

**GEORGIA MOUNTAINS REGIONAL
COMMISSION**

REVOLVING LOAN FUND PLAN



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REVOLVING LOAN FUND PLAN

I. THE REVOLVING LOAN FUND STRATEGY

A. Economic Adjustment Program Overview

The Comprehensive Economic Development Strategy (CEDS) is designed to bring together the public and private sectors in the creation of an economic roadmap to diversify and strengthen the economy of the region. The CEDS analyzes the regional economy and serves as a guide for establishing regional goals and objectives, a regional plan of action, and investment priorities and funding sources. The CEDS also identifies the lead organizations assigned responsibilities for its execution. As a performance based plan, the CEDS serves a critical role in the region's efforts to defend against economic dislocations due to global trade, competition and other events resulting in the loss of jobs and private investment. Disaster resiliency is another key component of the CEDS. Specifically, the CEDS addresses vulnerabilities and outlines rebuilding and recovery methods which yield healthier, sustainable communities, and more robust regional economies. The CEDS is the result of a continuing economic development planning process, developed with broad based and diverse public and private sector participation.

The organization responsible for the development and administration of the CEDS is the Georgia Mountains Regional Commission (GMRC). As a recipient of Planning Investment funds from the U.S. Department of Commerce Economic Development Administration (EDA), the GMRC serves as a designated Economic Development District (EDD). The purpose of EDA Planning Investments is to provide support to Planning Organizations for the development, implementation, revision, or replacement of CEDS and project development. GMRC covers the following counties: Banks, Dawson, Franklin, Habersham, Hall, Hart, Lumpkin, Rabun, Stephens, Towns, Union, and White Counties.

The CEDS outlines the methodology for cooperating and integrating a state's economic priorities, incorporating relevant material from other government sponsored plans, and ensuring consistency with applicable State and local workforce investment strategies.

The CEDS committee was developed with representation from the main economic interests of the region including a majority of Private Sector Representatives. In addition, the CEDS committee also consists of public officials, community leaders, representatives from institutions of higher education, workforce development, minority and labor groups, and private individuals.

The GMRC staff inventoried and analyzed (1) economic base data such as employment, earnings, and weekly wages, (2) labor force data such as occupation, unemployment, and commuting patterns, (3) resource data such as agencies, programs, tools, education, and training, and (4) development factors such as trends in existing businesses, etc. The inventory and analysis of the region's economic base was used as the "where are we today" portion of the planning process for developing the "where do we want to be" and "how are we going to get there" portions of the process.

The CEDS identifies goals and objectives that increase business activities, create jobs, and promote private investment. These goals and objectives in Georgia Mountains include:



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- To conserve, protect and promote the environmental, natural, and cultural resources of the region.
 - To promote and coordinate land use planning and management that supports the other goals and ambitions of the region.
 - To provide adequate facilities, utilities, and infrastructure in all areas to support existing business and industry, enable expansion, and recruit new business, and to support efficient growth and development patterns that will protect and enhance the region's quality of life.
 - To stimulate and strengthen the regional economy through a collaborative effort embracing global trends resulting in job creation and retention, capital investments, and thereby enhancing the tax base and quality of life in the Georgia Mountains Region.
 - Facilitate the development of a highly trained, educated workforce to meet business and industry's evolving needs and provide our region with a sustainable competitive advantage for recruiting new and expanding/existing industry.
 - Facilitate coordination of housing development with planning for infrastructure and overall community development for long-term sustainability, in every community in the region.
 - Encourage disaster resiliency, extending beyond emergency responsiveness for advance planning and organizational capacity to address vulnerabilities, and to enable rebuilding and recovery afterwards in a manner that offer healthier, sustainable communities, and more robust regional economies.

B. Business Development Objectives

Considering the continuing need for business development and diversification of the area, the GMRC has adopted the following strategies and major goals from the CEDS for the GMRC Revolving Loan Fund (GMRLF):

- 1) The objective of the business development strategy is to encourage industrial and commercial diversification through capital formation, and to create new job opportunities in order to increase per capita income, to reduce unemployment, and to increase the tax base derived from economic activities. In addition, in the area of manpower development, the objective is to improve the opportunities of the unemployed, underemployed, and minority persons.
- 2) The pertinent characteristics of the businesses and prospective businesses in the economic sectors targeted are varied. In addition, any business that creates or saves jobs is a target business for the GMRLF development strategy. Funds will be provided for industrial, retail, service, or any other commercial usage operating as private corporations, sole proprietorships, or partnerships that will provide the highest number of jobs.
- 3) Credit availability is the primary obstacle for existing businesses and would-be entrepreneurs in their ability to take advantage of opportunities. Terms of credit available may prevent the establishment or expansion of businesses that could employ and train people from distressed groups of unemployed or underemployed.
- 4) The programs/activities being undertaken by the public sector and development organizations to address the identified needs are technical colleges. In the private sector, the Chambers of Commerce and Development Authority's in the 12-county Region promotes information exchange and technical support as well. WorkSource Georgia Mountains works with employers to identify



and/or train employees, and with job seekers trying to further their careers. WorkSource Georgia Mountains' Business Services include On-the-Job Training, Incumbent Worker Training, Apprenticeships, and Internships.

The GMRLF staff utilizes other state and federal program funding whenever feasible either in lieu of or in conjunction with GMRLF funds, as with the SBA 504 program, the USDA-RD Intermediary Relending Program, USDA-RD Rural Business Development Grant, CDBG-Employment Incentive Program (EIP) Direct Loan Funds, and OneGeorgia Authority – Equity Direct Loan Funds where available in the Region.

Marketing Strategy

The GMRC staff will be responsible for publicizing the availability of the GMRLF program through the news media, flyers and promotional brochures, social media, meetings throughout the region, and working with the local office of the Small Business Development Center (SBDC). Visits and meetings will be scheduled with area bankers, accountants, chambers of commerce personnel, industrial development authority personnel, local government officials, and local business associations. Industrial development authority/chambers of commerce staff will assist in the process of publicizing and soliciting eligible applicants.

The GMRC will secure at least one article a year on its activities in local newspapers and/or in its regional newsletter or social media accounts.

C. Analysis of Local Capital Markets

There are several local and national financial institutions that provide financing in the Georgia Mountains Region. Additionally, there are two non-profit lenders in the region. Access to Capital for Entrepreneurs (ACE) is a non-profit and CDFI operating in North Georgia that has been providing underserved small and medium sized businesses with affordable loans. Small Business Access Partners is a non-profit certified development company authorized by the Small Business Administration to lend capital to small businesses.

Two of the challenges facing businesses of all sizes in the Georgia Mountains Region are the rise in interest rates and the instability in the banking system. The Federal Reserve has raised the prime rate five percent (5%) between 2022-2023. As the Federal Reserve continues to raise interest rates, the ability of borrowers to qualify and/or afford loans to start new businesses or expand existing businesses is becoming increasingly difficult, especially from traditional lending institutions that tend to be more conservative, have higher interest rate, and require more collateral and owner equity. Additionally, the recent instability in the banking system has business owners concerned about access to and the availability of their funds to make payroll or pay vendors.

