Kerr-Tar Regional Council of Governments
PO Box, 709
Henderson, NC 27536
Phone: 252-436-2040 Toll Free (866)506-6223
Web: www.kerrtarcog.org

KERR TAR REGIONAL

COUNCIL OF GOVERNMENTS

REVOLVING LOAN FUND

Policy Guidelines and Operating Plan

Adopted: March 2014

TABLE OF CONTENTS

Contents

Revolving Loan Fund Operating Overview

SCOPE AND GOALS

The Kerr-Tar Regional Council of Governments (COG) is the Development District serving the five counties in the Kerr-Tar region of North Carolina. The service area includes Franklin, Granville, Person, Vance and Warren Counties. Since its creation in 1972, a primary goal of the COG has been to develop, attract, expand, and maintain better economic and employment opportunities within its five county service area. The COG's Revolving Loan Fund (RLF) is an economic development tool to assist in reaching our goal. The RLF Poliy Guidelines and Operating Plan will be reviewed, at a minimum, every 5 years.

FUNDING

RLF funding comes from the Economic Development Administration (EDA). In 1986, the COG Board of Directors authorized the COG staff to submit an application to the Economic Development Administration for the Title IX Revolving Loan Fund under the Long Term Economic Deterioration (LTED) Program to help alleviate Region K's economic adjustment need created by a poor economic base throughout the five eligible counties of Region K.

The economic base of Franklin, Granville, Person, Vance and Warren counties is suffering from low per capita income levels, high poverty levels, low median family income levels, failing agricultural communities, and high unemployment rates.

On May 14, 1987, the Economic Development Administration (EDA), of the U.S. Department of Commerce, awarded a grant to the Kerr-Tar Regional Council of Governments to establish a new Economic Development program for Region K. The EDA grant amount of $500,000 was matched by a State appropriation of $166,000 to establish a Revolving Loan Fund (RLF) of $666,000 to leverage other public and private funds to stimulate new job opportunities and/or retain existing employment opportunities.

All funds in the RLF shall be retained in a special account, entirely separate from all other accounts, and may not be used for any purpose others than those eligible expenditures listed in this manual.

PURPOSE

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

Objective of the RLF program include:

- To reduce unemployment by creating or retaining as many job opportunities as possible;

- To increase the area's tax base by assisting with the expansion of existing industries and by encouraging new industrial and business development;

- To redevelop vacant land or blighted building areas in order to make them productive again;

- To aid in attracting other sources of capital to insure the best possible leverage of private sector dollars;

- To stimulate private sector capital formation and aid in small business development;

- To provide capital for manufacturing and service industry;

- To leverage the maximum number of private investment dollars, thus achieving the lowest ratio possible of RLF dollars to private dollars;

- To increase per capital income through achievement of more favorable jobs to people ratio;

- To aid minority-owned businesses and/or female business development by providing financial and technical assistance;

- To fill financial gaps in existing local financial markets and provide capital which otherwise would not be available for economic development, and encourage greater private sector job creation and capital formation.

Governance Structure

A Loan Review Committee (LRC) was established to assist the loan officer of the COG to evaluate and recommend actions to the COG Board of Directors pertaining to RLF applications.

The LRC will consist of ten (10) members; two (2) from each of the five (5) counties served by the Kerr-Tar Regional COG. The LRC members shall be appointed by the COG Board of Directors for a two-year term. One (1) member from each county's delegation shall have banking experience. The second county member may be selected based on the COG Board of Directors' desires for diversity among the LRC.

This committee and the Kerr-Tar Regional COG Loan Officer will review all RLF applications, interview applicants to determine loan worthiness and repayment ability. Upon thorough review, the LRC shall instruct the RLF Loan Officer to make a recommendation to the Kerr-Tar Regional COG Board of Directors

Operating Parameters

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

1) Eligible Borrowers

   Eligible borrowers for RLF funds include Private, for-profit proprietorship, partnership, LLC, or corporations.

