450) the following additional documents are included with and considered to be part of the Award's terms and conditions:

- A Recipient's final completed Application (this item not enclosed in this Award package);
- Instructions on how to enroll and access funds in ASAP (Attachment 1);
- The May 2013 Economic Development Administration Revolving Loan Fund Financial Assistance Standard Terms and Conditions are currently in the process of being updated to address, where appropriate: (i) the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (effective Dec. 26, 2014) as set forth at 2 C.F.R. part 200 and (ii) the amended EDA regulations (effective Jan. 20, 2015) (79 Fed. Reg. 76108) (Dec. 19, 2014). When the revised version of Economic Development Administration Revolving Loan Fund Financial Assistance Standard Terms and Conditions (Revised Version) becomes available, the Revised Version will supersede the May 2013 Economic Development Administration Revolving Loan Fund Financial Assistance Standard Terms and Conditions (attached hereto). At such time, the Recipient(s) shall execute an Amendment to Financial Assistance Award (Form CD-451) that will incorporate the Revised Version into the award that will replace the Department of Commerce Financial Assistance Standard Terms and Conditions (December 26, 2014) and superseded Economic Development Administration Revolving Loan Fund Financial Assistance Standard Terms and Conditions (May 2013) previously incorporated into the award. Until such time as EDA and Recipient(s) execute the referenced CD-451, the two (2) attached sets of Standard Terms and Conditions shall be interpreted as one harmonious document but the Department of Commerce Financial Assistance Standard Terms and Conditions (December 26, 2014) shall control as to any inconsistencies between the two (2) attached sets of Standard Terms and Conditions. ; and,
- RLF Plan/*Authorized Scope of Work* (this item not enclosed in this Award package).

Should there be a discrepancy with the Application, these Special Award Conditions and the attachments hereto shall control.

7. **PROJECT DEVELOPMENT TIME SCHEDULE:** The Recipient agrees to the following Project development time schedule:

Time allowed in Financial Assistance Award after EDA Award date:

Return of Executed Financial Assistance Award.....	30 calendar days after receipt of Form CD-450/CD-451
Authorized Award End Date.....	N/A
Submission of Final Financial Document (SF-425) .....	Due no later than 90 calendar days after September 30, 2018

The Recipient shall diligently pursue the development of the Project so as to ensure completion within this time schedule. Moreover, the Recipient shall promptly notify EDA in writing of any event that could substantially delay meeting any of the proscribed time limits for the Project as set forth above. The Recipient further acknowledges that failure to meet the development time schedule may result in EDA's taking action to terminate the Award in accordance with the regulations set forth at 2 C.F.R. §200.338 through § 200.342.

**8. PROJECT REPORTING AND FINANCIAL DISBURSEMENTS INSTRUCTIONS:**

- A. AWARD DISBURSEMENTS:** EDA will make Award payments using the Department of Treasury's Automated Standard Application for Payments (ASAP) system. The Recipient is required to furnish documentation as required by ASAP including but not limited to Recipient and Requestor Identification Numbers. Complete information concerning the ASAP system may be obtained by visiting [www.fms.treas.gov/asap](http://www.fms.treas.gov/asap).

In order to receive reimbursements, the Recipient shall submit a *Request for Reimbursement (Form SF-270)* to the Project Officer only to close a loan or disburse RLF funds to a borrower. The Recipient must disburse the RLF funds to a borrower within thirty (30) days of receipt of the Award funds. Any Award funds not disbursed within the thirty (30) day period shall be refunded to EDA. The amount of the disbursement shall not exceed the difference, if any, between the RLF Capital and the amount of a new RLF loan, less the amount, if any, of the Matching Share required to be disbursed concurrent with the Grant funds.

Please note that prior to the initial disbursement, Recipients must complete the attached Form SF-3881, "*ACH Vendor/Miscellaneous Payment Enrollment Form*" and submit it to NOAA's Accounting Office by FAX to 301-528-3675 (*FAX is required to secure confidentiality of sensitive information*). The form must be completed by the respective parties (EDA, Recipient Bank, and Recipient) at the start of each new award.

**B. REPORTS:**

- a. *Financial Reports:* The Recipient shall submit a "*Federal Financial Report*" (Form SF-425) on a semi-annual basis for the periods ending **March 31** and **September 30**, or any portion thereof. Form SF-425 (and instructions for completing this form) is available at: [http://www.whitehouse.gov/omb/grants/grants\\_forms.html](http://www.whitehouse.gov/omb/grants/grants_forms.html). Reports are due no later than 1 month following the end of the period.

A final Form SF-425 must be submitted no more than 90 calendar days after the expiration date of the Award (e.g., the Award end date specified on the Form CD-450 or Form CD-451). Final financial reports should follow the guidance outlined by the form instructions for submitting mid-term financial reports, but

should ensure that all fields accurately reflect the total outlays for the entire project period, and that all matching and program income (if applicable) is fully reported. Final grant rate and determinations of final balances owed to the government will be determined by the information on the final Form SF-425, so it is imperative that this final financial form is submitted in a timely and accurate manner.

Form SF-425 is required only during the disbursement phase of the grant award.

- b. RLF Income and Expense Statement: The Recipient shall submit an RLF Semiannual Income and Expense Statement Report for the periods ending **March 31 and September 30**, or any portion thereof, electronically on Form ED-209 or any successor form. This report is required during the grant period and during revolving period. Additionally, the Recipient shall submit Form ED-209I electronically along with the Form ED-209 submission if required, as outlined in EDA regulations. Reports are due no later than 30 calendar days following the end of the period.

- 9. **ALLOWABLE COSTS AND AUTHORIZED BUDGET**: Total allowable costs will be determined at the conclusion of the award period in accordance with the administrative authorities applicable pursuant to the *Financial Assistance Award* (Form CD-450), including 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, after Final Financial Documents are submitted.

Line Item Budget:

- A. Under the terms of the Award, the total approved/authorized budget is:

Federal Share (EDA)	\$1,222,906.00
Non-Federal Matching Share	\$305,727.00
Total Project Cost	\$1,528,633.00

- B. Under the terms of this Award, the total line item budget is:

Categories	Federal Share	Recipient Share	Total
Other	\$1,222,906.00	\$305,727.00	\$1,528,633.00

- 10. **FEDERAL SHARE**: The EDA participation in total eligible project costs will be limited to the EDA grant amount or the EDA share of total allowable project costs, based on the area's grant rate eligibility at the time of award, whichever is less.
- 11. **MATCHING SHARE**: The Recipient agrees to provide the Recipient's non-Federal Matching Share contribution for eligible project expenses in proportion to the Federal share requested for such project expenses. The Recipient also certifies that, in accepting the Financial Assistance

Award, the Recipient's Matching Share of the project costs is committed and unencumbered, from authorized sources, and shall be available as needed for the project.

12. **CASH CONTRIBUTION.** The Recipient agrees to provide the cash contribution for eligible project expenses to be loaned and re-loaned in accordance with the approved Revolving Loan Fund Plan and the terms of this Award. The Recipient's cash contribution must be available at the time needed for loan closings. The cash Matching Share of the RLF may only be used for lending purposes. The cash Matching Share must be used either in proportion of the Grant funds or at a faster rate than the Grant funds. The full amount of the cash Matching Share shall remain for use in the RLF.
13. **RLF ADMINISTRATIVE EXPENSES and RLF ADMINISTRATIVE COSTS AND INCOME RESTRICTIONS.** Administrative costs/expenses for the operation of this Revolving Loan Fund project are not included as eligible expenses in the authorized budget. The Recipient agrees to cover the administrative expenses for this project without relying on additional financial assistance from EDA with this or any other Award except as expressly allowed by EDA. The Recipient agrees that costs to administer this RLF Award will be paid by the Recipient and or by the "RLF Income".
14. **INTEREST BEARING ACCOUNT.** All Award funds disbursed by EDA to reimburse the Recipient for loan obligations already incurred must be held in an interest-bearing account (an "EDA funds account") by the Recipient until disbursed to the borrower. (See 13 C.F.R. § 307.11(d).) Any such interest should be treated as RLF Income in accordance with the definition of RLF Income at 13 C.F.R. § 307.8 and the requirements of 13 C.F.R. § 307.12.
15. **REQUIREMENTS PRIOR TO INITIAL DISBURSEMENT (For RLF Awards):** Prior to the initial disbursement of the Award, the Recipient shall submit to EDA the following items for approval:
  - a. Evidence satisfactory to EDA, from an independent account that their accounting system is adequate to identify the source and application of Award funds; including program income.
  - b. Evidence of employee dishonesty insurance or fidelity bonds coverage or other insurance coverage acceptable to EDA for all employees and officials who handle or have access to funds under this award. The Recipient agrees to maintain this fidelity bond insurance for persons authorized to handle funds under the award, for the life of the RLF, in an amount sufficient to protect the interest of EDA and the RLF. At a minimum, the amount of coverage shall be the greater of the maximum loan amount allowed for in the EDA approved RLF Plan, or 25 percent of the RLF Capital Base. Such coverage must exist at all times during the duration of the RLF's operation and the Recipient shall provide EDA with evidence of such coverage.
  - c. Standard RLF loan documents and certification stating loan documents necessary for lending are in place and the documents have been reviewed by Recipient's legal counsel for adequacy and compliance with the terms and conditions of the award, and applicable state and local laws. The standard loan documents to be submitted shall include, at a minimum, the following:



- i. Loan Application
- ii. Loan Agreement
- iii. Board of Director's meeting minutes approving the RLF loan
- iv. Promissory Note
- v. Deed of Trust or Mortgage (as applicable)
- vi. Security Agreement(s)
- 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 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 Administrative Plan.