Furthermore, the growth of the manufacturing industry in Georgia and more specifically along the I-85 corridor has created thousands of new skilled jobs in the automotive, food processing, and other sectors. While the technical colleges, college and career academies, and WorkSource Georgia Mountains work to train new workers entering this workforce, the number of jobs being created is outpacing the number of skilled workers being produced. This lack (or lag) of skilled workers in the region has been a challenge to this growth. Which is further exacerbated by the lack of housing, especially affordable workforce housing, available. Skilled workers attracted to the Georgia Mountains Region by these new jobs have trouble finding housing in which to settle.



Since its inception, the GMRC Loan Program has loaned out nearly \$6 million to 67 businesses in the Georgia Mountains Region, creating or retaining more than 550 jobs. That equates to 1.55 jobs for every \$15,000 loaned, and \$0.96 of private investment for every \$1 loaned. Women-owned, start-up businesses make up a substantial portion of the current GMRC Loan Program portfolio.

D. The Financing Strategy

The specific financing strategy for the GMRLF includes the following:

- 1) To stabilize and diversify an area's economy by providing employers with capital for start-up and/or expansion of locally owned businesses.
- 2) To create new jobs and retain existing jobs.
- 3) To retain existing businesses.
- 4) To redevelop and/or recycle blighted or vacant land and facilities in order to put them to productive uses.
- 5) To achieve modernization and rehabilitation of existing industrial or manufacturing facilities.
- 6) To provide capital for the use of new technologies, growth industries and/or high-tech firms.
- 7) To aid businesses owned and operated by minorities, women, or by persons who are socially or economically disadvantaged.
- 8) To complement other state and federal economic development loan programs.
- 9) To overcome specific gaps in local capital markets that restrict firms from obtaining suitable credit.
- 10) To leverage the minimum amount of public dollars with the maximum amount of private dollars.
- 11) To identify potential sources of additional capital for sustained growth and viability of the fund.
- 12) To increase the per capita income.
- 13) To increase the tax base.

The financing strategy of the GMRLF program will be to meet the overall economic development goals for the area by encouraging the development of new industries and the expansion of established industries which will provide jobs for the unemployed, underemployed, and minority persons in the area. This encouragement will be in the form of loans to prospective entrepreneurs, especially those who have not been able to secure total financing from conventional sources because of financing problems.

The long-term economic deterioration in the Georgia Mountains Region can only be alleviated by the attraction of stable industries to the area which can make use of its available land and labor. The essential element missing to stimulate such industry is venture capital. While local banks may have adequate loan funds, potential business owners often do not have sufficient equity to secure a business loan. There is a lack of wealth in the area, and there is a serious shortage of industrialist and commercial business entrepreneurs who are generating their own venture capital. Thus, the capital formation necessary for new industry is still lacking.

The use of the GMRLF as a catalyst will address itself to the needs of the area. The fund will encourage the establishment of businesses and industries which would provide unskilled, semiskilled and/or



skilled positions for the area unemployed and underemployed. By helping to solve these employment problems in general, the fund will result in an increase in the per capita income and median family income. Preference will be given to industries offering maximum full-time employment opportunities. In addition, the funding of more diversified industry will decrease the area's historic dependence on traditional cash crops and other industries which are subject to market fluctuations and foreign competition. The increase in money flow and the industrial tax digest as a result of the funding of new businesses and industries will result in the revitalization of downtown areas and improved public facilities.

The GMRLF can also be used to alleviate the specific problems of the area's minority population by offering better employment opportunities, thus decreasing minority unemployment, and increasing minority income. Potential borrowers will be made aware that they must adhere to equal employment opportunity practices. In addition, encouragement in the form of loans will be given to minority entrepreneurs who otherwise would not be able to raise venture capital.

The loan fund itself is only one way of meeting these needs; however, continued careful selection of prospects should result in the establishment of satellite industries to further dispel unemployment and underemployment problems.

§ 307.15 Prudent management of Revolving Loan Funds.

1) *Accounting principles.*

- a) 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.
- b) In accordance with GAAP, a loan loss reserve may be recorded in the GMRC 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.

2) *Loan and accounting system documents.*

Within 60 days prior to the initial disbursement of EDA funds, a qualified independent accountant who preferably has audited GMRC in accordance with OMB Circular A-133 requirements, shall certify to EDA and the GMRC that such system is adequate to identify, safeguard, and account for all RLF Capital, outstanding RLF loans, and other RLF operations.

E. Financing Policy

The GMRLF plan will relate directly to other investments being made for the redevelopment of the 12-county Region. Achievements by Federal agencies such as EDA, HUD, USDA-RD, and state and local agencies such as OneGeorgia Authority, and local RLF programs, who have invested in industrial improvement throughout the Georgia Mountains Region, are being continued and expanded.

In order for policy and portfolio standards to be effective, a list of the area’s financing problems were first identified:

- 1) Loan to value ratios too high in many cases to be affordable to the smaller businesses.
- 2) Lending policies that exclude loans to start-up firms or firms in their early stages of maturity, firms in certain industrial sectors that exclude certain geographic areas based on their socioeconomic characteristics.



- 3) Banks are reluctant to make long-term loans needed for new business or small business expansion they consider high risk.
- 4) A shortage of savings available in the area for investment.
- 5) Equity requirements for the purchase of equipment are often too high for potential borrowers.
- 6) Equity of company sufficient to guarantee loans for buildings, but not for equipment.
- 7) Reluctance to fund "new ideas" or industries whose feasibility is yet to be concretely demonstrated.
- 8) Interest rates are higher than smaller businesses can afford.

The GMRLF loan selection process offers at least a partial solution to these financing problems in the following ways: (a) modifying repayment terms, such as deferral of initial principal or interest payments; (b) taking greater risks than local banks are prepared to take, when substantial economic development benefits will result if the borrower does succeed; (c) providing below market interest rates; (d) providing longer term loans that are available regionally for a particular type of financing; (e) processing applications with a short turnaround time; and (f) reducing the risk for commercial lenders by providing subordinate financing.