2) Eligible Loans

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

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

   a. Land and Site Improvements – including land acquisition, engineering, legal, grading, testing, site mapping, and related costs associated with acquisition and preparation of land;
   b. Building Improvements – including real estate, engineering, architectural, legal, and related costs associated with acquisition, construction, rehabilitation of buildings, and demolitions;
   c. Purchase of Machinery and Equipment – including delivery, installation, engineering, architectural, legal, insurance, and related costs associated with acquisition and installation of machinery and equipment;
   d. Other costs contributing directly to the value of fixed assets, such as sales and use taxes, and interest on interim construction financing;
   e. Adequate contingency reserves;
   f. Start-up and working capital;
   g. Infrastructure costs;
   h. Relocation expenses as per Uniform Relocation Assistance Act.

3) Ineligible Borrowers

   - Land banking/real estate Investment Company;
   - Speculate building and Development Company;

- Passive investment company, e.g. stocks, bonds, high-yield instruments;
- Lending institutions;
- Non-profit organizations, associations, and corporations.

4) Ineligible Loans

The RLF cannot make loans for the following:

a. Creation of highly seasonal jobs;
b. Subsidization of interest payment on existing loans;
c. Refinancing of existing loan from other lenders or debt consolidation;
d. Provision of mandatory equity contribution required of borrowers for other Federal loan programs;
e. Loans to itself (the COG) or to a subsidiary;
f. Loans made outside the five county service area.
g. The COG shall not make loan funds available to a business entity if the owner of such entity or any owner of an interest in such entity is related by blood, marriage, law or business arrangement to an officer or employee of the COG or any member of the Board of Directors, or a member of the Loan Review Committee. The Board Members of the COG and Loan Review Committee are ineligible to apply for or receive RLF loans. This restriction continues for a period of two year from the date of termination from either the COG Board or Loan Review Committee.

5) Loan Guidelines:

Due to the limited amount of RLF dollars, the COG has set a maximum amount in an attempt to spread the funds available throughout the eligible counties of the region to achieve the economic objectives of the RLF program. The following guidelines shall apply in processing RLF loans:

1. Total project cost will be unlimited;
2. The projected average size of a loan under the RLF program is estimated to be $70,000;
3. The maximum RLF loan participation granted a borrower shall not exceed $200,000; or 75% of total Project Cost, whichever is the lesser;
4. The minimum RLF participation will be $25,000;
5. Maximum participation by RLF will be evaluated on a project-by-project basis taking into consideration such factors as: whether application is for project continuation or new start-up business, along with financial stability of the applicant;
6. Applicant must submit a letter from a commercial bank, savings and loan, or other private lender that reflects information on conventional sources of financing are not available, the amount of the loan application, and why it is denied;

7. “To leverage private investment: a minimum ratio of two private dollars is required for loan portfolio as to whole.”

6) Job Creation Requirements

A requirement for lending RLF funds is that the equivalent of at least one direct full-time 40 hours per week job is to be created/retained for every $25,000 in RLF funds. The borrower will have two years from the date of loan closing to create/retain the committed number of jobs or a pro-rata amount of the RLF funds must be returned to the RLF fund.

The RLF program will attempt to fulfill a goal of directing 15 percent of new jobs created to the long-term unemployed. In attempts to achieve this goal, there will be coordination with the regional WIA programs, local community colleges, and the NC Division of Workforce Solutions.

Priority will be given to loan applicant that meets the needs of the targeted population by providing a large number of permanent jobs and gaining opportunities for unskilled and semi-skilled workers.

7) Required Loan Documentation

1. A “letter of denial” from a bank. The Kerr-Tar Regional Council of Governments (COG) RLF Program is designed to fill gaps in existing local financial markets. The RLF program is not a substitute for conventional lending sources. Before filing an RLF application, you must first formally apply for the loan with a bank. If the bank declines to participate in full or in part, you may then apply for a loan under the RLF program. If the bank denies your request, it can provide you with a letter of denial. A letter of denial must accompany your RLF application. The letter of denial must state the loan amount requested from the bank and the specific reasons that the loan request was denied. The letter of denial should match the loan being requested from the COG in dollar amount, terms and collateral being offered.
2. A completed Personal Financial Statement.
3. A Business Plan.
4. A Resume of the loan applicant(s). The resume should adequately summarize the business and professional experience of the applicant for the last 10 years. Resumes for all administrative and operational management personnel, principals in the business, and persons guaranteeing the loan should also be included.
5. Latest Balance Sheet and Profit/Loss Statements for last three years (for existing businesses).
6. Annual Balance Sheet and Profit/Loss Statements for the last three years (for existing businesses).
7. A 24-month cash flow projection and analysis (for existing and proposed businesses).