16. **LOAN CLOSING AND DISTRIBUTION SCHEDULE:** The Recipient agrees to make loans at a rate such that no less than **100 percent** of the RLF capital (defined as the EDA award plus the Recipients' cash Matching Share contribution) is disbursed to business entities by September 30, 2018. EDA funds not disbursed in accordance with the above schedule may be retained by the Government. Any award funds retained by the Government will cease to be available to the Recipient.

17. **REFUND CHECKS, INTEREST, OR UNUSED FUNDS:** Treasury has given the EDA two options for having payments deposited to EDA's account:

- i. The first one is Pay.Gov. This option allows the payee to pay EDA through the Internet. The payee will have the option to make a one-time payment or to set up an account to make regular payments.
- ii. The second option is Paper Check conversion. All checks must identify on their face the name of the DOC agency funding the award, award number, and no more than a two-word description to identify the reason for the refund or check. A copy of the check should be provided to the EDA Project Officer. This option allows the payee to send a check to NOAA's Accounting Office, who processes EDA's accounting functions at the following address:

U.S. Department of Commerce  
National Oceanic and Atmospheric Administration  
Finance Office, AOD, EDA Grants  
20020 Century Boulevard  
Germantown, MD 20874

The accounting staff will scan the checks in to an encrypted file and transfer to the Federal Reserve Bank, where the funds will be deposited in EDA's account. While this process will not be an issue with most payees, there are occasionally issues for entities remitting funds to EDA via check. If you are remitting funds to EDA via check, please make note of the following:

- If a check is sent to EDA, it will be converted into an electronic funds transfer by copying the check and using the account information to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will appear on your regular account statement.
- EDA will not return your original check; the original will be destroyed and a copy will be maintained in our office. If the Electronic Funds Transfer (EFT) cannot be processed for technical reasons, the copy will be processed in place of the original check. If the EFT cannot be completed because of insufficient funds, EDA will charge you a one-time fee of \$25.00, which will be collected by EFT.

18. **TECHNICAL ASSISTANCE TO BUSINESSES:** Any technical assistance offered to businesses as intended beneficiaries under the EDA award shall be widely advertised and accessible to all potentially benefitting businesses, as is reasonably permitted by the EDA project Scope of Work and Budget. The Recipient shall maintain adequate documentation of any technical assistance offered and/or provided to benefitting businesses under the EDA award.
19. **NONRELOCATION:** In signing this award of financial assistance, Recipient(s) attests that EDA funding is not intended by the Recipient to assist its efforts to induce the relocation, or the movement of existing jobs from one region to another region in competition with those jobs. In the event that EDA determines that its assistance was used for such purposes, EDA retains the right to pursue appropriate enforcement action in accord with the Standard Terms and Conditions of the Award, including suspension of disbursements and termination of the award for convenience or cause, which may include the establishment of a debt requiring the Recipient to reimburse EDA.
20. **PERFORMANCE MEASURES:** The Recipient agrees to report on program performance measures and program outcomes in such a form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993, and the Government Performance and Results Modernization Act of 2010. Recipients are to retain sufficient documentation so that they can submit these required reports. Failure to submit this required report can adversely impact the ability of the Recipient to secure future funding from EDA.

Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document. EDA staff will contact Recipients in writing within a reasonable period prior to the time of submission of the reports with information on how this data should be submitted.

Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document. EDA staff will contact Recipients in writing within a reasonable period prior to the time of submission of the reports with information on how this data should be submitted. Recipients should ensure sufficient records are kept on how the initial job and private investment estimates are provided and all subsequent actual performance data is calculated so that it can be provided in cases where EDA conducts audits or performance site visits.

21. **ENVIRONMENTAL REVIEW:** As required by EDA's regulations at 13 C.F.R. §§ 302.1 and 307.10 and part 314, and in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (Pub. L. No. 91-190; 42 U.S.C. 4321 et seq., as implemented under 40 C.F.R. Chapter V), and all applicable Federal environmental statutes, regulations and Executive Orders, the Recipient will undertake review of loans and include in its RLF Plan an acceptable process to determine the environmental impacts of the use of any proceeds from loans made under this RLF. The Recipient must adopt procedures to review the impacts of prospective loan proposals on the physical environment and to ensure that potential borrowers comply with applicable environmental laws and regulations. **Prior to disbursement of any funds, the Recipient shall provide evidence satisfactory to the EDA demonstrating that there is an environmental review process for loan applications.**
22. **§ 307.15 PRUDENT MANAGEMENT OF REVOLVING LOAN FUNDS:** 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.

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 Award and applicable State and local law.

23. **§ 307.16 Effective UTILIZATION OF REVOLVING LOAN FUNDS.** (c) *Capital utilization standard.* (1) During the Revolving Phase, RLF Recipients must manage their repayment and lending schedules to provide that at all times at least seventy-five (75) percent of the RLF Capital is loaned or committed. The following exceptions apply: (i) An RLF Recipient that anticipates making large loans relative to the size of its RLF Capital base may propose a Plan that provides for maintaining a capital utilization standard greater than twenty-five (25) percent; and (ii) EDA may require RLF Recipients with an RLF Capital base in excess of \$4 million to adopt a Plan that maintains a proportionally higher percentage of its funds loaned. (2) When the percentage of loaned RLF Capital falls below the capital utilization standard, the dollar amount of the RLF funds equivalent to the difference between the actual percentage of RLF Capital loaned and the Capital Utilization Standard is referred to as "excess cash."
24. **REVOLVING LOAN FUND PLAN & RESOLUTION.** The Recipient agrees to operate this RLF project in accordance with a revolving loan fund administrative plan which shall be approved by EDA in writing. Prior to any disbursement of funds under this award, Recipient agrees to submit an acceptable administrative plan and a resolution by its governing board authorizing approval of the administrative plan.

Any material modifications, such as merger, change or addition to lending area, change in critical management staff, or change in the strategic purpose of the RLF, must be submitted electronically to EDA for prior written approval. In the case of any conflicts between the approved Plan and the terms and conditions governing this award, the terms and conditions shall prevail.

**ELIGIBLE LENDING AREAS.** Areas eligible for Section 209 assistance through this RLF project are: Riverside County. This may be amended with the approval of new Revolving Loan Plans by the Economic Development Administration to add new eligible areas in the future.

EXHIBIT "A"

U.S. DEPARTMENT OF COMMERCE  
Economic Development Administration

RECIPIENT: County of Riverside Economic Development Agency

SPECIAL AWARD CONDITIONS

Additional Terms:

- A. The Recipient agrees to operate this revolving loan fund project in accordance with a Revolving Loan Fund Administrative Plan to be submitted for approval by EDA not more than 60 days after date of execution of the EDA Award.
- B. The Recipient agrees to provide all Loan Documents and letter from Legal Counsel approving the Documents within 120 days of amendment execution.
- C. In accordance with 13C.F.R. §307.11(a)(1), the Recipient must provide within 60 days of the Recipient's execution of Form CD-450, in a form acceptable to EDA, evidence of fidelity bond coverage for persons authorized to handle funds under this Award in an amount sufficient to protect the interest of EDA and the RLF. At a minimum, the amount of coverage shall be the greater of the maximum loan amount allowed for in the EDA-approved RLF Plan, or 25 percent of the RLF Capital base. Such insurance coverage must exist at all times during the duration of the RLF's operation.



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

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

**May 1, 2013**

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
PREFACE.....	1
GENERAL REQUIREMENTS AND RESPONSIBILITIES .....	2
A. Purpose.....	2
B. Authority.....	2
1. Definitions.....	2
2. Recipient as Trustee.....	3
3. Grantor Authority to Change Policies.....	3
4. Variances.....	3
C. Financial Requirements.....	4
1. Financial Reports.....	4
2. Award Payments.....	4
3. Loan Closings and Disbursements.....	6
4. Cost Sharing Requirement.....	6
5. Budget Changes and Transfer of Funds among Categories.....	8
6. Indirect Costs and Facilities and Administrative Costs.....	8
7. Incurring Costs or Obligating Federal Funds beyond the Award and Date.....	10
8. Tax Refunds.....	11
9. Additional Funding.....	11
D. Programmatic Requirements.....	11
1. Project Progress Reports.....	11
2. Unsatisfactory Performance.....	11
3. Reporting Programmatic Changes.....	11
4. Time-Schedule Extensions.....	11
5. Other Federal Awards with Similar Programmatic Activities.....	12
6. Non-Compliance with Award Provisions.....	12
7. <i>Prohibition against Assignment by the Recipient</i> .....	14
8. Disclaimer Provisions.....	14
9. Payment of Attorneys' and Consultants' Fees.....	15
E. Non-Discrimination Requirements.....	15
F. OMB Circular A-133 Audit Requirements.....	15
1. Requirement to have an A-133 Audit Performed.....	15
2. Requirement to Instruct Auditor.....	15