The financing policies and techniques that will be used to address the financial problems of the area and to achieve the goals for the GMRLF project include the following projections:

- 1) *General rule.* The GMRLF may make loans to eligible borrowers at interest rates and under conditions determined by the GMRLF to be appropriate in achieving the goals of the RLF. The minimum interest rate the GMRLF may charge is four percentage (4%) 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 percent (4%) or seventy-five percent (75%) 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 percent (14%), the minimum RLF interest rate is not required to be raised above ten percent (10%) if doing so compromises the ability of the GMRLF to implement its financing strategy.
- 3) The equity or cash injection to be provided by the GMRLF borrower is a minimum of 10%.
- 4) The policy for established businesses will be more lenient than for new businesses.
- 5) Deviations will be allowed for working capital loans.
- 6) The standard repayment terms for both working capital and fixed asset loans and any deviations are as follows:
 - i) Real estate - up to 20 years
 - ii) Machinery and equipment - up to 15 years
 - iii) Working capital - up to 2 years
- 7) Moratoriums will be allowed on principal payments. The GMRLF will have a lenient payback policy. Upon the recommendation of the loan selection committee, the GMRLF Loan Committee may approve a temporary moratorium on principal payments in exceptional cases, such as when an industry is experiencing temporary difficulties. The maximum moratorium period is five years.
- 8) The GMRLF Loan Committee has the authority to implement special financing, such as re-amortizing an outstanding loan amount because of temporary difficulty or extenuating



circumstances which a deserving industrial project may be experiencing. The terms of existing loans may be modified or restructured to enhance the capability of the GMRLF in achieving program objectives. GMRLF loans will only be restructured if the restructuring improves the borrower's ability to repay the loan. The GMRLF Loan Committee has the authority to implement special loan terms designed to encourage early repayments and/or provisions for the sale of loans to accelerate the recycling of capital.

- 9) In the determination of collateral requirements, the grantee may consider the merits and potential economic benefits of each request. When appropriate and practical, GMRLF financing may be secured by liens or assignments of rights in assets of assisted firms as follows:
 - i) In order to encourage financial participation in a direct fixed asset loan project by other lenders and investors, the GMRLF loan may be repayable after other loans made in connection with the project have been repaid in full. The lien position of the GMRLF may be subordinate and made inferior to lien or liens securing other loans made in connection with the project.
 - ii) In projects involving direct working capital loans, the GMRLF will normally obtain collateral such as liens on inventories, receivables, fixed assets and/or other available assets of borrowers. Such liens may be subordinate only to existing liens of record and other loans involved in the project.
 - iii) In projects involving guaranteed loans in the revolving phase, the lending institution ordinarily will be required to maintain a collateral position, to which the GMRLF is subrogated, in the assets of the borrower and/or principals of the borrower such as by taking liens on inventories, receivables, fixed assets and/or other available assets of borrowers.
 - iv) In addition to the above types of security, the GMRLF may also require security in the form of assignment of patents and licenses, the acquisition of hazard, and other forms of insurance as may be necessary, and such other additional security as the grantee determines is necessary to support the GMRLF's exposure.
 - v) GMRLF loan requests submitted by closely held corporations, partnerships, or proprietorships dependent for their continuing success on certain individuals will ordinarily be expected to provide and assign to the GMRLF life insurance on these key persons. Personal guarantees will also be required from principal owners with twenty percent or more ownership, as appropriate.
- 10) The minimum size of loan from GMRLF will be approximately \$10,000. No individual loan will be made for more than \$300,000. In anticipation of making large loans relative to the size of our GMRLF Capital base, the GMRC will maintain a capital utilization percentage greater than twenty-five (25) percent, but no more than thirty-five (35) percent.
- 11) All proceeds from interest payments will be returned to the GMRLF for additional loans with the exception of that amount used for administrative purposes. (Reference §307.12, Page 15)
- 12) The GMRLF will charge an origination fee of one percent (1%) of the loan amount. Loan origination fees and other such charges may be waived to encourage participation.
- 13) Borrowers are eligible for GMRLF financing only when credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. (Reference §307.11) GMRC staff will provide written analysis in each loan file documenting the basis for the determination that the borrower meets this requirement.



§ 307.10 Pre-loan requirements.

- 1) The GMRLF has adopted procedures to review the impacts of prospective loan proposals on the physical environment. The Plan must provide for compliance with applicable environmental laws and other regulations, including parts 302 and 314 of chapter 13. The GMRLF has also adopted procedures to comply and ensure that potential borrowers comply with applicable environmental laws and regulations.
- 2) The GMRLF must ensure that prospective borrowers, consultants, or contractors are aware of and comply with the Federal statutory and regulatory requirements that apply to activities carried out with RLF loans. Accordingly, RLF loan agreements shall include applicable Federal requirements to ensure compliance, and the GMRLF must adopt procedures to diligently correct instances of noncompliance, including loan call stipulations.
- 3) All RLF loan documents and procedures must protect and hold the Federal government harmless from and against all liabilities that the Federal government may incur as a result of providing an RLF Grant to assist directly or indirectly in site preparation or construction, as well as the direct or indirect renovation or repair of any facility or site. These protections apply to the extent that the Federal government may become potentially liable as a result of ground water, surface, soil or other natural or man-made conditions on the property caused by operations of the GMRLF or any of its borrowers, predecessors or successors.

§ 307.15 Prudent management of Revolving Loan Funds.

Prior to the disbursement of any EDA funds, the GMRLF 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:

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

- 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 (as applicable)
- 7) Agreement of prior lien holder (as applicable)
- 8) Evidence that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed
- 9) Determination of level of environmental review
- 10) Determination of how rate and terms of the loan were determined if not specified by policy
- 11) Personal Guarantee or life insurance policy, if applicable



F. Portfolio Standards and Targets

In order to achieve the economic objectives of the GMRLF and address the financial problems of the area, certain standards have been adopted. These standards include the following:

- 1) The anticipated percentage of GMRLF investments in:
 - a) Industrial, Commercial, and Service sector businesses are difficult to quantify in terms of exact percentages. A “balance” between making loans to all three of the identified business sectors has been targeted as a goal of the GMRLF program rather than identifying specific percentages for each sector.
 - b) New Business – 35% and Expansion/Retention - 65%
- 2) *Private leveraging*. RLF loans must leverage private investment of at least two dollars (\$2) for every one dollar (\$1) of such RLF loans. This leveraging requirement applies to the RLF portfolio 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 prior to approval of an RLF loan, as part of the same business development Project, and may include:
 - a) Capital invested by the borrower or others,
 - b) Financing from private entities, or
 - c) Ninety (90) percent of the guaranteed portion and 100% of non-guaranteed portion of any federal loan program.
- 3) Private investments shall not include accrued equity in a borrower’s assets.
- 4) *Allowable Cash Percentage* (13 CFR §307.17) means the average percentage of the RLF Capital Base maintained as RLF Cash Available for lending by the GMRLF. The GMRLF will not have more than 50% cash on hand for a period of 24 months unless approved by EDA.
- 5) The GMRLF plan calls for a cost of \$15,000 per job ratio.

G. GMRLF Loan Selection Criteria

Documentation will be required from the applicant substantiating that credit is not otherwise available to the applicant on terms and conditions which would permit completion and/or the successful operation or accomplishment of the project activities to be financed. GMRC staff will provide written analysis in each loan file documenting the basis for the determination that the borrower meets this requirement.