8. Information on all of the applicant's parents, subsidiaries and/or affiliated enterprises (if applicable). The required information includes: 1.) Name, address, nature of business and extent of affiliation; 2.) Latest balance sheet and profit/loss statement (not over 90 days old); and 3.) Annual balance sheet and profit/loss statements for last three years.

9. A list of any business related equipment that is owned by the applicant and has a value of over $100.

10. A list of the fixed assets to be purchased with the loan proceeds (if applicable) along with an approximate value of each item.

11. A list of prospective clients (if applicable).

12. A signed "Certificate of Assurances". This form certifies that the applicant and/or any beneficiary of the loan will comply with all appropriate state and federal laws as they relate to the application and the acceptance and use of federal funds.

13. Hazard and flood insurance with other forms of insurance as required by the COG if loan is approved.

14. A security deposit check for $1,000. The deposit will pay for the loan processing and attorney fees. If the loan request is denied, the security deposit will be returned to the applicant.

15. In addition, **credit reports, appraisal reports** (if applicable) and **environmental reviews** (if applicable) will be required. There may be other exhibits pertinent to the RLF loan application that will be filled out by the COG such as a standard credit analysis.

16. Other information deemed necessary in the review and evaluation of the loan application.

7) Lending Policies:

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

a. The terms for repayment of loans will be made on a project-by-project basis. The shortest feasible term will be made available to insure rapid return of RLF funds in order to assist more borrowers.

b. Terms for fixed asset loans will not be greater than the weighted average useful life of the depreciable fixed assets of the project. Generally, maximum loan terms based on purpose and collateral will be offered as follows:

   Land and Building – 15 years

   ****Machinery and Equipment –10 yrs new / 7 yrs used or useful life documented by some non affiliated source with a maximum of 10 years

   Working Capital – 5 years

   The COG Board of Directors, upon recommendation from the Loan Review Committee, may make exceptions to these guidelines.

c. The RLF will have a solid but flexible payback policy. After evaluation of specific circumstances, the RLF Advisory Committee may approve a temporary moratorium on loan payment.

d. The minimum interest rate an RLF Recipient may charge is four (4) percentage points below the lesser of the current money center prime interest rate quoted in the Wall Street Journal, or the maximum interest rate allowed under State law. In no event shall the interest rate be less than the lower of four (4) percent or 75 percent of the prime interest rate listed in the Wall Street Journal. (2) Exception. Should the prime interest rate listed in the Wall Street Journal exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of the RLF Recipient to implement its financing strategy.

e. In the determination of collateral requirements the COG Board may consider the merits and potential economic benefits of each loan request. The COG may secure a first, second, or third lien on available collateral. The lien position of the COG may be subordinate and inferior to lien or liens securing other loans made in connection with a project.

f. When the purpose of a loan is for working capital, the COG will normally obtain collateral such as liens on inventories, accounts receivable, fixed assets and/or other available assets of the borrower. Such liens will be properly recorded as prescribed by applicable state and local Uniform Commercial Code (UCC) laws. Ordinarily, COG funds will not be used to take a subordinate lien position or other Federal, State or Local loan programs participating in the project.

g. The COG will ordinarily require security in the form of the assignment of patents and licenses; the acquisition of hazard, liability and other forms of insurance including flood insurance, as appropriate, performance bonds, and such other additional security as is deemed necessary to mitigate the RLF's exposure. Kerr-Tar Regional Council of Governments, as administrator of the RLF, must be shown as a lender loss payee/mortgagee by endorsement on insurance.

h. Life insurance policies on key individuals with benefits assigned to the COG may be required on business owners of closely held corporations, partnerships or proprietorships, where the continuing success of the business is dependent on such key individuals.

i. Personal guarantees from a borrower's principal owners (partnerships and proprietorships) and their spouses, to the extent permitted by law, making them jointly and severally liable for the loan, will be required. In case of a corporate borrower, in addition to corporate asset, members of the Board of Directors holding twenty percent or more of the corporation's outstanding common stock or twenty percent or more of the corporation's voting stock and their spouses (if held jointly), will guarantee loans.