4.	Clean Air Act, (42 U.S.C. § 7401 <i>et seq.</i> ), Federal Water Pollution Control Act (33 U.S.C. § 1251 <i>et seq.</i> ) (Clean Water Act) and Executive Order 11738 (“Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans”).....	26
5.	The Flood Disaster Protection Act of 1973 (42 U.S.C. § 4002 <i>et seq.</i> ).....	26
6.	The Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 <i>et seq.</i> ).....	27
7.	The Coastal Zone Management Act, as amended (16 U.S.C. § 1451 <i>et seq.</i> ).....	27
8.	The Coastal Barriers Resources Act (16 U.S.C. § 3501 <i>et seq.</i> ).....	27
9.	The Wild and Scenic Rivers Act, as amended (16 U.S.C. § 1271 <i>et seq.</i> ).....	27
10.	The Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f <i>et seq.</i> ).....	27
11.	The Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. § 6901 <i>et seq.</i> ).....	27
12.	The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 <i>et seq.</i> ) and the Community Environmental Response Facilitation Act (41 U.S.C. § 11001 <i>et seq.</i> ).....	27
13.	Executive Order 12898 (“ <i>Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations</i> ”).....	27
P.	Miscellaneous Requirements.....	28
1.	Criminal and Prohibited Activities.....	28
2.	Foreign Travel.....	28
3.	American-Made Equipment and Products.....	29
4.	Intellectual Property Rights.....	29
5.	Increasing Seat Belt Use in the United States.....	31
6.	Research Involving Human Subjects.....	31
7.	Federal Employee Expenses.....	32
8.	Minority-Serving Institutions (MSIs) Initiative.....	32
9.	Research Misconduct.....	33
10.	Publications, Videos and Acknowledgment of Sponsorship.....	33
11.	Care and Use of Live Vertebrate Animals.....	34
12.	Homeland Security Presidential Directive 12.....	34
13.	Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.....	35
14.	The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)), as amended, and the implementing regulations at 2 C.F.R. part 175.....	36
15.	The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, 31 USC § 6101 Note).....	38

2.	Credit Not Otherwise Available.....	56
B.	Pre-Loan Requirements for RLF Recipients and RLF Borrowers.....	57
1.	Environmental Impact.....	57
2.	Protection of RLF Assets.....	57
3.	Hold Harmless Provision.....	57
4.	Non-Discrimination Requirements.....	57
5.	Wage Rate Requirements of the Davis-Bacon Act.....	59
	APPENDIX.....	60



## PREFACE

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

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

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

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

## PART I

### GENERAL REQUIREMENTS AND RESPONSIBILITIES

#### A. Purpose.

The Economic Development Administration's (EDA) grants to capitalize or recapitalize revolving loan funds (RLFs) are most commonly used for business lending, but also may be established for public infrastructure lending or other authorized purposes involving lending. Generally, under EDA's RLF program, an RLF is capitalized with a combination of EDA grant funds and non Federal matching funds. The requirements set forth in these RLF Standard Terms and Conditions are applicable to RLFs that provide business lending to private borrowers. If the Recipient intends to use the RLF funds to make loans to public entities, EDA will include a special award condition in the Award to accommodate non-business lending activity.

#### B. Authority.

EDA was established under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*) (PWEDA). The regulations implementing PWEDA are published at 13 C.F.R. chapter III. The Department or EDA may issue changes from time to time to the regulations and other requirements and policies that apply to the Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering the Award. The implementation of any such regulatory, administrative or programmatic change in administering the Award must have prior EDA written approval. *See also* part I, sections B.3. and B.4. of these RLF Standard Terms and Conditions.

These RLF Standard Terms and Conditions apply to new RLFs and to the future actions of all RLFs funded prior to the effective date of this document.

#### 1. Definitions.

Whenever used in these RLF Standard Terms and Conditions, the following words and phrases shall have the following meanings:

- a. "Award" or "DOC Award" refers to the grant (awarded on Form CD-450 or other predecessor or successor form) of EDA funds to an eligible Recipient;
- b. "Closed Loan" is any loan for which all required documentation has been received, reviewed and executed by an RLF Recipient.
- c. "Department" or "DOC" refers to the U.S. Department of Commerce;
- d. "Government" or "Federal government" refers to EDA;
- e. "Grants Officer," unless otherwise indicated by a special award condition in this Award, refers to the Regional Director in the appropriate Regional Office who is responsible for all administrative aspects of this Award and is authorized to award, amend, suspend, and terminate EDA investment assistance;
- f. "Project Officer" refers to the EDA staff in the appropriate Regional Office who is responsible for programmatic and technical aspects of this Award;
- g. "Project" refers to the activity for which an EDA grant is awarded;
- h. "Recipient" refers to a grantee awarded an RLF Award;
- i. "Regional Office" refers to an EDA regional office;
- j. "RLF" refers to a revolving loan fund; and

- k. "RLF Standard Terms and Conditions" refers to this document, as may be amended from time to time, and which is made part of an Award.

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

**2. Recipient as Trustee.**

The Recipient (or RLF operator) holds the grant funds in trust to serve the purpose of the Economic Adjustment Assistance Program (pursuant to 42 U.S.C. § 3149) for which this Award was made. The Recipient's obligation to the Federal government continues as long as the Federal assets continue to exist. The Federal assets may include cash, receivables, Personal Property, and Real Property (each as defined in 13 C.F.R. § 314.1) and notes or other financial instruments developed through the use of the grant funds. If EDA determines that the Recipient fails to meet its obligation under this Award, the agency may assert its equitable reversionary interest, or the Federal Interest (defined in 13 C.F.R. § 314.2), in the RLF assets. However, EDA's non-assertion of its Federal Interest does not constitute a waiver thereof. See part I, section O.1. of these RLF Standard Terms and Conditions.

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

EDA, as the Federal agency charged with implementing the Economic Adjustment Assistance Program under PWEDA (42 U.S.C. § 3149), is obligated to promulgate policies and procedures to ensure that the Recipient:

- a. Complies with Federal requirements;
- b. Safeguards the public's interest in the grant assets; and
- c. Promotes effective use of the funds in accomplishing the purpose(s) for which they were granted.

Pursuant to this obligation, EDA requires the Recipient to comply with any changes that may occur to EDA's regulations, policies, or the Terms and Conditions of this Award. Such changes apply to actions taken by any Recipient, existing and prospective, after the effective date of the change. Loans made by the Recipient prior to the effective date of the change are not affected unless so required by law.

**4. Variances.**

EDA's policy is to administer RLF grants uniformly, but there may be situations that warrant a variance. To accommodate these situations and to encourage innovative and creative ways of addressing economic adjustment problems, EDA may approve variances to the requirements contained in 13 C.F.R. part 307, subpart B, (*Special Requirements for Revolving Loan Funds and Use of Grant Funds*), provided they:

- a. Are consistent with the goals of the Economic Adjustment Assistance Program under PWEDA (42 U.S.C. § 3149) and with an EDA-approved RLF Plan;
- b. Are necessary and reasonable for the effective implementation of the RLF;

- c. Are economically and financially sound; and
- d. Do not conflict with applicable legal requirements, including Federal, State and local law.

(See 13 C.F.R. § 307.22.)

**C. Financial Requirements.**

**1. Financial Reports.**

Unless otherwise authorized by a special award condition, all financial reports shall be submitted electronically to the Project Officer, who will review this information with the Grants Officer. The Grants Officer will approve as appropriate. In cases where electronic reports are unable to be submitted, EDA may authorize paper submissions. See 15 C.F.R. §§ 14.52(a)(2) or 24.41(a)(4), as applicable.

*Federal Financial Report.* The Recipient must submit a "Federal Financial Report" (Form SF-425) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period and are required until the grant is fully disbursed (this is defined as the grant award period outlined on the Form CD-450 or CD-451). The Recipient must submit a final Form SF 425 within 90 calendar days after the grant has been fully disbursed. Instructions for completing and submitting Form SF-425 will be discussed during the project kick-off meeting. Recipients may contact the EDA Project Officer with questions on how to complete or submit the report; however, recipients must pose such questions sufficiently in advance of a deadline to allow for timely submission of required reports.

**2. Award Payments.**

- a. *Method of Payment.* The Grants Officer determines the appropriate method of payment, retaining the right to determine whether Recipients are authorized to receive advance or reimbursement payments as outlined in the applicable special award conditions governing the Award. Payments will be made through electronic funds transfers directly to the Recipient's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996, as amended. The Award number must be included on all payment-related correspondence, information and forms.
- b. *EDA's Right to Change Method of Payment.* In cases where Advance payments are authorized, they shall be limited to the minimum amounts necessary to meet immediate disbursement needs. Advanced funds not disbursed in a timely manner and any applicable interest must be promptly returned to EDA. If a recipient demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between the transfer of funds and disbursement or if the recipient otherwise fails to continue to qualify for the advance method of

