May 6, 2009

FLEXIBILITY IN DETERMINING THE MAXIMUM ALLOWABLE GRANT RATES UNDER THE DISASTER APPROPRIATIONS AND UNDER ARRA

Disaster Appropriations: FEMA Designations. The $100 million and $400 million Disaster Appropriations[1] are each provided pursuant to section 703 (42 U.S.C. § 3233) of the Public Works and Economic Development Act of 1965, as amended (PWEDA) (42 U.S.C. § 3121 *et seq*.), which in turn provides that such funds must be used to carry out section 209(c)(2) of PWEDA (42 U.S.C. § 3149) under EDA's Economic Adjustment Assistance program. Section 209(c)(2) of PWEDA states that assistance may include assistance provided for activities identified by communities, the economies of which are injured by "disasters or emergencies, in areas with respect to which a major disaster or emergency has been declared under the [Act], for post-disaster economic recovery."

EDA will predicate regional eligibility upon the major disaster declarations issued by the Federal Emergency Management Agency (FEMA) in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. § 5121 *et seq*.). EDA must determine that the region qualifies for investment assistance under the Economic Adjustment Assistance program pursuant to the declarations of areas eligible for FEMA 'public assistance' and 'individual and public assistance.' However, applicants are responsible for demonstrating to EDA, by providing statistics and other appropriate information, the nature and level of economic distress in the region in which the proposed project will be located.

ARRA Appropriation: Economic Distress Criteria. Under the EDA American Recovery Program, EDA will determine regional eligibility using its traditional economic distress criteria and will give priority consideration to applications that will significantly benefit regions "that have experienced sudden and severe economic dislocation and job loss due to corporate restructuring," as stipulated under ARRA.[2] The applicant is responsible for demonstrating to EDA, by providing statistics and other appropriate information as necessary, the nature and level of economic distress in the region in which the proposed project will be located. For a Public Works or an Economic Adjustment investment, the project must be located in a region that, on the date EDA receives the application for investment assistance, meets one (or more) of the following economic distress criteria:

- (i) An unemployment rate that is, for the most recent 24-month period for which data are available, at least one percentage point greater than the national average unemployment rate;
- (ii) Per capita income that is, for the most recent period for which data are available, 80 percent or less of the national average per capita income; or
- (iii) A "Special Need," as determined by EDA. *See* section 301 of PWEDA (42 U.S.C. § 3161) and 13 C.F.R. § 301.3(a).

[1] Pursuant to the Act of June 30, 2008, Pub. L. No. 110-252, 122 Stat. 2323 (2008) and Division B of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. No. 110-329, 122 Stat. 3574 (2008), respectively.
[2] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

Investment Rate Determinations. For the Disaster Appropriations and ARRA appropriations, the Regional Directors are permitted to extend financial assistance to eligible applicants at a rate of 80 percent based either on the maximum allowable grant rate table set out in 13 C.F.R. § 301.4(b)(1) or on a determination of "Special Need" pursuant to 13 C.F.R. § 301.4(b)(2). For disaster-related projects, the Regional Directors have been delegated express authority to go up to a maximum investment rate of 100 percent pursuant to section 703 of PWEDA (42 U.S.C. § 3233), based on the regional office's consideration of whether the applicant has exhausted its effective taxing and borrowing capacity, or other indicia of dire need. Additionally, the Regional Directors are delegated express authority to go up to a maximum investment rate of 100 percent pursuant to a determination of exhaustion of effective borrowing and taxing capacity for ARRA-related projects (the "other indicia of dire need" criterion is available for disaster-related projects only). For ARRA-related projects, the official award file must contain documentation of the determination that the applicant has exhausted its effective taxing and borrowing capacity.

Please note the following *additional flexibility* for determining whether a State or local government has "**exhausted its effective taxing and borrowing capacity**," for purposes of increasing the maximum allowable grant rate for ARRA-funded projects. This flexibility is permissive – the Regional Directors *may* base a determination of exhaustion on a case-by-case analysis of relevant factors outside the contours of the table below. This flexibility is available for projects of State or local governments only, and is *not* available for projects of nonprofit organization applicants.

Authority. In the case of a grant to a State or a political subdivision of a State, 13 C.F.R. § 301.4(b)(5) provides that in order for a project to be eligible for a grant rate greater than 80 percent, the Assistant Secretary must determine that the State (or a political subdivision of the State) where the project is located has exhausted its effective taxing and borrowing capacity.

Justification. Exhaustion of taxing and borrowing capacity may be inferred from civilian labor force (CLF) decline. A forthcoming Urban Institute report finds that a 1% decrease in the CLF causes a 3-4% decrease in a jurisdiction's revenue. Municipal credit rating agencies typically require that debt service not exceed 10% of revenues, viewing this as the limit of taxing, and therefore borrowing, capacity. Assuming linearity, the Urban Institute results suggest that taxing and borrowing capacity are exhausted when CLF declines 3.00%. EDA concludes that exhaustion of taxing and borrowing capacity can be reliably inferred from employment loss and that December 2007 is the appropriate referent in that the National Bureau of Economic Research determined the current recession began at that point in time.

<table>
<tr><th colspan="2">Maximum Allowable ARRA Grant Rates in Excess of 80%</th></tr>
<tr><td>Projects may be eligible for ARRA funding above 80% if:
1. The per capita income of the applicant is not more than 80% of the current national average; <u>AND</u>
2. The applicant's actual or threatened decline in the civilian labor force (CLF) since December 2007 is at least:</td><td>Maximum Allowable Grant Rate Not to Exceed:</td></tr>
<tr><td>2.25% of the CLF</td><td>85%</td></tr>
<tr><td>2.50% of the CLF</td><td>90%</td></tr>
<tr><td>2.75% of the CLF</td><td>95%</td></tr>
<tr><td>3.00% of the CLF</td><td>100%</td></tr>
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