Priority will be given to loan applicants who meet the needs of the target population by providing large numbers of permanent jobs and training opportunities for unskilled and semiskilled workers in industry. Manufacturing industries also offer more training opportunities for movement to skilled positions than others normally do.

Industries and businesses which provide permanent jobs and training opportunities for the target population of unemployed, underemployed, and minority citizens, and meet the established GMRLF criteria, will be given priority. Borrowers may either be expanding or establishing a business which will address the Region’s need by providing employment for the target group.

The GMRLF has as a goal to target a portion of its funding toward minority-owned or minority-controlled businesses or toward women's business development.



§307.17 Uses of capital.

- 1) *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.
- 2) *Restrictions on use of RLF Capital* (13 CFR §307.17(c)). RLF Capital shall NOT be used to:
 - a) Acquire an equity position in a private business.
 - b) Subsidize interest payments on an existing RLF loan.
 - c) Provide a loan to a borrower for the purpose of meeting the requirements of equity contributions under other Federal Agencies' loan programs.
 - d) 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.
 - e) 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.
 - f) Refinance existing debt, unless:
 - (1) The GMRLF 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
 - (2) RLF funds 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 funds 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 a reasonable time frame approved by the EDA.
 - g) Serve as collateral to obtain credit or any other type of financing without EDA's prior written approval.
 - h) Support operations or administration of the GMRLF.
 - i) Undertake any activity that would violate the requirements found in 13 CFR Part 314, including §314.3 (“Authorized Use of Property”) and §314.4 (“Unauthorized Use of Property”).
 - j) Finance gambling activity, performances or products of a prurient sexual nature, or any illegal activity, including the cultivation, distribution, or sale of marijuana that is illegal under Federal law.
- 3) *Non-relocation.* The GMRLF must not use RLF funds to induce the relocation of existing jobs within the U.S. that are located outside of the GMRLF's jurisdiction to within its jurisdiction in competition with other U.S. jurisdictions for those same jobs.



H. Risk Analysis System (13 CFR § 307.16(a))

The GMRLF shall maintain a Risk Analysis System of its loan portfolio in accordance with EDA requirements that will focus on such risk factors as capital, assets, management, earnings, liquidity, strategic results, and financial controls. The Risk Analysis ratings shall be conducted at least annually by EDA and will be based on the most recently submitted ED-209 RLF report submitted to EDA.

II. REVOLVING LOAN FUND OPERATIONAL PROCEDURES

A. Organizational Structure

The Georgia Mountains Revolving Loan Fund (GMRLF) program is administered through the Georgia Mountains Regional Commission. GMRC was incorporated July 2009 under the name Georgia Mountains Regional Commission for the sole purpose of "operating a revolving loan fund program by making loans to eligible business applicants for economic development creation of new or improved job opportunities in the Georgia Mountains area under the auspices of the Georgia Mountains Regional Commission."

Effective October 1, 2007, the Georgia Mountains Regional Development Center (RDC) dissolved and was reconstituted as the Georgia Mountains Regional Commission (RC) which assumed all assets, liabilities, etc. of the former GMRDC. This action was a direct result of the passage and enactment of State of Georgia House Bill 1216. All assets of the former RDC are now assets of the "Georgia Mountains Regional Commission.

The GMRC Council governs the RLF. The Council is comprised of one county elected official, one city elected official, one private sector representative from each county, three appointees from the current Governor, one appointee from the Lt. Governor, and one appointee from the Speaker of the House. The GMRC Council has a RLF Committee comprising of five (5) council members who assist in underwriting loan applications and who makes recommendations to the full GMRC Council.

The Council has the following responsibilities with regard to the lending activity of the GMRC:

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 lending policy shall be adopted by resolution as an official act of the board.
3. To charge senior management of the GMRC with responsibility for effective communication and implementation of policy.
4. To ensure that the GMRC's loan portfolio is managed in compliance with approved policy and all applicable federal and state laws and regulations.
5. To provide approval of all GMRLF loans.

Staff Capacity

The GMRC Council operates the GMRLF through staff of the GMRC, the GMRLF Loan Committee, and finally, through the GMRC Council.

The GMRC has staff skilled in the areas of business, finance, marketing, credit analysis, loan packaging, processing, and servicing. This staff capacity is demonstrated by the management of the current GM Revolving Loan Fund program, Community Development Block Grant programs, and other state, region-wide and local grant, and technical assistance programs.



The GMRC staff has the skills necessary for loan analysis, packaging, processing, and servicing and has been delegated these responsibilities by the Council. Packaged loans are presented to the GMRC Council, via the GMRC Loan Committee for final decision-making on loans.

The individuals and committee authorized to handle funds are bonded.

§ 302.17 Conflicts of interest.

(a) *General.*

It is EDA's and the GMRC'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.

Interested Party means any officer, employee, or member of the council or other governing board of the recipient, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the recipient, such as agents, advisors, consultants, attorneys, accountants, or shareholders. An interested party also includes the Interested Party's immediate family (defined as a person's spouse, significant other or partner in a domestic relationship, parents, grandparents, siblings, children, and grandchildren, but not distant relatives, such as cousins, unless the distant relative lives in the same household as the person) and other persons directly connected to the interested party by law or through a business arrangement.

(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 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.

(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 (GMRC) of an RLF Grant (the GMRLF) shall also 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.
- 3) Former council 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 councilmember last served on the RLF's council.

(d) *GMRC Standards of Conduct.*

The GMRC has established Standards of Conduct in its Personnel Policies and Procedures, as adopted, related to conflicts of interest.

The Official Code of Georgia Annotated (O.C.G.A.) §50-8-63 requires Regional Commission's (RC) and their nonprofit corporations to disclose certain information regarding business transactions with local governments:

- GMRC employees and members of their immediate families cannot transact business with the RC. The Same is true for business in which the RC employee or immediate family member has an interest of 25 percent or greater.
- GMRC employees who have business income more than \$2,000 per year from local governments must report this income to the RC Council and to the Commissioner of the Georgia Department of Community Affairs. These are due prior to the last day of January each year.

Additionally, O.C.G.A. §45-10-26 requires that any public official or employee whether for themselves or on behalf of any business, or any business in which such public official or employee or any member of their family has a substantial interest who transacts business with the state, or any agency thereof shall disclose such transactions. Such disclosure shall be submitted prior to January 31 each year to the Georgia Government Transparency Campaign Finance commission on such forms as it shall prescribe and shall include an itemized list of the previous year's transactions with the dollar amount of each transaction reported and totaled. Such disclosure statements shall be public records.

The requirement to disclose certain transactions shall not apply to any transaction when the amount of a single transaction does not exceed \$250.00 and when the aggregate of all transactions does not exceed \$9,000.00 per calendar year.

Failure to disclosure such business transactions will subject the public officer or employee or business to a civil fine not to exceed \$10,000.00, restitution to the state of any pecuniary benefit received as a result of such violation, and in the case of appointed public officials and employees, removal from office or employment.