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

- c. *Department of Treasury's Automated Standard Application for Payment System.* Unless otherwise provided for in the Terms and Conditions, payments under this Award will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers, in accordance with the requirements of the Debt Collection Improvement Act of 1996, as amended. In order to receive payments under ASAP, the Recipient is required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows it to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP: (i) ASAP account number – the award number found on the cover sheet of the Award; (ii) Agency Location Code (ALC) – 13200001; and (iii) Region Code. Additionally, all Recipients will be required to submit an ASAP Enrollment Form to the applicable Project Officer prior to accessing funds via ASAP. All Awards paid under the ASAP system will contain a special award condition, clause, or provision describing additional enrollment requirements and any controls or withdrawal limits set in the ASAP system.
- d. *Interest-bearing Account.* All grant funds disbursed by EDA to reimburse the Recipient for loan obligations already incurred must be held in an interest-bearing account (EDA funds account) by the Recipient until disbursed to the borrower. (See 13 C.F.R. § 307.11(d).) This applies to funds received through disbursement (whether an advance or a reimbursement) and all RLF Capital. Interest from this account should be treated as RLF Income in accordance with the definition of RLF Income at 13 C.F.R. § 307.8 and the requirements of 13 C.F.R. § 307.12.
- e. *Initial Disbursement Request.* For the initial disbursement only, the Recipient must complete and submit Form SF-3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," and the ASAP Enrollment Form, along with Form SF 270 "Request for Advance or Reimbursement," to the Project Officer, who will review these forms with the Grants Officer and approve as appropriate.
- f. *Timing of Request for Disbursements.* The Recipient must request disbursements from EDA only at the time and in the amount immediately needed to close a loan or disburse RLF funds to a borrower. The Recipient must disburse RLF funds to the borrower within 30 days of receipt of the grant funds. Any grant funds not disbursed within the 30 day period shall be refunded to EDA pursuant to 13 C.F.R. § 307.11(e).
- g. *Amount of Disbursement.* As each new loan is made, the Recipient may request a disbursement of grant funds only for the difference, if any, between the RLF Capital (defined in 13 C.F.R. § 307.8) and the amount of the new RLF loan, less

an amount, if any, of the Local Share required to be disbursed concurrent with the grant funds. However, RLF Income held to reimburse eligible administrative expenses need not be disbursed in order to draw additional grant funds. (See 13 C.F.R. § 307.11(c).)

- h. *Interim Payment Requests.* All requests for interim disbursement shall be submitted using Form SF-270. When authorized, advances shall be approved for periods to cover only expenses anticipated over the next 30 days.

### 3. **Loan Closings and Disbursements.**

- a. RLF loan activity must be sufficient to draw down grant funds in accordance with the schedule prescribed in this Award for loan closings and disbursements to eligible RLF borrowers. The schedule usually requires the Recipient to lend the entire initial amount of the RLF Capital base within 3 years of the Award. (See 13 C.F.R. § 307.16(a)(1).)
- b. If the Recipient fails to meet the prescribed lending schedule for loan closings and disbursements, EDA may de-obligate the non-disbursed balance of the Award. EDA may allow an exception to the extent the Recipient has Closed Loans:
  - (i) That were approved prior to the scheduled deadline and will commence and complete disbursements within 45 days of the deadline; or
  - (ii) For which disbursement obligations have commenced (but are not yet completed) prior to the deadline.

EDA also may allow an exception where it has approved a lending schedule extension, or allow a no-cost time amendment extension if authorized in writing by the Grants Officer to ensure key program goals are met and funds are disbursed before the grant is closed. (See 13 C.F.R. §§ 307.8 and 307.16(a)(2).)

- c. If grant funds are requested and the RLF loan disbursement is subsequently delayed beyond 30 days, the Recipient must notify the Grants Officer and return such non-disbursed funds to EDA. The non-disbursed grant funds must be returned to the Government for credit to the Recipient's account. Returned grant funds will be available to the Recipient for future draw downs. When returning prematurely drawn grant funds, the Recipient must clearly identify on the face of the check or in the written notification to the Grants Officer "EDA," the grant award number, the words "Premature Draw," and a brief description of the reason for returning the grant funds. (See 13 C.F.R. § 307.11(e).)

### 4. **Cost Sharing Requirement.**

For the purposes of this Award, the Federal share is the EDA portion of the project, while the non-Federal share is the Matching Share of the approved project. The Recipient must show that the non-Federal Matching Share is committed to the Project, available as

needed and not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 C.F.R. § 301.5.

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

As approved in the Award, the Matching Share may be used only for lending purposes or for eligible and reasonable administrative costs. The Matching Share must be paid out either in proportion to the grant funds or at a faster rate than the grant funds. *See* 13 C.F.R. § 307.11(f)(1). The Matching Share must be available when needed for lending and must be under the control of the Recipient for use in accordance with the terms of the Award.

- a. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the Recipient must meet its cost share commitment over the Award period. The Recipient must create and maintain sufficient records justifying all non-Federal sharing requirements to facilitate questions and audits.
- b. Upon repayment of loans, cash Matching Share is treated the same as EDA funds. Repayments of principal must be placed in the RLF for re-lending, and interest earned on outstanding loan principal and accounts holding RLF funds must be used either for re-lending or for eligible and reasonable administrative costs associated with the RLF's operations. *See* 13 C.F.R. § 307.12 and the definition of "RLF Income" in 13 C.F.R. § 307.8.
- c. As approved in the RLF Award, In-Kind Contributions may satisfy Matching Share requirements when specifically authorized in the Terms and Conditions of the Award, and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs. (*See* 13 C.F.R. § 307.17(d).)

When an RLF has a combination of In-Kind Contributions and cash 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 Share may not be disbursed until all cash Local Share has been expended. The full amount of the cash Matching Share shall remain for use in the RLF. (*See* 13 C.F.R. § 307.11(f)(2).)

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

- a. Requests for budget changes to the approved budget in accordance with the provision provided below must be submitted through the Project Officer, who will review the requests and submit them to the Grants Officer. The Grants Officer will make the final determination on such requests and notify the Recipient in writing.

Transfers of funds by the Recipient among direct cost categories are permitted for an Award in which the Federal share of the Project is \$100,000 or less. For an Award in which the Federal share of the Project exceeds \$100,000, transfers of funds must be approved in writing by the Grants Officer when the cumulative amount of such transfers exceeds 10 percent of the current total Federal and non-Federal funds authorized by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same criterion applies to the cumulative amount of transfer of funds among projects, functions, joint ventures, consortia, activities, and annual costs when budgeted separately within an Award. Transfers will not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the Recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior approval. In addition, this does not prohibit the Recipient from requesting the Grants Officer's approval for revisions to the budget. (See 15 C.F.R. §§ 14.25(f) or 24.30(c), as applicable for specific requirements concerning budget revisions and transfer of funds between budget categories.)

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

**6. Indirect Costs and Facilities and Administrative Costs.**

- a. Indirect costs, or facilities and administrative (F&A) costs for educational institutions, are only allowable charges under this Award as permitted under the line item approved budget.
- b. Indirect costs are not allowed in the disbursement phase of the Project; however, such Indirect costs may be allowed after full disbursement of EDA grant funds, during the revolving phase of the RLF Award as an eligible administrative expense as outlined in the applicable Special Award Conditions. Recipients are encouraged to review part I, section C.5.c. for details about prohibition of transferring direct costs to the indirect cost line item or vice versa.



- c. Excess indirect costs may not be used to offset unallowable direct costs.
- d. OMB established the cognizant agency concept, under which a single agency represents all others in dealing with Recipients in common areas. The cognizant agency reviews and approves Recipients' indirect cost rates. Approved rates must be accepted by other agencies, unless specific program regulations restrict the recovery of indirect costs. If indirect costs are permitted and the Recipient would like indirect costs in its budget, but the Recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate is subject to the procedures in the applicable cost principles and the following subparagraphs:
  - (i) State and Local Governments: Department of Health and Human Services (HHS) serves as the cognizant agency for all States and most cities. For certain State agencies, cities and counties, OMB published a list of cognizant Federal agency assignments on January 6, 1986 (51 FR 552). The cognizant agency for governmental units or agencies not specifically identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. See Subsection D.1.b. of Appendix E to 2 C.F.R. Part 225 (OMB Circular A-87);
  - (ii) Indian Tribes: Department of the Interior serves as the cognizant agency for all Indian tribal governments. See Subsection D.1.c. of Appendix E to 2 C.F.R. Part 225 (OMB Circular A-87);
  - (iii) Educational Institutions: Department of Health and Human Services or the Department of Defense's Office of Naval Research serves as the cognizant agency for educational institutions as determined in accordance with Subsection G.11. of Appendix A to 2 C.F.R. Part 220 (OMB Circular A-21);
  - (iv) Non-Profit Organizations: Cognizant agency is determined by calculating which Federal agency provides the largest dollar amount of awards to the non-profit organization in accordance with Subsection E.2. of Appendix A to 2 C.F.R. Part 230 (OMB Circular A-122); and

For those organizations for which DOC is cognizant or has oversight, DOC or its designee will either negotiate a fixed rate with carry-forward provisions for the Recipient or, in some instances, will limit its review to evaluating the procedures described in the Recipient's cost allocation plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.

- e. Within 90 days of the award start date, the Recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The Recipient shall provide the Grants Officer with a copy of the transmittal letter:

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

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

**7. Incurring Costs or Obligating Federal Funds beyond the Award and Date.** RLF Awards have a specified period of performance with a specified grant end date, as outlined on the Award document (Form CD-450 or CD-451) and applicable RLF Special Award Conditions. While the RLF Capital base will continue in existence as long as loans are outstanding and repayments to the RLF are made available to make new loans, obligations or further expenses of Federal funds may not occur beyond the grant end date. In all cases, an extension of the grant end date requires written approval of the Grants

Officer and the execution of an Award amendment (Form CD-451). *See also* 15 C.F.R. §§ 14.25(e)(2) or 24.30(d)(2), as applicable.