j. Security interest on equipment, machinery, office furniture, fixtures and personal property owned now or acquired from the proceeds of the loan may be required;

k. In the determination of collateral requirements, the COG Board of Directors may consider the merits and potential economic benefits of each request. When appropriate, the RLF program may require security in the form of assignments of leases, contracts, and commissions. Additional security as the lender determines may be necessary to support the RLF's exposure

l. Should it be determined that it is necessary or desirable to take actions to protect or further the interests of the RLF, COG shall act to sell, collect, liquidate or otherwise recover on loans extended by the RLF in accordance with the legal rights of the COG, other lenders, and the RLF borrower.

m. The COG may modify the terms under which RLF financing has been extended to enhance the ability of the RLF to achieve program objectives.

Economic Development Administration Requirements

Because the United States Economic Development Administration (EDA) provides funding support to the Kerr-Tar Regional Council of Governments (COG) Revolving Loan Fund the following requirements are mandatory and compliance is a standard requirement for any loan funds.

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

SECTION I: REVOLVING LOAN FUND STRATEGY

Name of organization: The Kerr-Tar Regional Council of Governments

List of Counties Comprising the Lending Territory:

Franklin County and the municipalities of Bunn, Franklinton, Louisburg, and Youngsville

Granville County and the municipalities of Butner, Creedmoor, Oxford, Stem, and Stovall

Person County and the municipality of Roxboro

Vance County and the municipalities of Henderson, Kittrell, and Middleburg

Warren County and the municipalities of Macon, Norlina, and Warrenton

Description of Comprehensive Economic Development Strategy

In March, 1975, the United States Department of Commerce's Economic Development Administration (EDA) designated the geographic area served by the Kerr-Tar Regional Council of Governments (COG) as an Economic Development District (EDD). As the administrative body of the Kerr-Tar EDD, the COG receives economic development planning funds from EDA and is eligible to participate in the development and administration of EDA-funded projects in the region. The COG is also responsible for preparation and maintenance of a Comprehensive Economic Development Strategy (CEDS) for the EDD.

A CEDS is the result of a regional economic planning process designed to guide the economic growth of the region. The purpose of the CEDS is to create a process that will "create jobs, foster more stable and diversified economies, improve living conditions and provide a mechanism for coordinating the efforts of people, organizations, local governments, and private industry concerned with economic development". A CEDS is also necessary to quality for EDA assistance with development.

The COG's 2012 CEDS lists the following goals for the regions economic development:

Goal 1: Build on the Region's Competitive Advantage and Leverage the Marketplace

1. Develop outdoor recreational opportunities which are unique to the region
2. Support existing and emerging industry clusters in the region
3. Support and strengthen entrepreneurial development in the region
4. Prepare the region's workforce for sustainable employment

Goal 2: Establish & Maintain a Robust Regional Infrastructure

1. Improve access to broadband infrastructure for manufacturers, businesses, downtowns, and residential areas
2. Continue to work through the Kerr-Tar RPO to develop long-range transportation plans and advocate for local projects
3. Develop plans for equitable and affordable housing.

Goal 3: Create Revitalized & Vibrant Communities

1. Promote healthy, walkable communities in the Region
2. Promote downtowns in the region as cultural centers
3. Promote healthy lifestyles and obesity reduction

Goal 4: Develop Healthy and Innovative People

1. Foster development, recruitment and retention of a skilled workforce
2. Develop ways to create an environment that fosters entrepreneurial development and growth
3. Expand recreation and fitness activities though NC Lakes District Recreation Plan

Business Development Objectives

1. Create new job opportunities in order to increase per capital income, to reduce unemployment, and to increase the tax base derived from economic activities.
2. Improve economic opportunity and living standards for the citizens of the Kerr-Tar region.
3. Improve the opportunities of the unemployed, underemployed, and minority persons.
4. . Support and strengthen entrepreneurial development in the region.

RLF Financing Strategy

307.15 Prudent management of Revolving Loan Funds.

(A) Accounting principles.

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

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

(B) Loan and accounting system documents.

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

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

(i) Loan application;

(ii) Loan agreement;

(iii) Board of directors' meeting minutes approving the RLF loan;

(iv) Promissory note;

(v) Security agreement(s);

(vi) Deed of trust or mortgage (as applicable);

(vii) Agreement of prior lien holder (as applicable); and

(viii) Signed bank turn-down letter demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. EDA will permit the RLF Recipient to accept alternate documentation only if such documentation is allowed in the Recipient's EDA-approved RLF Plan.