O.C.G.A. §45-10-26 Definitions:

- **Business Transacted** means the sale of leasing of any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative and means the purchase of surplus or personal property on behalf of oneself or on behalf of any third party as an agency, broker, dealer, or representative.
- **Public Official** means any person elected to state office and/or any person appointed to a state office where in the conduct of such office, they have administrative or discretionary authority to receive and expend public funds to perform certain functions concerning the public which are assigned to them by public law.
- **Employee** means any person who pursuant to a written or oral contract is employed by an agency.
- **Any Business** means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, trust, or other legal entity.



- **Family** means spouse and dependents.
- **Substantial Interest** means the direct or indirect ownership of more than 25 percent of the assets or stock of any business.

All employees have an obligation to conduct business within guidelines that prohibit actual or potential conflicts of interest. Employees should not have, either directly or indirectly, any financial or other interest in any entity that is a supplier, client, or competitor of GMRC. Any outside employment or personal service to any other entity must not affect an employee's work efficiency or ability to act in the best interests of the GMRC.

An actual or potential conflict occurs when an employee is in a position to influence a decision that may result in personal gain for the employee or their immediate family as a result of the GMRC's operations.

No "presumption of guilt" is created by the mere existence of a relationship with outside firms or businesses. However, if an employee has an influence on transactions involving purchases, contracts, or other business decisions, it is imperative that the employee disclose this to the Executive Director as soon as possible so that safeguards can be established to protect all parties.

All GMRC employees are required to complete and sign a conflict of interest statement annually.

B. Loan Processing Procedures

Standard Loan Application items required of GMRLF loan applicants are as follows:

- 1) A history and description of the business and/or project.
- 2) Amount requested and for what purpose amount of personal investment. (Sources & Uses of Funds)
- 3) Personal Financial Statement - to be completed by each owner with 20% or more ownership.
- 4) Resumes of the principals involved in the day-to-day management of the business.
- 5) A balance sheet and income statement for the previous three years, or if a new business, pro forma balance sheet complete with assumptions.
- 6) An interim balance sheet and income statement with an aging of the accounts receivable and accounts payable.
- 7) A two-year income and expense projection complete with assumptions.
- 8) A 12 Month Cash Flow complete with assumptions (for new businesses).
- 9) A debt schedule covering all existing debt on the business and affiliates.
- 10) A schedule of any previous government financing.
- 11) The names of any affiliated or subsidiary businesses (through ownership or management) as well as the last two year-end financial statements and current financial statements (if applicable).
- 12) A copy of the franchise agreement (if applicable).
- 13) A copy of key cost documents such as real estate purchase contracts, contractor cost quotes, vendor quotes for machinery and equipment, etc.
- 14) A copy of existing or proposed lease agreements (if applicable).



- 15) An "as built" appraisal for construction projects.
- 16) Any other materials deemed necessary for review.

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

Standard Collateral Requirements: Loans should never be made based solely upon the collateral which is to secure them. Collateral is intended to provide an alternate source of repayment in the event of default. The adequacy and quality of collateral should be evaluated in light of its marketability, liquidity, value, and income potential, as applicable. Additional considerations such as stability of value, ease of liquidation, degree of control, and liquidation value must also be considered. Standard collateral requirements include personal guarantees and insurance (hazard, life, disability, flood, and title).

Standard Equity Requirements: Capital provides a “safety net” which helps sustain borrowers during difficult periods. The term is also used to refer to the borrower’s equity in a transaction or venture. Both issues are important factors in the credit decision.

The capital reserves of the borrower must be evaluated in light of the nature and demands of the business in a commercial enterprise. An evaluation of capital adequacy is a crucial step in predicting the likelihood of the business’ ongoing success and repayment of a loan.

Borrowers are expected to provide reasonable equity in purchases financed by the GMRLF. The GMRLF should never assume 100% of the risk in a venture or purchase. The greater the borrower’s equity (or down payment) in a project, the greater the incentive to perform according to the loan terms and to repay the obligation. The degree of risk in a loan should be measured, in part, based upon the proportionate investment of the borrower and GMRLF.

Companies starting a business should be able to inject at least 10% in cash or other assets that the business will use. Existing companies may expect to inject at least 10% in cash or other assets that the business will use. In addition, the use of proceeds may determine a larger or smaller down payment requirement. Fixed asset financing is considered less of a credit risk than working capital financing and thus a larger or smaller down payment may be required.

Loan Write-up: The loan write-up must discuss how the proposed GMRLF loan is not replacing private lender funding sources. Other items will include documentation on how the loan rate was determined, a summary of the firm’s history, management ability, product, production capability, market conditions, financing, collateral, repayment ability, consistency with the GMRLF’s financing policy, and whether there are any environmental problems associated with the project. The GMRC staff will also be responsible for reviewing and packaging loans for submission to the GMRLF Committee and the GMRC Council.

In addition to the basic information to book the loan, the memorandum should cover the following in detail:

- 1) Purpose
- 2) Repayment agreement
- 3) Collateral description/date/value/basis of valuation
- 4) Source of repayment



- 5) Secondary source of repayment
- 6) Strength of guarantors
- 7) Record of direct credit investigation
- 8) Current company and personal financial information.

Interest Rates

- 1) *General rule.* The GMRLF may make loans to eligible borrowers at interest rates and under conditions determined by the GMRLF to be appropriate in achieving the goals of the RLF. The minimum interest rate the GMRLF may charge is four percentage (4%) 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 percent (4%) or seventy-five percent (75%) 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 percent (14%), the minimum RLF interest rate is not required to be raised above ten percent (10%) if doing so compromises the ability of the GMRLF to implement its financing strategy.

RLF Income/Expenses

§ 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 twelve-month (12) Reporting Period.
- 2) RLF Income that is not used for administrative costs during the twelve-month (12) 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.
- 4) The GMRLF 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, the GMRLF 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), 2CFR 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 education institutions); and
- 2) OMB Circular A-13.3 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 the GMRLF 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 cost of collection.
- 2) *Second*, towards outstanding penalties and fees.
- 3) *Third*, towards any accrued interest to the extent due and payable.
- 4) *Fourth*, toward any outstanding principal balance.

C. Loan Closing and Disbursement Procedures

- 1) *General Closing Requirements*: Equity injection verification may take the form of cleared checks, HUD-1 closing statements, attorney certification, paid invoices, etc. Private lender financing is verified through a letter from the participating lender in the loan application or a HUD-1 closing statement.
- 2) *Loan Closing Documentation Requirements*:
 - Participation Agreement
 - Executed Note
 - Recorded Deed to Secure Debt
 - Loan Agreement
 - Guaranty(s)
 - Title Opinion
 - Estoppels Letter
 - UCC Forms
 - Security Agreement
 - Lease Agreement
 - Proof of Hazard Insurance, if applicable
 - Assignment of Life Insurance
 - Corporate/Partnership Resolution to Borrow

The above list is standard. However, depending on the collateral, the ownership structure of the borrower, etc., all items may not be required, and the list may not be all inclusive. Properly completed notes, deeds, security agreements, guarantee forms, UCC filings, lease assignments, and any other legally required instruments to secure or perfect GMRC's interest in collateral.