**8. Tax Refunds.**

Refunds of Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes received by the Recipient during or after the Project period must be refunded or credited to Department where the benefits were financed with Federal funds under the Award. The Recipient agrees to notify the Grants Officer immediately upon receipt of these refunds. The Recipient further agrees to refund portions of FICA and FUTA taxes determined to belong to the Federal Government, including refunds received after the expiration of this Award.

**9. Additional Funding.**

The Department has no obligation to provide any additional prospective funding in connection with an Award. Any amendment of this Award to increase funding or to extend the period of performance is at the sole discretion of the Department.

**D. Programmatic Requirements.**

**1. Project Progress Reports.**

*See* part I, section C and section D, and part II, section H. of these RLF Standard Terms and Conditions for specific RLF reporting requirements.

**2. Unsatisfactory Performance.**

Failure to perform the work in accordance with the Terms and Conditions of this Award may result in designation of the Recipient as a "high-risk" grantee and assignment of special award conditions or other further action as specified in part I, section D.6. of these RLF Standard Terms and Conditions. (*See* 15 C.F.R. §§ 14.14 or 24.12, as applicable.)

**3. Reporting Programmatic Changes.**

- a. The Recipient must request prior approval for all programmatic changes from the Grants Officer in accordance with 15 C.F.R. §§ 14.25 or 24.30, as applicable. Requests should be submitted to the Project Officer, who will review requests and submit them to the Grants Officer for final determination, as applicable.
- b. Any changes made to the Project without EDA's approval are made at the Recipient's risk of non-payment of costs, suspension, termination or other EDA action with respect to the Award. (*See* 13 C.F.R. § 302.7(b).)

**4. Time-Schedule Extensions.**

- a. Unless otherwise authorized in 15 C.F.R. §§ 14.25(e)(2) or 24.30, as applicable, or in a special award condition, any extension of the Project period must be authorized in writing by the Grants Officer. A verbal or written assurance of funding from other than the Grants Officer, including Regional Office staff other

than the Grants Officer, does not constitute authority to obligate funds for programmatic activities beyond the expiration date.

- b. The Recipient is responsible for contacting EDA as soon as conditions become known that may materially affect its ability to meet the prescribed lending schedule. The Recipient must submit a written request to the Grants Officer for continued use of grant funds beyond a missed deadline for disbursement of RLF funds. The Recipient must provide good reason for the delay by demonstrating that:
  - (i) The delay was unforeseen or beyond the control of the Recipient;
  - (ii) The financial need for the RLF still exists;
  - (iii) The current and planned use and the anticipated benefits of the RLF will remain consistent with the current CEDS and the RLF Plan; and
  - (iv) The achievement of a new proposed lending schedule is reasonable.

The Recipient also must provide an explanation as to why further delays may or may not be anticipated. (See 13 C.F.R. § 307.16(b)(1).)

- c. EDA reserves the right to withhold disbursements while the Recipient is not in compliance with the time schedule. EDA reserves the right to suspend or terminate an Award if the Recipient fails to exercise reasonable diligence to accomplish the Project as intended.
- d. EDA is under no obligation to grant a time extension, and in the event an extension is denied, EDA may de-obligate all or part of the unused grant funds and may terminate the grant. (See 13 C.F.R. § 307.16(b)(2).)

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

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

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

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

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

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

b. *Suspension and Termination.* EDA may suspend or terminate this Award for cause, including but not limited to failure to:

- (i) Operate the RLF in accordance with the RLF Plan, the RLF Award or EDA's statutory and regulatory requirements;
- (ii) Obtain prior EDA approval for material changes to the RLF Plan, including provisions for administering the RLF;
- (iii) Submit timely progress, financial and audit reports as required by the Terms and Conditions of the Award and 13 C.F.R. § 307.14; and
- (iv) Comply with the conflicts-of-interest provisions set forth in 13 C.F.R. § 302.17.

(See 13 C.F.R. § 307.21(a).)

c. *Suspension of Award.* The Grants Officer may suspend an RLF Award when he or she determines that circumstances warrant temporarily stopping all activities under the Award, including making payments to the Recipient, pending the Recipient taking corrective actions as specified by the Grants Officer. Upon suspension, the Recipient will be prohibited from engaging in new lending activity, although normal loan servicing and collection efforts will continue. In addition, the Recipient may be subject to restrictions on the use of RLF Income and specific actions to protect the RLF assets as may be required. The Grants Officer will promptly notify the Recipient in writing via certified mail of the determination to suspend the Award, the reason(s) for the suspension and what the Recipient can do to remedy the situation. If immediate action is not necessary to protect EDA's interest, the Grants Officer may notify the Recipient that unless the Recipient submits information within 30 days of that notice establishing compliance with the requested remedial actions, EDA will proceed with the suspension of the Award. However, the Grants Officer has the discretion to suspend the grant immediately if he or she determines that the Recipient has not taken or will not take corrective action, or that continued operation of the Award would place the RLF assets at risk. Additionally, in the event that the Recipient fails to take specified corrective actions, the Grants Officer may, after considering the best interests of the Federal government, take more severe enforcement action, including termination of the Award. When applicable, suspension of an Award may result in a no-cost extension of the project period to compensate for work that was not done on the Project during the suspension.

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

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

The Recipient shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express prior written approval of the Grants Officer.

**8. *Disclaimer Provisions.***

- a. The United States expressly disclaims any and all responsibility or liability to the Recipient or third persons for the actions of the Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this Award or any other losses resulting in any way from the performance of this Award or any sub-award or subcontract under this Award.

- b. The Recipient's acceptance of this Award does not in any way constitute an agency relationship between the United States and the Recipient.

**9. Payment of Attorneys' and Consultants' Fees.**

Grant funds must not be used directly or indirectly to reimburse any attorneys' or consultants' fees incurred in connection with obtaining investment assistance under PWEDA. (See 13 C.F.R. § 302.10.)

**E. Non-Discrimination Requirements.**

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Recipient must act in accordance with EDA's requirements set out in 13 C.F.R. § 302.20 and in part III, section B.4. of these RLF Standard Terms and Conditions.

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

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

A Recipient that expends Federal awards of \$500,000 or more in a fiscal year (see section F.3. below) must have a program-specific or single audit performed for that year in accordance with the provisions of OMB Circular A-133, "*Audits of States, Local Governments, and Non-Profit Organizations*," issued pursuant to the Single Audit Act of 1984 (Pub. L. No. 98-502), as amended by the Single Audit Act Amendments of 1996 (Pub. L. No. 104-156). A Recipient that has expended Federal awards through only EDA's RLF program may elect to have a program-specific audit performed. All other Recipients must have a single audit performed. The Circular can be accessed at [http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133\\_revised\\_2007.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf).

On Form SF-SAC (OMB Control No. 0348-0057, or any successor form), the Recipient must indicate whether it is submitting data for a single audit or a program-specific audit.

**2. Requirement to Instruct Auditor.**

RLF Recipients must direct auditors to use the applicable *Compliance Supplement* (Appendix B to OMB Circular A-133) when conducting audits of an RLF. The *Compliance Supplement* is available from the Government Printing Office, Superintendent of Documents, Washington, D.C. 20402-9325 or online at [http://www.whitehouse.gov/omb/circulars\\_default](http://www.whitehouse.gov/omb/circulars_default) (note that a new *Compliance Supplement* is released annually). To ensure that an audit is properly performed, the Recipient is obligated under OMB Circular A-133 to prepare appropriate financial statements, including the schedule of expenditures of Federal awards (SEFA), in accordance with § \_\_\_.310 of the Circular.

The Recipient must instruct the auditor to consider the following when determining Project dollars expended in the fiscal year:

- a. Balance of RLF principal loans outstanding at the end of the fiscal year, plus

- b. Cash and investment balance in the RLF at the end of the fiscal year, plus
- c. Administrative expenses paid out of RLF Income during the fiscal year.

The calculation of Federal award dollars expended is as follows:

[(Balance of RLF loans outstanding at the end of the fiscal year) plus (total cash on hand at the end of the fiscal year, including any sequestered funds) *plus* (administrative expenses paid out of RLF Income during the fiscal year)] *multiplied* by [sum of all EDA dollars/total project dollars from all of Recipient's RLF Awards].

**3. Classification as a Major Program.**

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

**4. Requirement to Submit Audit to Federal Audit Clearinghouse.**

A Recipient expending Federal awards of \$500,000 or more in a fiscal year and therefore, having a single or program-specific audit for that year conducted in accordance with OMB Circular A-133, must submit a copy of the single or program-specific audit (including Form SF-SAC) to the Bureau of the Census, designated by OMB as a central clearinghouse, at the following address:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 E. 10th Street  
Jeffersonville, IN 47132

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

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

Some DOC programs have specific audit guidelines that will be incorporated into the award. When DOC does not have a program-specific audit guide available for the



program, the auditor will follow the requirements for a program-specific audit as described in OMB Circular A-133 § .235. The recipient may include a line item in the budget for the cost of the audit. A copy of the program-specific audit shall be submitted to the Grants Officer as specified in the award terms, and to the OIG at the following address:

Office of Inspector General  
U.S. Department of Commerce  
Atlanta Regional Office of Audits  
401 West Peachtree Street, N.W., Suite 2742  
Atlanta, GA 30308

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

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

**G. Audit Resolution Process.**

1. An audit of the Award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due to EDA. For this reason, the Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.
2. In accordance with the *Federal Register* notice dated January 27, 1989 (54 Fed. Reg. 4053), a Recipient whose Award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:
  - a. Unless the OIG determines otherwise, the Recipient has 30 days from the date of the transmittal of the "Draft Audit Report" to submit written comments and documentary evidence.
  - b. The Recipient has 30 days from the date of the transmittal of the "Final Audit Report" to submit written comments and documentary evidence. There shall be no extension of this deadline.
  - c. EDA shall review the documentary evidence submitted by the Recipient and shall notify the Recipient of the results in an "Audit Resolution Determination Letter." The Recipient has 30 days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There shall be no extension of this deadline. The appeal is the last opportunity for the Recipient to submit written comments and documentary evidence that dispute the validity of the Audit Resolution Determination Letter.

