

Title 13 of the Code of Federal Regulations
Chapter III—Economic Development Administration,
Department of Commerce

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PART 300—GENERAL INFORMATION

Authority: 42 U.S.C. 3121; 42 U.S.C. 3122; 42 U.S.C. 3211; 15 U.S.C. 3701; Department of Commerce Organization Order 10-4.

Source: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

§300.1 Introduction and mission.

EDA was created by Congress pursuant to the Public Works and Economic Development Act of 1965 to provide financial assistance to both rural and urban distressed communities. EDA's mission is to lead the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA will fulfill its mission by fostering entrepreneurship, innovation and productivity through Investments in infrastructure development, capacity building and business development in order to attract private capital investments and new and better jobs to Regions experiencing substantial and persistent economic distress. EDA works in partnership with distressed Regions to address problems associated with long-term economic distress as well as to assist those Regions experiencing sudden and severe economic dislocations, such as those resulting from natural disasters, conversions of military installations, changing trade patterns and the depletion of natural resources. EDA Investments generally take the form of Grants to or Cooperative Agreements with Eligible Recipients.

[79 FR 76123, Dec. 19, 2014]

§300.2 EDA Headquarters and regional offices.

- (a) EDA's Headquarters Office is located at: U.S. Department of Commerce, Economic Development Administration, 1401 Constitution Avenue NW., Washington, DC 20230.
- (b) EDA has regional offices throughout the United States and each regional office's contact information may be found on EDA's Internet Web site at <http://www.eda.gov> or in the applicable announcement of Federal Funding Opportunity issued by EDA. Please contact the appropriate regional office to learn about EDA Investment opportunities in your Region.

[79 FR 76123, Dec. 19, 2014]

§300.3 Definitions.

As used in this chapter, the following terms shall have the following meanings:

Assistant Secretary means the Assistant Secretary for Economic Development within the Department.

Comprehensive Economic Development Strategy or *CEDS* means a strategy that meets the requirements of §303.7 of this chapter.

Cooperative Agreement means the financial assistance award of EDA funds to an Eligible Recipient where substantial involvement is expected between EDA and the Eligible Recipient in carrying out a purpose or activity authorized under PWEDA or another statute. *See* 31 U.S.C. 6305.

Co-Recipient means one of multiple Recipients awarded Investment Assistance under a single award. Unless otherwise provided in the terms and conditions of the Investment Assistance, each Co-Recipient is jointly and severally liable for fulfilling the terms of the Investment Assistance.

Department means the U.S. Department of Commerce.

District Organization means an organization meeting the requirements of §304.2 of this chapter.

Economic Development District or *District* or *EDD* means any Region in the United States designated by EDA as an Economic Development District under §304.1 of this chapter (or such regulation as was previously in effect before the effective date of this section) and also includes any economic development district designated as such under section 403 of PWEDA, as in effect on February 10, 1999.

EDA means the Economic Development Administration within the Department.

Eligible Applicant means an entity qualified to be an Eligible Recipient or its authorized representative.

Eligible Recipient means any of the following:

- (1) City or other political subdivision of a State, including a special purpose unit of State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions;
- (2) State;
- (3) Institution of higher education or a consortium of institutions of higher education;
- (4) Public or private non-profit organization or association, including a community or faith-based non-profit organization, acting in cooperation with officials of a political subdivision of a State;
- (5) District Organization;
- (6) Indian Tribe or a consortium of Indian Tribes; or
- (7) Private individual or for-profit organization, but only for Training, Research and Technical Assistance Investments pursuant to §306.1(d)(3) of this chapter.

Federal Agency means a department, agency or instrumentality of the United States government.

Federal Funding Opportunity or *FFO* means an announcement EDA publishes during the fiscal year at <http://www.grants.gov> and on EDA's Internet Web site at <http://www.eda.gov> that

provides the funding amounts, application and programmatic requirements, funding priorities, special circumstances, and other information concerning a specific competitive solicitation for EDA's economic development assistance programs. EDA also may periodically publish FFOs on specific programs or initiatives.

Federally Declared Disaster means a Presidentially Declared Disaster, a fisheries resource disaster pursuant to section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1861a(a)), or other Federally declared disasters pursuant to applicable law.

Grant means the financial assistance award of EDA funds to an Eligible Recipient, under which the Eligible Recipient bears responsibility for carrying out a purpose or activity authorized under PWEDA or another statute. *See* 31 U.S.C. 6304.

Immediate Family means a person's spouse (or domestic partner or significant other), parents, grandparents, siblings, children and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person.

In-Kind Contribution(s) means non-cash contributions, which may include contributions of space, equipment, services and assumptions of debt that are fairly evaluated by EDA and that satisfy applicable Federal uniform administrative requirements and cost principles as set out in 2 CFR part 200.

Indian Tribe means an entity on the list of recognized tribes published pursuant to the Federally Recognized Indian Tribe List Act of 1994, as amended (Pub. L. 103-454) (25 U.S.C. 479a *et seq.*), and any Alaska Native Village or Regional Corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). This term includes the governing body of an Indian Tribe, non-profit Indian corporation (restricted to Indians), Indian authority, or other non-profit Indian tribal organization or entity; provided that the Indian tribal organization or entity is wholly owned by, and established for the benefit of, the Indian Tribe or Alaska Native Village.

Interested Party means any officer, employee or member of the board of directors 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 and other persons directly connected to the Interested Party by law or through a business arrangement.

Investment or Investment Assistance means a Grant or Cooperative Agreement entered into by EDA and a Recipient.

Investment Rate means, as set forth in §301.4 of this chapter, the amount of the EDA Investment in a particular Project expressed as a percentage of the total Project cost.

Local Share or Matching Share means the non-EDA funds and any In-Kind Contributions that are approved by EDA and provided by a Recipient or third party as a condition of an Investment. The Matching Share may include funds from another Federal Agency only if authorized by

statute that allows such use, which may be determined by EDA's reasonable interpretation of such authority.

Presidentially Declared Disaster means a major disaster or emergency declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*).

Project means the proposed or authorized activity (or activities) the purpose of which fulfills EDA's mission and program requirements as set forth in PWEDA or Stevenson-Wydler and this chapter and which may be funded in whole or in part by EDA Investment Assistance.

PWEDA means the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*).

Recipient means an entity receiving EDA Investment Assistance, including any EDA-approved successor to the entity.

Region or *Regional* means an economic unit of human, natural, technological, capital or other resources, defined geographically. Geographic areas comprising a Region need not be contiguous or defined by political boundaries, but should constitute a cohesive area capable of undertaking self-sustained economic development. For the limited purposes of determining economic distress levels and Investment Rates pursuant to part 301 of this chapter, a Region also may comprise a specific geographic area defined solely by its level of economic distress, as set forth in §§301.3(a)(2) and 301.3(a)(3) of this chapter.

Regional Commission means any of the following:

- (1) The Appalachian Regional Commission established under chapter 143 of title 40, United States Code;
- (2) The Delta Regional Authority established under subtitle F of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009aa *et seq.*);
- (3) The Denali Commission established under the Denali Commission Act of 1998 (42 U.S.C. 3121 note; 112 Stat. 2681-637 *et seq.*); or
- (4) The Northern Great Plains Regional Authority established under subtitle G of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009bb *et seq.*).

Regional Innovation Clusters or *RICs* means networks of similar, synergistic, or complementary entities that support a single industry sector and its various supply chains. In general, RICs:

- (1) Are based on a geographic area that may cross municipal, county, and other jurisdictional boundaries;
- (2) May include catalysts of innovation and drivers of Regional economic growth, such as universities, government research centers, and other research and development resources;
- (3) Have active channels for business transactions and communication; and

- (4) Depend upon specialized infrastructure, labor markets, and services that build on the unique competitive assets of a location, including talent, technology, services, and hard and soft infrastructure, to spur innovation, job creation, and business expansion.

Special Impact Area means a Region served by a Project for which the requirements of section 302 of PWEDA and §303.7 of this chapter have, upon an application filed by an Eligible Recipient pursuant to section 214 of PWEDA and part 310 of this chapter, been waived in whole or in part by the Assistant Secretary.

Special Need means a circumstance or legal status arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions, including:

- (1) Substantial outmigration or population loss;
- (2) Underemployment; that is, employment of workers at less than full-time or at less skilled tasks than their training or abilities permit;
- (3) Military base closures or realignments, defense contractor reductions-in-force, or U.S. Department of Energy defense-related funding reductions;
- (4) Natural or other major disasters or emergencies;
- (5) Extraordinary depletion of natural resources;
- (6) Closing or restructuring of an industrial firm or loss of a major employer;
- (7) Negative effects of changing trade patterns; or
- (8) Other circumstances set forth in an FFO.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Stevenson-Wydler, for purposes of EDA, means the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3701 *et seq.*).

Subrecipient means an Eligible Recipient that receives a redistribution of Investment Assistance in the form of a subgrant, under part 309 of this chapter, from another Eligible Recipient to carry out part of a Federal program.

Trade Act, for purposes of EDA, means title II, chapters 3, 4 and 5, of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*).

United States means all of the States.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62865, Oct. 22, 2008; 79 FR 76123, Dec. 19, 2014; 82 FR 57052, Dec. 1, 2017]

PART 301—ELIGIBILITY, INVESTMENT RATE AND APPLICATION REQUIREMENTS

Authority: 42 U.S.C. 3121; 42 U.S.C. 3141-3147; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3175; 42 U.S.C. 3192; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3233; Department of Commerce Delegation Order 10-4.

Source: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

Subpart A—General

§301.1 Overview of eligibility requirements.

In order to receive EDA Investment Assistance, the following requirements must be met:

- (a) The applicant must be an Eligible Applicant as set forth in subpart B of this part;
- (b) The Region in which the Project will be located must meet the economic distress criteria set forth in subpart C of this part;
- (c) The sources of funding for the Project must fulfill the Investment Rate and Matching Share requirements set forth in subpart D of this part;
- (d) The Eligible Applicant must satisfy the formal application requirements set forth in subpart E of this part;
- (e) The Project must meet the general requirements set forth in part 302 (General Terms and Conditions for Investment Assistance) and the specific program requirements (as applicable) set forth in part 303 (Planning Investments and Comprehensive Economic Development Strategies), part 304 (Economic Development Districts), part 305 (Public Works and Economic Development Investments), part 306 (Training, Research and Technical Assistance Investments), or part 307 (Economic Adjustment Assistance Investments) of this chapter; and
- (f) EDA must select the Eligible Applicant's proposed Project.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76124, Dec. 19, 2014]

Subpart B—Applicant Eligibility

§301.2 Applicant eligibility.

- (a) An Eligible Applicant for EDA Investment Assistance is defined in §300.3 of this chapter.

- (b) An Eligible Applicant that is a non-profit organization must include in its application for Investment Assistance a resolution passed by (or a letter signed by) an authorized representative of a general purpose political subdivision of a State, acknowledging that it is acting in cooperation with officials of such political subdivision. EDA, at its sole discretion, may waive this cooperation requirement for certain Projects of a significant Regional or national scope under part 306 or 307 of this chapter. See §§306.3(b), 306.6(b), and 307.5(b) of this chapter.

[71 FR 56675, Sept. 27, 2006, as amended at 82 FR 57053, Dec. 1, 2017]

Subpart C—Economic Distress Criteria

§301.3 Economic distress levels.

- (a) *Part 305 (Public Works and Economic Development Investments) and part 307 (Economic Adjustment Assistance Investments).*
- (1) Except as otherwise provided by this paragraph (a), for a Project to be eligible for Investment Assistance under parts 305 or 307 of this chapter, the Project must be located in a Region that, on the date EDA receives an application for Investment Assistance, is subject to 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.
- (2) A Project located within an Economic Development District, which is located in a Region that does not meet the economic distress criteria described in paragraph (a)(1) of this section, also is eligible for Investment Assistance under parts 305 or 307 of this chapter if EDA determines that the Project will be of “substantial direct benefit” to a geographic area within the District that meets the criteria of paragraph (a)(1) of this section. For this purpose, a Project provides a “substantial direct benefit” if it provides significant employment opportunities for unemployed, underemployed or low-income residents of the geographic area within the District.
- (3) A Project located in a geographic area of poverty or high unemployment that meets the requirements of paragraph (a)(1) of this section, but which is located in a Region that overall does not meet the requirements of paragraph (a)(1) of this section, is eligible for Investment Assistance under parts 305 or 307 of this chapter without regard to political or other subdivisions or boundaries.

(4) *Data requirements to demonstrate economic distress levels.* EDA will determine the economic distress levels pursuant to this subsection at the time EDA receives an application for Investment Assistance as follows:

- (i) For economic distress levels based upon per capita income requirements, EDA will base its determination upon the most recent American Community Survey (“ACS”) published by the U.S. Census Bureau. For economic distress levels based upon the unemployment rate, EDA will base its determination upon the most recent data published by the Bureau of Labor Statistics (“BLS”), within the U.S. Department of Labor. For eligibility based upon either per capita income requirements or the unemployment rate, when the ACS or BLS data, as applicable, are not the most recent Federal data available, EDA will base its decision upon the most recent Federal data from other sources (including data available from the Census Bureau and the Bureaus of Economic Analysis, Labor Statistics, Indian Affairs, or any other Federal source determined by EDA to be appropriate). If no Federal data are available, an Eligible Applicant must submit to EDA the most recent data available from the State. The required data must be for the Region where the Project will be located (paragraph (a)(1) of this section), the geographic area where substantial direct Project benefits will occur (paragraph (a)(2) of this section), or the geographic area of poverty or high unemployment (paragraph (a)(3) of this section), as applicable.
- (ii) For economic distress based upon a Special Need, EDA will conduct the independent analysis it deems necessary under the facts and circumstances of a given case. Eligible Applicants are encouraged to submit reliable data substantiating their claim of a Special Need.

(b) *Part 303 (Planning Investments) and part 306 (Training, Research and Technical Assistance Investments).* There are no minimum economic distress level requirements for Investment Assistance awarded to Projects under parts 303 or 306 of this chapter.

(c) *Part 304 (Economic Development Districts).* For EDA to designate a Region as an Economic Development District under part 304 of this chapter, such Region must:

- (1) Contain at least one geographic area that fulfills the economic distress criteria set forth in paragraph (a)(1) of this section and is identified in an approved CEDS; and
- (2) Meet the Regional eligibility requirements set forth in §304.1 of this chapter.

(d) EDA reserves the right to reject any documentation of Project eligibility that it determines is inaccurate or otherwise unreliable.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62865, Oct. 22, 2008; 79 FR 76124, Dec. 19, 2014]

Subpart D—Investment Rates and Matching Share Requirements

§301.4 Investment rates.

(a) *Minimum Investment Rate.* There is no minimum Investment Rate for a Project.

(b) *Maximum Investment Rate—*

(1) *General rule.* Except as otherwise provided by this paragraph (b) or paragraph (c) of this section, the maximum EDA Investment Rate for all Projects shall be determined in accordance with Table 1 in paragraph (b)(1)(ii) of this section. The maximum EDA Investment Rate shall not exceed the sum of 50 percent, plus up to an additional 30 percent based on the relative needs of the Region in which the Project is located, as determined by EDA.

(i) (A) *Relative needs.* In determining the relative needs of the Region in which the Project is located, EDA will prioritize allocations of its Investment Assistance to ensure that the level of economic distress of a Region, rather than a preference for a specific geographic area or a specific type of economic distress, is the primary factor in allocating its Investment Assistance. In making this determination, EDA will take into consideration the following measures of economic distress:

- (1) The severity of the unemployment rate and the duration of the unemployment in the Region;
- (2) The per capita income levels and the extent of underemployment in the Region;
- (3) The outmigration of population and the extent to which such outmigration is causing economic injury in the Region; and
- (4) Such other factors as EDA deems relevant in determining the relative needs of the Region in which the Project is located.

(B) A Project is eligible for the maximum allowable Investment Rate as determined by EDA between the time EDA receives the application for Investment Assistance and the time that EDA awards Investment Assistance to the Project; however, the burden is on the Eligible Applicant to establish the relative needs of the Region in which the Project is located.

(ii) *Table 1.* Table 1 of this paragraph sets forth the maximum allowable Investment Rate for Projects located in Regions subject to certain levels of economic distress. In cases where Table 1 produces divergent results (*i.e.*, where Table 1 produces more than one maximum allowable Investment Rate based on the Region's levels of economic distress), the higher Investment Rate produced by Table 1 shall be the maximum allowable Investment Rate for the Project.

Table 1

Projects located in regions in which:	Maximum allowable investment rates (percentage)
(A) The 24-month unemployment rate is at least 225% of the national average; or	80
(B) The per capita income is not more than 50% of the national average	80
(C) The 24-month unemployment rate is at least 200% of the national average; or	70
(D) The per capita income is not more than 60% of the national average	70
(E) The 24-month unemployment rate is at least 175% of the national average; or	60
(F) The per capita income is not more than 65% of the national average	60
(G) The 24-month unemployment rate is at least one percentage point greater than the national average; or	50
(H) The per capita income is not more than 80% of the national average	50

(2) *Projects subject to a Special Need.* EDA shall determine the maximum allowable Investment Rate for Projects subject to a Special Need (as determined by EDA pursuant to §301.3(a)(1)(iii)) based on the actual or threatened overall economic situation of the Region in which the Project is located. However, unless the Project is eligible for a higher Investment Rate pursuant to paragraph (b)(5) of this section, the maximum allowable Investment Rate for any Project subject to a Special Need shall be 80 percent.

(3) *Projects under part 303.*

- (i) The minimum Investment Rate for Projects under part 303 of this chapter shall be 50 percent.
- (ii) Except as otherwise provided in paragraph (b)(3)(iii) of this section or in paragraph (b)(5) of this section, the maximum allowable Investment Rate for Projects under part 303 of this chapter shall be the maximum allowable Investment Rate set forth in Table 1 for the most economically distressed county or other equivalent political unit

(e.g., parish) within the Region. The maximum allowable Investment Rate shall not exceed 80 percent.

(iii) In compelling circumstances, the Assistant Secretary may waive the application of the first sentence in paragraph (b)(3)(ii) of this section.

(4) *Projects under part 306.* Except as otherwise provided in paragraph (b)(5) of this section, the maximum allowable Investment Rate for Projects under part 306 of this chapter shall generally be determined based on the relative needs (as determined under paragraph (b)(1) of this section) of the Region which the Project will serve. As specified in section 204(c)(3) of PWEDA, the Assistant Secretary has the discretion to establish a maximum Investment Rate of up to 100 percent where the Project:

- (i) Merits, and is not otherwise feasible without, an increase to the Investment Rate; or
- (ii) Will be of no or only incidental benefit to the Eligible Recipient.

(5) *Special Projects.* Table 2 of this paragraph sets forth the maximum allowable Investment Rate for certain special Projects as follows:

Table 2

Projects	Maximum allowable investment rates (percentage)
Projects that involve broad Regional planning and coordination with other entities outside the Eligible Applicant's political jurisdiction or area of authority, under special circumstances determined by EDA, and Projects that effectively leverage other Federal Agency resources	80
Projects of Indian Tribes	100
Projects for which EDA receives appropriations under section 703 of PWEDA (42 U.S.C. 3233) and Projects to address and implement post-disaster economic recovery efforts in Presidentially Declared Disaster areas in a timely manner	100
Projects of States or political subdivisions of States that the Assistant Secretary determines have exhausted their effective taxing and borrowing capacity, or Projects of non-profit organizations that the Assistant Secretary determines have exhausted their effective borrowing capacity	100

Projects under parts 305 or 307 that receive performance awards pursuant to §308.2 of this chapter	100
Projects located in a District that receive planning performance awards pursuant to §308.3 of this chapter	100

- (c) Federal Funding Opportunity announcements may provide additional Investment Rate criteria and standards to ensure that the level of economic distress of a Region, rather than a preference for a geographic area or a specific type of economic distress, is the primary factor in allocating Investment Assistance.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62865, Oct. 22, 2008; 75 FR 4262, Jan. 27, 2010; 79 FR 76125, Dec. 19, 2014]

§301.5 Matching share requirements.

The required Matching Share of a Project's eligible costs may consist of cash or In-Kind Contributions. In addition, the Eligible Applicant must provide documentation to EDA demonstrating that the Matching Share is committed to the Project, will be available as needed and is not or will not be conditioned or encumbered in any way that would preclude its use consistent with the requirements of the Investment Assistance. EDA shall determine at its sole discretion whether the Matching Share documentation adequately addresses the requirements of this section.

[82 FR 57053, Dec. 1, 2017]

§301.6 Supplementary Investment Assistance.

- (a) Pursuant to a request made by an Eligible Applicant, EDA Investment Assistance may supplement a grant awarded in another “designated Federal grant program,” if the Eligible Applicant qualifies for financial assistance under such program, but is unable to provide the required non-Federal share because of the Eligible Applicant's economic situation. For purposes of this section, a “designated Federal grant program” means a Federal grant program that:
- (1) Provides assistance in the construction or equipping of public works, public service or development facilities;
 - (2) Is designated by EDA as eligible for supplementary Investment Assistance under this section; and
 - (3) Assists Projects that are otherwise eligible for Investment Assistance and consistent with the Eligible Applicant's CEDS.

- (b) For a Project that meets the economic distress criteria provided in §301.3(a), the Investment Assistance, combined with funds from a designated Federal grant program, may be at the maximum allowable Investment Rate, even if the designated Federal grant program has a lower grant rate. If the designated Federal grant program has a grant rate higher than the maximum EDA Investment Rate, the EDA Investment and other Federal funds together may exceed the EDA Investment Rate, provided that the EDA share of total funding does not exceed the maximum allowable Investment Rate.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76126, Dec. 19, 2014]

Subpart E—Application Requirements; Evaluation Criteria

§301.7 Investment Assistance application.

- (a) For all EDA Investment Assistance programs, including the Public Works, Economic Adjustment Assistance, Planning, Local Technical Assistance, Research and National Technical Assistance, and University Center programs, EDA will publish an FFO that specifies application submission requirements and evaluation procedures and criteria. Each FFO will be published on the EDA Web site and at <http://www.grants.gov>. All forms required for EDA Investment Assistance may be obtained electronically from <http://www.grants.gov> or from the appropriate regional office.
- (b) PWEDA does not require nor does EDA provide an appeals process for denial of applications or EDA Investment Assistance.

[75 FR 4262, Jan. 27, 2010, as amended at 79 FR 76126, Dec. 19, 2014; 82 FR 57053, Dec. 1, 2017]

§301.8 Application evaluation criteria.

EDA will screen all applications for the feasibility of the budget presented and conformance with EDA's statutory and regulatory requirements. EDA will assess the economic development needs of the affected Region in which the proposed Project will be located (or will service), as well as the capability of the Eligible Applicant to implement the proposed Project. EDA will also review applications for conformance with program-specific evaluation criteria set out in the applicable FFO.

