

§ 307.19

Recipient (for example, through a recapitalization), EDA shall determine a new Investment Rate for the New Lending Area based on the criteria set forth in § 301.4 of this chapter;

(iv) EDA must provide written approval of the merger agreement(s), modifications and revisions to the Plans and any other related amendments thereto;

(v) All applicable RLF Grant assets of the discharging RLF Recipient(s) transfer to the surviving RLF Recipient as of the merger's effective date; and

(vi) The surviving RLF Recipient becomes fully responsible for administration of the RLF Grant assets transferred and fulfills all surviving RLF Grant requirements and any other conditions reasonably requested by EDA.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62869, Oct. 22, 2008]

§ 307.19 RLF loan portfolio Sales and Securitizations.

EDA may take such actions as appropriate to enable an RLF Recipient to sell or securitize RLF loans, except that EDA may not issue a Federal guaranty covering any issued Security. With prior approval from EDA, an RLF Recipient may enter into a Sale or a Securitization of all or a portion of its RLF loan portfolio, provided:

(a) An RLF Recipient must use all proceeds from any Sale or Securitization (net of reasonable transaction costs) to make additional RLF loans;

(b) An RLF Recipient must request EDA to subordinate its interest in all or a portion of any RLF loan portfolio sold or securitized;

(c) No Security collateralized by RLF loans and other RLF property and offered in a secondary market transaction pursuant to a Securitization shall be treated as an Exempt Security for purposes of the Securities Act of 1933, as amended (15 U.S.C. 77a *et seq.*), or the Securities Exchange Act of 1934, as amended (15 U.S.C. 78a *et seq.*) (the "Exchange Act"), unless exempted by a rule or regulation issued by the Commission; and

(d) Except as provided in paragraph (c), no provision of this section supersedes or otherwise affects the applica-

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tion of the "securities laws" (as such term is defined in section 3(a)(47) of the Exchange Act) or the rules, regulations or orders issued by the Commission or a self-regulatory organization under the Commission.

§ 307.20 Partial liquidation; liquidation upon termination.

(a) *Partial liquidation or disallowance of a portion of an RLF Grant.* If the RLF Recipient engages in certain problematic practices, EDA may disallow a corresponding proportion of the Grant or direct the RLF Recipient to transfer loans to an RLF Third Party for liquidation. Problematic practices for which EDA may disallow a portion of an RLF Grant and recover the pro-rata Federal Share (as defined in § 314.5 of this chapter) include but are not limited to the RLF Recipient:

(1) Having RLF loans that are more than one hundred and twenty (120) days delinquent;

(2) Having excess cash sequestered for twelve (12) months or longer and EDA has not approved an extension request;

(3) Making an ineligible loan;

(4) Failing to disburse the EDA funds in accordance with the time schedule prescribed in the RLF Grant; or

(5) Determining that it does not wish to further invest in the RLF or cannot maintain operations at the degree originally contemplated upon receipt of the RLF Grant and requests that a portion of the RLF Grant be disallowed, and EDA agrees to allow the disallowance.

(b) *Liquidation upon termination.* When EDA approves the termination of an RLF Grant, EDA may assign or transfer assets of the RLF to an RLF Third Party for liquidation.

(c) *Terms.* The following terms will govern any liquidation:

(1) EDA shall have sole discretion in choosing the RLF Third Party;

(2) The RLF Third Party may be an Eligible Applicant or a for-profit organization not otherwise eligible for Investment Assistance;

(3) EDA may enter into an agreement with the RLF Third Party to liquidate the assets of one (1) or more RLFs or RLF Recipients;

(4) EDA may allow the RLF Third Party to retain a portion of the RLF

assets, consistent with the agreement referenced in paragraph (c)(3) of this section, as reasonable compensation for services rendered in the liquidation; and

(5) EDA may require additional reasonable terms and conditions.

(d) *Distribution of proceeds.* The proceeds resulting from any liquidation upon termination shall be distributed in the following order of priority:

(1) *First*, for any third party liquidation costs;

(2) *Second*, for the payment of EDA's Federal Share; and

(3) *Third*, if any proceeds remain, to the RLF Recipient.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62869, Oct. 22, 2008]

§ 307.21 Termination of Revolving Loan Funds.

(a)(1) EDA may suspend or terminate an RLF Grant for cause, including but not limited to the RLF Recipient's failure to:

(i) Operate the RLF in accordance with the Plan, the RLF Grant or this part;

(ii) Obtain prior EDA approval for material changes to the Plan, including provisions for administering the RLF;

(iii) Submit an updated Plan to EDA in accordance with § 307.9(c);

(iv) Submit timely progress, financial and audit reports in the format required by the RLF Grant and § 307.14, including the semi-annual report and the Income and Expense Statement (if applicable);

(v) Manage the RLF Grant in accordance with Prudent Lending Practices, as defined in § 307.8;

(vi) Sequester excess funds or remit the interest on EDA's portion of the sequestered funds to the U.S. Treasury, as directed by EDA;

(vii) Submit the documentation requested by EDA regarding a high loan default rate and collection efforts, or correct a high loan default rate, as determined by EDA;

(viii) Comply with the audit requirements set forth in OMB Circular A-133 and the Compliance Supplement, including timely submission of audit reports to the Federal Audit Clearinghouse and the correct designation of

the RLF as a major program (as defined in OMB Circular A-133), as applicable;

(ix) Comply with an EDA-approved corrective action plan to remedy RLF-related audit findings; and

(x) Comply with the conflicts of interest provisions set forth in § 302.17.

(2) To maintain effective control over and accountability of RLF Grant funds and assets, EDA shall determine the manner and timing of any suspension or termination action. EDA may require the RLF Recipient to repay the Federal Share in a lump-sum payment or enter into a Sale, or EDA may agree to enter into a repayment agreement with the RLF Recipient for repayment of the Federal Share.

(b) EDA may approve a request from an RLF Recipient to terminate an RLF Grant. The RLF Recipient must compensate the Federal 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 RLF Recipient may use for other economic development activities a portion of RLF property that EDA determines is attributable to RLF Income.

(c) Upon termination, distribution of proceeds shall occur in accordance with § 307.20(d).

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§ 307.22 Variances.

EDA may approve variances to the requirements contained in this subpart, provided such variances:

(a) Are consistent with the goals of the Economic Adjustment Assistance program and with an 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 any applicable legal requirements, including Federal, State and local law.