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

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

### **1. Payment of Debts Owed the Federal Government.**

The Recipient shall promptly pay any debts determined to be owed the Federal government. In accordance with 15 C.F.R. § 19.1, delinquent debt is a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. In accordance with 15 C.F.R. § 19.5 and 31 U.S.C. § 3717, failure to pay a debt by the due date, or if there is no due date, within 30 days of the billing date, shall result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. Commerce entities will transfer any Commerce debt that is more than 180 days delinquent to the Financial Management Service for debt collection services, a process known as "cross-servicing," pursuant 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12 and 15 C.F.R. § 19.9, and may result in DOC taking further action as specified in the standard term and condition entitled "Non-Compliance With Award Provisions." Funds for payment of a debt must not come from other Federally-sponsored programs. Verification that other Federal funds have not been used for payment of a debt will be made, e.g., during on-site visits and audits.

### **2. Late Payment Charges.**

- a. Interest shall be charged on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act (*see* 31 U.S.C. § 3701 et seq. for the entire Debt Collection Act), as amended. The minimum annual interest rate to be assessed is the Department of the Treasury's Current Value of Funds Rate (CVFR). The CVFR is available online at <http://www.fms.treas.gov/cvfr/index.html>. The CVFR is published by the Department of the Treasury in the Federal Register (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>) and in the Treasury Financial Manual Bulletin. The assessed rate shall remain fixed for the duration of the indebtedness.

- b. Penalties shall accrue at a rate of not more than 6 percent per year or such other higher rate as authorized by law.
- c. Administrative charges, that is, the costs of processing and handling a delinquent debt, shall be determined by the Commerce entity collecting the debt, as directed by the Office of the Deputy Chief Financial Officer.

**3. Barring Delinquent Federal Debtors from Obtaining Federal Loans, Loan Guaranties or Loan Insurance.**

Pursuant to 31 U.S.C. § 3720B and 31 C.F.R. § 901.6, unless waived, the Department is not permitted to extend financial assistance in the form of a loan, loan guaranty, or loan insurance to any person delinquent on a non-tax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

**4. Effect of Judgment Lien on Eligibility for Federal Grants, Loans or Programs.**

Pursuant to 28 U.S.C. § 3201(e), unless waived by the Department, a debtor who has a judgment lien against the debtor's property for a debt to the United States shall be ineligible to receive any grant or loan which is made, insured, guaranteed or financed directly or indirectly by the United States, or to receive funds directly from the Federal government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

**I. Government-wide Debarment and Suspension (Non-Procurement).**

The Recipient shall comply with the provisions of subpart C of 2 C.F.R. part 1326, "*Non-Procurement Debarment and Suspension*" (71 FR 76573, December 21, 2006), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal non-procurement transactions either through primary or lower-tier covered transactions, and which set forth the responsibilities of Recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

**J. Drug-Free Workplace.**

The Recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (Pub. L. No. 100-690, Title V, sec. 5153, as amended by Pub. L. No. 105-85, Div. A, Title VIII, sec. 809, as codified at 41 U.S.C. § 8102), and the Department's implementing regulations at 15 C.F.R. part 29, "*Government-wide Requirements for Drug-Free Workplace (Financial Assistance)*," which require the Recipient to take steps to provide a drug-free workplace.

**K. Lobbying Restrictions.**

**1. Statutory Provisions.**

The Recipient shall comply with the provisions of 31 U.S.C. § 1352, and the Department's implementing regulations found at 15 C.F.R. part 28, "*New Restrictions on Lobbying*." These provisions prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the U.S. government in connection with an Award, and require the disclosure of the use of non-Federal funds for lobbying.

**2. Disclosure of Lobbying Activities.**

Any Recipient receiving in excess of \$100,000 in Federal funding shall submit a completed Form SF-LLL, "*Disclosure of Lobbying Activities*," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously submitted. The Recipient must submit the Form SF-LLL, including any received from sub-recipients, contractors, and subcontractors, to the Grants Officer.

**3. Special Provisions relating to Indian Tribes.**

As set out in 31 U.S.C. § 1352, there are special provisions applicable to Indian Tribes, tribal organizations, or other Indian organizations eligible to receive Federal contracts, grants, loans, or cooperative agreements. In accordance with Departmental policy, EDA recognizes Tribal Employment Rights Ordinances ("TEROs"), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, firing, and the payment of a TERO fee generally are allowable provisions under Federal awards granted to American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for proper and efficient performance and administration" of an Award, as provided under the applicable cost principles set out in 2 C.F.R. part 225.

**L. Freedom of Information Act (FOIA) and Privacy Act Requests.**

The rules and procedures regarding public access to records or documents held by EDA are set out at 15 C.F.R. part 4.

**M. Codes of Conduct and Sub-Award, Contract and Subcontract Provisions.**

**1. Code of Conduct for Recipients.**

Pursuant to the certification in Form SF-424B, "Assurances - Non-Construction Programs," paragraph 3, the Recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict-of-interest, or personal gain in the administration of this Award. See also part I, section N of these RLF Standard Terms and Conditions.

**2. Applicability of Award Provisions to Sub-recipients.**

- a. The Recipient shall require all sub-recipients, including lower-tier sub-recipients, to comply with the provisions of this Award, including applicable cost principles, and administrative and audit requirements, and all associated terms and conditions. Different cost principles apply to for-profit contractors, non-profit organizations, educational institutions and units of government. Care must be

exercised, therefore, in applying the correct cost principles depending on what type of entity the sub-recipient or contractor may be.

- b. The Recipient is responsible for sub-recipient monitoring, including the following:
  - (i) Award Identification - At the time of the award, identifying to the sub-recipient the Federal award information (e.g., Catalog of Federal Domestic Assistance (CFDA) title and number, grant award number, name of the granting Federal agency) and applicable compliance requirements.
  - (ii) During-the-Award Monitoring - Monitoring the sub-recipient's use of Federal awards through reporting, on-site visits, regular contact, or other means to provide reasonable assurance that the sub-recipient administers the Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.
  - (iii) Sub-recipient Audits - Ensuring that any sub-recipient expending Federal awards of \$500,000 or more during the sub-recipient's fiscal year has met the audit requirements of OMB Circular A-133, and that the required single or program-specific audit is completed within nine months of the end of the sub-recipient's audit period. In addition, the Recipient is required to issue a management decision on audit findings within six months after receipt of the sub-recipient's audit report, and ensure that the sub-recipient takes timely and appropriate corrective action on all audit findings. In cases of continued inability or unwillingness of a sub-recipient to complete and submit the required OMB Circular A 133 audit, the Recipient shall take appropriate action using sanctions. (See part I, section F. of these RLF Standard Terms and Conditions.)

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

- a. *Competition.* All sub-awards will be made in a manner to provide, to the maximum extent practicable, open and free competition. The Recipient must be alert to organizational conflicts-of-interest as well as other practices among sub-recipients that may restrict or eliminate competition. In order to ensure objective sub-recipient performance and eliminate unfair competitive advantage, sub-recipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such sub-awards.
- b. *Written Standards of Conduct.* The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of sub-awards. The written standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by any Interested Party (as defined in 13 C.F.R. § 300.3). No Interested Party shall participate in the selection, award, or administration of a sub-award supported by Federal funds if a real or apparent conflict of interest would be involved. A

conflict-of-interest generally exists when an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party's personal or financial interests. A conflict-of-interest also may exist where there is an appearance that an Interested Party's objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an Interested Party is unable to render impartial assistance, services or advice to the Recipient, a participant in the Project or to the Federal government. (See 13 C.F.R. § 302.17(a) and part II, section D. of these RLF Standard Terms and Conditions.)

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

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

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

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

activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.

**5. Small Business, Minority Business Enterprises and Women's Business Enterprises.**

The Department encourages Recipients to utilize small businesses, minority business enterprises, and women's business enterprises in contracts under financial assistance awards. The Minority Business Development Agency will assist Recipients in matching qualified minority owned enterprises with contract opportunities. For further information visit MBDA's website at <http://www.mbda.gov>. If you do not have access to the Internet, you may contact MBDA via mail at the following address:

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

**6. Sub-award and/or Contract to a Federal Agency.**

- a. The Recipient, sub-recipient, contractor or subcontractor shall not sub-grant or sub-contract any part of the approved Project to any agency or employee of the Department or other Federal bureau, agency or instrumentality, without the prior written approval of the Grants Officer.
- b. Requests for approval of such action must be submitted to the Federal Program Officer who shall review and make a recommendation to the Grants Officer. The Grants Officer must forward all requests to the Federal Assistance Law Division in the Office of the Department of Commerce Assistant General Counsel for Finance and Litigation for review prior to making the final determination. The Grants Officer will notify the Recipient in writing of the final determination.