[82 FR 57053, Dec. 1, 2017]

§301.9 Application selection criteria.

- (a) EDA will review completed application materials for compliance with the requirements set forth in PWEDA, this chapter, the applicable FFO, and other applicable Federal statutes and regulations. From those applications that meet EDA's technical and legal requirements, EDA will select applications based on the:
- (1) Availability of funds;

(2) Competitiveness of the applications in accord with the criteria set forth in §301.8; and

(3) Funding priority considerations identified in the applicable FFO.

- (b) EDA will endeavor to notify applicants as soon as practicable regarding whether their applications are selected for funding.

[79 FR 76127, Dec. 19, 2014]

§301.10 Formal application requirements.

Each formal application for EDA Investment Assistance must:

- (a) Include evidence of applicant eligibility (as set forth in §301.2) and of economic distress (as set forth in §301.3);

- (b) Identify the sources of funds, both eligible Federal and non-EDA, and In-Kind Contributions that will constitute the required Matching Share for the Project (*see* the Matching Share requirements under §301.5); and

- (c) For Projects under parts 305 or 307 of this chapter, include a CEDS acceptable to EDA pursuant to part 303 of this chapter or otherwise incorporate by reference a current CEDS that EDA approves for the Project. The requirements stated in the preceding sentence shall not apply to:

(1) Strategy Grants, as defined in §307.3 of this chapter; and

(2) A Project located in a Region designated as a Special Impact Area pursuant to part 310 of this chapter.

- (d) Projects that propose the construction of a business, technology, or other type of incubator or accelerator, must include a feasibility study demonstrating the need for the Project and an operational plan based on industry best practices demonstrating the Eligible Applicant's plan for ongoing successful operations. EDA will provide further guidance in the applicable FFO. EDA may require the Recipient to demonstrate that the feasibility study has been conducted by an impartial third party, as determined by EDA.

[75 FR 4263, Jan. 27, 2010, as amended at 79 FR 76127, Dec. 19, 2014]

§301.11 Infrastructure.

- (a) EDA will fund both construction and non-construction infrastructure necessary to meet a Region's strategic economic development goals and needs, which in turn results in job creation. This includes infrastructure used to develop basic economic development assets as described in §§305.1 and 305.2 of this chapter (*e.g.*, roads, sewers, and water lines), as well as infrastructure that supports innovation and entrepreneurship. The following are examples of innovation and entrepreneurship-related infrastructure that support job creation:

- (1) *Business Incubation.* Business incubation includes both physical facilities and business support services to advance the successful development of start-up companies by providing entrepreneurs with an array of targeted resources and services.
 - (2) *Business Acceleration.* Business acceleration includes both physical facilities and an array of business support services to help new and existing businesses develop new processes or products, get products and services to market more efficiently, expand market opportunities, or increase sales and exports.
 - (3) *Venture Development Organization.* A venture development organization (“VDO”) works to ensure that Regional economies operate as smoothly and efficiently as possible in support of innovation-based entrepreneurship. A VDO may make strategic investments of time, talent, and other resources toward innovation, entrepreneurship, and technology to help nurture and grow promising companies and ideas, thereby promoting and taking advantage of the innovation assets of a Region and addressing the needs of the high-growth, innovation-oriented start-up companies in the Region.
 - (4) *Proof of Concept Center.* A proof of concept center serves as a hub of collaborative and entrepreneurial activity designed to accelerate the commercialization of innovations into the marketplace. Such centers support innovation-based, high growth entrepreneurship through a range of services, including technology and market evaluation, business planning and mentorship, network development, and early stage access to capital.
 - (5) *Technology Transfer.* Technology transfer is the process of transferring scientific findings from one organization to another for the purpose of further development and commercialization. The process typically includes: Identifying new technologies; protecting technologies through patents and copyrights; and forming development and commercialization strategies, such as marketing and licensing, for existing private sector companies or creating start-up companies based on the technology.
- (b) In general, successful Projects, including innovation and entrepreneurship-related infrastructure, require the engagement of a broad range of Regional stakeholders and resources. Therefore through appropriate FFOs and program requirements, EDA will seek to advance interagency coordination by funding Projects that demonstrate effective leveraging of other Federal Agency resources based on a Region's strategic economic development goals and needs. For all types of Projects, EDA assistance may not be used to provide direct venture capital to a for-profit entity because of the restrictions set out in section 217 of PWEDA (42 U.S.C. 3154c) and part 309 of this chapter. Nonetheless, EDA may consider an application more competitive if it includes measures to address the need to provide entrepreneurs with access to early stage capital outside of the proposed EDA Project budget. *See* §301.8(b).

PART 302—GENERAL TERMS AND CONDITIONS FOR INVESTMENT ASSISTANCE

AUTHORITY: 19 U.S.C. 2341 *et seq.*; 42 U.S.C. 3150; 42 U.S.C. 3152; 42 U.S.C. 3153; 42 U.S.C. 3192; 42 U.S.C. 3193; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3212; 42 U.S.C. 3216; 42

U.S.C. 3218; 42 U.S.C. 3220; 42 U.S.C. 5141; 15 U.S.C. 3701; Department of Commerce Delegation Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

§302.1 Environment.

EDA will undertake environmental reviews of Projects in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190; 42 U.S.C. 4321 *et seq.*, as implemented under 40 CFR chapter V) (“NEPA”), and all applicable Federal environmental statutes, regulations, and Executive Orders. These authorities include the implementing regulations of NEPA requiring EDA to provide public notice of the availability of Project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, to the affected or interested public, as specified in 40 CFR 1506.6(b). Depending on the Project's location, environmental information concerning specific Projects may be obtained from the individual serving as the Environmental Officer in the appropriate EDA regional office listed in the applicable FFO.

[79 FR 76128, Dec. 19, 2014]

§302.2 Procedures in disaster areas.

When non-statutory EDA administrative or procedural conditions for Investment Assistance awards under PWEDA cannot be met by an Eligible Applicant as the result of a disaster, EDA may waive such conditions.

§302.3 Project servicing for loans, loan guaranties and Investment Assistance.

EDA will provide Project servicing to borrowers who received EDA loans or EDA-guaranteed loans and to lenders who received EDA loan guaranties under an EDA-administered program. Project servicing includes loans made under PWEDA prior to the effective date of the Economic Development Administration Reform Act of 1998, the Trade Act, and the Community Emergency Drought Relief Act of 1977 (Pub. L. 95-31; 42 U.S.C. 5184 note).

- (a) EDA will continue to monitor such loans and loan guaranties in accordance with the applicable loans or loan guaranty program(s).
- (b) Borrowers and lenders shall submit to EDA any requests for modifications of their loan or loan guaranty agreements with EDA, as applicable. EDA shall consider and respond to such modification requests in accordance with applicable laws and policies, including the budgetary constraints imposed by the Federal Credit Reform Act of 1990, as amended (2 U.S.C. 661c(e)).

- (c) In the event that EDA determines it necessary or desirable to take actions to protect or further the interests of EDA in connection with loans, loan guaranties or evidence of purchased debt, EDA may:
- (1) Assign or sell at public or private sale or otherwise dispose of for cash or credit, in its discretion and upon such terms and conditions as it shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property, or security assigned to or held by it in connection with any EDA loans, EDA-guaranteed loans or Investment Assistance extended under PWEDA;
 - (2) Collect or compromise all obligations assigned to or held by it in connection with any EDA loans, EDA-guaranteed loans or Investment Assistance awarded under PWEDA until such time as such obligations may be referred to the Attorney General of the United States for suit or collection; and
 - (3) Take any and all other actions determined to be necessary or desirable in purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively processing or disposing of loans or loan guaranties made or evidence of purchased debt in connection with any EDA loans, EDA-guaranteed loans or Investment Assistance awarded under PWEDA.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76128, Dec. 19, 2014]

§302.6 Additional requirements; Federal policies and procedures.

Recipients are subject to all Federal laws and to Federal, Department, and EDA policies, regulations, and procedures applicable to Federal financial assistance awards, including 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

§302.7 Amendments and changes.

- (a) Recipients shall submit requests for amendments to Investment awards in writing to EDA for approval and shall provide such information and documentation as EDA deems necessary to justify the request.
- (b) Any changes to Projects made without EDA's approval are made at the Recipient's risk of non-payment of costs, suspension, termination or other applicable EDA action with respect to the Investment.

§302.8 Pre-approval Investment Assistance costs.

Project activities carried out before approval of Investment Assistance shall be carried out at the sole risk of the Eligible Applicant. Such activity is subject to the rejection of the application, the disallowance of costs, or other adverse consequences as a result of non-compliance with EDA or Federal requirements, including procurement requirements, civil rights requirements, Federal labor standards, or Federal environmental, historic preservation, and related requirements.

[79 FR 76128, Dec. 19, 2014]

§302.9 Inter-governmental review of projects.

- (a) When an Eligible Applicant is not a State, Indian Tribe, or other general purpose governmental authority, the Eligible Applicant must afford the appropriate general purpose local governmental authority (the “*Authority*”) in the Region a minimum of 15 days to review and comment on a proposed Project under EDA's Public Works and Economic Development program or a proposed construction Project or RLF Grant under EDA's Economic Adjustment Assistance program. Under these programs, the Eligible Applicant shall furnish the following with its application:
- (1) If no comments are received from the Authority, a statement of efforts made to obtain such comments; or
 - (2) If comments are received from the Authority, a copy of the comments and a statement of any actions taken to address such comments.
- (b) As required by 15 CFR part 13 and Executive Order 12372, “Intergovernmental Review of Federal Programs,” as amended, if a State has adopted a process under Executive Order 12372 to review and coordinate proposed Federal financial assistance and direct Federal development (commonly referred to as the “single point of contact review process”), all Eligible Applicants also must give State and local governments a reasonable opportunity to review and comment on the proposed Project, including review and comment from area-wide planning organizations in metropolitan areas, as provided for in 15 CFR part 13.

[79 FR 76128, Dec. 19, 2014]

§302.10 Attorneys' and consultants' fees, employment of expeditors, and post-employment restriction.

- (a) *Employment of expeditors.* Investment Assistance awarded under PWEDA shall not directly or indirectly reimburse any attorneys' or consultants' fees incurred in connection with obtaining Investment Assistance and contracts under PWEDA. Such Investment Assistance shall not be awarded to any Eligible Applicant, unless the owners, partners, or officers of the Eligible Applicant certify to EDA the names of any attorneys, agents, and other persons engaged by or on behalf of the Eligible Applicant for the purpose of expediting an application made to EDA in connection with obtaining Investment Assistance under PWEDA and the fees paid or to be paid to the person(s) for expediting the application.
- (b) *Post-employment restriction.*
- (1) In general, any Eligible Applicant that is a non-profit organization, District Organization, or for-profit entity, for the two-year period beginning on the date on which the Investment Assistance under PWEDA is awarded to the Eligible Applicant, must refrain from employing, offering any office or employment to, or retaining for professional

services any person who, on the date on which the Investment Assistance is awarded or within the one-year period ending on that date:

- (i) Served as an officer, attorney, agent, or employee of the Department; and
- (ii) Occupied a position or engaged in activities that the Assistant Secretary determines involved discretion with respect to the award of Investment Assistance under PWEDA.

- (2) In addition to the types of Eligible Applicants noted in this paragraph (b), EDA may require another Eligible Applicant to execute an agreement to abide by the above-described post-employment restriction on a case-by-case basis; for example, when an institution of higher education implements activities under or related to the Investment Assistance through a separate non-profit organization or association.

[79 FR 76128, Dec. 19, 2014]

§302.12 Project administration, operation and maintenance.

EDA shall approve Investment Assistance awards only if, as determined in its sole discretion, the Project for which such Investment Assistance is awarded will be properly and efficiently administered, operated and maintained.

§302.13 Maintenance of standards.

All laborers and mechanics employed by contractors or subcontractors on Projects receiving Investment Assistance under PWEDA shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. EDA shall not extend any Investment Assistance under this chapter for a Project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The U.S. Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan No. 14 of 1950 (15 FR 3176 (May 25, 1950); 64 Stat. 1267) and section 3145 of title 40, United States Code.

§302.15 Acceptance of certifications made by Eligible Applicants.

EDA will accept an Eligible Applicant's certifications, accompanied by evidence satisfactory to EDA, that the Eligible Applicant meets the requirements for receiving Investment Assistance.

§302.16 Accountability.

- (a) *General.* Each Recipient must submit reports to EDA at intervals and in the manner that EDA shall require, except that EDA shall not require any report to be submitted more than ten years after the date of closeout of the Investment Assistance.

- (b) *Data on Project effectiveness.* Each report must contain a data-specific evaluation of the effectiveness of the Investment Assistance provided in fulfilling the Project's purpose (including alleviation of economic distress and meeting Project goals) and in meeting the objectives of PWEDA. Data used by a Recipient in preparing reports shall be accurate and verifiable as determined by EDA, and from independent sources (whenever possible). EDA will use this data and report to fulfill its performance measurement reporting requirements under the Government Performance and Results Act of 1993, as amended (Pub. L. 103-62) and to monitor internal, Investment, and Project performance through an internal performance measurement system.
- (c) *Reporting Project service benefits.* To enable EDA to determine the economic development effect of a Project that provides service benefits, EDA may require the Recipient to submit a Project service map and information from which to determine whether services are provided to all segments of the Region being assisted.
- (d) *Consequences for failure to undertake good faith efforts.*
- (1) The Recipient must undertake good faith efforts to fulfill the purpose of the Project as set out in the terms of the Investment Assistance and must report regularly on Project goals. In the event that EDA determines that the Recipient is failing to make good faith efforts to meet these goals, or otherwise is failing to meet its obligations under the Investment Assistance, EDA shall take necessary actions to protect EDA's interest in the Project, including the following:
 - (i) Discontinue disbursement of funds pending correction;
 - (ii) Suspend the Investment Assistance;
 - (iii) Terminate the Investment Assistance;
 - (iv) Require reimbursement of the EDA share of the Project; or
 - (v) Institute formal Government-wide debarment and suspension proceedings against the Recipient.
 - (2) Before making a determination under this subsection, EDA shall provide the Recipient with reasonable notice and opportunity to respond. A determination under this subsection is final and cannot be appealed.

[79 FR 76129, Dec. 19, 2014]

§302.17 Conflicts of interest.

- (a) *General.* It is EDA's and the Department's policy to maintain the highest standards of conduct to prevent conflicts of interest in connection with the award of Investment Assistance or its use for reimbursement or payment of costs (*e.g.*, procurement of goods or services) by or to the Recipient. A conflict of interest generally exists when an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party's

personal or financial interests. A conflict also may exist where there is an appearance that an Interested Party's objectivity in performing his or her responsibilities under the Project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an Interested Party is unable to render impartial assistance, services or advice to the Recipient, a participant in the Project or to the Federal government. Additionally, a conflict of interest may result from non-financial gain to an Interested Party, such as benefit to reputation or prestige in a professional field.

(b) *Prohibition on direct or indirect financial or personal benefits.*

- (1) An Interested Party shall not receive any direct or indirect financial or personal benefits in connection with the award of Investment Assistance or its use for payment or reimbursement of costs by or to the Recipient.
- (2) An Interested Party also shall not, directly or indirectly, solicit or accept any gift, gratuity, favor, entertainment or other benefit having monetary value, for himself or herself or for another person or entity, from any person or organization which has obtained or seeks to obtain Investment Assistance from EDA.
- (3) Costs incurred in violation of any conflicts of interest rules contained in this chapter or in violation of any assurances by the Recipient may be denied reimbursement.
- (4) See §315.15 of this chapter for special conflicts of interest rules for Trade Adjustment Assistance Investments.

(c) *Special rules for Revolving Loan Fund (“RLF”) Grants.* In addition to the rules set forth in this section:

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

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62866, Oct. 22, 2008; 79 FR 76129, Dec. 19, 2014]

§302.18 Post-approval requirements.

A Recipient must comply with all financial, performance, progress report, and other requirements set forth in the terms and conditions of the Investment Assistance, including any special award conditions and applicable Federal cost principles (collectively, “*Post-Approval Requirements*”). A Recipient's failure to comply with Post-Approval Requirements may result in

the disallowance of costs, termination of the Investment Assistance award, or other adverse consequences to the Recipient.

[79 FR 76129, Dec. 19, 2014]

§302.19 Indemnification.

To the maximum extent permitted by law, a Recipient shall indemnify and hold EDA harmless from any liability that EDA may incur due to the actions or omissions of the Recipient.

§302.20 Civil rights.

(a) Discrimination is prohibited by a Recipient or Other Party (as defined in paragraph (b) of this section) with respect to a Project receiving Investment Assistance under PWEDA or Stevenson-Wydler or by an entity receiving Adjustment Assistance (as defined in §315.2 of this chapter) under the Trade Act or any other type of assistance under Stevenson-Wydler, in accordance with the following authorities:

- (1) Section 601 of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d *et seq.*) (proscribing discrimination on the basis of race, color, or national origin), and the Department's implementing regulations found at 15 CFR part 8;
- (2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex in Investment Assistance provided under PWEDA), 42 U.S.C. 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program), Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 *et seq.*) (proscribing discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution), and the Department's implementing regulations found at 15 CFR part 8a;
- (3) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) (proscribing discrimination on the basis of disabilities), and the Department's implementing regulations found at 15 CFR part 8b;
- (4) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*) (proscribing discrimination on the basis of age), and the Department's implementing regulations found at 15 CFR part 20; and
- (5) Other Federal statutes, regulations and Executive Orders, as applicable.

(b) *Definitions.*

- (1) For purposes of this section, an “*Other Party*” means an “other party subject to this part,” as defined in 15 CFR 8.3(l), and includes an entity which (or which is intended to) creates and/or saves 15 or more permanent jobs as a result of Investment Assistance; provided that such entity also is either specifically named in the application as benefiting from the Project, or is or will be located in an EDA building, port, facility, or industrial,

commercial or business park constructed or improved in whole or in part with Investment Assistance prior to EDA's final disbursement of award funds.

(2) Additional applicable definitions are provided in 15 CFR part 8.

(c) No Recipient or Other Party shall intimidate, threaten, coerce or discriminate against any person for the purpose of interfering with any right or privilege secured by 42 U.S.C. 3123 or 42 U.S.C. 6709, or because the person has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this section.

(d) All Recipients of Investment Assistance under PWEDA and Stevenson-Wydler, all Other Parties, and all entities receiving Adjustment Assistance under the Trade Act or any other type of assistance under Stevenson-Wydler must submit to EDA written assurances that they will comply with applicable laws, EDA regulations, Department regulations, and such other requirements as may be applicable, prohibiting discrimination.

(e) Reporting and other procedural matters are set forth in 15 CFR parts 8, 8a, 8b, 8c and 20.

[71 FR 56675, Sept. 27, 2006, as amended at 75 FR 4263, Jan. 27, 2010; 79 FR 76129, Dec. 19, 2014; 82 FR 57053, Dec. 1, 2017]

PART 303—PLANNING INVESTMENTS AND COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES

AUTHORITY: 42 U.S.C. 3143; 42 U.S.C. 3162; 42 U.S.C. 3174; 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

Subpart A—General

§303.1 Overview of EDA's Planning Program.

The purpose of EDA Planning Investments is to provide support to Planning Organizations for the development, implementation, revision, or replacement of Comprehensive Economic Development Strategies, and for related State plans and short-term Planning Investments designed to create and retain new and better jobs, particularly for the unemployed and underemployed in the nation's most economically distressed Regions. EDA's Planning Investments support partnerships with District Organizations, Indian Tribes, community development corporations, non-profit Regional planning organizations, and other Eligible Recipients. Planning activities supported by these Investments must be part of a continuous process involving the active participation of the private sector, public officials, non-profit organizations, educational institutions, and private citizens, and include:

(a) Analyzing local economies;

(b) Defining economic development goals;

- (c) Determining Project opportunities; and
- (d) Formulating and implementing an economic development program that includes systematic efforts to reduce unemployment and increase incomes.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76129, Dec. 19, 2014]

§302.6 Additional requirements; Federal policies and procedures.

Recipients are subject to all Federal laws and to Federal, Department, and EDA policies, regulations, and procedures applicable to Federal financial assistance awards, including 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

[82 FR 57053, Dec. 1, 2017]

§303.2 Definitions.

In addition to the defined terms set forth in §300.3 of this chapter, the following terms used in this part shall have the following meanings:

Planning Investment means the award of EDA Investment Assistance under section 203 of PWEDA and this part.

Planning Organization means a Recipient whose purpose is to develop and implement a CEDS for a specific EDA-approved Region under section 203 of PWEDA.

Strategy Committee means the committee or other entity identified by the Planning Organization as responsible for the development, implementation, revision or replacement of the CEDS for the Planning Organization.

§303.3 Application requirements and evaluation criteria.

- (a) For Planning Investment awards, EDA uses the general application evaluation criteria set forth in §301.8 of this chapter. In addition, applications for Planning Investments must include information about the following:
 - (1) The proposed scope of work for the development, implementation, revision or replacement of the CEDS, or the relation of the CEDS to the proposed short-term planning activities or the State plan;
 - (2) Qualifications of the Eligible Applicant to implement the goals and objectives resulting from the CEDS, short-term planning activities or the State plan;
 - (3) The involvement of the Region's business leadership at each stage of the preparation of the CEDS, short-term planning activities or State plan;

- (4) Extent of broad-based representation and involvement of the Region's civic, business, labor, minority and other interests in the Eligible Applicant's economic development activities; and
 - (5) Feasibility of the proposed scope of work to create and retain new and better jobs through implementation of the CEDS.
- (b) In addition to the criteria set forth in paragraph (a) of this section, funded Recipients are evaluated on the basis of the extent of continuing economic distress within the Region, their past performance, and the overall effectiveness of their CEDS.
 - (c) For Planning Investment awards to a State, the Assistant Secretary also shall consider the extent to which the State will integrate and coordinate its CEDS with local and Economic Development District plans.
 - (d) The Investment Rates for Planning Investments will be determined in accordance with §301.4 of this chapter.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76129, Dec. 19, 2014]

§303.4 Award requirements.

- (a) Planning Investments shall be coordinated with and effectively leverage any other available Federal, State, or local planning assistance and private sector investments.
- (b) Except in compelling circumstances as determined by the Assistant Secretary, EDA will not provide Planning Investments for multiple CEDS that address the needs of an identical or substantially similar Region.
- (c) EDA will provide a Planning Investment for the period of time required to develop, revise or replace, and implement a CEDS, generally in 36-month renewable Investment project periods.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62866, Oct. 22, 2008; 79 FR 76130, Dec. 19, 2014]

§303.5 Eligible administrative expenses.