(C) Interest rates—

RLF Financing Policies

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

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

(D) Private leveraging.

(1) RLF loans must leverage private investment of at least two dollars for every one dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to

individual loans and is effective for the duration of the RLF's operation. To be classified as leveraged, private investment must be made within twelve (12) months of approval of an RLF loan, as part of the same business development project, and may include:

(i) Capital invested by the borrower or others;

(ii) Financing from private entities; or

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

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

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

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

307.17 Uses of capital.

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

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

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

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

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

(4) Enable borrowers to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF;

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

(6) Refinance existing debt, unless:

(i) The RLF Recipient sufficiently demonstrates in the loan documentation a ''sound economic justification'' for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification; or

(ii) RLF Capital will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. RLF Capital may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF's costs plus a reasonable portion of the outstanding RLF loan within eighteen (18) months following the date of refinancing.

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

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

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

SECTION II: OPERATIONAL PROCEDURES

A. Organizational Structure

The Kerr-Tar Regional Council of Governments (COG) is the Development District serving the five counties in the Kerr-Tar region of North Carolina. The service area includes Franklin, Granville, Person, Vance and Warren Counties. Since its creation in 1972, a primary goal of the COG has been to develop, attract, expand, and maintain better economic and employment opportunities within its five county service area. The COG's Revolving Loan Fund (RLF) is an economic development tool to assist in reaching our goal.

The Board of Directors of the COG consists of at least 35 members appointed by the respective Municipal/County elected bodies. Additional members are appointed by the COG Board of Directors as needed to meet the demographics as required by the US Department of Commerce Economic Development Administration regulations.

The Board of Directors has the following responsibilities with regard to the lending activity of the COG:

1. To carefully consider the general direction and philosophy of lending desired for this agency.
2. To establish policies in sufficient detail to clearly define that direction and philosophy. The Revolving Loan Fund Plan document as approved by EDA and the Board of Directors shall be adopted by resolution as an official act of the board.
3. To charge senior management of the COG with responsibility for effective communication and implementation of the policy/plan.

4. To ensure that COG's loan portfolio is managed in compliance with approved policy and all applicable Federal and State laws and regulations.
5. To reconsider and approve the lending policy/plan on an annual basis.
6. To serve as the final decision body for loan approvals.
7. Members of the COG Board of Directors are not eligible to be appointed as members of the Loan Review Committee.
8. To appoint a Loan Review Committee whose purpose is to review and make approval/denial recommendations to the COG Board of Directors.
    - The Loan Review Committee shall include 10 representatives with two members from each county in the service area. Each county will be entitled to recommend one member from the financial community and one community leader for appointment. The following makeup of the Loan Review Committee will be strictly adhered to:
    - 5 members representing financial institutions which could include but not be limited to banks, independent financing companies, and Certified Public Accountants.
    - 5 members may be selected based on the COG Board of Directors' desires for diversity among the LRC.

The COG Board of Directors shall directly approve loans by majority vote of a quorum of its members. All lending transactions must constitute impartial, arm's length transactions. As required by law, the RLF program is included in the annual single audit of the COG in compliance with OMB Circular A-133.

02.17 EDA's conflict of interest regulation

It is the policy of the COG to adhere to 13CFR 302.17 as it relates to conflicts of interest. This section of the U.S. Code is hereby included:

302.17 Conflicts of interest.

(A) General. It is EDA's and the Department's policy to maintain the highest standards of conduct to prevent conflicts of interest in connection with the award of Investment Assistance or its use for reimbursement or payment of costs (e.g., procurement of goods or services) by or to the Recipient. A conflict of interest generally exists when an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party's personal or financial interests. A conflict may also exist where there is an appearance that an Interested Party's objectivity in performing his or her responsibilities under the Project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an Interested Party is unable to render impartial assistance, services or advice to the Recipient, a participant in the Project or to the Federal government. Additionally, a conflict of interest may result from non-financial gain to an Interested Party, such as benefit to reputation or prestige in a professional field.

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

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

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

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

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

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

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

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

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

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

B. Loan Processing Procedures

Revolving Loan Income

§ 307.12 Revolving Loan Fund Income.