- 3) *Loan Disbursement Requirements*: A closing attorney representing GMRC, and the private lender will be responsible for closing GMRLF loans properly. The GMRC provides permanent financing. The GMRC does not provide interim construction financing.

If the GMRC is providing funds from the Revolving Loan Fund in participation with another lender (bank), the participating bank's attorney generally prepares the loan closing documents, schedules the closing, and conducts the loan closing. Most of these loans are partially or totally funded at the loan closing. It is the GMRC responsibility to review the loan closing documents, prepare and execute a participation agreement with the bank, and provide funds to purchase the



pro-rata share of the participation at closing. The GMRC would obtain copies of all executed loan closing documents in addition to the participating agreement for the loan files. The bank and the GMRC responsibilities are outlined in a “Participation Agreement” executed by the two parties.

In some cases, the GMRC will make a direct loan. Normally, this is done only to save the company or provide additional funds to projects which are already funded by the GMRC and where funds are otherwise unavailable. The loan closing and funding is done entirely by GMRC and its attorney. The GMRC RLF attorney prepares the note and loan closing documents which are placed in the loan file and maintained in the same manner as a participating GMRLF loan. In this type of loan, the GMRC is solely responsible for servicing, whereas with bank participation loans, the bank provides the servicing function with the GMRC verifying annually that the UCC’s are renewed, insurance is current and annual financial statements have been provided.

Prior to closing and disbursement of funds, the Loan Program Staff and Executive Director of GMRC will review the loan application for completeness and review the closing instructions for consistency with the loan application and board approval. The Loan Staff will also sign off on the loan application to determine completeness.

The Executive Director will sign off on a Pre-Closing Checklist which includes a review of:

- a) Application checklist and all exhibits indicated to be included and checked off by Loan Staff.
- b) GMRLF Loan Committee minutes for approval and special conditions with the date of the meeting and the minutes attached.
- c) Closing sheet instructions for consistency with loan application and board approval.
- d) Closing instructions to attorney and/or draft closing documents.

D. Environmental Requirements

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to approve: (1) a proposal for Federal assistance; (2) the proposal with mitigation; or (3) a different proposal having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. Each non-Federal entity must comply with all environmental standards, to include those prescribed under the following statutes and E.O.s and must identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

a) The National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.)

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations (40 C.F.R. Parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions to determine whether they have significant impacts on 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 when the award activities remain subject to Federal authority and control. Non-Federal entities are required to identify to the awarding agency any direct, indirect, or cumulative impact an award will have on the quality of the human environment and assist the agency in complying with NEPA. Non-Federal entities may also be requested to assist DOC in



drafting an environmental assessment or environmental impact statement if DOC determines such documentation is required, but DOC remains responsible for the sufficiency and approval of the final documentation. Until the appropriate NEPA documentation is complete and in the event that any additional information is required during the period of performance to assess project environmental impacts, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit the appropriate environmental information and NEPA documentation sufficient to enable DOC to make an assessment on any impacts that a project may have on the environment.

b) The 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 (ACHP) implementing regulations (36 C.F.R. Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties and, when appropriate, provide the ACHP with a reasonable opportunity to comment. Historic properties include but are not necessarily limited to districts, buildings, structures, sites, and objects. In this connection, archeological resources and sites that may be of traditional religious and cultural importance to Federally recognized Indian Tribes, Alaskan Native Villages and Native Hawaiian Organizations may be considered historic properties. Non-Federal entities 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. Non-Federal entities may also be requested to assist DOC in consulting with State or Tribal Historic Preservation Officers, ACHPs 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 are complete and in the event that any additional information is required during the period of performance in order to assess project impacts on historic properties, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit any information sufficient to enable DOC to make the requisite assessment under the NHPA.

Additionally, non-Federal entities are required to assist the DOC in assuring compliance with the Archeological and Historic Preservation Act of 1974 (54 U.S.C. § 312502 et seq., formerly 16 U.S.C. § 469a-1 et seq.); Executive Order 11593 (Protection and Enhancement of the Cultural Environment, May 13, 1971); Executive Order 13006 (Locating Federal Facilities on Historic Properties in Our Nation's Central Cities, May 21, 1996); and Executive Order 13007 (Indian Sacred Sites, May 24, 1996).

c) Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands)

Non-Federal entities must identify proposed actions in Federally defined floodplains and wetlands to enable DOC to decide whether there is an alternative to minimize any potential harm.

d) 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”)

Non-Federal entities must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 et seq.), Clean Water Act (33 U.S.C. §§ 1251 et seq.), and E.O. 11738 (38 FR 25161), and must not use a facility on the Excluded Parties List (EPL) (located on the System for Award Management (SAM) website, SAM.gov) in performing any award that is nonexempt under 2 C.F.R. § 1532, and must notify the Program Officer in writing if it intends to use a facility that is on the EPL or knows that the facility has been recommended to be placed on the EPL.



e) The Flood Disaster Protection Act (42 U.S.C. §§ 4002 et seq.)

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas. Per 2 C.F.R. § 200.447(a), the cost of required flood insurance is an allowable expense, if it is reflected in the approved project budget.

f) The Endangered Species Act (16 U.S.C. §§ 1531 et seq.)

Non-Federal entities must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the reviews required under the Endangered Species Act, as applicable.

g) The Coastal Zone Management Act (16 U.S.C. §§ 1451 et seq.)

Funded projects must be consistent with a coastal State's approved management program for the coastal zone.

h) 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.

i) The Wild and Scenic Rivers Act (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.

j) 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 the EPA determines may contaminate a sole source aquifer which threatens public health.

k) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.)

This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and provides that non-Federal entities give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

l) The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) (42 U.S.C. §§ 9601 et seq.) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note et seq.)

These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting, and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

m) Executive Order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations")

Federal agencies are required 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.

n) The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq.)