In accordance with applicable Federal cost principles, Planning Investments may be used to pay the direct and indirect costs incurred by a Planning Organization in the development, implementation, revision or replacement of a CEDS and for related short-term planning activities.

Subpart B—Partnership Planning Assistance

§303.6 Partnership Planning and the EDA-funded CEDS process.

- (a) *Partnership Planning Overview.* Partnership Planning Investments support a nationwide network of Planning Organizations to provide comprehensive economic development planning services to distressed Regions. EDA makes Partnership Planning Investments to enable Planning Organizations to manage and coordinate the development and implementation of CEDS to address the unique needs of their respective Regions.
- (b) *CEDS Process.* If EDA awards Investment Assistance to a Planning Organization to develop, revise, or replace a CEDS, the Planning Organization must follow the procedures set forth in this section:
 - (1) *CEDS Strategy Committee.* The Planning Organization must appoint a Strategy Committee. The Strategy Committee must represent the main economic interests of the Region, which may include Indian tribes, the private sector, State and other public officials, community leaders, private individuals, representatives of workforce development boards, institutions of higher education, minority and labor groups, and others who can contribute to and benefit from improved economic development in the relevant Region. In addition, the Strategy Committee must demonstrate the capacity to undertake a collaborative and effective planning process.
 - (2) *Public notice and comment.* The Planning Organization must develop and submit to EDA a CEDS that complies with the requirements of §303.7. Before submission to EDA, the Planning Organization must provide the public and appropriate governments and interest groups in the relevant Region with adequate notice of and opportunity to comment on the CEDS. The comment period shall be at least 30 days and the Planning Organization shall make the CEDS readily available through appropriate means of distribution, electronically and otherwise, throughout the comment period. The Planning Organization also shall make the CEDS available in hardcopy upon request. EDA may require the Planning Organization to provide any comments received and demonstrate how the comments were resolved.
 - (3) *Reports and updates.*
 - (i) After obtaining EDA approval of the CEDS, the Planning Organization must submit annually an updated CEDS performance report to EDA.
 - (ii) The Planning Organization must submit a new or revised CEDS to EDA at least every five years, unless EDA or the Planning Organization determines that a new or revised CEDS is required earlier due to changed circumstances. In connection with the submission of a new or revised CEDS, the Planning Organization shall use its best efforts to obtain renewed commitments from participating counties or other areas within the District to support the economic development activities of the District. Provided the Planning Organization can document a good faith effort to obtain

renewed commitments, the inability to secure renewed commitments shall not disqualify a CEDS update.

(iii) Any updated CEDS performance report that results in a change of the requirements set forth in §303.7(b)(1)(iii) of the EDA-accepted CEDS or any new or revised CEDS, must be available for review and comment by the public in accordance with paragraph (b)(2) of this section.

(4) *Inadequate CEDS.* If EDA determines that implementation of the CEDS is inadequate, it will notify the Planning Organization in writing and the Planning Organization shall submit to EDA a new or revised CEDS.

(5) *Regional Commission notification.* If any part of a Region is covered by one or more of the Regional Commissions as set forth in section 404 of PWEDA, the Planning Organization shall ensure that a copy of the CEDS is provided to the Regional Commission(s).

[79 FR 76130, Dec. 19, 2014, as amended at 82 FR 57054, Dec. 1, 2017]

§303.7 Requirements for Comprehensive Economic Development Strategies.

(a) *General.* CEDS are designed to bring together the public and private sectors in the creation of an economic roadmap to diversify and strengthen Regional economies. The CEDS should analyze the Regional economy and serve as a guide for establishing Regional goals and objectives, developing and implementing a Regional plan of action, and identifying investment priorities and funding sources. Public and private sector partnerships are critical to the implementation of the integral elements of a CEDS set forth in paragraph (b) of this section. As a performance-based plan, the CEDS will serve a critical role in a 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.

(b) *Strategy requirements.*

(1) A CEDS must be the result of a continuing economic development planning process, developed with broad-based and diverse public and private sector participation. Consistent with section 302 of PWEDA, each CEDS must promote Regional resiliency and be unique and responsive to the relevant Region. Each CEDS must include:

(i) A summary of economic development conditions of the Region;

(ii) An in-depth analysis of economic and community development strengths, weaknesses, opportunities, and threats (commonly known as a “SWOT” analysis);

(iii) Strategies and an implementation plan to build upon the Region's strengths and opportunities and resolve the weaknesses and threats facing the Region, which should not be inconsistent with applicable State and local economic development or workforce development strategies; and

(iv) Performance measures used to evaluate the Planning Organization's successful development and implementation of the CEDS.

(2) EDA will publish and periodically update specific CEDS content guidelines.

(c) *Consideration of non-EDA funded CEDS.*

(1) In determining the acceptability of a CEDS prepared independently of EDA Investment Assistance or oversight for Projects under parts 305 and 307 of this chapter, EDA may in its discretion determine that the CEDS is acceptable so long as it includes all of the elements listed in paragraph (b) of this section. In certain circumstances, EDA may accept a non-EDA funded CEDS that does not contain all the elements listed in paragraph (b) of this section. In doing so, EDA shall consider the circumstances surrounding the application for Investment Assistance, including emergencies or natural disasters and the fulfillment of the requirements of section 302 of PWEDA.

(2) If the CEDS for a Project under parts 305 and 307 of this chapter is developed under another federally-supported program, it must include acceptable performance measures similar to those set forth in paragraph (b) of this section and information on the state of the Regional economy. To the maximum extent practicable, the CEDS shall be consistent and coordinated with any existing economic development plan for the Region.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76130, Dec. 19, 2014; 82 FR 57054, Dec. 1, 2017]

Subpart C—State and Short-Term Planning Assistance

§303.8 Requirements for State plans.

(a) As a condition of a State receiving a Planning Investment:

(1) The State must have or develop a CEDS that meets the requirements of §303.7;

(2) Any State plan developed with Planning Investment Assistance must, to the maximum extent practicable, be developed cooperatively by the State, political subdivisions of the State, and the Economic Development Districts located wholly or partially in the State; and

(3) The State must submit to EDA an annual report on any State plan receiving Planning Investment Assistance.

(b) Before awarding a Planning Investment to a State, EDA shall consider the extent to which the State will take into account local and District economic development plans.

§303.9 Requirements for short-term Planning Investments.

- (a) In addition to providing support for CEDS and State plans, EDA also may provide Investment Assistance to support short-term planning activities. EDA may provide such Investment Assistance to:
 - (1) Develop the economic development planning capacity of States, cities and other Eligible Applicants experiencing economic distress;
 - (2) Assist in institutional capacity building; or
 - (3) Undertake innovative approaches to economic development.
- (b) Eligible activities may include updating a portion of a CEDS, economic analysis, development of economic development policies and procedures, and development of economic development goals.
- (c) Applicants for short-term Planning Investments must provide performance measures acceptable to EDA that can be used to evaluate the success of the program and provide EDA with progress reports during the term of the Planning Investment, as set forth in the Investment agreement.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76130, Dec. 19, 2014]

PART 304—ECONOMIC DEVELOPMENT DISTRICTS

AUTHORITY: 42 U.S.C. 3122; 42 U.S.C. 3171; 42 U.S.C. 3172; 42 U.S.C. 3196; Department of Commerce Organization Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

§304.1 Designation of Economic Development Districts: Regional eligibility.

Upon the request of a District Organization (as defined in §304.2), EDA may designate a Region as an Economic Development District if such Region:

- (a) Contains at least one geographic area that is subject to the economic distress criteria set forth in §301.3(a)(1) of this chapter and is identified in an approved CEDS;
- (b) Is of sufficient size or population and contains sufficient resources to foster economic development on a scale involving more than a single geographic area subject to the economic distress criteria set forth in §301.3(a)(1) of this chapter;
- (c) Has an EDA-approved CEDS that:
 - (1) Meets the requirements under §303.7 of this chapter;

- (2) Contains a specific program for intra-District cooperation, self-help, and public investment; and
- (3) Is approved by each affected State and by the Assistant Secretary;
- (d) Obtains commitments from at least a majority of the counties or other areas within the proposed District, as determined by EDA, to support the economic development activities of the District; and
- (e) Obtains the concurrence with the designation request from the State (or States) in which the proposed District will be wholly or partially located.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76131, Dec. 19, 2014]

§304.2 District Organizations: Formation, organizational requirements and operations.

- (a) *General.* A “*District Organization*” is an entity that satisfies the formation and organizational requirements under paragraphs (b) and (c) of this section.
- (b) *Formation.* A District Organization must be organized as one of the following:
 - (1) A public organization formed through an inter-governmental agreement providing for the joint exercise of local government powers; or
 - (2) A public organization established under State-enabling legislation for the creation of multi-jurisdictional area-wide planning organizations; or
 - (3) A non-profit organization incorporated under the applicable non-profit statutes of the State in which it is incorporated.
- (c) *Organization and governance.*
 - (1) Each District Organization must meet the requirements of this paragraph (c) concerning membership composition, the maintenance of adequate staff support to perform its economic development functions, and its authorities and responsibilities for carrying out economic development functions. The District Organization's board of directors (or other governing body) also must meet these requirements.
 - (2) The District Organization must demonstrate that its governing body is broadly representative of the principal economic interests of the Region, which may include the private sector, public officials, community leaders, representatives of workforce development boards, institutions of higher education, minority and labor groups, and private individuals. In addition, the governing body must demonstrate the capacity to implement the EDA-approved CEDS.
 - (3) The District Organization must be assisted by a professional staff drawn from qualified persons in economic development, planning, business development or related disciplines.

- (4) The governing bodies of District Organizations must provide access for persons who are not members to make their views known concerning ongoing and proposed District activities in accordance with the following requirements:
- (i) The District Organization must hold meetings open to the public at least twice a year and also shall publish the date and agenda of such meetings sufficiently in advance to allow the public a reasonable time to prepare in order to participate effectively.
 - (ii) The District Organization shall adopt a system of parliamentary procedures to assure that board members and others have access to an effective opportunity to participate in the affairs of the District.
 - (iii) The District Organization shall provide information sufficiently in advance of decisions to give the public adequate opportunity to review and react to proposals. District Organizations should communicate technical data and other material to the public so they may understand the impact of public programs, available options and alternative decisions.
 - (iv) The District Organization must make available to the public such audited statements, annual budgets and minutes of public meetings, as may be reasonably requested.
 - (v) The District Organization and its board of directors must comply with all Federal and State financial assistance reporting requirements and the conflicts of interest provisions set forth in §302.17 of this chapter.

(d) *Operations.*

- (1) The District Organization shall engage in the full range of economic development activities listed in its EDA-approved CEDS. These activities may include:
 - (i) Coordinating and implementing economic development activities in the District;
 - (ii) Carrying out economic development research, planning, implementation and advisory functions identified in the CEDS; and
 - (iii) Coordinating the development and implementation of the CEDS with other local, State, Federal and private organizations.
- (2) The District Organization may at its option contract for services to accomplish the activities listed in paragraphs (d)(1)(i) through (iii) of this section.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76131, Dec. 19, 2014; 82 FR 57054, Dec. 1, 2017]

§304.3 District modification and termination.

- (a) *Modification.* Upon the request of a District Organization and with the concurrence of the State or States affected (unless such concurrence is waived by the Assistant Secretary), EDA

may modify the geographic boundaries of a District, if it determines that such modification will contribute to a more effective program for economic development.

- (b) *Termination.* EDA may, upon 60 days prior written notice to the District Organization, member counties, and other areas determined by EDA and each affected State, terminate a Region's designation as an Economic Development District when:
 - (1) A District or District Organization no longer meets the requirements of §§304.1 or 304.2;
or
 - (2) EDA determines that the District Organization fails to execute its CEDS according to the development, implementation and other performance measures set forth therein; or
 - (3) A District Organization has requested termination.
- (c) Prior to terminating a District Organization under paragraph (b)(2) of this section, EDA will consult with the District Organization and consider all facts and circumstances regarding the District Organization's operations. EDA will not terminate a District's designation based on circumstances beyond the control of the District Organization (e.g., natural disaster, plant closure, overall economic downturn, sudden and severe economic dislocation, or other situation).
- (d) EDA may further modify or terminate a Region's designation as a District according to the standards set forth in an FFO.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76131, Dec. 19, 2014]

§304.4 Performance evaluations.

- (a) EDA shall evaluate the management standards, financial accountability and program performance of each District Organization within three years after the initial Investment award and at least once every three years thereafter, so long as the District Organization continues to receive Investment Assistance. EDA's evaluation shall assess:
 - (1) The continuing Regional eligibility of the District, as set forth in §304.1;
 - (2) The management of the District Organization, as set forth in §304.2; and
 - (3) The implementation of the CEDS, including the District Organization's performance and contribution towards the retention and creation of employment, as set forth in §303.7 of this chapter.
- (b) For peer review, EDA shall ensure the participation of at least one other District Organization in the performance evaluation on a cost-reimbursement basis.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76131, Dec. 19, 2014]

PART 305—PUBLIC WORKS AND ECONOMIC DEVELOPMENT INVESTMENTS

AUTHORITY: 42 U.S.C. 3211; 42 U.S.C. 3141; Department of Commerce Organization Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

Subpart A—General

§305.1 Purpose and scope.

Public Works and Economic Development Investments (“*Public Works Investments*”) intend to help the nation's most distressed communities revitalize, expand, and upgrade their physical infrastructure (as defined in §301.11 of this chapter) to attract new industry, encourage business expansion, diversify local economies, and generate or retain long-term private sector jobs and investments. The primary goal of these Investments is to create new or retain existing, long-term private sector job opportunities in communities experiencing significant economic distress as evidenced by chronic high unemployment, underemployment, low per capita income, outmigration, or a Special Need. These Investments also intend to assist communities in attracting private capital investment and new and better job opportunities and to promote the successful long-term economic recovery of a Region.

[79 FR 76131, Dec. 19, 2014]

§305.2 Award requirements.

(a) *Project scope.* Public Works Investments may fund the following activities:

- (1) Acquisition or development of land and improvements for use in a public works, public service or other type of development facility; or
- (2) Acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment.

(b) *Requirements.* A Public Works Investment may be made if EDA determines that:

- (1) The Project will, directly or indirectly:
 - (i) Improve the opportunities for the successful establishment or expansion of industrial or commercial plants or facilities in the Region where the Project is located;
 - (ii) Assist in the creation of additional long-term employment opportunities in the Region; or
 - (iii) Primarily benefit the long-term unemployed and members of low-income families in the Region;

- (2) The Project will fulfill a pressing need of the Region, or a part of the Region, in which the Project is located; and
 - (3) The Region in which the Project is located has a CEDS and the Project is consistent with the CEDS.
- (c) Not more than 15 percent of the annual appropriations made available to EDA to fund Public Works Investments may be made in any one State.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76131, Dec. 19, 2014]

§305.3 Application requirements.

- (a) Each application for Public Works Investment Assistance must:
- (1) Include evidence of eligibility, as provided in part 301 of this chapter;
 - (2) Include, or incorporate by reference, a CEDS (as provided in §303.7 of this chapter);
 - (3) Demonstrate how the proposed Project meets the criteria of §305.2; and
 - (4) Demonstrate how the proposed Project meets the application evaluation criteria set forth in §301.8 of this chapter.
- (b) The Investment Rate for Public Works Investments will be determined in accordance with §301.4 of this chapter.

[71 FR 56675, Sept. 27, 2006, as amended at 75 FR 4264, Jan. 27, 2010]

§305.4 Projects for design and engineering work.

In the case of Public Works Investment Assistance awarded solely for design and engineering work, the following additional application requirements and terms shall apply:

- (a) EDA may determine that a separate Investment for design and engineering is warranted due to the technical complexity or environmental sensitivity of the construction Project;
- (b) The purpose of the Investment may be limited to the development and production of all documents required for the construction of the proposed construction Project in a format and in sufficient quantity to permit advertisement and award of a construction contract soon after securing construction financing for the Project;
- (c) EDA will not disburse any portion of the Investment Assistance until it receives and certifies compliance with the Investment award of all design and engineering contracts; and
- (d) EDA's funding of the Project for design and engineering work does not in any way commit EDA to fund construction of the Project.

Subpart B—Requirements for Approved Projects

§305.5 Project administration by District Organization.

- (a) When a District Organization is not the Recipient or co-Recipient of Investment Assistance, the District Organization may administer the Project for the Recipient if EDA determines fulfillment of the following conditions:
 - (1) The Recipient has requested (either in the application or by separate written request) that the District Organization for the Region in which the Project is located administer the Project;
 - (2) The Recipient certifies and EDA finds that:
 - (i) Administration of the Project is beyond the capacity of the Recipient's current staff and would require hiring additional staff or contracting for such services;
 - (ii) No local organization or business exists that could administer the Project in a more efficient or cost-effective manner than the staff of the District Organization; and
 - (iii) The staff of the District Organization would administer the Project without sub-contracting the work; and
 - (3) The allowable costs for the administration of the Project by the District Organization's staff will not exceed the amount that would be allowable to the Recipient.
- (b) EDA must approve the request either by approving the application in which the request is made or by separate specific written approval.

§305.6 Allowable methods of procurement for construction services.

- (a) Recipients shall seek EDA's prior written approval to use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). These alternate methods may include design/build, construction management at risk, and force account. If an alternate method is used, the Recipient shall submit to EDA for approval a construction services procurement plan and the Recipient must use a design professional to oversee the process. The Recipient shall submit the plan to EDA prior to advertisement for bids and shall include the following, as applicable:
 - (1) Justification for the proposed method for procurement of construction services, including a brief analysis of the appropriateness and benefits of using the method to successfully execute the Project and the Recipient's experience in using the method;
 - (2) The scope of work with cost estimates and schedules;
 - (3) A copy of the proposed construction contract;
 - (4) The name and qualifications of the selected design professional; and

(5) Procedures to be used to ensure full and open competition, including the selection criteria.

(b) For all procurement methods, the Recipient must comply with the procedures and standards set forth in 2 CFR part 200.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62866, Oct. 22, 2008; 79 FR 76131, Dec. 19, 2014; 82 FR 57054, Dec. 1, 2017]

§305.7 Services performed by the Recipient's own forces.

In certain circumstances, the Recipient may wish to consider having a portion or all of the design, construction, inspection, legal services or other work and/or services in connection with the Project performed by personnel who are employed by the Recipient either full-time or part-time. EDA may approve the use of such “in-house forces” if:

- (a) The services are routinely performed by the Recipient for all construction Projects performed by the Recipient (for example, inspection or legal); or
- (b) The Recipient has a special skill required for the construction of the Project (for example, construction of unique Indian structures); or
- (c) The Recipient has made all reasonable efforts to obtain a contractor but has failed to do so because of uncontrollable factors such as the remoteness of the Project site or an overabundance of construction work in the Region; or
- (d) The Recipient demonstrates substantial cost savings.

§305.8 Recipient-furnished equipment and materials.

The Recipient may wish to incorporate into the Project equipment or materials that it will secure through its own efforts, subject to the following requirements:

- (a) EDA must approve any use of Recipient-furnished equipment and materials. EDA may require that major equipment items be subject to a lien in favor of EDA and also may require a statement from the Recipient regarding expected useful life and salvage value of such equipment;
- (b) EDA may require the Recipient to establish that the expense claimed for such equipment or materials is competitive with current local market costs; and
- (c) Acquisition of Recipient-furnished equipment or materials under this section also is subject to the requirements of 2 CFR part 200.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76132, Dec. 19, 2014; 82 FR 57054, Dec. 1, 2017]

§305.9 Project phasing and Investment disbursement.

- (a) EDA may authorize in advance the award of construction contracts in phases, provided the Recipient submits a request that includes each of the following:
 - (1) Valid reasons justifying why the Project must be phased;
 - (2) Description of the specific elements to be completed in each phase;
 - (3) Detailed construction cost estimates for each phase;
 - (4) Time schedules for completing all phases of the Project;
 - (5) Certification that the Recipient can and will fund any overrun(s); and
 - (6) Certification that the Recipient is capable of paying incurred costs prior to the first disbursement of EDA funds.
- (b) EDA will begin disbursement of funds after receipt of evidence sufficient to EDA of compliance with all Investment award conditions. EDA may approve the disbursement of funds prior to the tender of all construction contracts if the Recipient can demonstrate to EDA's satisfaction that a severe financial hardship will result without such approval.

§305.10 Bid underrun and overrun.

- (a) *Underrun.* If at the construction contract bid opening, the lowest responsive bid is less than the total Project cost, the Recipient shall notify EDA immediately to determine relevant procedures.
- (b) *Overrun.*
 - (1) In the case of an overrun at the construction contract bid opening, the Recipient may:
 - (i) If provided for in the bid documents, take deductive alternatives to eliminate certain Project elements in case of insufficient funds in the exact order shown on the invitation for bid until at least one of the responsive bids, less deductive alternative(s), results in a price within the budget for that item of work;
 - (ii) Reject all bids and re-advertise if there is a rational basis to expect that re-advertising will result in a lower bid; or
 - (iii) Augment the Matching Share by an amount sufficient to cover the excess cost. The Recipient must furnish a letter to EDA identifying the source of the additional funds and confirming that the Matching Share meets the requirements of §301.5 of this chapter.
 - (2) If the Recipient demonstrates to EDA's satisfaction that the options listed in paragraph (b)(1) of this section are not feasible and the Project cannot be completed otherwise, the

Recipient may submit a written request to EDA for additional funding in accordance with applicable EDA guidance. The award of additional Investment Assistance is at EDA's sole discretion and will be considered in accord with EDA's competitive process requirements. EDA's consideration of a request for additional Investment Assistance does not indicate approval.

[79 FR 76132, Dec. 19, 2014]

§305.11 Contract awards; early construction start.

EDA must determine that the award of all contracts necessary for design and construction of the Project facilities is in compliance with the terms and conditions of the Investment award in order for the costs to be eligible for EDA reimbursement. Pending this determination, the Recipient may issue a notice permitting construction under the contract to commence. If construction commences prior to EDA's determination, the Recipient proceeds at its own risk until EDA review and concurrence. The EDA regional office will advise the Recipient of the requirements necessary to obtain EDA's determination.

§305.12 Project sign.

The Recipient shall be responsible for the construction, erection and maintenance in good condition throughout the construction period of a sign or signs at a conspicuous place at the Project site indicating that the Federal government is participating in the Project. The EDA regional office will provide mandatory specifications for the signage.

§305.13 Contract change orders.

- (a) If it becomes necessary to alter the construction contracts post-execution, the Recipient and contractor shall agree to a formal contract change order.
- (b) All contract change orders must receive EDA review for compliance with the terms and conditions of the Investment award, even if the Recipient is to pay for all additional costs resulting from the change or the change order reduces the contract price.
- (c) Work on the Project may continue pending EDA review of the contract change order, but all such work will be at the Recipient's risk until EDA completes its review.