(A) *General requirements.* RLF Income must be placed into the RLF Capital base for the purpose of making loans or paying for eligible and reasonable administrative costs associated with the RLF's operations. RLF Income may fund administrative costs, provided:

(1) Such RLF Income and the administrative costs are incurred in the same six-month (6) Reporting Period;

(2) RLF Income that is not used for administrative costs during the six month (6) Reporting Period is made available for lending activities;

(3) RLF Income shall not be withdrawn from the RLF Capital base in a subsequent Reporting Period for any purpose other than lending without the prior written consent of EDA; and

(4) The RLF Recipient completes an RLF Income and Expense Statement (the ''*Income and Expense Statement*'') as required under § 307.14(c).

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

(1) 2 CFR part 225 (OMB Circular A–87 for State, local, and Indian tribal governments), 2 CFR part 230 (OMB Circular A–122 for non-profit organizations other than institutions of higher education, hospitals or organizations named in OMB Circular A–122 as not subject to such Circular), and 2 CFR part 220 (OMB Circular A–21 for educational institutions); and

(2) OMB Circular A–133 for Single Audit Act requirements for States, local governments, and non-profit organizations and the Compliance Supplement, as appropriate.

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

(1) *First,* towards any costs of collection;

(2) *Second,* towards outstanding penalties and fees;

(3) *Third*, towards any accrued interest to the extent due and payable; and

(4) *Fourth*, towards any outstanding principal balance.

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

1. Environmental Considerations:

The COG agrees to and hereby places the following into the RLF plan:

The COG 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 or jurisdictional water without prior consultation with the US Army Corps of Engineers, and, if applicable, obtaining a section 404 permit and completing applicable mitigation requirements set forth in the section 404 permit.

No project shall be approved which would result in potential loss of federally protected species or their critical habitat. The determination regarding potential loss of federally protected species will be made by reviewing the list of federally protected species in the county of the project (available at the US Fish and Wildlife Service website) and comparing the preferred habitat of each species with the existing habitat(s) at the project site. If any potential to affect habitat of federally protected species exists, consultation shall be initiated with the US Fish and Wildlife Service (FWS). Determination for critical habitat shall be made by viewing the Critical Habitat Mapper at the FWS website. If any potential habitat *or* critical habitat exists on the proposed project site, no activity shall be financed without prior concurrence from FWS and completion of any and all mitigation recommended by FWS.

Generally, 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 FEMA Flood Insurance Rate Maps. If a detailed, written analysis of alternatives performed by the COG clearly demonstrates that no practicable alternative to above-ground development in the 100-year floodplain exists, the project may proceed. Flood insurance is required for federally-assisted construction or acquisition in flood-prone areas for all insurable structures.

The State Historic Preservation Officer (SHPO) shall be notified of each loan proposal that involves new construction or expansion and asked to submit comments on the effect of the proposed activity on historic and archaeological resources. The COG shall work with SHPO and EDA in cases where SHPO has recommended actions or has been determined an adverse impact. No construction activity shall be initiated or financed prior to concurrence from the SHPO and completion of any and all mitigation recommended by SHPO.

The COG 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

RLF Semi Annual Reporting

307.14 Revolving Loan Fund semi-annual report and Income and Expense Statement.
(A) *Frequency of reports.* All RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, must complete and submit a semi-annual report in electronic format, unless EDA approves a paper submission.
(B) *Report contents*. RLF Recipients must certify as part of the semi-annual report to EDA that the RLF is operating in accordance with the applicable RLF Plan. RLF Recipients also must describe (and propose pursuant to § 307.9) any modifications to the RLF Plan to ensure effective use of the RLF as a strategic financing tool.
(C) *RLF Income and Expense Statement*.
An RLF Recipient using either fifty (50) percent or more (or more than $100,000) of RLF Income for administrative costs in a six-month (6) Reporting Period must submit to EDA a completed Income and Expense Statement (Form ED–209I or any successor form) for that Reporting Period in electronic format, unless EDA approves a paper submission.