Non-Federal entities must identify to DOC any effects the award may have on essential fish habitat (EFH). Federal agencies which fund, permit, or carry out activities that may adversely impact EFH are required to consult with the National Marine Fisheries Service (NMFS) regarding the potential effects of their actions



and respond in writing to NMFS recommendations. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. In addition, NMFS is required to comment on any state agency activities that would impact EFH. Provided the specifications outlined in the regulations are met, EFH consultations will be incorporated into interagency procedures previously established under NEPA, the ESA, Clean Water Act, Fish and Wildlife Coordination Act, or other applicable statutes.

o) Clean Water Act (CWA) Section 404 (33 U.S.C. § 1344)

CWA Section 404 regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as levees and some coastal restoration activities), and infrastructure development (such as highways and airports). CWA Section 404 requires a permit from the U.S. Army Corps of Engineers before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities).

p) Rivers and Harbors Act (33 U.S.C. § 407)

A permit may be required from the U.S. Army Corps of Engineers if the proposed activity involves any work in, over or under navigable waters of the United States. Recipients must identify any work (including structures) that will occur in, over or under navigable waters of the United States and obtain the appropriate permit, if applicable.

q) The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 et seq.), and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds, January 10, 2001)

Many prohibitions and limitations apply to projects that adversely impact migratory birds and bald and golden eagles. Executive Order 13186 directs Federal agencies to enter a Memorandum of Understanding with the U.S. Fish and Wildlife Service to promote conservation of migratory bird populations when a Federal action will have a measurable negative impact on migratory birds.

r) Executive Order 13112 (Invasive Species, February 3, 1999)

Federal agencies must identify actions that may affect the status of invasive species and use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them. In addition, an agency may not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere.

s) Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.)

During the planning of water resource development projects, agencies are required to give fish and wildlife resources equal consideration with other values. Additionally, the U.S. Fish and Wildlife Service and fish and wildlife agencies of states must be consulted whenever waters of any stream or other body of water are “proposed or authorized, permitted or licensed to be impounded, diverted... or otherwise controlled or modified” by any agency under a Federal permit or license.



Environmental Review and Compliance

The GMRLF 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 outlined above. The applicant must fill out a questionnaire as part of the loan application which gathers environmental information related to the proposed project.

At a minimum, the environmental review of loan applications for construction projects will include:

- Determine whether the project will result in a significant adverse environmental impact. 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.
- Determine whether the project will be located within or adjacent to a wetland area. 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.
- Determine whether the project will have an adverse effect on federally protected species or critical habitats. 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 using the Information for Planning and Consultation (IPaC) tool on 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.
- Determine whether the project involves new above-ground development within a floodplain. 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 GMRLF staff 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. GMRLF staff shall work with SHPO and EDA in cases where the SHPO has recommended actions, or an adverse impact has been determined. No construction activity shall be initiated or financed prior to concurrence from the SHPO and completion of any and all mitigation recommended by SHPO.
- Determine whether the project is located within or adjacent to an Environmental Protection Agency's (EPA) List of Violating Facilities (this list is incorporated into the Excluded Parties List System located at <https://sam.gov/content/exclusions>) 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.



- 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) hazardous 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, GMRLF staff shall work with the loan applicant and the appropriate state environmental agency to resolve these outstanding issues.
- No project shall be funded for actions within a Coastal Barrier System or the National Wild and Scenic Rivers system without written permission from EDA.
- No project shall be funded if it will result in a disproportionately high and adverse human health or environmental effects on low income and minority populations.
- Written records of the determinations and consultations described above shall be maintained in the loan file by the GMRLF.

E. Davis-Bacon and Related Labor Laws

§302.13 Davis-Bacon Act.

The GMRLF ensures that any borrower and/or his/her contractor(s) and sub-contractor(s) will comply with the Davis-Bacon Act with regard to prevailing wage rates when RLF funds are used in whole or in part to finance construction activities. This includes when RLF funds are used for the purchase of land and/or real estate where construction work not directly paid for with RLF funds is included.

40 U.S.C. §3701 Contract Work Hours and Safety Standards Act.

For construction contracts over \$100,000, the GMRLF will ensure that any borrower and/or his/her contractor(s) and sub-contractor(s) will comply with the Contract Work Hours and Safety Standards Act, which provides work hour standards for every laborer and mechanic employed by a contractor or subcontractor in the performance of certain work financed in whole or in part with RLF funds. It sets a standard 40 hour work week and requires contractors and sub-contractors to pay time and a half for any hours in excess of 40 hours per week.

At a minimum, for RLF loans that include construction, the GMRLF staff will conduct site inspections and construction worker interviews during construction, and the loan file will be document with the following:

- The Wage Determination as determined by the Department of Labor (DOL) for the County in which the project is taking place and the type of construction (building, housing, heavy, etc.)
- Weekly payroll reports using DOL's form WH347 for every contractor and sub-contractor listing each worker, their job classification, hours, wage rates, benefits, deductions, etc.
- Questionnaires of workers that are interviewed on site to verify the accuracy of the weekly payroll reports.
- Photographs of the Wage Determinations, DOL Employee Rights poster (both English and Spanish) and OSHA Poster (both English and Spanish) displayed at the jobsite.



F. Loan Servicing Procedures

Closing

Following a loan approval by the GMRC Council and as close to the loan closing date as possible, funds from the GMRLF savings account will be transferred to the GMRLF checking account. A check for the approved loan amount will be deposited into the escrow account of the GMRLF attorney. The attorney is responsible for preparing all the loan documents for signature by all parties at closing.

An origination fee of 1% of the loan amount is due from the borrower at the time of closing. Other costs such as attorney fees, UCC filing fees, mortgage recording taxes, appraisals, or other fees deemed necessary are the responsibility of the borrower and are due at closing. All fees will be reflected in the HUD-1 Settlement Statement prepared by the attorney.

Monitoring

The GMRLF staff is responsible for the administration, monitoring, and the servicing of the loan from loan disbursement through full payment. Monitoring includes ensuring loan recipients maintain evidence of ongoing compliance with loan requirements including annual insurance filings, collateral, and financial reporting. Proof of insurance, copies of tax returns and an annual job survey are required to be submitted to the GMRC office. The staff will make periodic visits (at a minimum annually) to the borrower's business, monitor the loan agreement for defaults in covenants, and maintain a loan payment schedule. The loan payment schedule will be kept up to date with payments posted as to principal and interest. GMRLF staff will notify borrowers in a timely fashion when their accounts become past due, counseling of delinquent accounts, and the initiation of any necessary legal action.

Delinquent Accounts

Delinquencies in payments will be addressed by mail, telephone, or personal visits from the staff. On a monthly basis, payment on all loans will be reviewed to ensure that payments have been made on a timely basis and the amount received is in accordance with the loan agreement. If payments are not made on a timely basis or in the amount due, the following process shall be followed:

(a) Loans which are one (1) to fifteen (15) days past due:

Loans which are 1-15 days past due will result in a phone call or email made by GMRLF staff to the loan recipient to obtain information on the cause of the past due payment and will work with them to bring the loan current. As outlined in the loan agreement, a late fee of 4% of the payment due will be paid if installments are not received within fifteen (15) calendar days following the due date.

(b) Loans which are thirty (30) days past due:

A 30 day past due letter will be sent to the loan recipient. If payment is not remitted within 10 days of the date of the letter, a follow-up call or email will be made to the loan recipient to discuss payment options.