§305.14 Occupancy prior to completion.

Occupancy of any part of the Project prior to final acceptance is entirely at the Recipient's risk and must follow the requirements of local and State law.

PART 306—TRAINING, RESEARCH AND TECHNICAL ASSISTANCE INVESTMENTS

AUTHORITY: 42 U.S.C. 3147; 42 U.S.C. 3196; 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

Subpart A—Local and National Technical Assistance

§306.1 Purpose and scope.

- (a) Local and National Technical Assistance Investments may be awarded to:
- (1) Determine the causes of excessive unemployment, underemployment, low per capita income, outmigration or other problems throughout the nation;
 - (2) Formulate and implement economic development tools, models, and innovative techniques that will alleviate or prevent conditions of excessive unemployment or underemployment;
 - (3) Formulate and implement economic development programs to increase local, regional and national capacity;
 - (4) Evaluate the effectiveness and economic impact of programs, projects and techniques to alleviate economic distress and promote economic development;
 - (5) Conduct project planning and feasibility studies;
 - (6) Provide management and operational assistance;
 - (7) Establish business outreach centers;
 - (8) Disseminate information about effective programs, projects and techniques that alleviate conditions of economic distress and promote economic development;
 - (9) Assess, market and establish business clusters and associations; or
 - (10) Perform other activities determined by EDA to be appropriate under the Local and National Technical Assistance program.
- (b) Investment Assistance may not be used to start or expand a private business.
- (c) EDA may identify specific training, research or technical assistance Projects it will fund, which will be subject to competition. Ordinarily, these Projects are specified in an FFO, which will provide the specific requirements, timelines and the appropriate points of contact and addresses.
- (d) In providing Local and National Technical Assistance under this subpart, EDA, in addition to making Investments, may:
- (1) Provide Local and National Technical Assistance through officers or employees of the Department;

- (2) Pay funds made available to carry out this subpart to Federal Agencies; or
- (3) Employ private individuals, partnerships, businesses, corporations, or appropriate institutions under contracts entered into for this purpose.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76132, Dec. 19, 2014]

§306.2 Award requirements.

EDA selects Projects for Local and National Technical Assistance Investments in accordance with the general evaluation and selection criteria set forth in part 301 of this chapter and the extent to which the Project:

- (a) Strengthens the capacity of local, State or national organizations and institutions to undertake and promote effective economic development programs targeted to Regions of distress;
- (b) Benefits distressed Regions;
- (c) Demonstrates innovative approaches to stimulate economic development in distressed Regions;
- (d) Is consistent with an EDA-approved CEDS, as applicable, for the Region in which the Project is located; and
- (e) Meets the criteria outlined in the applicable FFO.

§306.3 Application requirements.

- (a) EDA will provide Investment Assistance under this subpart for the period of time required to complete the Project's scope of work, generally not to exceed 12 to 18 months.
- (b) For a Project of significant Regional or national scope, EDA may waive the requirement set forth in §301.2(b) of this chapter that the non-profit organization act in cooperation with officials of a political subdivision of a State.
- (c) The Investment Rate for Investments under this subpart shall be determined in accordance with §301.4(b)(4) of this chapter.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76132, Dec. 19, 2014]

Subpart B—University Center Economic Development Program

§306.4 Purpose and scope.

The University Center Economic Development Program is intended to help improve the economies of distressed Regions. Institutions of higher education have many assets, such as faculty, staff, libraries, laboratories, and computer systems that can address local economic problems and opportunities. With Investment Assistance, institutions of higher education

establish and operate research centers (“*University Centers*”) that provide technical assistance to public and private sector organizations with the goal of enhancing local economic development.

[79 FR 76132, Dec. 19, 2014]

§306.5 Award requirements.

EDA provides Investment Assistance to University Center Projects in accordance with the general evaluation and selection criteria set forth in part 301 of this chapter, the competitive selection process outlined in the applicable FFO, and the extent to which the Project:

- (a) Addresses the economic development needs, issues and opportunities of the Region and will benefit distressed areas in the Region;
- (b) Provides service and value that are unique and will maximize coordination with other organizations in the Region;
- (c) Has the commitment and support (both financial and non-financial) of the highest management levels of the sponsoring institution;
- (d) Outlines activities consistent with the expertise of the proposed staff, academic programs and other resources available within the sponsoring institution; and
- (e) Documents past experience of the sponsoring institution in operating technical assistance programs.

§306.6 Application requirements.

- (a) EDA will provide Investment Assistance under this subpart for the period of time required to complete the Project's scope of work, as specifically outlined in the applicable FFO.
- (b) For a Project of significant Regional or national scope, EDA may waive the requirement set forth in §301.2(b) of this chapter that the non-profit organization act in cooperation with officials of a political subdivision of a State.
- (c) The Investment Rate for Investments under this subpart shall be determined in accordance with §301.4(b)(4) of this chapter.
- (d) At least 80 percent of EDA funding must be allocated to direct costs of program delivery.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76132, Dec. 19, 2014]

§306.7 Performance evaluations of University Centers.

- (a) EDA will:

- (1) Evaluate each University Center within three years after the initial Investment award and at least once every three years thereafter, so long as such University Center continues to receive Investment Assistance; and
 - (2) Assess the University Center's contribution to providing technical assistance, conducting applied research, meeting program performance objectives (as evidenced by retention and creation of employment opportunities) and disseminating Project results in accordance with the scope of work funded during the evaluation period.
- (b) The performance evaluation will determine in part whether a University Center can compete to receive Investment Assistance under the University Center Economic Development Program for the following Investment Assistance cycle.
 - (c) For peer review, EDA shall ensure the participation of at least one other University Center in the performance evaluation on a cost-reimbursement basis.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76132, Dec. 19, 2014]

PART 307—ECONOMIC ADJUSTMENT ASSISTANCE INVESTMENTS

AUTHORITY: 42 U.S.C. 3211; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3162; 42 U.S.C. 3233; Department of Commerce Organization Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

Subpart A—General

§307.1 Purpose.

The purpose of Economic Adjustment Assistance Investments is to address the needs of communities experiencing adverse economic changes that may occur suddenly or over time, including those caused by:

- (a) Military base closures or realignments, defense contractor reductions in force, or U.S. Department of Energy defense-related funding reductions;
- (b) Federally Declared Disaster;
- (c) International trade;
- (d) Long-term economic deterioration;
- (e) Loss of a major community employer; or
- (f) Loss of manufacturing jobs.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76132, Dec. 19, 2014]

§307.2 Criteria for Economic Adjustment Assistance Investments.

- (a) Economic Adjustment Assistance Investments are intended to enhance a distressed community's ability to compete economically by stimulating private investment in targeted economic sectors through use of tools that:
 - (1) Help develop and implement a CEDS;
 - (2) Expand the capacity of public officials and economic development organizations to work effectively with businesses;
 - (3) Assist in overcoming major obstacles identified in the CEDS;
 - (4) Enable communities to plan and coordinate the use of Federal resources and other resources available to support economic recovery, development of Regional economies, or recovery from natural or other disasters; or
 - (5) Encourage the development of innovative public and private approaches to economic restructuring and revitalization.
- (b) Economic Adjustment Assistance Investments may be made when the Project funded by the Investment will help the Region meet a Special Need. The Region in which a Project is located must have a CEDS with which the Project is consistent (except that this requirement shall not apply to Strategy Grants described in §307.3).

§307.3 Use of Economic Adjustment Assistance Investments.

Economic Adjustment Assistance Investments may be used to develop a CEDS to alleviate long-term economic deterioration or a sudden and severe economic dislocation (a “*Strategy Grant*”), or to fund a Project implementing such a CEDS (an “*Implementation Grant*”).

- (a) Strategy Grants support developing, updating or refining a CEDS.
- (b) Implementation Grants support the execution of activities identified in a CEDS. Specific activities may be funded as separate Investments or as multiple elements of a single Investment. Examples of Implementation Grant activities include:
 - (1) Infrastructure (as defined in §301.11 of this chapter) improvements, such as site acquisition, site preparation, construction, rehabilitation and equipping of facilities;
 - (2) Provision of business or infrastructure financing through the capitalization of Recipient-administered Revolving Loan Funds (“*RLFs*”), which may include loans and interest rate buy-downs to facilitate business lending activities;
 - (3) Market or industry research and analysis;
 - (4) Technical assistance, including organizational development such as business networking, restructuring or improving the delivery of business services, or feasibility studies;

- (5) Public services;
- (6) Training; and
- (7) Other activities justified by the CEDS that satisfy applicable statutory and regulatory requirements.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76132, Dec. 19, 2014]

§307.4 Award requirements.

- (a) *General.* EDA will select Economic Adjustment Assistance Projects in accordance with part 301 of this chapter and the additional criteria provided in paragraphs (b), (c), and (d) of this section, as applicable. Funding priority considerations for Economic Adjustment Assistance, including RLF Grants, may be set forth in an FFO.
- (b) *Strategy Grants.* EDA will review Strategy Grant applications to ensure that the proposed activities conform to the CEDS requirements set forth in §303.7 of this chapter. Strategy Grants shall comply with the applicable provisions of part 303 of this chapter.
- (c) *Implementation Grants.*
 - (1) EDA will review Implementation Grant applications for the extent to which the:
 - (i) Applicable CEDS meets the requirements in §303.7 of this chapter; and
 - (ii) Proposed Project is identified as a necessary element of or consistent with the applicable CEDS.
 - (2) Implementation Grants involving construction shall comply with the provisions of subpart B of part 305 of this chapter.
 - (3) Implementation Grants that do not involve construction shall comply with the applicable provisions of subpart A of part 306 of this chapter.
- (d) *See* §307.7 for RLF award requirements.

[71 FR 56675, Sept. 27, 2006, as amended at 75 FR 4264, Jan. 27, 2010; 79 FR 76132, Dec. 19, 2014]

§307.5 Application requirements.

- (a) Each application for Economic Adjustment Assistance must:
 - (1) Include or incorporate by reference (if so approved by EDA) a CEDS, except that a CEDS is not required when applying for a Strategy Grant; and
 - (2) Explain how the proposed Project meets the criteria set forth in §307.2.

- (b) For a technical assistance Project of significant Regional or national scope under this subpart, EDA may waive the requirement set forth in §301.2(b) of this chapter that the non-profit organization act in cooperation with officials of a political subdivision of a State.

Subpart B—Revolving Loan Fund Program

§307.6 Revolving Loan Funds established for lending.

Economic Adjustment Assistance Grants to capitalize or recapitalize RLFs most commonly fund business lending, but also may fund public infrastructure or other authorized lending activities. The requirements in this subpart apply to EDA-funded RLFs. Special award conditions may contain appropriate modifications of these requirements.

[82 FR 57054, Dec. 1, 2017]

§307.7 Revolving Loan Fund award requirements.

- (a) For Eligible Applicants seeking to capitalize or recapitalize an RLF, EDA will review applications for the following, as applicable:
- (1) Need for a new or expanded public financing tool to:
 - (i) Enhance other business assistance programs and services targeting economic sectors and locations described in the CEDS; or
 - (ii) Provide appropriate support for post-disaster economic recovery efforts in Presidentially Declared Disaster areas;
 - (2) Types of financing activities anticipated; and
 - (3) Capacity of the RLF organization to manage lending activities, create networks between the business community and other financial providers, and implement the CEDS.
- (b) RLF Grants shall comply with the requirements set forth in this part, as well as relevant provisions of parts 300 through 303, 305, and 314 of this chapter and in the following publications:
- (1) EDA's RLF Standard Terms and Conditions; and
 - (2) The Compliance Supplement, which is appendix XI to 2 CFR part 200 and is available on the OMB Web site at https://www.whitehouse.gov/omb/circulars_default.

[79 FR 76133, Dec. 19, 2014, as amended at 82 FR 57055, Dec. 1, 2017]

§307.8 Definitions.

In addition to the defined terms set forth in §300.3 of this chapter, the following terms used in this part shall have the following meanings:

Allowable Cash Percentage means the average percentage of the RLF Capital Base maintained as RLF Cash Available for Lending by RLF Recipients in each EDA regional office's portfolio of RLF Grants over the previous year.

Closed Loan means any loan for which all required documentation has been received, reviewed and executed by an RLF Recipient.

Disbursement Phase means the period of loan activity where Grant funds awarded have not been fully disbursed to the RLF Recipient.

Exempt Security means a Security that is not subject to certain SEC or Federal Reserve Board rules.

Prudent Lending Practices means generally accepted underwriting and lending practices for public loan programs, based on sound judgment to protect Federal and lender interests. Prudent Lending Practices include loan processing, documentation, loan approval, collections, servicing, administrative procedures, collateral protection and recovery actions. Prudent Lending Practices provide for compliance with local laws and filing requirements to perfect and maintain a security interest in RLF collateral.

Recapitalization Grants are Investments of additional Grant funds to increase the RLF Capital Base.

Reporting Period, for purposes of this subpart only, is based on the RLF Recipient's fiscal year end and is on an annual or semi-annual basis as determined by EDA.

Revolving Phase means that stage of the RLF's business lending activities that commences immediately after all Grant funds have been disbursed to the RLF Recipient.

Risk Analysis System refers to a set of measures defined by EDA to evaluate a Recipient's administration of its RLF Grant and that may include but is not limited to capital, assets, management, earnings, liquidity, strategic results, and financial controls.

RLF Capital Base means the total value of RLF Grant assets administered by the RLF Recipient. It is equal to the amount of Grant funds used to capitalize (and recapitalize, if applicable), the RLF, plus Local Share, plus RLF Income less any eligible and reasonable administrative expenses, plus Voluntarily Contributed Capital, less any loan losses and disallowances. Except as used to pay for eligible and reasonable administrative costs associated with the RLF's operations, the RLF Capital Base is maintained in two forms at all times: As RLF Cash Available for Lending and as outstanding loan principal.

RLF Cash Available for Lending means the portion of the RLF Capital Base that is held as cash and available to make loans. This excludes loans that have been committed or approved but have not yet been funded.

RLF Income means interest earned on outstanding loan principal and RLF accounts holding RLF funds, all fees and charges received by the RLF, and other income generated from RLF operations. An RLF Recipient may use RLF Income only to capitalize the RLF for financing

activities and to cover eligible and reasonable costs necessary to administer the RLF, unless otherwise provided for in the Grant agreement or approved in writing by EDA. RLF Income excludes repayments of principal and any interest remitted to the U.S. Treasury pursuant to generally accepted accounting principles (GAAP) and §307.20(h).

RLF Recipient means the Eligible Recipient that receives an RLF Grant to manage an RLF in accordance with an RLF Plan, Prudent Lending Practices, the terms and conditions of the RLF Grant, and all applicable policies, laws, and regulations.

RLF Third Party, for purposes of this subpart B only, means an Eligible Recipient or for-profit entity selected by EDA through a request for applications or Cooperative Agreement to facilitate or manage the intended liquidation of an RLF.

Sale means an EDA-approved sale by an RLF Recipient of its RLF loan portfolio (or a portion thereof) to a third party. A third party may participate in a subsequent Securitization offered in a secondary market transaction and collateralized by the underlying RLF loan portfolio (or a portion thereof).

SEC or the *Commission* means the U.S. Securities and Exchange Commission.

Securitization refers to the financing technique of securing an investment of new capital with a stream of income generated by aggregating similar instruments such as loans or mortgages into a new transferable Security.

Security means any investment instrument issued by a corporation, government or other organization which offers evidence of debt or equity.

Voluntary Contributed Capital means an RLF Recipient's voluntary infusion of additional non-EDA funds into the RLF Capital Base that is separate from and exceeds any Local Share that is required as a condition of the RLF Grant. Voluntary Contributed Capital is an irrevocable addition to the RLF Capital Base and must be administered in accordance with EDA regulations and policies.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62867, Oct. 22, 2008; 75 FR 4264, Jan. 27, 2010; 82 FR 57055, Dec. 1, 2017]

§307.9 Revolving Loan Fund Plan.

All RLF Recipients shall manage RLFs in accordance with an RLF plan (the “*RLF Plan*” or “*Plan*”) as described in this section. The Plan shall be submitted in electronic format to EDA for approval, unless EDA approves a paper submission.

(a) *Format and content.*

- (1) Part I of the Plan titled “Revolving Loan Fund Strategy” shall summarize the Region's CEDS or EDA-approved economic development plan, if applicable, and business development objectives, and shall describe the RLF's financing strategy, policy and portfolio standards.

(2) Part II of the Plan titled “Operational Procedures” must serve as the RLF Recipient's internal operating manual and set out administrative procedures for operating the RLF consistent with “Prudent Lending Practices,” as defined in §307.8, the RLF Recipient's environmental review and compliance procedures as set out in §307.10, and EDA's conflicts of interest rules set out in §302.17 of this chapter.

(b) *Evaluation of RLF Plans.* EDA will use the following criteria in evaluating Plans:

- (1) The Plan must be consistent with the CEDS or EDA-approved economic development plan, if applicable, for the Region.
- (2) The Plan must identify the strategic purpose of the RLF and must describe the selection of the financing strategy and lending criteria, including:
 - (i) An analysis of the local capital market and the financing needs of the targeted businesses; and
 - (ii) Financing policies and portfolio standards that are consistent with EDA's policies and requirements; and
- (3) The Plan must demonstrate an adequate understanding of commercial loan portfolio management procedures, including loan processing, underwriting, closing, disbursements, collections, monitoring, and foreclosures. It also shall provide sufficient administrative procedures to prevent conflicts of interest and to ensure accountability, safeguarding of assets and compliance with Federal and local laws.

(c) *Revision and Modification of RLF Plans.*

- (1) An RLF Recipient must update its Plan as necessary in accordance with changing economic conditions in the Region; however, at a minimum, an RLF Recipient must submit an updated Plan to EDA every five years.
- (2) An RLF Recipient must notify EDA of any change(s) to its Plan. Any material modification, such as a merger, consolidation, or change in the EDA-approved lending area under §307.18, a change in critical management staff, or a change to the strategic purpose of the RLF, must be submitted to EDA for approval prior to any revision of the Plan. If EDA approves the modification, the RLF Recipient must submit an updated Plan to EDA in electronic format, unless EDA approves a paper submission.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62867, Oct. 22, 2008; 75 FR 4264, Jan. 27, 2010; 79 FR 76133, Dec. 19, 2014]

§307.10 Pre-loan requirements.

- (a) RLF Recipients must adopt 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 this chapter. The

RLF Recipient also must adopt procedures to comply, and ensure that potential borrowers comply, with applicable environmental laws and regulations.

- (b) RLF Recipients 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 RLF Recipients must adopt procedures to diligently correct instances of non-compliance, including loan call stipulations.
- (c) 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 RLF Recipient or any of its borrowers, predecessors or successors.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76133, Dec. 19, 2014]

§307.11 Pre-disbursement requirements and disbursement of funds to Revolving Loan Funds.

(a) *Pre-disbursement requirements.*

- (1) Within 60 calendar days before the initial disbursement of EDA funds, the RLF Recipient must provide the following in a form acceptable to EDA:
 - (i) Certification from the RLF Recipient that the Recipient's accounting system is adequate to identify, safeguard, and account for the entire RLF Capital Base, outstanding RLF loans, and other RLF operations.
 - (ii) The RLF Recipient's certification that standard RLF loan documents reasonably necessary or advisable for lending are in place and a certification from the RLF Recipient's legal counsel that the loan documents are adequate and comply with the terms and conditions of the RLF Grant, RLF Plan, and applicable State and local law. The standard loan documents must include, at a minimum, the following:
 - (A) Loan application;
 - (B) Loan agreement;
 - (C) Board of directors' meeting minutes approving the RLF loan;
 - (D) Promissory note;
 - (E) Security agreement(s);
 - (F) Deed of trust or mortgage (as applicable);

- (G) Agreement of prior lien holder (as applicable); and
 - (H) Evidence demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed.
- (iii) Evidence of fidelity bond coverage for persons authorized to handle funds under the RLF Grant 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.
- (2) The RLF Recipient is required to maintain the adequacy of the RLF's accounting system and maintain and update standard RLF loan documents at all times during the duration of the RLF's operation. In addition, the RLF recipient must maintain sufficient fidelity bond coverage as described in this subsection for the duration of the RLF's operation. The RLF Recipient shall maintain records and documentation to demonstrate the requirements set out in this paragraph (a) are maintained for the duration of the RLF's operation. *See also* §307.13(b)(3).
- (b) *Timing of request for disbursements.* An RLF Recipient shall request disbursements of Grant funds only to close a loan or disburse RLF funds to a borrower. The RLF Recipient must disburse the RLF funds to a borrower within 30 days of receipt of the Grant funds. Any Grant funds not disbursed within the 30 day period shall be refunded to EDA pursuant to paragraph (e) of this section.
- (c) *Amount of disbursement.* The amount of a disbursement of Grant funds shall be the amount required to meet the Federal share requirement of a new RLF loan. RLF Income held during the disbursement phase may be used to reimburse eligible administrative costs. RLF Income earned and principal repaid during the Disbursement Phase must be placed in the RLF Capital Base and may be used to reimburse eligible and reasonable administrative costs, provide the requirements of §307.12(a) and (b) are met, and increase the RLF Capital Base. RLF Income earned and principal repaid during the Disbursement Phase is not required to be used for new RLF loans, unless otherwise specified in the terms and conditions of an RLF Grant.
- (d) *Interest-bearing account.* All Grant funds disbursed by EDA to the RLF Recipient for loan obligations incurred but not yet disbursed to an eligible RLF borrower must be deposited and held in an interest-bearing account by the Recipient until an RLF loan is made to a borrower.
- (e) *Delays.* If the RLF Recipient receives Grant funds and the RLF loan disbursement is subsequently delayed beyond 30 days, the RLF Recipient must notify the applicable grants officer and return such non-disbursed funds to EDA. Grant funds returned to EDA shall be available to the RLF Recipient for future draw-downs. When returning prematurely drawn Grant funds, the RLF Recipient must clearly identify on the face of the check or in the written notification to the applicable grants officer "EDA," the Grant award number, the words "Premature Draw," and a brief description of the reason for returning the Grant funds.
- (f) *Local Share.*

- (1) Cash Local Share of the RLF may only be used for lending purposes. The cash Local Share must be used either in proportion to the Grant funds or at a faster rate than the Grant funds.
- (2) When an RLF has a combination of In-Kind Contributions, which must be specifically authorized in the terms and conditions of the RLF Grant and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs, and cash Local Share, the cash Local Share and the Grant funds will be disbursed proportionately as needed for lending activities, provided that the last 20 percent of the Grant funds may not be disbursed until all cash Local Share has been expended. The full amount of the cash Local Share shall remain for use in the RLF.