**7. Other Federal Requirements Applicable to Sub-awards, Contracts or Subcontracts.**

Recipients are responsible for ensuring, prior to awarding sub-awards, contracts or subcontracts, that prospective borrowers, consultants or contractors are aware of and comply with EDA's statutory and regulatory requirements regarding activities carried out with RLF loans. Recipients must develop loan agreements that include applicable Federal requirements and adopt procedures diligently to correct instances of non-compliance, including the calling of loans if necessary. Loan documents and sub-award, contract or subcontract documents and procedures must protect and hold the Federal government harmless from and against all liabilities that may arise as a result of providing an award to assist (directly or indirectly) in site preparation or construction as well as the renovation or repair of any facility or site. This applies to the extent that such liabilities are incurred because of ground water, surface, soil or other conditions caused by operations of the Recipient or any of its predecessors on the property.

In administering the RLF, the Recipient must adopt procedures to comply and ensure that potential borrowers, consultants, or contractors comply with all laws and regulations applicable under this Award. (See also 13 C.F.R. §§ 302.6 and 302.13.)

**N. Property Management.**

With respect to any property acquired or improved in whole or in part with EDA investment assistance under an Award, the Recipient shall comply with the uniform administrative requirements set forth in 15 C.F.R. §§ 14.30 – 14.37 and 15 C.F.R. §§ 24.31-24.34, and EDA's requirements at 13 C.F.R. part 314. Property acquired or improved in whole or in part by the Recipient under an Award may consist of real property or personal property, including intangible property such as money, notes and security interests. Any inventory listings stipulated under the applicable uniform administrative requirements must be submitted to the Project Officer, who will review and submit them to the Grants Officer for approval on Form CD-281, "Report of Government Property in Possession of Contractor."

**1. Recipient as Trustee and Successor Recipients.**

When the Recipient fails in its fiduciary responsibilities or is unable or unwilling to perform as trustee of the grant funds, EDA may suspend or terminate this Award. In addition, EDA may transfer this Award to an eligible successor with jurisdiction over the Project area to administer it. If EDA transfers this Award, the Recipient remains responsible for complying with the Terms and Conditions of this Award for the period in which it is the Recipient, and any Successor Recipient holds the Project property with the same responsibilities as the Recipient under this Award. (See 13 C.F.R. § 314.2(a) and 314.3(d).)

**2. Use of Proceeds upon Sale, Collection or Liquidation of RLF Loans.**

In the event of a sale, collection, or liquidation of any RLF loan, any proceeds (minus late payment penalties, accrued interest and reasonable amounts associated with the cost of collection), up to the amount of the outstanding loan principal, must be returned to the RLF for re-lending. Any net proceeds from a loan sale, collection or liquidation above the outstanding loan principal is considered RLF Income and must either be added to the RLF Capital base for lending or used to cover eligible and reasonable costs for administering the RLF in accordance with the rules for use of RLF Income. The net transaction proceeds must be used to make additional loans as part of the RLF grant. (See 13 C.F.R. § 307.12(a).)

**3. Sale or Securitization of Loans to Raise New Funds.**

With EDA's consent, a Recipient may enter into a Sale or a Securitization of all or a portion of its RLF loan portfolio, provided the requirements set out in 13 C.F.R. § 307.19 are satisfied. The Recipient must use all proceeds from any Sale or Securitization (net of reasonable transaction costs) to make additional RLF loans.

**4. Termination of RLF Award.**

EDA may approve a request from the Recipient to terminate this Award. The Recipient must compensate the Government for the Federal Share of the RLF property, including



the current value of all outstanding RLF loans. However, with EDA's prior approval, upon a showing of compelling circumstances, the Recipient may use for other economic development activities a portion of RLF property that EDA determines is attributable to RLF Income, provided that the amount of such RLF Income (or program income) does not exceed the Federal Share. (See 13 C.F.R. § 307.21(b).)

When EDA approves the termination of an RLF grant, EDA may assign or transfer assets of the RLF to an RLF Third Party (defined in 13 C.F.R. § 307.8) for liquidation. The RLF Third Party may be an Eligible Applicant (as defined in 13 C.F.R. § 300.3) or a for-profit organization not otherwise eligible for EDA investment assistance. EDA will have sole discretion in choosing the RLF Third Party, may enter into an agreement with the RLF Third Party to liquidate the assets of one or more RLFs or Recipients, and may allow the RLF Third Party to retain a portion of the RLF assets as reasonable compensation for services rendered in the liquidation. (See 13 C.F.R. § 307.20(c).) The proceeds resulting from any liquidation upon termination shall be distributed in accordance with 13 C.F.R. § 307.20(d). See also part I, section D.6 and part I, section O.4 of these RLF Standard Terms and Conditions.

#### **O. Environmental Requirements.**

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

**1. The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4327).** The National Environmental Policy Act (NEPA) and the Council on Environmental Quality's (CEQ) implementing regulations (40 C.F.R. parts 1500-1508) require that an environmental analysis be completed for all major Federal actions significantly affecting the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements. Recipients of Federal assistance are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency to comply with NEPA. Recipients also may be requested to assist the Department in drafting an environmental assessment, if the Department determines an assessment is required. In the event that any additional information is required during the project period in order to assess any impacts that a project may have on the environment, funds can be withheld by the Grants Officer under a special award condition requiring the

Recipient to submit such additional environmental compliance information sufficient to enable the Department to make the requisite assessment.

**2. National Historic Preservation Act (16 U.S.C. § 470 *et seq.*)**

Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f) and the Advisory Council on Historic Preservation implementing regulations (36 C.F.R. Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties. Recipients of Federal funding are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Recipients may also be requested to assist the Department in consulting with State or Tribal Historic Preservation Officers or other applicable interested parties necessary to identify, assess and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation is complete, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to fully comply with the requirement of the NHPA. In the event that any additional information is required during the project period in order to assess any impacts that a project may have on historic properties, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit such additional information sufficient to enable the Department to make the requisite assessment.

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

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

**4. Clean Air Act, (42 U.S.C. § 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) (Clean Water Act) and Executive Order 11738 ("Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans").**

Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. § 7401 *et seq.*), Clean Water Act (42 U.S.C. § 1251 *et seq.*) and Executive Order 11738, and shall not use a facility on the Environmental Protection Agency's (EPA) List of Violating Facilities (this list is incorporated into the Excluded Parties List System located at <https://www.sam.gov/portal/public/SAM/>) in performing any Award that is nonexempt under 2 C.F.R. § 1532, and shall notify the Federal Project Officer in writing if it intends to use a facility that is on EPA's List of Violating Facilities or knows that the facility has been recommended to be placed on the List.

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

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

- 6. The Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq.*).**  
Recipients must identify any impact or activities which may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to the protected species or habitat occur from actions under Federal assistance awards and conduct the required reviews under the Endangered Species Act, as applicable.
- 7. The Coastal Zone Management Act, as amended (16 U.S.C. § 1451 *et seq.*).**  
Funded Projects must be consistent with a coastal State's approved management program for the coastal zone.
- 8. The Coastal Barriers Resources Act (16 U.S.C. § 3501 *et seq.*).**  
Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.
- 9. The Wild and Scenic Rivers Act, as amended (16 U.S.C. § 1271 *et seq.*).**  
This Act applies to Awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.
- 10. The Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f *et seq.*).**  
This Act precludes Federal assistance for any project that EPA determines may contaminate a sole source aquifer so as to threaten public health.
- 11. The Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. § 6901 *et seq.*).**  
This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that Recipients of Federal funds give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.
- 12. The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 *et seq.*) and the Community Environmental Response Facilitation Act (41 U.S.C. § 11001 *et seq.*).**  
These requirements address responsibilities of hazardous substance releases, threatened releases and environmental cleanup. There is also a requirement to impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.
- 13. Executive Order 12898 ("*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*")-**  
This Order requires Federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of Federal programs, policies and activities on low income and minority populations.

**P. Miscellaneous Requirements.**

**1. Criminal and Prohibited Activities.**

- a. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812) provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal government for money (including grants, loans or other benefits).
- b. The False Claims Amendment Act and the False Statements Act (18 U.S.C. §§ 287 and 1001) provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.
- c. The Civil False Claims Act (31 U.S.C. § 3729 et seq.) provides that suits under this Act can be brought by the Government, or a person on behalf of the Federal government, for false claims under Federal assistance programs.
- d. The Copeland "Anti-Kickback" Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally-supported Project from enticing an employee working on the Project from giving up a part of his compensation under an employment contract. The Copeland "Anti-Kickback" Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

**2. Foreign Travel.**

- a. The Recipient shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 -10.143.
- b. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.
- c. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow Federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple "Open Skies

Agreements” currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA website <http://www.gsa.gov/portal/content/103191>. Information on the three Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State’s website <http://www.state.gov/e/eeb/tra/>.

- d. If a foreign air carrier is anticipated to be used, the Recipient must receive prior approval from the Grants Officer. When requesting such approval, the Recipient must provide a justification in accordance with the guidance provided in 41 C.F.R. § 301-10.142, which requires the Recipient to provide a “certification” to the Grants Officer with the following: name; dates of travel; the origin and destination of travel; a detailed itinerary of travel, the name of the air carrier and flight number for each leg of the trip; and a statement explaining why the Recipient meets one of the exceptions to the applicable regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the Recipient must provide the Grants Officer with a copy of the agreement. The Grants Officer shall make the final determination and notify the Recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the Recipient not being reimbursed for any transportation costs for which the Recipient improperly used a foreign air carrier.