(c) Loans which are sixty (60) days past due:

A 60 day past due letter will be sent to the loan recipient. If payment is not remitted within 10 days of the date of the letter, GMRLF staff will contact the recipient and set up a meeting to discuss further options. Delinquencies can be resolved by loan restructuring, moratorium or deferment on payments or other techniques upon approval of the GMRC Council.

(d) Loans which are ninety (90) days past due:

A 90 day Final Notice letter will be sent to the loan recipient by the GMRLF counsel to all known mailing addresses and email addresses. If contact and/or payment has not been made by the loan recipient within 10 days of the date of the letter, the loan will be declared in default and foreclosure procedures will be initiated according to policy.



Foreclosure

If collection efforts are unsuccessful on defaulted loans or inadequate to recover loan proceeds, GMRLF staff, under the direction and guidance of the GMRC RLF Committee, shall work with the GMRLF attorney to commence foreclosure proceedings to acquire title and take possession of affected collateral. GMRLF staff will manage and secure any collateral it takes ownership of and work swiftly to dispose of said collateral via use of agents and/or auction companies. The GMRLF may engage the services of a collection agency to recoup the outstanding balance of the loan. The GMRLF will continue to service any defaulted loan until a settlement deemed favorable has been reached.

Write-Off Policy

All loans which have been identified as uncollectible/loss shall be promptly charged against the loan loss reserve as provided below:

- (a) All reasonable efforts at collection shall be exhausted prior to charging off a loan.
- (b) To the extent it may be done in a timely manner, collateral shall be liquidated, and the proceeds applied to the loan prior to charging any balances to the loan loss reserve.
- (c) Losses anticipated after the liquidation of collateral should be charged off as they are identified, not as they are realized.
- (d) Every effort shall be made to limit charge-offs to one transaction per loan. Multiple charge-offs of the same loan at different times should be avoided.
- (e) Collection and recovery of loan losses should be actively pursued by all available legal means.
- (f) All requests for charge-offs shall be prepared, documented, approved by the appropriate management, and submitted to the Finance Director by the twenty-fifth day of the month for processing by month-end. The charge-off history sheet should be used to record the factors causing the loss and proper approvals.
- (g) A summary of activity in the loan loss reserve including charge-offs and recoveries of the previous quarter shall be presented to the GMRC Council as part of the quarterly loan portfolio update.
- (h) Under any circumstances, monthly loans six (6) payments past due and single payment notes 180 days overdue shall be written off. This provision may be delayed if a written request, outlining the prospects and time frame for collection, is submitted to and signed by the Executive Director.

Loan write-offs are initiated by GMRLF staff upon recommendation of the RLF Committee. Once a loan has been deemed beyond salvaging, the RLF Committee shall vote on a recommendation to write-off the loan. If the Committee votes in favor of the recommendation, the item shall be presented to the GMRC Council at the next monthly Council meeting for its consideration. If the GMRC Council votes in favor of writing off the loan, a letter will be sent to the loan recipient stating the terms and closure of the loan.

GMRC staff will also submit a 1099-C Cancellation of Debt form to the IRS and to the defaulting party after all legal remedies have been exhausted, collateral foreclosed on and sold, and any remaining amount due written off. A 1099-C form is used on debt of \$600 or more that is canceled, forgiven, or discharged, and when filed with the IRS requires the borrower to report the amount of cancelled debt on their tax return as taxable income.

§307.14 Revolving Loan Fund Reports.

(a) *Frequency of reports.* The GMRLF must complete and submit a semi-annual report to EDA using form ED-209 (or any successor form or format) within 30-days of the end of the fiscal year (June 30) and six



months later (December 30). Semi-annual reporting to EDA is only required for the RLF portfolio funded by the CARES Act.

(b) *Report contents.* The GMRLF must certify as part of the semi-annual report to EDA that the information provided is complete and accurate, and that the RLF is operating in accordance with the applicable EDA-approved RLF plan.

G. Administrative Procedures

1. The following items should be included in the Loan File and will be kept in a fireproof filing cabinet:
 - a. Loan Application
 - b. Closing Documents
 - c. Reviewed Annual Financial Statements
 - d. Annual Insurance Certifications
 - e. Annual Site Visit reports
 - f. UCC renewals (if applicable)
 - g. General Correspondence
 - h. Job Reports
2. *EDA Reporting Requirements:* The GMRC Finance Director will receive loan payments and account for GMRLF funds, loan fees, late payment fees, and any other sources of GMRLF revenue. The Finance Director will also comply with EDA reporting requirements with the assistance of the loan staff. The GMRC will be reimbursed for administration of the GM Revolving Loan Fund program. The sources of funds for these reimbursements will include interest earned on GMRLF loans. Program income will not be used to cover administrative costs not directly related to the GMRLF. In addition, no more than 50% of program income will be used to cover administrative costs.
3. As required by law, an outside accounting firm audits the EDA loan program annually. The GMRLF 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.

§307.13 Records and retention.

- a) *Closed loan files and related documents.* The GMRLF 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 (3) year 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.* The GMRLF must at all times:
 - 1) Maintain adequate accounting records and source documentation to substantiate the amount and percentage of RLF Income expended for eligible RLF administrative costs.



- 2) Retain records of administrative costs incurred for activities and equipment relating to the operation of the RLF for three (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) Maintain records to demonstrate:
 - i) The adequacy of the RLF's accounting system to identify, safeguard, and account for the entire RLF Capital Base, outstanding RLF loans, and other RLF operations.
 - ii) That standard RLF loan documents reasonably necessary or advisable for lending are in place.
 - iii) Evidence of fidelity bond coverage for persons authorized to handle funds under the RLF Award in an amount sufficient to protect the interests of EDA and the RLF. At a minimum, the amount of coverage shall be the maximum loan amount allowed for in the EDA-approved RLF Plan.
- 4) Make available for inspection retained records, including those retained for longer than the required period. The record retentions periods described in this section are minimum periods and such prescription does not limit any other record retention requirement by law or agreement. EDA will not question any claimed administrative costs that are more than three (3) years old, unless fraud is at issue.

Procedures for Loan Approvals:

- 1) Meeting and interviewing the applicant to gain an understanding of the project and its parameters, the principals, and the potential structure of the deal. The goals of this initial interview are to give the applicant specific information about the GMRLF program, to determine if the proposed project is feasible, and to determine whether the proposed project meets the goals of the GMRLF program.
- 2) Applicants determined eligible for GMRLF assistance are requested to furnish financial statements and other information necessary to complete the GMRLF application form. The application form and process allow the GMRLF staff to evaluate the proposed project.
- 3) GMRLF staff recommended loan applications are submitted to the GMRC Revolving Loan Fund (RLF) Committee, which will review each application and make a funding recommendation based on applicant eligibility, GMRLF standards, and financial soundness. Minutes of the GMRC RLF Committee meeting will document the committee's recommendations.
- 4) GMRC RLF Committee recommendations will be presented to The GMRC Council for final approval or denial of the loan. Notification will be provided to the borrower by GMRLF staff.