(g) *Loan closing and disbursement schedule.*

- (1) RLF loan activity must be sufficient to draw down Grant funds in accordance with the schedule prescribed in the award conditions for loan closings and disbursements to eligible RLF borrowers. The schedule usually requires that the RLF Recipient lend the entire amount of the RLF Grant within three years of the Grant award.
- (2) If an RLF Recipient fails to meet the prescribed lending schedule, EDA may de-obligate the non-disbursed balance of the RLF Grant. EDA may allow exceptions where:
 - (i) Closed Loans approved prior to the schedule deadline will commence and complete disbursements within 45 days of the deadline;
 - (ii) Closed Loans have commenced (but not completed) disbursement obligations prior to the deadline; or
 - (iii) EDA has approved a time schedule extension pursuant to paragraph (h) of this section.

(h) *Time schedule extensions.*

- (1) RLF Recipients shall promptly inform EDA in writing of any condition that may adversely affect their ability to meet the prescribed schedule deadlines. RLF Recipients must submit a written request to EDA for continued use of Grant funds beyond a missed deadline for disbursement of RLF funds. RLF Recipients must provide good reason for the delay in their extension request by demonstrating that:
 - (i) The delay was unforeseen or beyond the control of the RLF Recipient;
 - (ii) The financial need for the RLF still exists;
 - (iii) The current and planned use and the anticipated benefits of the RLF will remain consistent with the current CEDS and the RLF Plan; and
 - (iv) The proposal of a revised time schedule is reasonable. An extension request must also provide an explanation as to why no further delays are anticipated.

- (2) EDA is under no obligation to grant a time extension. In the event an extension is denied, EDA may de-obligate all or part of the unused Grant funds and terminate the Grant.

[71 FR 56675, Sept. 27, 2006, as amended at 75 FR 4264, Jan. 27, 2010; 79 FR 76133, Dec. 19, 2014; 82 FR 57055, Dec. 1, 2017]

§307.12 Revolving Loan Fund Income requirements during the Revolving Phase; payments on defaulted and written off Revolving Loan Fund loans; Voluntarily Contributed Capital.

- (a) *Revolving Loan Fund Income requirements during the Revolving Phase.* During the Revolving Phase, 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 is earned and the administrative costs are accrued in the same fiscal year of the RLF Recipient;
 - (2) RLF Income earned, but not used for administrative costs during the same fiscal year of the RLF Recipient is made available for lending activities;
 - (3) RLF Income shall not be withdrawn from the RLF Capital Base in a subsequent fiscal year for any purpose other than lending without the prior written consent of EDA; and
 - (4) An RLF Recipient shall not use funds in excess of RLF Income for administrative costs unless directed otherwise in writing by EDA. In accordance with EDA's RLF Risk Analysis System, RLF Recipients are expected to keep administrative costs to a minimum in order to maintain the RLF Capital Base. The percentage of RLF Income used for administrative expenses will be one of the measures used in EDA's RLF Risk Analysis System to evaluate RLF Recipients. *See also* §307.16.
- (b) *Compliance guidance.* When charging costs against RLF Income, RLF Recipients must comply with applicable Federal uniform administrative requirements, cost principles, and audit requirements as detailed in this paragraph (b) and in the terms and conditions of the RLF Grant.
- (1) *For RLF Grants made on or after December 26, 2014.* For RLFs awarded on or after December 26, 2014 or for RLFs that have received one or more Recapitalization Grants on or after December 26, 2014, the RLF Recipient must comply with the administrative and cost principles in 2 CFR part 200 (“Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”).
 - (2) *For RLF Grants made before December 26, 2014.* For RLFs awarded before December 26, 2014, unless otherwise indicated in the terms of the Grant, the RLF Recipient must comply with the following cost principles:
 - (i) 2 CFR part 225 (OMB Circular A-87 for State, local, and Indian tribal governments),

(ii) 2 CFR part 230 (OMB Circular A-122 for non-profit organizations other than institutions of higher education, hospitals or organizations named in OMB Circular A-122 as not subject to such Circular), and

(iii) 2 CFR part 220 (OMB Circular A-21 for educational institutions).

(3) *For all RLF Grants.* For all RLF Grants, regardless of when they were awarded, the audit requirements set out as subpart F to 2 CFR part 200 apply to audits of the RLF Recipient's fiscal years beginning on or after December 26, 2014. In addition, the Compliance Supplement, which is appendix XI to 2 CFR part 200, applies as appropriate.

(c) *Priority of payments on defaulted and written off RLF loans.* When an RLF Recipient receives proceeds on a defaulted or written off RLF loan that is not subject to liquidation pursuant to §307.21, such proceeds shall be applied in the following order of priority:

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

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

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

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

(d) *Voluntarily Contributed Capital.* An RLF Recipient that wishes to inject additional capital into the RLF Capital Base to augment the amount of resources available to lend must submit a written request that specifies the source of the funds to be added. Once an RLF Recipient elects to commit Voluntarily Contributed Capital and upon approval by EDA, the Voluntarily Contributed Capital becomes an irrevocable part of the RLF Capital Base and may not be subsequently withdrawn or separated from the RLF.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62867, Oct. 22, 2008; 79 FR 76134, Dec. 19, 2014; 82 FR 57056, Dec. 1, 2017]

§307.13 Records and retention.

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

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

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

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

- (1) Maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs.
- (2) Retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF for three years from the actual submission date of the report that covers the fiscal year in which such costs were claimed.
- (3) Consistent with §307.11(a), for the duration of RLF operations, 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; and
 - (iii) Evidence of fidelity bond coverage for persons authorized to handle funds under the Grant award in an amount sufficient to protect the interests of EDA and the RLF.
- (4) Make available for inspection retained records, including those retained for longer than the required period. The record retention periods described in this section are minimum periods and such prescription does not limit any other record retention requirement of law or agreement. In no event will EDA question claimed administrative costs that are more than three years old, unless fraud is at issue.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62867, Oct. 22, 2008; 79 FR 76134, Dec. 19, 2014; 82 FR 57057, Dec. 1, 2017]

§307.14 Revolving Loan Fund report.

- (a) *Frequency of reports.* All RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, must complete and submit an RLF report, using Form ED-209, in a format and at a frequency as required by EDA.
- (b) *Report contents.* RLF Recipients must certify as part of the RLF report to EDA that the RLF is operating in accordance with the applicable RLF Plan and that the information provided is complete and accurate.

[82 FR 57057, Dec. 1, 2017]

§307.15 Prudent management of Revolving Loan Funds.

- (a) *Accounting principles.*
 - (1) RLFs shall operate in accordance with generally accepted accounting principles (“GAAP”) as in effect in the United States and the provisions outlined in the audit requirements set out as subpart F to 2 CFR part 200 and the Compliance Supplement, which is appendix XI to 2 CFR part 200, as applicable.

(2) In accordance with GAAP, a loan loss reserve may be recorded in the RLF Recipient's financial statements to show the adjusted current value of an RLF's loan portfolio, provided this loan loss reserve is non-funded and is represented by a non-cash entry. However, loan loss reserves shall not be used to reduce the value of the RLF in the Schedule of Expenditures of Federal Awards (“SEFA”) required as part of the RLF Recipient's audit requirements under 2 CFR part 200.

(b) *Interest rates*—

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

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

(c) *RLF leveraging.*

(1) RLF loans must leverage additional investment of at least two dollars for every one dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF's operation. To be classified as leveraged, additional investment must be made within 12 months of approval of an RLF loan, as part of the same business development project, and may include:

(i) Capital invested by the borrower or others;

(ii) Financing from private entities;

(iii) The non-guaranteed portions and 90 percent of the guaranteed portions of any Federal loan; or

(iv) Loans from other State and local lending programs.

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

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

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62868, Oct. 22, 2008; 75 FR 4264, Jan. 27, 2010; 79 FR 76134, Dec. 19, 2014; 82 FR 57057, Dec. 1, 2017]

§307.16 Risk Analysis System.

- (a) EDA shall evaluate and manage RLF recipients using a Risk Analysis System that will focus on such risk factors as: capital, assets, management, earnings, liquidity, strategic results, and financial controls. Risk analysis ratings of each RLF Recipient's RLF program shall be conducted at least annually and will be based on the most recently submitted Form ED-209 RLF report.
- (b) An RLF Recipient generally will be allowed a reasonable period of time to achieve compliance with risk factors as defined by EDA. However, persistent noncompliance with these factors and their limits as identified through EDA's Risk Analysis System over multiple Reporting Periods may result in EDA taking appropriate remedies for noncompliance as detailed in §307.21.

[82 FR 57057, Dec. 1, 2017]

§307.17 Requirements for Revolving Loan Fund Cash Available for Lending.

- (a) *General.* RLF Cash Available for Lending shall be deposited and held in an interest-bearing account by the Recipient and used for the purpose of making RLF loans that are consistent with an RLF Plan or such other purposes approved by EDA. To ensure that RLF funds are used as intended, each loan agreement must clearly state the purpose of each loan.
- (b) *Allowable Cash Percentage.* EDA shall notify each RLF recipient by January 1 of each year of the Allowable Cash Percentage that is applicable to lending during the Recipient's ensuing fiscal year. During the Revolving Phase, RLF Recipients must manage their repayment and lending schedules so that at all times they do not exceed the Allowable Cash Percentage.
- (c) *Restrictions on use of RLF Cash Available for Lending.* RLF Cash Available for Lending shall not be used to:
 - (1) Acquire an equity position in a private business;
 - (2) Subsidize interest payments on an existing RLF loan;
 - (3) Provide a loan to a borrower for the purpose of meeting the requirements of equity contributions under another Federal Agency's loan programs;
 - (4) Enable borrowers to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF;

- (5) Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit, or any investment unrelated to the RLF; or
- (6) Refinance existing debt, unless:
 - (i) The RLF Recipient sufficiently demonstrates in the loan documentation a “sound economic justification” for the refinancing (*e.g.*, the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification; or
 - (ii) RLF Cash Available for Lending 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 EDA following the date of refinancing.
- (7) Serve as collateral to obtain credit or any other type of financing without EDA's prior written approval;
- (8) Support operations or administration of the RLF Recipient; or
- (9) Undertake any activity that would violate the requirements found in part 314 of this chapter, including §314.3 (“Authorized Use of Property”) and §314.4 (“Unauthorized Use of Property”).

[82 FR 57057, Dec. 1, 2017]

§307.18 Addition of lending areas; consolidation and merger of RLFs.

- (a) (1) An RLF Recipient shall make loans only within its EDA-approved lending area, as set forth and defined in the RLF Grant and the RLF Plan. An RLF Recipient may add a lending area (an “*Additional Lending Area*”) to its existing lending area to create a new lending area (the “*New Lending Area*”) only with EDA's prior written approval and subject to the following provisions and conditions:
 - (i) The Additional Lending Area must meet the economic distress criteria for Economic Adjustment Assistance Investments under this part and in accordance with §301.3(a) of this chapter;
 - (ii) Prior to EDA's disbursement of additional funds to the RLF Recipient (for example, through a recapitalization), EDA shall determine a new Investment Rate for the New Lending Area based on the criteria set forth in §301.4 of this chapter;

(iii) The RLF Recipient must demonstrate that the Additional Lending Area is consistent with its CEDS, or modify its CEDS for any such Additional Lending Area, in accordance with §307.9(b)(1);

(iv) The RLF Recipient shall modify its Plan to incorporate the Additional Lending Area and revise its lending strategy, as necessary;

(v) The RLF Recipient shall execute an amended financial assistance award, as necessary; and

(vi) The RLF Recipient fulfills any other conditions reasonably requested by EDA.

(2) Following EDA approval, the New Lending Area designation shall remain in place until EDA approves a subsequent request for a New Lending Area.

(b) *Consolidation and merger of RLFs*—

(1) *Single RLF Recipient.* An RLF Recipient with more than one EDA-funded RLF Grant may consolidate two or more EDA-funded RLFs into one combined RLF with EDA's prior written approval and provided:

(i) It is up-to-date with all reports in accordance with §307.14;

(ii) It demonstrates a rational basis for undertaking the consolidation (for example, the lending area(s) and borrower criteria identified in different RLF Plans are compatible, or will be compatible, for all RLFs to be consolidated);

(iii) It amends and consolidates its Plan to account for the consolidation of RLFs, including items such as the New Lending Area (including any Additional Lending Area(s)), its lending strategy and borrower criteria;

(iv) Prior to EDA's disbursement of additional funds to the RLF Recipient (for example, through a recapitalization), EDA shall determine a new Investment Rate for the New Lending Area based on the criteria set forth in §301.4 of this chapter; and

(v) The RLF Recipient fulfills any other conditions reasonably requested by EDA.

(2) *Multiple RLF Recipients.* Two or more RLF Recipients may merge their EDA-funded RLFs into one surviving RLF with EDA's prior written approval and provided:

(i) The replacement RLF Recipient is up-to-date with all reports in accordance with §307.14;

(ii) The surviving RLF Recipient amends and consolidates its Plan to account for the merger of RLFs, including items such as the New Lending Area (including any Additional Lending Area(s)), its lending strategy and borrower criteria;

- (iii) Prior to EDA's disbursement of additional funds to the surviving RLF Recipient (for example, through a recapitalization), EDA shall determine a new Investment Rate for the New Lending Area based on the criteria set forth in §301.4 of this chapter;
- (iv) EDA must provide written approval of the merger agreement(s), modifications and revisions to the Plans and any other related amendments thereto;
- (v) All applicable RLF Grant assets of the discharging RLF Recipient(s) transfer to the surviving RLF Recipient as of the merger's effective date; and
- (vi) The surviving RLF Recipient becomes fully responsible for administration of the RLF Grant assets transferred and fulfills all surviving RLF Grant requirements and any other conditions reasonably requested by EDA.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62869, Oct. 22, 2008; 79 FR 76135, Dec. 19, 2014; 82 FR 57058, Dec. 1, 2017]

§307.19 RLF loan portfolio Sales and Securitizations.

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

- (a) An RLF Recipient must use all proceeds from any Sale or Securitization (net of reasonable transaction costs) to make additional RLF loans;
- (b) No Security collateralized by RLF loans and other RLF property and offered in a secondary market transaction pursuant to a Securitization shall be treated as an Exempt Security for purposes of the Securities Act of 1933, as amended (15 U.S.C. 77a *et seq.*), or the Securities Exchange Act of 1934, as amended (15 U.S.C. 78a *et seq.*) (the “*Exchange Act*”), unless exempted by a rule or regulation issued by the Commission; and
- (c) Except as provided in paragraph (b), no provision of this section supersedes or otherwise affects the application of the “securities laws” (as such term is defined in section 3(a)(47) of the Exchange Act) or the rules, regulations or orders issued by the Commission or a self-regulatory organization under the Commission.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76135, Dec. 19, 2014]

§307.20 Noncompliance.

EDA will take appropriate compliance actions as detailed in §307.21 for the RLF Recipient's failure to operate the RLF in accordance with the RLF Plan, the terms and conditions of the RLF Grant, or this subpart, including but not limited to:

- (a) Failing to obtain prior EDA approval for material changes to the RLF Plan, including provisions for administering the RLF;

- (b) Failing to submit an updated RLF Plan to EDA in accordance with §307.9(c);
- (c) Failing to submit timely progress, financial, and audit reports in the format required by the RLF Grant and §307.14, including the Form ED-209 RLF report;
- (d) Failing to manage the RLF Grant in accordance with Prudent Lending Practices, as defined in §307.8;
- (e) Holding RLF Cash Available for Lending so that it is 50 percent or more of the RLF Capital Base for 24 months without an EDA-approved extension request based on other EDA risk analysis factors or other extenuating circumstances;
- (f) Making an ineligible loan;
- (g) Failing to disburse the EDA funds in accordance with the time schedule prescribed in the RLF Grant;
- (h) Failing to sequester funds or remit the interest on EDA's portion of the sequestered funds to the U.S. Treasury, as directed by EDA;
- (i) Failing to comply with the audit requirements set forth in subpart F to 2 CFR part 200 and the related Compliance Supplement, including reference to the correctly valued EDA RLF Federal expenditures in the SEFA, timely submission of audit reports to the Federal Audit Clearinghouse, and the inclusion of the RLF program as an appropriately audited program;
- (j) Failing to implement timely resolutions to audit findings or questioned costs contained in the annual audit, as applicable;
- (k) Failing to comply with an EDA-approved corrective action plan to remedy persistent noncompliance with RLF-related findings;
- (l) Failing to comply with the conflicts of interest provisions set forth in §302.17; and
- (m) Making unauthorized use of RLF Cash Available for Lending in violation of §307.18(c).

[82 FR 57058, Dec. 1, 2017]

§307.21 Remedies for noncompliance.

- (a) *General.* If an RLF Recipient fails to operate the RLF in accordance with the RLF Plan, the terms and conditions of the RLF Grant, or this subpart, as detailed in §307.20, EDA may require one or more of the following actions, as appropriate in the circumstances:
 - (1) Increased reporting requirements;
 - (2) Implementation of a corrective action plan;
 - (3) A special audit;

- (4) Sequestration of RLF funds;
- (5) Repayment of ineligible loans or other costs to the RLF;
- (6) Transfer or merger of the RLF in accordance with §307.18;
- (7) Suspension of the RLF Grant; or
- (8) Termination of the RLF Grant, in whole or in part.

(b) *Disallowance of a portion of an RLF Grant, liquidation.* If the RLF Recipient engages in certain problematic practices, EDA may disallow a corresponding proportion of the Grant or direct the RLF Recipient to transfer loans to an RLF Third Party for liquidation. Problematic practices for which EDA may disallow a portion of an RLF Grant and recover the pro-rata Federal Share (as defined in §314.5 of this chapter) include the RLF Recipient:

- (1) Holding RLF Cash Available for Lending so that it is 50 percent or more of the RLF Capital Base for 24 months without an EDA-approved extension request;
- (2) Failing to disburse the EDA funds in accordance with the time schedule prescribed in the RLF Grant; or
- (3) Determining that it does not wish to further invest in the RLF or cannot maintain operations at the degree originally contemplated upon receipt of the RLF Grant and requests that a portion of the RLF Grant be disallowed, and EDA agrees to the disallowance.

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

(d) *Termination, liquidation upon termination.* When EDA approves the termination of an RLF Grant, EDA must make all efforts to recover the pro rata Federal Share (as defined in §314.5 of this chapter). EDA may assign or transfer assets of the RLF to an RLF Third Party for liquidation. The following terms will govern any liquidation:

- (1) EDA shall have sole discretion in choosing the RLF Third Party;
- (2) The RLF Third Party may be an Eligible Applicant or a for-profit organization not otherwise eligible for Investment Assistance;
- (3) EDA may enter into an agreement with the RLF Third Party to liquidate the assets of one or more RLFs or RLF Recipients;

- (4) EDA may allow the RLF Third Party to retain a portion of the RLF assets, consistent with the agreement referenced in paragraph (d)(3) of this section, as reasonable compensation for services rendered in the liquidation; and
- (5) EDA may require additional reasonable terms and conditions.
- (e) *Distribution of proceeds.* The proceeds resulting from any liquidation upon termination shall be distributed in the following order of priority:
 - (1) *First*, for any third party liquidation costs;
 - (2) *Second*, for the payment of EDA's Federal Share; and
 - (3) *Third*, if any proceeds remain, to the RLF Recipient.
- (f) *RLF Recipient's request to terminate.* EDA may approve a request from an RLF Recipient to terminate an RLF Grant. The RLF Recipient must compensate the Federal Government for the pro rata Federal Share of the RLF Capital Base.
- (g) *Distribution of proceeds upon termination.* Upon termination, distribution of proceeds shall occur in accordance with §307.21(e).

[82 FR 57058, Dec. 1, 2017]

§307.22 Variances.

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

- (a) Are consistent with the goals of the Economic Adjustment Assistance program and with an RLF Plan;
- (b) Are necessary and reasonable for the effective implementation of the RLF;
- (c) Are economically and financially sound; and
- (d) Do not conflict with any applicable legal requirements, including Federal, State and local law.

PART 308—PERFORMANCE INCENTIVES

AUTHORITY: 42 U.S.C. 3151; 42 U.S.C. 3154a; 42 U.S.C. 3154b; Department of Commerce Delegation Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

§308.1 Use of funds in Projects constructed under projected cost.

- (a) If the Assistant Secretary determines before closeout of a construction Project funded under parts 305 or 307 of this chapter that the cost of the Project, based on the designs and specifications that were the basis of the Investment Assistance, has decreased because of a decrease in costs, EDA may in its discretion approve the use of the excess funds (or a portion of the excess funds) by the Recipient to:
 - (1) Increase the Investment Rate of the Project to the maximum percentage allowable under §301.4 of this chapter for which the Project was eligible at the time of the Investment award; or
 - (2) Further improve the Project consistent with its purpose.
- (b) EDA, in its sole discretion, may use any amount of excess funds remaining after application of paragraph (a) of this section for other eligible Investments.
- (c) In the case of Projects involving funds transferred from other Federal Agencies, EDA will consult with the transferring Agency regarding the use of any excess funds.

§308.2 Performance awards.

- (a) A Recipient of Investment Assistance under parts 305 or 307 of this chapter may receive a performance award in connection with an Investment made on or after the date of enactment of section 215 of PWEDA in an amount not to exceed 10 percent of the amount of the Investment award.
- (b) To receive a performance award, a Recipient must demonstrate Project performance in one or more of the areas listed in this paragraph, weighted at the discretion of the Assistant Secretary:
 - (1) Meet or exceed the Recipient's projection of jobs created;
 - (2) Meet or exceed the Recipient's projection of private sector capital invested;
 - (3) Meet or exceed target dates for Project start and completion stated at the time of Investment approval;
 - (4) Fulfill the application evaluation criteria set forth in §301.8 of this chapter; or
 - (5) Demonstrate other unique Project performance characteristics as determined by the Assistant Secretary.
- (c) A Recipient may receive a performance award no later than three years following the Project's closeout.
- (d) A performance award may fund up to 100 percent of the cost of an eligible Project or any other authorized activity under PWEDA. For the purpose of meeting the non-Federal share

requirement of PWEDA or any other statute, the amount of a performance award shall be treated as non-Federal funds.

- (e) The applicable FFO will set forth the requirements, qualifications, guidelines and procedures for performance awards to be made during the applicable fiscal year, with all performance awards being subject to the availability of funds.

[71 FR 56675, Sept. 27, 2006, as amended at 75 FR 4265, Jan. 27, 2010; 79 FR 76136, Dec. 19, 2014]

§308.3 Planning performance awards.

- (a) A Recipient of Investment Assistance awarded on or after the date of enactment of section 216 of PWEDA for a Project located in an EDA-funded Economic Development District may, at the discretion of the Assistant Secretary, receive a planning performance award in an amount not to exceed five percent of the amount of the applicable Investment award if EDA determines before closeout of the Project that:

- (1) The Recipient, through the Project, actively participated in the economic development activities of the District;
- (2) The Project demonstrated exceptional fulfillment of one or more components of, and is otherwise in accordance with, the applicable CEDS, including any job creation or job retention requirements; and
- (3) The Recipient demonstrated exceptional collaboration with Federal, State, and local economic development entities throughout the development of the Project.

- (b) The Recipient shall use the planning performance award to increase, up to 100 percent, the Federal share of the cost of a Project under this chapter.

- (c) The applicable FFO may set forth additional requirements, qualifications and guidelines for planning performance awards.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62869, Oct. 22, 2008; 79 FR 76136, Dec. 19, 2014]

PART 309—REDISTRIBUTIONS OF INVESTMENT ASSISTANCE

AUTHORITY: 42 U.S.C. 3154c; 42 U.S.C. 3211; Department of Commerce Delegation Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

§309.1 Redistributions under parts 303, 305 and 306.

- (a) *General.* Except as provided in paragraph (b) of this section, a Recipient of Investment Assistance under parts 303, 305 or 306 of this chapter may directly expend such Investment

Assistance or, with prior EDA approval, may redistribute such Investment Assistance in the form of a subgrant to another Eligible Recipient, generally referred to as a Subrecipient, that qualifies for Investment Assistance under the same part of this chapter as the Recipient, to fund required components of the scope of work approved for the Project. All subgrants made pursuant to this section shall be subject to the same terms and conditions applicable to the Recipient under the original Investment Assistance award and must satisfy the requirements of PWEDA and of this chapter. EDA may require the Eligible Recipient under the original Investment award to agree to special award conditions and the Subrecipient to provide appropriate certifications to ensure the Subrecipient's compliance with legal requirements.

- (b) *Exception.* A Recipient may not make a subgrant of Investment Assistance received under parts 303 or 305 of this chapter to a for-profit entity.

[71 FR 56675, Sept. 27, 2006, as amended at 82 FR 57059, Dec. 1, 2017]

§309.2 Redistributions under part 307.

- (a) A Recipient of Investment Assistance under part 307 of this chapter may directly expend such Investment Assistance or, with prior EDA approval, may redistribute such Investment Assistance in the form of:
- (1) A subgrant to another Eligible Recipient, generally referred to a Subrecipient, that qualifies for Investment Assistance under part 307 of this chapter; or
 - (2) Pursuant to part 307, subpart B, a loan or other appropriate assistance to non-profit and private for-profit entities.
- (b) All redistributions of Investment Assistance made pursuant to this section shall be subject to the same terms and conditions applicable to the Recipient under the original Investment Assistance award and must satisfy the requirements of PWEDA and of this chapter. EDA may require the Eligible Recipient under the original Investment Award to agree to special award conditions and the Subrecipient to provide appropriate certifications to ensure the Subrecipient's compliance with legal requirements.

[71 FR 56675, Sept. 27, 2006, as amended at 82 FR 57059, Dec. 1, 2017]

PART 310—SPECIAL IMPACT AREAS

AUTHORITY: 42 U.S.C. 3154; Department of Commerce Organization Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

§310.1 Special Impact Area.

Upon the application of an Eligible Applicant, and with respect to that Eligible Applicant's Project only, the Assistant Secretary may designate the Region which the Project will serve as a Special Impact Area if the Eligible Applicant demonstrates that its proposed Project will:

- (a) Directly fulfill a pressing need; and
- (b) Be useful in alleviating or preventing conditions of excessive unemployment or underemployment, or assist in providing useful employment opportunities for the unemployed or underemployed residents of the Region.

[73 FR 62869, Oct. 22, 2008, as amended at 79 FR 76136, Dec. 19, 2014]

§310.2 Pressing need; alleviation of unemployment or underemployment.

- (a) The Assistant Secretary may find a pressing need to exist if the Region which the Project will serve:
 - (1) Has a unique or urgent circumstance that would necessitate waiver of the CEDS requirements of §303.7 of this chapter;
 - (2) Involves a Project undertaken by an Indian Tribe;
 - (3) Is rural and severely distressed;
 - (4) Is undergoing a transition in its economic base as a result of changing trade patterns (e.g., the Region is certified as eligible by the North American Development Bank Program or the Community Adjustment and Investment Program);
 - (5) Exhibits a substantial reliance on a natural resource for its economic well-being;
 - (6) Has been designated as a Federally Declared Disaster area; or
 - (7) Has a Special Need.
- (b) For purposes of this part, excessive unemployment exists if the 24-month unemployment rate is at least 225 percent of the national average or the per capita income is not more than 50 percent of the national average. A Region demonstrates excessive underemployment if the employment of a substantial percentage of workers in the Region is less than full-time or at less skilled tasks than their training or abilities would otherwise permit. Eligible Applicants seeking a Special Impact Area designation under this criterion must present appropriate and compelling economic and demographic data.
- (c) Eligible Applicants may demonstrate the provision of useful employment opportunities by quantifying and evidencing the Project's prospective:
 - (1) Creation of jobs;
 - (2) Commitment of financial investment by private entities; or
 - (3) Application of innovative technology that will lead to the creation of jobs or the commitment of financial investment by private entities.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76136, Dec. 19, 2014]

PART 311 [RESERVED]

PART 312—REGIONAL INNOVATION PROGRAM

AUTHORITY: 15 U.S.C. 3701 *et seq.*; Department of Commerce Organization Order 10-4.

SOURCE: 82 FR 3134, Jan. 11, 2017, unless otherwise noted.

Subpart A—General Provisions

§312.1 Purpose and scope of the Regional Innovation Program.

The purpose of the Regional Innovation Program is to encourage and support the development of regional innovation strategies. The Regional Innovation Program includes two sub-programs. One is focused on the formation and development of regional innovation clusters and implemented through the Regional Innovation Strategies Program. 15 U.S.C. 3722(b). The second program is focused on best practices, metrics and the collection and dissemination of information related to regional innovation strategies, achieved through the Regional Innovation Research and Information Program. 15 U.S.C. 3722(c). The Secretary has delegated to the Economic Development Administration the authority to implement and administer the Regional Innovation Program.

§312.2 General definitions from Public Works and Economic Development Act regulations inapplicable to this part.

The definitions contained in §300.3 of this chapter do not apply to this part.

§312.3 General definitions.

As used in this part, the following terms shall have the following meanings:

Act or *Stevenson-Wydler* means the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3701 *et seq.*).

Assistant Secretary means the Assistant Secretary of Commerce for Economic Development within the Department.

Department of Commerce, Department, or DOC means the U.S. Department of Commerce.

Economic Development Organization means an organization whose primary purpose is to support the economic development of a community or region.

EDA means the Economic Development Administration within the Department.

Eligible applicant means an entity qualified to be an eligible recipient or its authorized representative.

Eligible recipient means a recipient that meets the requirements of §312.6.

Equipment is defined at 2 CFR 200.33.

Federal agency means any executive agency as defined in 5 U.S.C. 105, and the military departments as defined in 5 U.S.C. 102, as well as any agency of the legislative branch of the Federal Government.

Federal funding opportunity or FFO means an announcement that EDA publishes during the fiscal year on a Federal Government grants platform or on EDA's Internet Web site at <http://www.eda.gov>, <https://www.eda.gov/oie/>, or any successor Web site, that provides the funding amounts, application and programmatic requirements, funding priorities, special circumstances, and other information concerning a specific competitive solicitation under EDA's Regional Innovation Program.

Federal interest is defined at 2 CFR 200.41, in accordance with 2 CFR 200.316.

Federal laboratory means any laboratory, any federally funded research and development center, or any center established under section 7 or section 9 of the Act that is owned, leased, or otherwise used by a Federal agency and funded by the Federal Government, whether operated by the government or by a contractor.

Grant means the financial assistance award of EDA funds to an eligible recipient, under which the Eligible Recipient bears responsibility for meeting a purpose or carrying out an activity authorized under Stevenson-Wydler. *See* 31 U.S.C. 6304.

In-kind contribution(s) means non-cash contributions, which may include contributions of space, Equipment, services, and assumptions of debt that are fairly evaluated by EDA and that satisfy applicable Federal Uniform Administrative Requirements and Cost Principles as set out in 2 CFR part 200.

Indian tribe means an entity on the list of recognized tribes published pursuant to the Federally Recognized Indian Tribe List Act of 1994, as amended (Pub. L. 103-454) (25 U.S.C. 479a *et seq.*), and any Alaska Native Village or Regional Corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)). This term includes the governing body of an Indian tribe, nonprofit Indian corporation (restricted to Indians), Indian authority, or other nonprofit Indian tribal organization or entity; provided that the Indian tribal organization or entity is wholly owned by, and established for the benefit of, the Indian tribe or Alaska Native village.

Investment or Investment assistance means a grant entered into by EDA and a recipient.

Investment rate means, as set forth in §312.8, the amount of the EDA investment in a particular project expressed as a percentage of the total project cost.

Matching share or Local share means the non-EDA funds and any in-kind contribution(s) that are approved by EDA and provided by a recipient or third party as a condition of an investment. The matching share may include funds from another Federal agency only if authorized by a statute that allows such use, which may be determined by EDA's reasonable interpretation of such authority.

Nonprofit organization is defined at 2 CFR 200.70.

Office of Innovation and Entrepreneurship or *OIE* means the office established by 15 U.S.C. 3720.

Project means the proposed or authorized activity (or activities), the purpose of which fulfills EDA's mission and program requirements as set forth in the Act and this part, and which may be funded in whole or in part by EDA investment assistance.

Public-private partnership means a relationship formalized by contractual agreement between a public agency and a private-sector entity that reasonably defines the terms of collaboration in the delivery and financing of a public project.

Real property means any land, whether raw or improved, and includes structures, fixtures, appurtenances, and other permanent improvements, excluding moveable machinery and equipment.

Recipient means an entity receiving EDA investment assistance, including any successor to the entity approved by EDA in writing. If investment assistance is awarded to more than one recipient under a single award, the recipients are referred to as “co-recipients” and, unless otherwise provided in the terms and conditions of the investment assistance, each co-recipient is jointly and severally liable for fulfilling the terms of the investment assistance.

Region or *Regional* means an economic unit of human, natural, technological, capital, or other resources, defined geographically. Geographic areas comprising a region need not be contiguous or defined by political boundaries, but should constitute a cohesive area capable of undertaking self-sustained economic development.

Regional innovation clusters or *RICs* means a geographically bounded network of similar, synergistic, or complementary entities that are engaged in or with a particular industry sector and its related sectors; have active channels for business transactions and communication; share specialized infrastructure, labor markets, and services; and leverage the region's unique competitive strengths to stimulate innovation and create jobs.

Regional Innovation Program means the program enacted by Stevenson-Wydler at 15 U.S.C. 3722.

Regional Innovation Research and Information Program or *RIRI Program* means the program authorized by 15 U.S.C. 3722(c).

Regional Innovation Strategies Program or *RIS Program* means the cluster grant program authorized by 15 U.S.C. 3722(b).

Science or research park means a property-based venture that has: Master-planned property and buildings designed primarily for private-public research and development activities, high technology and science-based companies, and research and development support services; a contractual or operational relationship with one or more science- or research-related institutions of higher education or governmental or nonprofit research laboratories; a primary mission to

promote research and development through industry partnerships, assisting in the growth of new ventures and promoting innovation-driven economic development; a role in facilitating the transfer of technology and business skills between researchers and industry teams; and a role in promoting technology-led economic development for the community or region in which the park is located.

Secretary means the Secretary of Commerce.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

United States means all of the States.

Subpart B—Regional Innovation Strategies Program

§312.4 Purpose and scope of the Regional Innovation Strategies Program.

Under the RIS Program, EDA makes grants on a competitive basis to eligible applicants to foster connected, innovation-centric economic regions that support commercialization and entrepreneurship. The grants are intended to build public and private capacity to invent and improve products and services and to bring those products and services to market through a process often referred to as technology commercialization, as demonstrated by methodologically sound metrics for output and outcome.

§312.5 Regional Innovation Strategies Program definitions.

In addition to the defined terms set forth in subpart A of this part, the following term applies specifically to the RIS Program:

Institution of higher education means:

(1) An educational institution in any State that—

- (i) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of 20 U.S.C. 1091(d);
- (ii) Is legally authorized within such State to provide a program of education beyond secondary education;
- (iii) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary of Education; and
- (iv) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an

agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(2) *Additional institutions included.* For purposes of this subpart, the term *Institution of higher education* also includes—

(i) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (1)(i), (ii), and (iv) of this definition; and

(ii) An educational institution in any State that, in lieu of the requirement in paragraph (1)(i) of this definition, admits as regular students individuals—

(A) Who are beyond the age of compulsory school attendance in the State in which the institution is located; or

(B) Who will be dually or concurrently enrolled in the institution and a secondary school.

§312.6 Eligible recipients.

A recipient eligible for investment assistance includes:

(a) A State;

(b) An Indian tribe;

(c) A city or other political subdivision of a State;

(d) An entity that is a nonprofit organization and whose application for funding under the RIS Program is supported by a State or a political subdivision of a State;

(e) An entity that is an institution of higher education, a public-private partnership, a science or research park, a Federal laboratory, or an economic development organization or similar entity, and whose application for funding under the RIS Program is supported by a State or a political subdivision of a State; or

(f) A consortium of any of the entities described in paragraphs (a) through (e) of this section.

§312.7 Eligible project activities.

(a) Activities eligible for a RIS Program grant include:

(1) Feasibility studies;

(2) Planning activities;

- (3) Technical assistance;
- (4) Developing or strengthening communication and collaboration between and among participants of a regional innovation cluster;
- (5) Attracting additional participants to a regional innovation cluster;
- (6) Facilitating market development of products and services of a regional innovation cluster, including through demonstration, deployment, technology transfer, and commercialization activities;
- (7) Developing relationships between a regional innovation cluster and entities or clusters in other regions;
- (8) Interacting with the public and State and local governments to meet the goals of the regional innovation cluster;
- (9) Purchase of equipment and equipment-related modifications or renovations of a facility, but only to the extent that such equipment and any related modifications or renovations are used to support another eligible activity as described in this section (the recipient may be required to secure and record the Federal interest in the equipment); and
- (10) Any other activity determined appropriate by the Assistant Secretary and consistent with section 27(b) of Stevenson-Wydler.

(b) An ineligible activity includes, but is not limited to:

- (1) Use of Federal funds or matching share for equity investments;
- (2) Acquisition or improvement of real property;
- (3) Construction except to the extent provided in paragraph (a)(9) of this section; and
- (4) Lending programs, such as a direct loan program or capitalizing a revolving loan fund.

§312.8 Investment rates.

- (a) *Minimum investment rate.* There is no minimum investment rate for a project.
- (b) *Maximum investment rate.* The maximum investment rate for a project shall not exceed 50 percent.

§312.9 Matching share requirements.

The required matching share of a project's eligible costs may consist of cash or in-kind contribution(s) whose value can be readily determined, verified, and justified. Applicants must show at the time of application that the matching share is committed to the project, will be available as needed, and is not or will not be conditioned or encumbered in any way that would

preclude its use consistent with the requirements of the investment assistance. EDA shall determine at its sole discretion whether the matching share documentation adequately addresses the requirements of this section.

§312.10 Application components.

In addition to the criteria set forth in the FFO, to be considered for a RIS Program grant, eligible applicants must provide the following information:

- (a) A description of the regional innovation cluster supported by the proposed activity;
- (b) The extent to which the regional innovation cluster is supported by the private sector, State and local units of government, and other relevant stakeholders;
- (c) The methods that participants in the regional innovation cluster will use to encourage and solicit participation by all types of entities that might benefit from participation, including newly formed entities and rival existing participants;
- (d) The extent to which the regional innovation cluster is likely to stimulate innovation and have a positive effect on regional economic growth and development;
- (e) The capacity of participants in the regional innovation cluster to access, or contribute to, a well-trained workforce;
- (f) The ability of participants in the regional innovation cluster to attract additional funds to support the cluster with non-Federal funds; and
- (g) The likelihood that participants in the regional innovation cluster will be able to sustain activities after the grant expires.

§312.11 Application evaluation and selection criteria.

- (a) EDA will evaluate and select complete applications in accordance with the evaluation criteria, funding priority considerations, availability of funding, competitiveness of the application, and requirements set forth in section 27(b) of Stevenson-Wydler, the FFO, and other applicable Federal statutes and regulations. All awards are subject to the availability of funds.
- (b) EDA will endeavor to notify applicants as soon as practicable regarding whether their applications are selected for funding.
- (c) Stevenson-Wydler does not require nor does EDA provide an appeal process for denial of applications for EDA investment assistance.

§312.12 General terms and conditions for investment assistance.

RIS Program grants are subject to all requirements contained in part 302 of this chapter, except §§302.2, 302.3, 302.9, 302.10, and 302.17.

Subpart C—Regional Innovation Research and Information Program [Reserved]

§§312.13-312.17 [Reserved]

PART 313 [Reserved]

PART 314—PROPERTY

AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

§314.1 Definitions.

In addition to the defined terms set forth in §300.3 of this chapter, the following terms shall have the following meanings:

Adequate Consideration means the fair market value at the time of sale or lease of any Property, as adjusted, in EDA's sole discretion, by any services, property exchanges, contractual commitments, acts of forbearance or other considerations that are in furtherance of the authorized purposes of the Investment Assistance, which are received by the Recipient or Owner in exchange for such Property.

Disposition or *Dispose* means the sale, lease, abandonment or other disposition of any Property and also includes the Unauthorized Use of such Property.

Estimated Useful Life, as used in this part, means the period of years that constitutes the expected useful lifespan of a Project, as determined by EDA, during which EDA anticipates obtaining the economic development benefits of its Investment.

Federal Interest has the definition ascribed to it in §314.2(a).

Federal Share has the definition ascribed to it in §314.5.

Owner means a fee owner, transferee, lessee or optionee of any Property. The term Owner also includes the holder of other interests in a Property where the interests are such that the holder effectively controls the use of such Property.

Personal Property means all tangible and intangible property other than Real Property, including the RLF Capital Base as defined at §307.8.

Project Property means all Property that is acquired or improved, in whole or in part, with Investment Assistance and is required, as determined by EDA, for the successful completion and operation of a Project and/or serves as the economic justification of a Project. As appropriate to specify the type of Property referenced, this part refers to Project Property as “Project Real Property” or “Project Personal Property”.

Property means Real Property, Personal Property and mixed property.

Real Property means any land, whether raw or improved, and includes structures, fixtures, appurtenances and other permanent improvements, excluding moveable machinery and equipment. Real Property includes land that is served by the construction of Project infrastructure (such as roads, sewers and water lines) where the infrastructure contributes to the value of such land as a specific purpose of the Project.

Successor Recipient means an EDA-approved transferee of Property pursuant to §314.3(d). A Successor Recipient must be an Eligible Recipient of Investment Assistance.

Unauthorized Use means any use of Property acquired or improved in whole or in part for purposes not authorized by EDA Investment Assistance, PWEDA or this chapter, as set forth in §314.4.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76136, Dec. 19, 2014; 82 FR 57059, Dec. 1, 2017]

§314.2 Federal Interest.

- (a) Subject to the obligations and conditions set forth in this part and in relevant provisions of 2 CFR part 200, Project Property vests upon acquisition in the Recipient (or, if approved by EDA, in a Co-recipient or Subrecipient). Project Property shall be held in trust by the Recipient for the benefit of the Project for the Estimated Useful Life of the Project, during which period EDA retains an undivided equitable reversionary interest in the Property (the “Federal Interest”). The Federal Interest ensures compliance with EDA Project requirements, including those related to the purpose, scope, and use of a Project. The Recipient typically must secure the Federal Interest through a recorded lien, statement, or other recordable instrument setting forth EDA's Property interest in a Project (*e.g.*, a mortgage, covenant, or other statement of EDA's Real Property interest in the case of a Project involving the acquisition, construction, or improvement of a building. See §314.8.).
- (b) When the Federal Government is fully compensated for the Federal Share of Project Property, the Federal Interest is extinguished and the Federal Government has no further interest in the Property, except as provided in §314.10(e)(3) regarding nondiscrimination requirements.

[82 FR 57059, Dec. 1, 2017]

§314.3 Authorized use of Project Property.

- (a) *General.* During the Estimated Useful Life of the Project, the Recipient or Owner must use any Project Property only for authorized Project purposes as set out in the terms of the Investment Assistance. Such Property must not be Disposed of or encumbered without EDA's prior written authorization.
- (b) *Project Property that is no longer needed for Project purposes.* Where EDA and the Recipient determine during the Estimated Useful Life of the Project that Project Property is

longer needed for the original purpose of the Investment Assistance, EDA, in its sole discretion, may approve the use of such Property in other Federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and by this chapter.

- (c) *Real Property for sale or lease.* Where EDA determines that the authorized purpose of the Investment Assistance is to develop Real Property to be leased or sold, such sale or lease is permitted provided it is for Adequate Consideration and the sale is consistent with the authorized purpose of the Investment Assistance and with all applicable Investment Assistance requirements, including nondiscrimination and environmental compliance.
- (d) *Property transfers and Successor Recipients.* EDA, in its sole discretion, may approve the transfer of any Project Property from a Recipient to a Successor Recipient (or from one Successor Recipient to another Successor Recipient). The Recipient will remain responsible for complying with the rules of this part and the terms and conditions of the Investment Assistance for the period in which it is the Recipient. Thereafter, the Successor Recipient must comply with the rules of this part and with the same terms and conditions as were applicable to the Recipient (unless such terms and conditions are otherwise amended by EDA). The same rules apply to EDA-approved transfers of Property between Successor Recipients.
- (e) *Replacement Personal Property.* When acquiring replacement Personal Property of equal or greater value than Personal Property originally acquired with Investment Assistance, the Recipient may, with EDA's approval, trade in such Personal Property originally acquired or sell the original Personal Property and use the proceeds for the acquisition of the replacement Personal Property, provided that the replacement Personal Property is for use in the Project. The replacement Personal Property is subject to the same requirements as the original Personal Property.
- (f) *Replacement Real Property.* In extraordinary and compelling circumstances, the Assistant Secretary may approve the replacement of Real Property used in a Project.
- (g) *Incidental use of Project Property.* With EDA's prior written approval, a Recipient may undertake an incidental use of Project Property that does not interfere with the scope of the Project or the economic purpose for which the Investment was made, provided that the Recipient is in compliance with applicable law and the terms and conditions of the Investment Assistance, and the incidental use of the Property will not violate the terms and conditions of the Investment Assistance or otherwise undermine the economic purpose for which the Investment was made or adversely affect the economic useful life of the Property. Eligible Applicants and Recipients should contact the appropriate regional office (whose contact information is available via the Internet at <http://www.eda.gov>) for guidelines on obtaining approval for incidental use of Property under this section.

§314.4 Unauthorized Use of Project Property.

- (a) *Compensation of Federal Share upon an Unauthorized Use of Project Property.* Except as provided in §§314.3 (regarding the authorized use of Property) or 314.10 (regarding the release of the Federal Interest in certain Property), or as otherwise authorized by EDA, the Federal Government must be compensated by the Recipient for the Federal Share whenever, during the Estimated Useful Life of the Project, any Project Property is Disposed of, encumbered, or no longer used for the purpose of the Project; provided that for equipment and supplies, the requirements of 2 CFR part 200, including any supplements, shall apply.
- (b) *Additional Unauthorized Uses of Project Property.* Additionally, prior to the release of the Federal Interest, Project Real Property or tangible Project Personal Property may not be used:
- (1) In violation of the nondiscrimination requirements of §302.20 of this chapter or in violation of the terms and conditions of the Investment Assistance; or
 - (2) For any purpose prohibited by applicable law.
- (c) *Recovery of the Federal Share.* Where the Disposition, encumbrance, or use of any Project Property violates paragraph (a) or (b) of this section, EDA may assert the Federal Interest in the Project Property to recover the Federal Share for the Federal Government and may take such actions as authorized by PWEDA and this chapter, including the actions provided in §§302.3, 302.16, and 307.21 of this chapter. EDA may pursue its rights under paragraph (a) of this section and this paragraph (c) to recover the Federal Share, plus costs and interest. When the Federal Government is fully compensated for the Federal Share, the Federal Interest is extinguished as provided in §314.2(b), and EDA will have no further interest in the ownership, use, or Disposition of the Property, except for the nondiscrimination requirements set forth in §314.10(d)(3).

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76137, Dec. 19, 2014; 82 FR 57059, Dec. 1, 2017]

§314.5 Federal Share.

- (a) For purposes of this part, “Federal Share” means that portion of the current fair market value of any Project Property attributable to EDA's participation in the Project. EDA may rely on a current certified appraisal of the Project Property prepared by an appraiser licensed in the State where the Project Property is located to determine the fair market value. In extraordinary circumstances and at EDA's sole discretion, where EDA is unable to determine the current fair market value, EDA may use other methods of determining the value of Project Property, including the amount of the award of Investment Assistance or the amount paid by a transferee. The Federal Share shall be the current fair market value or other valuation as determined by EDA of the Property after deducting:
- (1) Reasonable repair expenses, if any, incurred to put the Property into marketable condition; and

(2) Sales, commission and marketing costs.

- (b) The Federal Share excludes that portion of the current fair market value of the Property attributable to acquisition or improvements before or after EDA's participation in the Project, which are not included in the total Project costs. For example, if the total Project costs are \$100, consisting of \$50 of Investment Assistance and \$50 of Matching Share, the Federal Share is 50 percent. If the Property is disposed of when its current fair market is \$250, the Federal Share is \$125 (*i.e.*, 50 percent of \$250). If \$10 is spent to put the Property into salable condition, the Federal Share is \$120 (*i.e.*, 50 percent of (\$250-\$10)).

[73 FR 62870, Oct. 22, 2008, as amended at 79 FR 76137, Dec. 19, 2014; 82 FR 57060, Dec. 1, 2017]

§314.6 Encumbrances.

- (a) *General.* Except as provided in paragraph (b) of this section or as otherwise authorized by EDA, Project Property must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered, except to secure a grant or loan made by a Federal Agency or State agency or other public body participating in the same Project, so long as the Recipient discloses such an encumbrance in writing as part of its application for Investment Assistance or as soon as practicable after learning of the encumbrance.
- (b) *Exceptions.* Subject to EDA's approval, which will not be unreasonably withheld or unduly delayed, paragraph (a) of this section does not apply in the following circumstances:
- (1) *Shared first lien position.* EDA, at its discretion, may approve an encumbrance on Project Property where a lien holder and EDA enter into an inter-creditor agreement pursuant to which EDA and the other lien holder share a first lien position on terms satisfactory to EDA.
 - (2) *Utility encumbrances.* Encumbrances arising solely from the requirements of a pre-existing water or sewer facility or other utility encumbrances, which by their terms extend to additional Property connected to such facilities.
 - (3) *Pre-existing encumbrances.* Encumbrances already in place and disclosed to EDA at the time EDA approves the Project where EDA, in its sole discretion, determines that:
 - (i) The requirements of §314.7(b) are met;
 - (ii) Consistent with paragraphs (b)(4)(iv) and (b)(5)(iv) of this section, the terms and conditions of the encumbrance are satisfactory; and
 - (iii) Consistent with paragraphs (b)(4)(v) and (b)(5)(v) of this section, there is a reasonable expectation that the Recipient will not default on its obligations.
 - (4) *Encumbrances proposed proximate to Project approval.* Encumbrances required to secure debt, including time and maturity-limited debt, that finances the Project Property

at the same proximate time that EDA approves the Project when all of the following are met:

- (i) EDA, in its sole discretion, determines that there is good cause and legal authority to waive paragraph (a) of this section;
 - (ii) All proceeds secured by the encumbrance on the Property shall be available only to the Recipient and shall be used only for the Project for which the Investment Assistance applies, for related activities of which the Project is an essential part, or other activities that EDA determines are authorized under PWEDA;
 - (iii) A grantor or lender will not provide funds without the security of a lien on the Property;
 - (iv) The terms and conditions of the encumbrance are satisfactory to EDA; and
 - (v) There is a reasonable expectation, as determined by EDA, that the Recipient will not default on its obligations. In determining whether an expectation is reasonable for purposes of this paragraph, EDA shall take into account whether:
 - (A) A Recipient that is a non-profit organization is joined in the Project with a co-Recipient that is a public body and all co-Recipients are jointly and severally responsible;
 - (B) A Recipient that is a non-profit organization is financially strong and is an established organization with sufficient organizational life to demonstrate stability over time;
 - (C) The approximate value of the Project Property so that the total amount of all debt plus the Federal share of cost as reflected on the EDA Investment award, and any amendments as applicable, does not exceed the value of the Project Property as improved; and
 - (D) Such other factors as EDA deems appropriate.
- (5) *Encumbrances proposed after Project approval.* Encumbrances proposed to be incurred after Project approval where all of the following are met:
- (i) EDA, in its sole discretion, determines that there is good cause and legal authority to waive paragraph (a) of this section;
 - (ii) All proceeds secured by the encumbrance on the Property shall be available only to the Recipient and shall be used only for the Project for which the Investment Assistance applies, for related activities of which the Project is an essential part, or other activities that EDA determines are authorized under PWEDA;
 - (iii) A grantor or lender will not provide funds without the security of a lien on the Property;

- (iv) The terms and conditions of the encumbrance are satisfactory to EDA; and
- (v) There is a reasonable expectation, as determined by EDA, that the Recipient will not default on its obligations. In determining whether an expectation is reasonable for purposes of this paragraph, EDA shall take into account whether:
 - (A) A Recipient that is a non-profit organization is joined in the Project with a co-Recipient that is a public body and all co-Recipients are jointly and severally responsible;
 - (B) A Recipient that is a non-profit organization is financially strong and is an established organization with sufficient organizational life to demonstrate stability over time;
 - (C) The Recipient's equity in the Project Property based on the appraised value of the Project Property at the time the encumbrance is requested so that the total amount of all debt plus the Federal share of cost as reflected on the EDA Investment award, and any amendments as applicable, does not exceed the value of the Project Property as improved; and
 - (D) Such other factors as EDA deems appropriate.

(c) *Unauthorized encumbrances.* Encumbering Project Property, other than as permitted in this section, is an Unauthorized Use of the Property under §314.4.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62870, Oct. 22, 2008; 79 FR 76137, Dec. 19, 2014; 82 FR 57060, Dec. 1, 2017]

§314.7 Title.

(a) *General title requirement.* Except in those limited circumstances identified in paragraph (c) of this section, at the time Investment Assistance is awarded, the Recipient must hold title to Project Real Property, which, as noted in §314.1 in the definition of “Real Property” includes land that is served by the construction of Project infrastructure (such as roads, sewers, and water lines) and where the infrastructure contributes to the value of such land as a specific purpose of the Project. The Recipient must maintain title to Project Real Property at all times during the Estimated Useful Life of the Project, except in those limited circumstances as provided in paragraph (c) of this section. The Recipient also must furnish evidence, satisfactory in form and substance to EDA, that title to Project Real Property (other than property of the United States) is vested in the Recipient and that any easements, rights-of-way, State or local government permits, long-term leases, or other items required for the Project have been or will be obtained by the Recipient within an acceptable time, as determined by EDA.

(b) *Disclosure of encumbrances.*

(1) The Recipient must disclose to EDA all encumbrances, including the following:

- (i) Liens;
 - (ii) Mortgages;
 - (iii) Reservations;
 - (iv) Reversionary interests; and
 - (v) Other restrictions on title or on the Recipient's interest in the Property.
- (2) No encumbrance will be acceptable if, as determined by EDA, the encumbrance interferes with the construction, use, operation or maintenance of the Project during its Estimated Useful Life.
- (c) *Exceptions.* The following are exceptions to the requirements of paragraph (a) of this section that the Recipient hold title to Project Real Property at the time Investment Assistance is awarded and at all times during the Estimated Useful Life of the Project.
- (1) *Project Real Property acquisition.* Where the acquisition of Project Real Property is contemplated as part of an Investment Assistance award, EDA may determine that an agreement for the Recipient to purchase the Project Real Property will be acceptable for purposes of paragraph (a) of this section if:
- (i) The Recipient provides EDA with reasonable assurances that it will obtain fee title to the Real Property prior to or concurrent with the initial disbursement of the Investment Assistance; and
 - (ii) EDA, in its sole discretion, determines that the terms and conditions of the purchase agreement adequately safeguard the Federal Government's interest in the Project Real Property.
- (2) *Leasehold interests.* EDA may determine that a long-term leasehold interest for a period not less than the Estimated Useful Life of Project Real Property will be acceptable for purposes of paragraph (a) of this section if:
- (i) Fee title to the Real Property is not otherwise obtainable; and
 - (ii) EDA, in its sole discretion, determines that the terms and conditions of the lease adequately safeguard the Federal government's interest in the Real Property and demonstrate the economic development and public benefits of the leasehold transaction.
- (3) *Railroad right-of-way construction.* When a Project includes construction within a railroad's right-of-way or over a railroad crossing, EDA may find it acceptable for the work to be completed by the railroad and for the railroad to continue to own, operate, and maintain that portion of the Project, if required by the railroad; and provided that, the construction is a minor but essential component of the Project.

- (4) *State or local government owned roadway or highway construction.* When the Project includes construction on a State or local government owned roadway or highway the owner of which is not the Recipient, EDA may allow the Project to be constructed in whole or in part in the right-of-way of such public roadway or highway, provided that:
- (i) All EDA-funded construction is completed in accordance with EDA requirements;
 - (ii) The Recipient confirms in writing to EDA, satisfactory to EDA, that:
 - (A) The Recipient is committed during the Estimated Useful Life of the Project to operate, maintain and repair all improvements for the Project consistent with the Investment Assistance; and
 - (B) If at any time during the Estimated Useful Life of the Project any or all of the improvements in the Project within the State or local government owned roadway or highway are relocated for any reason pursuant to requirements of the owner of the public roadway or highway, the Recipient shall be responsible for accomplishing such relocation, including expending the Recipient's own funds as necessary, so that the Project continues as authorized by the Investment Assistance; and
 - (iii) The Recipient obtains all written authorizations (*i.e.*, State or county permit(s)) necessary for the Project to be constructed within the public roadway or highway, copies of which shall be submitted to EDA. Such authorizations shall contain no time limits that EDA determines substantially restrict the use of the public roadway or highway for the Project during the Estimated Useful Life of the Project.
- (5) *Construction of Recipient-owned facilities to serve Recipient or privately owned Real Property—*
- (i) *General.* At EDA's discretion, when an authorized purpose of the Project is to construct Recipient-owned facilities to serve Recipient or privately owned Project Real Property, including industrial or commercial parks, so that the Recipient or Owner may sell or lease parcels of the Project Real Property to private parties, such ownership, sale, or lease, as applicable, is permitted so long as:
 - (A) In cases where an authorized purpose of the Project is to sell Project Real Property, the Recipient or Owner, as applicable, provides evidence sufficient to EDA that it holds title to the Project Real Property intended for sale or lease prior to the disbursement of any portion of the Investment Assistance and will retain title until the sale of the Property in accordance with paragraphs (c)(5)(i)(C) through (E) of this section;
 - (B) In cases where an authorized purpose of the Project is to lease Project Real Property, the Recipient or Owner, as applicable, provides evidence sufficient to EDA that it holds title to the Project Real Property intended for lease prior to the disbursement of any portion of the Investment Assistance and will retain title for the entire Estimated Useful Life of the Project;

- (C) The Recipient provides adequate assurances that the Project and the development of land and improvements on the Recipient or privately owned Project Real Property to be served by or that provides the economic justification for the Project will be completed according to the terms of the Investment Assistance;
- (D) The sale or lease of any portion of the Project or of Project Real Property served by the Project or that provides the economic justification for the Project during the Project's Estimated Useful Life must be for Adequate Consideration and the terms and conditions of the Investment Assistance and the purpose(s) of the Project must continue to be fulfilled after such sale or lease; and
- (ii) *Additional conditions on sale or lease.* EDA also may condition the sale or lease on the satisfaction by the Recipient, Owner, purchaser, or lessee (as the case may be) of any additional requirements that EDA may impose, including EDA's pre-approval of the sale or lease.
- (iii) *Agreement between Recipient and Owner.* In addition to paragraphs (c)(5)(i) and (ii) of this section, when an authorized purpose of the Project is to construct facilities to serve privately owned Real Property, the Recipient and the Owner must agree to use the Real Property improved or benefitted by the EDA Investment Assistance only for the authorized purposes of the Project and in a manner consistent with the terms and conditions of the EDA Investment Assistance for the Estimated Useful Life of the Project.
- (iv) *Unauthorized Use and compensation of Federal Share.* EDA may deem that a violation of this paragraph (c)(5) by the Recipient, Owner, purchaser, or lessee (as the case may be) constitutes an Unauthorized Use of the Real Property and the Recipient must agree to compensate EDA for the Federal government's Federal Share of the Project in the case of such Unauthorized Use.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62870, Oct. 22, 2008; 79 FR 76137, Dec. 19, 2014; 82 FR 57061, Dec. 1, 2017]

§314.8 Recorded statement for Project Real Property.

- (a) For all Projects involving the acquisition, construction, or improvement of a building, as determined by EDA, the Recipient shall execute a lien, covenant, or other statement of the Federal Interest in such Project Real Property. The statement shall specify the Estimated Useful Life of the Project and shall include, but not be limited to, the Disposition, encumbrance and Federal Share requirements. The statement shall be satisfactory in form and substance to EDA.
- (b) The statement of the Federal Interest must be perfected and placed of record in the Real Property records of the jurisdiction in which the Project Real Property is located, all in accordance with applicable law.

- (c) Facilities in which the EDA Investment is only a small part of a large project, as determined by EDA, may be exempted from the requirements of this section.
- (d) In extraordinary circumstances and at EDA's sole discretion, EDA may choose to accept another instrument to protect the Federal Interest in Project Real Property, such as an escrow agreement or letter of credit, provided that EDA determines such instrument is adequate and a recorded statement in accord with paragraph (a) of this section is not reasonably available. The terms and provisions of the relevant instrument shall be satisfactory to EDA in EDA's sole judgment. The costs and fees for escrow services and letters of credit shall be paid by the Recipient.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76138, Dec. 19, 2014; 82 FR 57061, Dec. 1, 2017]

§314.9 Recorded statement for Project Personal Property.

For all Projects which EDA determines involve the acquisition or improvement of significant items of Personal Property, including ships, machinery, equipment, removable fixtures, or structural components of buildings, the Recipient shall provide notice of the Federal Interest in all Project Personal Property by executing a Uniform Commercial Code Financing Statement (Form UCC-1, as provided by State law) or other statement of the Federal Interest in the Project Personal Property, acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with applicable law, with continuances re-filed as appropriate. Whether or not a statement is required by EDA to be recorded, the Recipient must hold title to all Project Personal Property, except as otherwise provided in this part.

[82 FR 57062, Dec. 1, 2017]

§314.10 Procedures for release of the Federal Interest.

- (a) *General.* As provided in §314.2, the Federal Interest in Project Property extends for the duration of the Estimated Useful Life of the Project, which is determined by EDA at the time of Investment award. Upon request of the Recipient, EDA will release the Federal Interest in Project Property upon expiration of the Estimated Useful Life as established in the terms and conditions of the Investment Assistance and in accord with the requirements of this section and part. This section provides procedures to obtain a release of the Federal Interest in Project Property.
- (b) *Release of the Federal Interest after the expiration of the Estimated Useful Life.* At the expiration of a Project's Estimated Useful Life and upon the written request of a recipient, the Assistant Secretary may release the Federal Interest in Project Property if EDA determines that the Recipient has made a good faith effort to fulfill all terms and conditions of the Investment Assistance. The determination provided for in this paragraph (b) shall be established at the time of Recipient's written request and shall be based, at least in part, on the facts and circumstances provided in writing by the Recipient. For a Project in which a Recorded Statement as provided for in §§314.8 and 314.9 has been recorded, EDA will provide for the release by executing an instrument in recordable form. The release will

terminate the Investment as of the date of its execution and satisfy the Recorded Statement. See paragraph (e) of this section for limitations and covenants of use that are applicable to any release of the Federal Interest.

- (c) *Release prior to the expiration of the Estimated Useful Life.* If the Recipient will no longer use the Project Property in accord with the requirements of the terms and conditions of the Investment within the time period of the Estimated Useful Life, EDA will determine if such use by the Recipient constitutes an Unauthorized Use of Property and require compensation for the Federal Interest as provided in §314.4 and this section. EDA may release the Federal Interest in connection with such Property only upon receipt of full payment in compensation of the Federal Interest and thereafter will have no further interest in the ownership, use, or Disposition of the Property, except for the nondiscrimination requirements set forth in paragraph (e)(3) of this section.
- (d) *Release of the Federal Interest before the expiration of the Estimated Useful Life, but 20 years after the award of Investment Assistance.* In accord with section 601(d)(2) of PWEDA, upon the request of a Recipient and before the expiration of the Estimated Useful Life of a Project, but where 20 years have elapsed since the award of Investment Assistance, EDA may release any Real Property or tangible Personal Property interest held by EDA, if EDA determines:
 - (1) The Recipient has made a good faith effort to fulfill all terms and conditions of the award of Investment Assistance; and
 - (2) The economic development benefits as set out in the award of Investment Assistance have been achieved.
 - (3) See paragraph (e) of this section for limitations and covenants of use that are applicable to any release of the Federal Interest.
- (e) *Limitations and Covenant of Use.*
 - (1) EDA's release of the Federal Interest pursuant to this section is not automatic; it requires EDA's approval, which will not be withheld except for good cause or as otherwise required by law, as determined in EDA's sole discretion. As deemed appropriate, EDA may require the Recipient to take some action as a condition of the release.
 - (2) In determining whether to release the Federal Interest, EDA will review EDA's legal authority to release its interest, including the Recipient's performance under and conformance with the terms and conditions of the Investment Assistance; any use of Project Property in violation of §314.3 or §314.4; and other such factors as EDA deems appropriate. When requesting a release of the Federal Interest pursuant to this section, the Recipient will be required to disclose to EDA the intended future use of the Real Property or the tangible Personal Property for which the release is requested.
 - (i) A Recipient not intending to use the Real Property or tangible Personal Property for explicitly religious activities following EDA's release will be required to execute a covenant of use. A covenant of use with respect to Real Property shall be recorded in

the jurisdiction where the Real Property is located in accordance with §314.8. A covenant of use with respect to items of tangible Personal Property shall be perfected and recorded in accordance with applicable law, with continuances re-filed as appropriate. *See* §314.9. A covenant of use shall (at a minimum) prohibit the use of the Real Property or the tangible Personal Property for explicitly religious activities in violation of applicable Federal law.

(ii) EDA may require a Recipient (or its successors in interest) that intends or foresees the use of Real Property or tangible Personal Property for explicitly religious activities following the release of the Federal Interest to compensate EDA for the Federal Share of such Property. If such compensation is made, no covenant with respect to explicitly religious activities will be required as a condition of the release. EDA recommends that any Recipient who intends or foresees the use of Real Property or tangible Personal Property (including by successors of the Recipient) for explicitly religious activities to contact EDA well in advance of requesting a release pursuant to this section.

(3) Notwithstanding any release of the Federal Interest under this section, including a release upon a Recipient's compensation for the Federal Share, a Recipient must ensure that Project Property is not used in violation of nondiscrimination requirements set forth in §302.20 of this chapter. Accordingly, upon the release of the Federal Interest, the Recipient must execute a covenant of use that prohibits use of Real Property or tangible Personal Property for any purpose that would violate the nondiscrimination requirements set forth in §302.20 of this chapter.

(i) With respect to Real Property, the Recipient must record a covenant under this subsection in the jurisdiction where the Real Property is located in accordance with §314.8.

(ii) With respect to items of tangible Personal Property, the Recipient must perfect and record a covenant under this subsection in accordance with applicable law, with continuances re-filed as appropriate, in accordance with §314.9.

[79 FR 76139, Dec. 19, 2014, as amended at 82 FR 57062, Dec. 1, 2017]

PART 315—TRADE ADJUSTMENT ASSISTANCE FOR FIRMS

AUTHORITY: 19 U.S.C. 2341-2356; 42 U.S.C. 3211; Title IV of Pub. L. 114-27, 129 Stat. 373; Department of Commerce Delegation Order 10-4.

SOURCE: 74 FR 41598, Aug. 18, 2009, unless otherwise noted.

Subpart A—General Provisions

§315.1 Purpose and scope.

Chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341-2355) establishes the responsibilities of the Secretary of Commerce concerning the Trade Adjustment Assistance for Firms (TAAF) program. The regulations in this part lay out those responsibilities as delegated to EDA by the Secretary. EDA executes these responsibilities through cooperative agreements that support a network of Trade Adjustment Assistance Centers (TAACs). The TAACs assist Firms in petitioning EDA for certification of eligibility to receive Adjustment Assistance. EDA certifies the eligibility of Firms. The TAACs then provide Adjustment Assistance to Firms through the development and implementation of Adjustment Proposals.