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

Records and Retention

307.13 Records and retention.

(A) *Closed Loan files and related documents.*
The RLF Recipient shall maintain Closed Loan files and all related documents, books of account, computer data files and other records over the term of the Closed Loan and for a three-year (3) period from the date of final disposition of such Closed Loan. The date of final disposition of a Closed Loan is the date:

(1) Principal, interest, fees, penalties and all other costs associated with the Closed Loan have been paid in full; or

(2) Final settlement or discharge and cessation of collection efforts of any unpaid amounts associated with the Closed Loan have occurred.

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

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

(2) Retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF for three (3) years from the actual submission date of the last semi-annual report that covers the Reporting Period in which such costs were claimed.

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

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

Loan Write off Policy

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

Late Payment and Collection Procedures

The COG Finance Director will invoice borrowers monthly and receive and deposit loan and interest payments into an interest bearing RLF bank account. Additionally, upon request, the COG Finance Director will provide monthly reports of disbursements, receipts of interest and principal and any past due accounts. Timely notification of any payment due and not paid will be provided.

Late fees shall be 5% of the payment outstanding and begin accruing on the next calendar day after the payment is due. If the loan is past due more than 15 business days, late fees shall commence.

Late Payment Follow-up Procedures

a. Upon being advised that a payment due was not made, COG staff will contact the borrower promptly to determine the problem, if any exists.
b. The COG Finance Officer will send a written notice of delinquent payment 5 working days after due date with notification of late penalty, and will notify the COG RLF staff in writing.
c. RLF staff will make personal contact when payment is 10 working days past due.
d. COG Finance Officer will send a second written notice 30 days after the due date.
e. COG Finance Officer will send a third written notice 45 days after the due date.
f. During the first 30 days of delinquency, written and oral communication, as well as site visits by RLF staff will be utilized to resolve the delinquency.
g. If, after 90 days a delinquency still exists and the loan has not been renegotiated or brought current, the loan will generally be determined to be in default and recovery of the security will commence.
h. Any renegotiation of loan terms to remedy a default must be approved the RLF Committee and the COG Board of Directors.
i. If at any time during this 90-day period, the Chairperson or Committee believes that the borrower cannot or will not bring the loan current, with Committee approval, RLF staff can declare the loan in default and begin recovery against collateral, if deemed appropriate.

Collection Procedures

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

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

Write-off Policy and Procedures

Kerr-Tar COG will exhaust any and all means available for the collection of all outstanding loans that are declared in default status. All write-offs must be directed from the Committee to the COG Board of Directors for approval and signoff. In the event that it becomes necessary to write off the remaining balance of an uncollectible loan, the recipient will be issued a 1099-C which will also be submitted to the IRS as required.

OTHER

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

Loan Administration

The administration, management, loan packaging, and servicing of the RLF will be performed by the staff of the COG. COG staff has skills in the areas of business, finance, marketing, credit analysis, loan packaging, processing, and servicing with over 20 years experience administering EDA funded RLFs. This staff capacity is demonstrated by the management of the current and other EDA funded Revolving Loan Fund programs as well as other State, Region-wide and local grant and technical assistance programs.

COG staff has the skill necessary for loan analysis, packaging, processing and servicing and has been delegated these responsibilities by the Board of Directors. Packaged loans are presented to the Loan Review Committee for review and recommendation to the COG Board of Directors for final decision-making on loans.

The person(s) authorized to handle funds are bonded.

Only legal services will be acquired from outside the COG organization.

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

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

RLF Committee meetings are scheduled on an as-needed basis.

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

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

COG staff, is responsible for the administration, monitoring, and servicing of the loan from loan disbursement through full payment. Staff will make at minimum annual visits to the borrower's business, monitor the loan agreement for defaults in covenants and maintain an awareness of current and other borrowers. Loans are considered delinquent as defined in the executed Promissory Note. Delinquencies in payments will be addressed by mail, telephone or personal visits from the staff. Delinquencies may be resolved by loan restructuring, moratorium on payments or other techniques as recommended by the RLF Committee. Unresolved delinquencies will be declared in loan default and turned over to the RLF attorney. The attorney will recommend and carry out appropriate courses of action, including foreclosure.

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

As a requirement of receiving an RLF loan, recipients are required to report their business results, using a pre-agreed-upon format, on a regular annual basis, to COG staff. Staff will review the information with the loan recipient, and include a summary of loan results/status in regular updates to the Loan Review Committee and other COG leadership.