



EDA Regulatory Revision Final Rule – Summary

Things to Know:

- EDA’s revised regulations promote two key pillars of EDA: innovation and regional collaboration. The final rule encourages coordination and the leveraging of other federal resources while providing greater flexibility to EDA stakeholders.
- The final rule will take effect on January 20, 2015. The proposed rule, which was published in December 2011, received more than 120 public comments, which were taken into account in this Final Rule.
- Based on the public comments, some key changes are to the regulations governing the Comprehensive Economic Development Strategies (CEDS) process, EDA’s Planning program and Economic Development Districts (EDDs).

The Final Rule:

- Removes outdated provisions (e.g., RLF Recipient no longer required to request that EDA subordinate its interest when seeking EDA approval to sell or securitize its RLF portfolio)
- Streamlines burdensome or unnecessary requirements (e.g., removes the “laundry-list” elements of CEDS and replaces them with four essential planning elements).
- Clarifies definitions, processes and requirements (e.g., EDA will use most recent data from BLS to determine economic distress levels based on unemployment rate, and ACS data to determine distress levels based on per capita income).

Key Provisions:

Eligibility, Investment Rates and Match Requirements

- Changes key definitions, which includes adding a definition for Regional Innovation Clusters (RICs).
- Clarifies the data requirements eligible recipients must follow to demonstrate economic distress.

- EDA can now authorize a grant rate of up to 80 percent to incentivize projects that encourage broad, innovative Regional planning or demonstrate effective leveraging of other Federal resources.
- Modifies EDA's criteria for evaluating applications; projects will be evaluated based on the extent to which they: (a) ensure regional collaboration; (b) leverage public-private partnerships; (c) advance national strategic priorities; (d) enhance global competitiveness; (e) encourage environmentally sustainable development; and (f) support economically distressed and underserved communities.
- Maintains current definitions for traditional infrastructure but now provides examples of innovation- and entrepreneurship-related infrastructure and definitions of these terms, including business incubation, business acceleration, venture development organizations, proof of concept centers and technology transfer.

Planning and Comprehensive Economic Development Strategies (CEDS)

Restructuring of the CEDS process

- Adds non-profit organizations and educational institutions to the list of entities that EDA expects will be part of the planning process.
- Maintains the requirement that a CEDS Strategy Committee represent the main economic interests of the region (e.g., private sector, public officials, community leaders, private individuals, representatives of workforce development boards, institutions of higher education, minority and labor groups), but eliminates the requirement for a majority or membership threshold for any type of economic stakeholder (unless State law says otherwise). *Thus, eliminates the requirement that private sector representatives constitute a majority of Strategy Committee membership.*
- Imposes new public notice and comment requirements before a Planning Organization can submit a CEDS to EDA (e.g., keeping comment period open for at least 30 days, permitting EDA to request any comments received on the CEDS and a demonstration of how these comments were addressed).

CEDS Content Requirements

- Replaces the laundry-list of 10 detailed items with four essential planning elements: (a) summary of economic development conditions of the region; (b) in-depth SWOT analysis of the region; (c) strategies and implementation plan that is not inconsistent with applicable State and local economic development or workforce development strategies; and (d) performance measures used to evaluate the Planning Organization's successful development and implementation of the

CEDS. The CEDS should also include how it is supporting and advancing economic resilience in the region

- Removes the express requirement that the CEDS document contain a “project list.” There is no prohibition on a CEDS document containing a project list, but EDA emphasizes that the appropriate focus should be on developing a strategy-driven plan based on regional visioning, prioritized actions and performance outcomes rather than a stand-alone list of projects and programs.
- Final Rule emphasizes that EDA will provide further guidance through the publication of periodically-updated CEDS Guidelines, which will be based on best practices and developed in collaboration with EDA’s economic development and research partners.

Economic Development Districts (EDDs)

- Eliminates the current membership thresholds for EDD policy boards, so:
- No longer required that EDD policy boards include at least a majority of its membership being elected officials or employees of a State, local or Indian tribal government appointed to represent the government.
- No longer required that EDD policy boards include at least one private sector Representative.
- No longer required that EDD policy boards include one or more representatives from Chambers of Commerce, institutions of post-secondary education, workforce development groups, or labor groups, all of which must aggregate a minimum of 35 percent of the District Organization’s governing body.
- In lieu of the membership thresholds, EDA maintains the requirement that the governing bodies must demonstrate that they are broadly representative of the principal economic interests of the region and adds the requirement that governing bodies must demonstrate the capability to implement the relevant CEDS.
- District Organizations must meet at least twice a year, instead of annually.

Public Works

- Clarifies that recipients must obtain EDA’s prior written approval before an alternate construction method to the traditional design/bid/build approach can be used. The justification for using the alternate method must include a brief analysis of the appropriateness and benefits of using the method to successfully execute the project, as well as the recipient’s past experience in using the method.

- Adds a new paragraph, codifying EDA’s existing practice, setting forth EDA’s procedures in the event of an overrun at construction contract bid opening.

Revolving Loan Fund (RLF) Requirements

- Permits EDA to waive the requirement to submit the RLF Income and Expense Statement (Form ED-209I) for RLFs with a small capital base, as determined by EDA.
- Imposes more rigorous standard for certification by an independent accountant as to adequacy of the RLF recipient’s accounting system.
- EDA now permits any Federal loans, not just those from the U.S. Small Business Administration’s 7(a) and 504 loan programs, to be used by the RLF recipient to satisfy its leveraging requirement.
- Clarifies requirements related to EDA’s capital utilization standard of 75 percent.
- EDA now may approve, at the request of the RLF recipient, the addition of a new lending area before the full amount of the RLF grant is disbursed to the recipient.
- Clarifies the distinction between a “consolidation,” when a single RLF recipient that has multiple RLF awards obtains EDA approval for consolidation of the multiple awards into a single RLF, and a “merger,” when two or more RLF recipients obtains EDA approval for the merger of their respective RLF awards to form a single RLF award.

Property

- Clarifies that EDA’s use restrictions apply only during the Estimated Useful Life of the Project.
- Clarifies EDA’s authority to enter into an inter-creditor agreement under which EDA and another lien holder share a first lien position.
- Provides flexibility on subordination, depending on whether subordination requests are made before, contemporaneously with, or after the grants award decision.
- Makes clear that EDA may waive the restriction against encumbrances if it finds that there is both “good cause” to waive the restriction and legal authority to waive.
- Provides necessary clarification of the difference between a “Project” and “Real Property” to be benefitted by the scope of work of the “Project.”

- Adds a new provision setting out EDA's authority to accept an instrument other than a recorded statement to protect EDA's interest in project property, such an escrow agreement or a letter of credit.
- Clarifies the procedures for the release of the Federal Interest associated with EDA-assisted property: (a) outlines the general rule that upon a written request, EDA may release the Federal Interest in project property at the expiration of the project's Estimated Useful Life, so long as the recipient has made a good faith effort to fulfill the terms and conditions of the award, as determined by EDA; (b) provides that EDA can release its interest before the expiration of the Estimated Useful Life only if the agency receives compensation for the fair market value of the Federal Interest.