[85 FR 8379, Feb. 14, 2020]

§315.2 Definitions.

In addition to the defined terms set forth in §300.3 of this chapter, the following terms used in this part shall have the meanings set forth below:

Adjustment Assistance means technical assistance provided to Firms by TAACs under chapter 3 of title II of the Trade Act. The type of assistance provided is determined by EDA and may include one or more of the following:

- (1) Assistance in preparing a Firm's petition for certification of eligibility;
- (2) Assistance to a Certified Firm in developing an Adjustment Proposal for the Firm; and
- (3) Assistance to a Certified Firm in implementing an Adjustment Proposal.

Adjustment Proposal means a Certified Firm's plan for improving the Firm's competitiveness in the marketplace.

Certified Firm means a Firm which has been determined by EDA to be eligible to apply for Adjustment Assistance.

Confidential Business Information means any information submitted to EDA or a TAAC by a Firm that concerns or relates to trade secrets for commercial or financial purposes, which is exempt from public disclosure under 5 U.S.C. 552(b)(4), 5 U.S.C. 552b(c)(4) and 15 CFR part 4.

Contributed Importantly, with respect to an Increase in Imports, refers to a cause which is important but not necessarily more important than any other cause. Imports will not be considered to have Contributed Importantly if other factors were so dominant, acting singly or in combination, that the worker separation or threat thereof or decline in sales or production would have been essentially the same, irrespective of the influence of imports.

Decreased Absolutely means a Firm's sales or production has declined by a minimum of five percent relative to its sales or production during the applicable prior time period, and this decline is:

- (1) Independent of industry or market fluctuations; and
- (2) Relative only to the previous performance of the Firm, unless EDA determines that these limitations in a given case would not be consistent with the purposes of the Trade Act.

Directly Competitive or Like means imported articles or services that compete with and are substantially equivalent for commercial purposes (i.e., are adapted for the same function or use and are essentially interchangeable) as the Firm's articles or services. For the purposes of this term, any Firm that engages in exploring or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.

Firm means an individual proprietorship, partnership, joint venture, association, corporation (includes a development corporation), business trust, cooperative, trustee in bankruptcy or receiver under court decree, and includes fishing, agricultural or service sector entities and those which explore, drill or otherwise produce oil or natural gas. See also the definition of Service Sector Firm. Pursuant to section 259 of chapter 3 of title II of the Trade Act (19 U.S.C. 2351), a Firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same person, may be considered a single Firm where necessary to prevent Unjustifiable Benefits. For purposes of receiving benefits under this part, when a Firm owns or controls other Firms, the Firm and such other Firms may be considered a single Firm when they produce or supply like or Directly Competitive articles or services or are exerting essential economic control over one or more production facilities. Accordingly, such other Firms may include a(n):

- (1) *Predecessor*—see the following definition for Successor;
- (2) *Successor*—a newly established Firm (that has been in business less than two years) which has purchased substantially all of the assets of a previously operating company (or in some cases a whole distinct division) (such prior company, unit or division, a 'Predecessor') and is able to demonstrate that it continued the operations of the Predecessor which has operated as an autonomous unit, provided that there were no significant transactions between the Predecessor unit and any related parent, subsidiary, or affiliate that would have affected its past performance, and that separate records are available for the Predecessor's operations for at least two years before the petition is submitted. The Successor Firm must have continued virtually all of the Predecessor Firm's operations by producing the same type of products or services, in the same plant, utilizing most of the same machinery and equipment and most of its former workers, and the Predecessor Firm must no longer be in existence;
- (3) *Affiliate*—a company (either foreign or domestic) controlled or substantially beneficially owned by substantially the same person or persons that own or control the Firm filing the petition; or

- (4) *Subsidiary*—a company (either foreign or domestic) that is wholly owned or effectively controlled by another company. A Firm that has been acquired by another Firm but which maintains operations independent of the acquiring Firm is considered an Independent Subsidiary and may be considered separately from the acquiring Firm as eligible for TAAF assistance.

Increase in Imports means an increase in imports of Directly Competitive or Like Articles or Services with articles produced or services supplied by a Firm.

Like Articles or Services means any articles or services, as applicable, which are substantially identical in their intrinsic characteristics.

Partial Separation occurs when there has been no increase in overall employment at the Firm and either of the following applies:

- (1) A reduction in an employee's work hours to 80 percent or less of the employee's average weekly hours during the year of such reductions as compared to the preceding year; or
- (2) A reduction in the employee's weekly wage to 80 percent or less of his/her average weekly wage during the year of such reduction as compared to the preceding year.

Person means an individual, organization or group.

Record means any of the following:

- (1) A petition for certification of eligibility to qualify for Adjustment Assistance;
- (2) Any supporting information submitted by a petitioner;
- (3) The report of an EDA investigation with respect to petition; and
- (4) Any information developed during an investigation or in connection with any public hearing held on a petition.

Service Sector Firm means a Firm engaged in the business of supplying services.

Significant Number or Proportion of Workers means five percent of a Firm's work force or 50 workers, whichever is less, unless EDA determines that these limitations in a given case would not be consistent with the purposes of the Trade Act. An individual farmer or fisherman is considered a Significant Number or Proportion of Workers.

Substantial Interest means a direct material economic interest in the certification or non-certification of the petitioner.

TAAC means a Trade Adjustment Assistance Center, as more fully described in §315.5.

Threat of Total or Partial Separation means, with respect to any group of workers, one or more events or circumstances clearly demonstrating that a Total or Partial Separation is imminent.

Total Separation means the laying off or termination of employment of an employee in a Firm for lack of work.

Unjustifiable Benefits means Adjustment Assistance inappropriately accruing to the benefit of:

- (1) Other Firms that would not otherwise be eligible when provided to a Firm; or
- (2) Any predecessor or successor Firm, or any affiliated Firm controlled or substantially beneficially owned by substantially the same person, rather than treating these entities as a single Firm.

[74 FR 41598, Aug. 18, 2009, as amended at 85 FR 8379, Feb. 14, 2020]

§315.3 Confidential Business Information.

EDA will follow the procedures set forth in 15 CFR 4.9 for the submission of Confidential Business Information. Submitters should clearly mark and designate as confidential any Confidential Business Information.

Subpart B—TAAC Provisions

SOURCE: 85 FR 8380, Feb. 14, 2020, unless otherwise noted.

§315.4 TAAC selection and operation.

- (a) EDA solicits applications from organizations interested in operating a TAAC through Notice of Funding Opportunity announcements laying out selection and award criteria. The following entities are eligible to apply:
 - (1) Universities or affiliated organizations;
 - (2) States or local governments; or
 - (3) Non-profit organizations.
- (b) Entities selected to operate the TAACs are awarded cooperative agreements and work closely with EDA and import-impacted firms. TAAC cooperative agreements are subject to all Federal laws and to Federal, Department, and EDA policies, regulations, and procedures applicable to Federal financial assistance awards, including 2 CFR part 200.

§315.5 The role and geographic coverage of the TAACs.

- (a) TAACs are available to assist Firms in obtaining Adjustment Assistance in all 50 U.S. States, the District of Columbia, and the Commonwealth of Puerto Rico. TAACs provide Adjustment Assistance in accordance with this part either through their own staffs or by arrangements with outside consultants. Information concerning TAACs and their coverage areas may be obtained from the TAAC website at <http://www.taacenters.org> or from EDA at <http://www.eda.gov>.

- (b) Prior to submitting a petition for Adjustment Assistance to EDA, a Firm should determine the extent to which a TAAC can provide the required Adjustment Assistance. EDA will provide Adjustment Assistance through TAACs whenever EDA determines that such assistance can be provided most effectively in this manner. Requests for Adjustment Assistance will be made through TAACs.
- (c) A TAAC generally provides Adjustment Assistance by:
 - (1) Helping a Firm to prepare its petition for eligibility certification; and
 - (2) Assisting Certified Firms with diagnosing their strengths and weaknesses, and with developing and implementing an Adjustment Proposal.

Subpart C—Certification of Firms

SOURCE: 85 FR 8380, Feb. 14, 2020, unless otherwise noted.

§315.6 Certification requirements.

- (a) *General.* Firms apply for certification through a TAAC by completing a petition for certification. The TAAC will assist Firms in completing such petitions at no cost to the Firms. EDA evaluates Firms' petitions based on the requirements set forth in §315.7. EDA may certify a Firm as eligible to apply for Adjustment Assistance under section 251(c) of the Trade Act (19 U.S.C. 2341) if it determines that the petition for certification meets one of the minimum certification thresholds set forth in paragraph (b) of this section. In order to be certified, a Firm must meet the criteria listed under any one of the five circumstances described in paragraph (b) of this section.
- (b) *Minimum certification thresholds—*
 - (1) *Twelve-month decline.* Based upon a comparison of the most recent 12-month period for which data are available and the immediately preceding 12-month period:
 - (i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;
 - (ii) Either sales or production, or both, of the Firm has Decreased Absolutely; or sales or production, or both, of any article or service that accounted for not less than 25 percent of the total production or sales of the Firm during the 12-month period preceding the most recent 12-month period for which data are available have Decreased Absolutely; and
 - (iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

- (2) *Twelve-month versus twenty-four month decline.* Based upon a comparison of the most recent 12-month period for which data are available and the immediately preceding 24-month period:
- (i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;
 - (ii) Either average annual sales or production, or both, of the Firm has Decreased Absolutely; or average annual sales or production, or both, of any article or service that accounted for not less than 25 percent of the total production or sales of the Firm during the 24-month period preceding the most recent 12-month period for which data are available have Decreased Absolutely; and
 - (iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.
- (3) *Twelve-month versus thirty-six month decline.* Based upon a comparison of the most recent 12-month period for which data are available and the immediately preceding 36-month period:
- (i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;
 - (ii) Either average annual sales or production, or both, of the Firm has Decreased Absolutely; or average annual sales or production, or both, of any article or service that accounted for not less than 25 percent of the total production or sales of the Firm during the 36-month period preceding the most recent 12-month period for which data are available have Decreased Absolutely; and
 - (iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.
- (4) *Interim sales or production decline.* Based upon an interim sales or production decline:
- (i) Sales or production has Decreased Absolutely for, at minimum, the most recent six-month period during the most recent 12-month period for which data are available as compared to the same six-month period during the immediately preceding 12-month period;
 - (ii) During the same base and comparative period of time as sales or production has Decreased Absolutely, a Significant Number or Proportion of Workers in such Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation; and
 - (iii) During the same base and comparative period of time as sales or production has Decreased Absolutely, an Increase in Imports has Contributed Importantly to the

applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(5) *Interim employment decline.* Based upon an interim employment decline:

- (i) A Significant Number or Proportion of Workers in such Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation during, at a minimum, the most recent six-month period during the most recent 12-month period for which data are available as compared to the same six-month period during the immediately preceding 12-month period; and
 - (ii) Either sales or production of the Firm has Decreased Absolutely during the 12-month period preceding the most recent 12-month period for which data are available; and
 - (iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.
- (c) *Evidence of an increase in imports.* EDA may consider as evidence of an Increase in Imports a certification from the Firm's customers that account for a significant percentage of the Firm's decrease in sales or production, that they have increased their purchase of imports of Directly Competitive or Like Articles or Services from a foreign country, either absolutely or relative to their acquisition of such Like Articles or Services from suppliers located in the United States. Such certification from a Firm's customer must be submitted directly to a TAAC or to EDA.

§315.7 Processing petitions for certification.

- (a) Firms shall consult with a TAAC for guidance and assistance in the preparation of their petitions for certification.
- (b) A Firm seeking certification shall complete a *Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance* (Form ED-840P or any successor form) with the following information about such Firm:
 - (1) Identification and description of the Firm, including legal form of organization, economic history, major ownership interests, officers, directors, management, parent company, Subsidiaries or Affiliates, and production and sales facilities;
 - (2) Description of goods or services supplied or sold;
 - (3) Description of imported Directly Competitive or Like Articles or Services with those produced or supplied;
 - (4) Data on its sales, production and employment for the applicable 24-month, 36-month, or 48-month period, as required under §315.6(b);

- (5) One copy of a complete auditor's certified financial report for the entire period covering the petition, or if not available, one copy of the complete profit and loss statements, balance sheets and supporting statements prepared by the Firm's accountants for the entire period covered by the petition. In addition, publicly-owned corporations should also submit copies of the most recent Form 10-K annual reports (or Form 10-Q quarterly reports, as appropriate) filed with the U.S. Securities and Exchange Commission for the entire period covered by the petition;
 - (6) Information concerning customers accounting for a significant percent of the Firm's decline and the customers' purchases (or the Firm's unsuccessful bids, if there are no customers fitting this description); and
 - (7) Such other information as EDA considers material.
- (c) EDA shall determine whether the petition has been properly prepared and can be accepted. Promptly thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the TAAC that the petition has not been accepted, but may be resubmitted at any time without prejudice when the specified deficiencies have been corrected. Any resubmission will be treated as a new petition.
 - (d) EDA will publish a notice of acceptance of a petition in the FEDERAL REGISTER.
 - (e) EDA will initiate an investigation to determine whether the petitioner meets the requirements set forth in section 251(c) of the Trade Act (19 U.S.C. 2341) and §315.6.
 - (f) A petition for certification may be withdrawn if EDA receives a request for withdrawal submitted by the petitioner before EDA makes a certification determination or denial. A Firm may submit a new petition at any time thereafter in accordance with the requirements of this section and §315.6.
 - (g) Following acceptance of a petition, EDA will:
 - (1) Make a determination based on the Record as soon as possible after the petitioning Firm or TAAC has submitted all requested material. In no event may the determination period exceed 40 calendar days from the date on which EDA accepted the petition; and
 - (2) Either certify the petitioner as eligible to apply for Adjustment Assistance or deny the petition. In either event, EDA shall promptly give written notice of action to the petitioner. Any written notice to the petitioner of a denial of a petition shall specify the reason(s) for the denial. A petitioner shall not be entitled to resubmit a petition within one year from the date of denial unless EDA waives the one-year limitation for good cause.

§315.8 Hearings.

EDA will hold a public hearing on an accepted petition if the petitioner or any interested Person found by EDA to have a Substantial Interest in the proceedings submits a request for a hearing no later than 10 calendar days after the date of publication of the notice of acceptance in the FEDERAL REGISTER, under the following procedures:

- (a) The petitioner or any interested Person(s) shall have an opportunity to be present, to produce evidence and to be heard.
- (b) A request for public hearing must be delivered by hand or by registered mail to EDA. A request by a Person other than the petitioner shall contain:
 - (1) The name, address and telephone number of the Person requesting the hearing; and
 - (2) A complete statement of the relationship of the Person requesting the hearing to the petitioner and the subject matter of the petition, and a statement of the nature of the requesting party's interest in the proceedings.
- (c) If EDA determines that the requesting party does not have a Substantial Interest in the proceedings, a written notice of denial shall be sent to the requesting party. The notice shall specify the reasons for the denial.
- (d) If EDA determines that the requesting party does have a Substantial Interest in the proceedings, EDA shall publish a notice of a public hearing in the FEDERAL REGISTER, containing the subject matter, name of petitioner, and date, time and place of the hearing.
- (e) EDA shall appoint a presiding officer for the hearing who shall respond to all procedural questions.

§315.9 Loss of certification benefits.

EDA may terminate a Firm's certification or refuse to extend Adjustment Assistance to a Firm for any of the following reasons:

- (a) The Firm failed to submit an acceptable Adjustment Proposal within two years after date of certification. While approval of an Adjustment Proposal may occur after the expiration of such two-year period, a Firm must submit an acceptable Adjustment Proposal before such expiration.
- (b) The Firm failed to submit documentation necessary to start implementation or modify its request for Adjustment Assistance consistent with its Adjustment Proposal within six months after approval of the Adjustment Proposal, where two years have elapsed since the date of certification. If the Firm anticipates needing a longer period to submit documentation, it should indicate the longer period in its Adjustment Proposal. If the Firm is unable to submit its documentation within the allowed time, it should notify EDA in writing of the reasons for the delay and submit a new schedule. EDA has the discretion to accept or refuse a new schedule.
- (c) EDA has denied the Firm's request for Adjustment Assistance, the time period allowed for the submission of any documentation in support of such request has expired, and two years have elapsed since the date of certification.
- (d) The Firm failed to diligently pursue an approved Adjustment Proposal, and five years have elapsed since the date of certification.

§315.10 Appeals, final determinations, and termination of certification.

- (a) Any petitioner may appeal in writing to EDA from a denial of certification, provided that EDA receives the appeal by personal delivery or by registered mail within 60 calendar days from the date of notice of denial under §315.7(g). The appeal must state the grounds on which the appeal is based, including a concise statement of the supporting facts and applicable law. The decision of EDA on the appeal shall be the final determination within the Department. In the absence of an appeal by the petitioner under this paragraph (a), the determination under §315.7(g) shall be final.
- (b) A Firm, its representative, or any other interested domestic party aggrieved by a final determination under paragraph (a) of this section may, within 60 calendar days after notice of such determination, begin a civil action in the United States Court of International Trade for review of such determination, in accordance with section 284 of the Trade Act (19 U.S.C. 2395).
- (c) Whenever EDA determines that a Certified Firm no longer requires Adjustment Assistance or for other good cause, EDA will terminate the certification and promptly publish notice of such termination in the FEDERAL REGISTER. The termination will take effect on the date specified in the published notice. EDA shall immediately notify the petitioner and shall state the reasons for any termination.

Subpart D—Adjustment Proposals

SOURCE: 85 FR 8380, Feb. 14, 2020, unless otherwise noted.

§315.11 Adjustment Proposal process.

- (a) Firms certified in accordance with the procedures described in §§315.6 and 315.7 must prepare an Adjustment Proposal and submit it to EDA for approval within two years after the date of certification.
- (b) EDA determines whether to approve the Adjustment Assistance requested in the Adjustment Proposal based upon the evaluation criteria set forth in §315.12. Upon approval, a Certified Firm may submit a request to the TAAC for Adjustment Assistance to implement an approved Adjustment Proposal. Firms must begin implementation within six months after approval. Firms that do not begin implementation within six months after approval must update, re-submit their Adjustment Proposal, and request re-approval before any Adjustment Assistance may be provided.
- (c) EDA will make a determination regarding the Adjustment Proposal no later than 60 calendar days upon receipt of the Adjustment Proposal.
- (d) Adjustment Assistance is subject to matching share requirements. Each Certified Firm must pay at least 25 percent of the cost of preparing its Adjustment Proposal. Each Certified Firm requesting \$30,000 or less in total Adjustment Assistance in its approved Adjustment Proposal must pay at least 25 percent of the cost of that Adjustment Assistance. Each

Certified Firm requesting more than \$30,000 in total Adjustment Assistance in its approved Adjustment Proposal must pay at least 50 percent of the cost of that Adjustment Assistance. Certified Firms may request no more than the amount as established by EDA for total Adjustment Assistance over the entire lifetime of the firm.

- (e) Firms may request EDA approval to amend their Adjustment Proposals within two years from the date of EDA approval of their initial Adjustment Proposal.
- (f) Firms must complete implementation of their Adjustment Proposals within five years of EDA approval of their initial Adjustment Proposal.
- (g) If a Certified Firm is transferred, sold, or otherwise acquired by another Firm during the five-year period of Adjustment Assistance, the Firm must notify EDA no later than 30 calendar days following the transfer, sale, or acquisition. EDA will then make a determination as to whether the Firm remains eligible for Adjustment Assistance. EDA will make this determination no later than 60 calendar days following notification by the Firm.
- (h) In accordance with Section 255A of chapter 3 of title II of the Trade Act (19 U.S.C. 2345a), Firms that receive Adjustment Assistance must provide data regarding the Firms' sales, employment, and productivity upon completion of the program and each year for the two-year period following completion.

§315.12 Adjustment Proposal requirements.

EDA evaluates Adjustment Proposals based on the following:

- (a) The Adjustment Proposal must include a description of any Adjustment Assistance requested to implement such proposal, including financial and other supporting documentation as EDA determines is necessary, based upon either:
 - (1) An analysis of the Firm's problems, strengths, and weaknesses and an assessment of its prospects for recovery; or
 - (2) If EDA so determines, other available information;
- (b) The Adjustment Proposal must:
 - (1) Be reasonably calculated to contribute materially to the economic adjustment of the Firm (*i.e.*, that such proposal will constructively assist the Firm to establish a competitive position in the same or a different industry);
 - (2) Give adequate consideration to the interests of a sufficient number of separated workers of the Firm, by providing, for example, that the Firm will:
 - (i) Give a rehiring preference to such workers;
 - (ii) Make efforts to find new work for a number of such workers; and

- (iii) Assist such workers in obtaining benefits under available programs; and
- (3) Demonstrate that the Firm will make all reasonable efforts to use its own resources for its recovery, though under certain circumstances, resources of related Firms or major stockholders will also be considered; and
- (c) The Adjustment Assistance identified in the Adjustment Proposal must consist of specialized consulting services designed to assist the Firm in becoming more competitive in the global marketplace. For purposes of this paragraph (c), Adjustment Assistance generally consists of knowledge-based services such as market penetration studies, customized business improvements, and designs for new products. Adjustment Assistance does not include expenditures for capital improvements or for the purchase of business machinery or supplies.

Subpart E—Protective Provisions

SOURCE: 85 FR 8380, Feb. 14, 2020, unless otherwise noted.

§315.13 Persons engaged by Firms to expedite petitions and Adjustment Proposals.

EDA will provide no Adjustment Assistance to any Firm unless the owners, partners, members, directors, or officers thereof certify in writing to EDA:

- (a) The names of any attorneys, agents, and other Persons engaged by or on behalf of the Firm for the purpose of expediting petitions for such Adjustment Assistance or Adjustment Proposals; and
- (b) The fees paid or to be paid to any such Person.

§315.14 Conflicts of interest.

EDA will provide no Adjustment Assistance to any Firm under this part unless the owners, partners, members, directors, or officers thereof execute an agreement binding them and the Firm for a period of two years after such Adjustment Assistance is provided, to refrain from employing, tendering any office or employment to, or retaining for professional services any Person who, on the date such assistance or any part thereof was provided, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee occupying a position or engaging in activities which involved discretion with respect to the provision of such Adjustment Assistance.

Subpart F—International Trade Commission Investigations

SOURCE: 85 FR 8380, Feb. 14, 2020, unless otherwise noted.

§315.15 Affirmative findings.

Whenever the International Trade Commission makes an affirmative finding under section 202(b) of the Trade Act (19 U.S.C. 2252) that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, EDA will notify the TAACs and provide expedited review of petitions and Adjustment Proposals from Firms within the specified industry.

PARTS 316-399 [RESERVED]