**3. American-Made Equipment and Products.**

Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this Award.

**4. Intellectual Property Rights.**

- a. *Inventions.* The rights to any invention made by a Recipient under a DOC Award are determined by the Bayh-Dole Act, as amended (Pub. L. No. 96-517), and codified in 35 U.S.C. § 200 et seq., except as otherwise required by law. The specific rights and responsibilities are described in more detail in 37 C.F.R. part 401, and in the particular, in the standard patent rights clause in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this Award.

(i) *Ownership.*

- (a) *Recipient.* The Recipient has the right to elect to retain title to any invention it or its employees make (conceived or first reduced to practice). A Recipient that is a non-profit organization, which includes a university or other institution of higher learning, may not assign to a third party its rights to such an invention without the permission of DOC unless that assignment is to a patent management organization (i.e., a university’s Research Foundation). The Recipient’s

ownership rights are subject to the Federal government's nonexclusive, nontransferable, irrevocable, paid-up license and other rights.

- (b) *Department.* If the Recipient elects not to retain title, fails to disclose the invention to the agency within the required time limits, or does not file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive revocable license for the Recipient. DOC owns any invention made solely by its employees, but may license the Recipient in accordance with the procedures in 37 C.F.R. part 404.
  - (c) *Inventor/Employee.* If neither the Recipient nor the Department is interested in owning an invention by a Recipient employee, the Recipient, with the written concurrence of the Department's Patent Counsel, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 C.F.R. § 401.9.
  - (d) *Joint Inventions.* Inventions made jointly by a Recipient and a Department employee will be owned jointly by the Recipient and DOC. However, the Department may transfer its rights to the Recipient as authorized by 35 U.S.C. § 202(e) and 37 C.F.R. § 401.10 if the Recipient is willing to patent and license the invention in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-50 if there is one Recipient and Department employee). The agreement will be prepared by DOC and may include other provisions, such as a royalty free license to the Federal government and certain other entities. The provision at 35 U.S.C. § 202(e) also authorizes the Recipient to transfer its rights to the Government, which can agree to share royalties similarly as described above.
- (ii) *Responsibilities --iEdison.* The Recipient has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The Recipient is expected to comply with all the requirements of the standard patent rights clause and 37 C.F.R. part 401. Recipients of DOC Awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at [www.iedison.gov](http://www.iedison.gov). Recipients may obtain a waiver of this electronic submission requirement by providing DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.

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

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

- c. *Data, Databases and Software.* The rights to any work produced or purchased under a DOC Award are determined by 15 C.F.R. § 24.34 for State and Local Governments, and 15 C.F.R. § 14.36, for Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations. Such works may include data, databases or software. The Recipient owns any work produced or purchased under a DOC Award subject to the Department's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Government purposes.
- d. *Copyright.* The Recipient may copyright any work produced under a DOC Award subject to the Department's royalty-free non-exclusive and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Federal government purposes. Works jointly authored by the Department and Recipient employees may be copyrighted but only the part authored by the Recipient is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. If the contributions of the authors cannot be separated, the copyright status of the joint work is questionable. On occasion, DOC may require the Recipient to transfer to DOC its copyright in a particular work for government purposes or when DOC is undertaking the primary dissemination of the work. Ownership of copyright by the Government through assignment is permitted by 17 U.S.C. § 105.

**5. Increasing Seat Belt Use in the United States.**

Pursuant to Executive Order 13043, Recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented or personally-owned vehicles.

**6. Research Involving Human Subjects.**

- a. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. part 27, Protection of Human Subjects. No research involving

human subjects is permitted under this Award unless expressly authorized by special award condition, or otherwise authorized in writing by the Grants Officer.

- b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
- c. The Department's regulations at 15 C.F.R. part 27 require that Recipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in carrying out the purpose(s) of this Award, the Recipient shall submit appropriate documentation to the Program Officer for approval. This documentation may include:
  - (i) Documentation establishing approval of the Project by an institutional review board (IRB) approved for government-wide use under Department of Health and Human Services guidelines (*See* 15 C.F.R. § 27.103);
  - (ii) Documentation to support an exemption for the Project under 15 C.F.R. § 27.101(b);
  - (iii) Documentation to support deferral for an exemption or IRB review under 15 C.F.R. § 27.118;
  - (iv) Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- d. No work involving human subjects may be undertaken, conducted, or costs incurred or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred or charged to the Project for protocol or instrument development related to human subjects research.

**7. Federal Employee Expenses.**

Federal agencies are generally barred from accepting funds from a Recipient to pay transportation, travel, or other expenses for any Federal employee. Use of Award funds (Federal or non-Federal) or the Recipient's provision of in-kind goods or services, for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for Federal employees, from Recipients or applicants regardless of the source.

**8. Minority-Serving Institutions (MSIs) Initiative.**

Pursuant to Executive Order 13555 ("White House Initiative on Educational Excellence for Hispanics"), 13270 ("Tribal Colleges and Universities"), and 13532 ("Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities"), the Department is strongly committed to broadening the participation of



minority-serving institutions (MSIs) in its financial assistance programs. The Department's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. The Department encourages all applicants and Recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

**9. Research Misconduct.**

The Department of Commerce adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 Fed. Reg. 76260 (2000)). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipient organizations that conduct extramural research funded by the Department must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipient organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Federal award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the award, up to and including award termination and possible suspension or debarment. The Department requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the OIG of such allegation. Once the Recipient organization has investigated the allegation, it will submit its findings to the Grants Officer. The DOC may accept the Recipient's findings or proceed with its own investigation. The Grants Officer shall inform the Recipient of the Department's final determination.

**10. Publications, Videos and Acknowledgment of Sponsorship.**

- a. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording and reporting results of Federally funded projects, e.g. scientific research, and expanding access to Federally funded projects.
- b. Recipients must submit a copy of any publication materials, including but not limited to print, recorded or Internet materials, to the EDA Project Officer.
- c. When releasing information related to a funded project, Recipients must include a statement that the project or effort undertaken was or is sponsored by DOC.
- d. Recipients are responsible for assuring that every publication of material based on, developed under, or produced under a DOC financial assistance award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer:

*This [report/video] was prepared by [Recipient name] under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce.*

**11. Care and Use of Live Vertebrate Animals.**

Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. No. 89-544), as amended (7 U.S.C. § 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and the implementing regulations at 9 C.F.R. parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. § 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); Non-indigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. § 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling and treatment of warm blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC Award unless authorized by the Grants Officer.

**12. Homeland Security Presidential Directive 12.**

If the performance of a grant award requires recipient organization personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term "routine access" is defined as more than 180 days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services' (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual has lawful immigration status and is eligible for employment within the US. Any items or services delivered under a financial assistance award shall comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12, "Policy for a Common Identification Standard for Federal Employees and Contractors", FIPS PUB 201, and OMB Memorandum M-05-24. The Recipient shall ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The Recipient shall insert the following term in all subawards and contracts when the subaward Recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

- a. *The subrecipient or contractor shall comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all*

*employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.*

- b. The subrecipient or contractor shall account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee's employment; (3) Upon subaward or contract completion or termination.*

**13. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.**

- a. This clause applies to the extent that this Award involves access to export-controlled items.
- b. In performing this Award, the Recipient may gain access to items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The Recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and reexports provisions. The Recipient shall establish and maintain effective export compliance procedures at DOC and non-DOC facilities throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual and electronic access to export-controlled items, including by foreign nationals.
- c. *Definitions.*
  - (i) *Export-controlled items.* Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application.
  - (ii) *Deemed Export/Reexport.* The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is "deemed" to be an export to the home country of the foreign national. 15 C.F.R. § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national's home country. Licenses from the Department may be required for deemed exports or reexports.

- d. The Recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this Award, to ensure that access to, or release of, such items are restricted, or licensed, as required by applicable Federal laws, Executive Orders or regulations, including the EAR.
- e. As applicable, Recipient personnel and associates at Department sites will be informed of any procedures to identify and protect export-controlled items.
- f. To the extent the recipient wishes to provide foreign nationals with access to export-controlled items, the recipient shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed reexports.
- g. Nothing in the terms of this Award is intended to change, supersede or waive the requirements of applicable Federal laws, Executive Orders or regulations.
- h. The Recipient shall include this clause, including this paragraph (f), in all lower-tier transactions (sub-awards, contracts, and subcontracts) under this Award that may involve access to export-controlled information technology.

**14. The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)), as amended, and the implementing regulations at 2 C.F.R. part 175**

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the Recipient or subrecipient engages in certain activities related to trafficking in persons. The Department of Commerce hereby incorporates the following award term required by 2 C.F.R. § 175.15(b). See <http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-voll/pdf/CFR-2012-title2-voll-sec175-15.pdf>.

Award Term from 2 C.F.R. § 175.15(b): Trafficking in persons.

- a. Provisions applicable to a Recipient that is a private entity.
  - 1 You as the Recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
    - (i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
    - (ii) Procure a commercial sex act during the period of time that the award is in effect; or
    - (iii) Use forced labor in the performance of the award or subawards under the award.
  - 2 We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity