

**DEPARTMENT OF COMMERCE****Economic Development Administration****13 CFR Chapter III**

[Docket No.: 05072910–6229–06]

RIN: 0610–AA63

**Economic Development Administration Reauthorization Act of 2004 Implementation; Regulatory Revision**

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** On August 11, 2005, the Economic Development Administration (“EDA”) published an interim final rule to reflect the amendments made to EDA’s authorizing statute, the Public Works and Economic Development Act of 1965, by the Economic Development Administration Reauthorization Act of 2004. A ninety-three (93) day public comment period followed the publication of the interim final rule, specifically from August 11, 2005 through November 14, 2005. On December 15, 2005, EDA published an interim final rule that amended certain provisions of the August 11, 2005 interim final rule. EDA received a large number of public comments on different portions of the August 11, 2005 interim final rule. This final rule responds to all substantive comments received during the public comment period and finalizes this rulemaking proceeding based on comments received during the public comment period.

**DATES:** This rule is effective as of September 27, 2006.

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**SUPPLEMENTARY INFORMATION:****Background**

EDA published an interim final rule in the *Federal Register* (70 FR 47002) on August 11, 2005 (the “*Interim Final Rule*”). The Interim Final Rule reflects the amendments made to EDA’s authorizing statute, the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*) (“*PWEDA*”), by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108–373, 118 Stat. 1756 (2004)) (the “*2004 Act*”). In addition, the Interim Final Rule reflects EDA’s

current practices and policies in administering its economic development programs that have evolved since the promulgation of EDA’s former regulations. The Interim Final Rule provided for a public comment period from August 11, 2005 through October 11, 2005. EDA also held a public hearing on September 1, 2005 on the Interim Final Rule.

On September 30, 2005, EDA published a final rule (70 FR 57124) that extended the deadline for submitting public comments on the Interim Final Rule from October 11, 2005 until November 14, 2005. The September 30, 2005 final rule also delayed the effective date, from October 1, 2005 until November 14, 2005, of (i) § 304.2(c)(2) of the Interim Final Rule, pertaining to membership requirements of a District Organization’s governing body; and (ii) § 301.4 of the Interim Final Rule, as the provisions of this section pertain to Investment Rates for EDA Planning Investments. On November 14, 2005, EDA published another final rule (70 FR 69053) delaying the effective date of these provisions from November 14, 2005 until January 31, 2006. All other provisions of the Interim Final Rule became effective on October 1, 2005.

The conference report (H.R. Rep. No. 109–272, at 136–138 (2006) (Conf. Rep.); the “*Conference Report*”) accompanying the FY 2006 Science, State, Justice, Commerce and Related Agencies Appropriations Act (Pub. L. 109–108, 119 Stat. 2290 (2005)) (the “*2006 Appropriations Act*”) expressed Congressional intent as to specific provisions of the Interim Final Rule. On December 15, 2005, EDA published an interim final rule (70 FR 74193) to immediately effect only those changes to the Interim Final Rule specified in the Conference Report (the “*December 15, 2005 Rulemaking*”).

After receiving extensive input from stakeholders, EDA is publishing this final rule to respond to all comments received during the public comment period on all aspects of the Interim Final Rule, and to make additional revisions. The majority of public comments were part of a mass mailing campaign, which resulted in EDA receiving hundreds of identical or nearly identical pieces of mail in a calendar month. For the most part, these comments expressed opinions on 13 CFR parts 300, 301, 302, 303, 304 and 307. This final rule also explains changes made to the Interim Final Rule in response to the Congressional recommendations set forth in the Conference Report and effected by the December 15, 2005 Rulemaking. Capitalized terms used but not

otherwise defined in this final rule have the meanings ascribed to them in the Interim Final Rule (*see, e.g.*, 13 CFR 300.3, 303.2, 307.8, 314.1 and 315.2). Specifically, this final rule makes the following revisions to the Interim Final Rule:

**Part 300—General Information**

Part 300 of the regulations specifically states EDA’s mission and highlights the policies and practices that EDA employs in order to attract private capital investments and higher-skill, higher-wage jobs to those Regions experiencing substantial and persistent economic distress. In drafting the Interim Final Rule, the main revisions occurred in § 300.3, in which EDA introduced several new terms and revised existing terms. Anticipating that an improved section of definitions would assist readers in better understanding EDA’s policies and requirements, EDA increased the number of defined terms to ensure clarity, consistency and technical precision.

This final rule further revises part 300 of the Interim Final Rule by inserting the word “development” between the words “economic” and “agenda” in the second sentence in § 300.1, to clarify that EDA’s mission is to lead sustainable economic development throughout the United States.

EDA received one comment expressing difficulty in understanding the difference between the definitions of “*District Organization*” and “*Economic Development District*.” EDA believes that both terms are explained clearly in the Interim Final Rule and, therefore, this final rule does not amend these terms. A District Organization is any organization that meets the requirements of § 304.2. The definition of Economic Development District conveys that EDA may (at the request of a District Organization) designate a geographic area, or a “*Region*,” as an Economic Development District if the Region satisfies the requirements of § 304.1. This final rule adds a minor clarifying point to the definition of Economic Development District to make clear that Districts designated prior to the effective date of the Interim Final Rule would have been designated pursuant to a previous version of this regulation at 13 CFR part 302.

We received five comments that stated the following: “Part 300 eliminates the EDD designation and replaces it with ‘District Organization’ and specifically adds reference to ‘community or faith-based non-profit organization.’ With numerous unfunded and under-funded EDDs around the nation[,] expanding the number of new

eligible recipients is not prudent use of already limited funding.” The Interim Final Rule replaced the reference to an Economic Development District in the definition of “*Eligible Recipient*” with the term “*District Organization*” because a District Organization may apply for and receive EDA Investment Assistance. In contrast, an Economic Development District is a geographic description and cannot apply for EDA Investment Assistance until it establishes a structure to give voice to the interests in that Region. EDA has included faith-based organizations in its investment portfolio since approximately 1969; therefore, the Interim Final Rule did not expand the number of new Eligible Recipients. Rather, the Interim Final Rule demonstrates EDA’s commitment to making its programs fully available to community and faith-based organizations by specifically identifying these non-profit organizations as Eligible Recipients. For these reasons, this final rule does not amend the definition of Eligible Recipient.

This final rule replaces the lead-in statement for the defined term Eligible Recipient to “Eligible Recipient means any of the following:”, and clarifies that a consortium of Indian Tribes is qualified to be an Eligible Recipient, similar to consortia of political subdivisions and institutions of higher education. EDA did not intend to exclude a consortium of Indian Tribes from the definition of Eligible Recipient; this language was inadvertently dropped from the text of the Interim Final Rule. Additionally, the definition of “*In-Kind Contributions*” is revised by replacing the phrase “Uniform Administrative Requirements of 15 CFR parts 14 and 24 (as applicable)” with the phrase “requirements of 15 CFR parts 14 or 24, as applicable.” This final rule also expands the definition of “*Indian Tribe*” to include a non-profit Indian corporation, Indian authority and other non-profit Indian tribal organization or entity, provided that the tribal organization or entity is wholly owned by, and established for the benefit of, the Indian tribe. This language was inadvertently dropped in the Interim Final Rule. EDA makes expressly clear that these types of organizations are included in the definition of Indian Tribe, consistent with the definition of Indian Tribe in EDA’s former regulations.

EDA received no public comments on the defined term “*Private Sector Representative*” in the Interim Final Rule. However, the Conference Report accompanying the 2006 Appropriations Act included a specific direction by

Congress for EDA to expand the definition of Private Sector Representative. Accordingly, the December 15, 2005 Rulemaking expanded the definition to include a designee of any senior management official or executive holding a key decision-making position in any for-profit enterprise.

EDA received one question regarding “whether the other Federal grant programs will allow EDA funds to match their programs.” Section 205 of PWEDA (42 U.S.C. 3145) and § 301.6 of the Interim Final Rule authorize EDA to supplement a grant awarded in another designated Federal grant program up to the amount of the maximum allowable EDA investment rate, even if the other Federal grant program has a lower grant rate. An applicant should contact the Federal Agency making the grant award to determine if its governing statute conflicts with PWEDA.

EDA received approximately 84 identical comments stating, “While we appreciate the theory and practice of forging local partnerships based on shared economic interests of a ‘region,’ the creation of competing regional boundaries and definitions is confusing and misleading.” This final rule does not amend the definition of Region or the term “*Regional*” because it sufficiently explains that self-sustained economic development should occur across communities and political boundaries. EDA believes that Regional partnerships, with human, natural, technological and capital components, are essential to the economic competitiveness of a Region.

EDA received one comment on the definition of “*Special Need*” in § 300.3. The commenter noticed a discrepancy between the phrase “closure or restructuring of industrial firms” in the definition of Special Need and the phrase “loss of a major community employer” in the list of circumstances set forth in § 307.1. In response to this comment, this final rule adds to the definition of Special Need the circumstance of a Region losing a major employer.

#### **Part 301—Eligibility, Investment Rate and Proposal and Application Requirements**

Part 301 of the regulations sets forth eligibility, maximum allowable Investment Rate levels, and proposal and application requirements common to all PWEDA-enumerated programs (excluding Trade Adjustment Assistance for Firms at part 315). Part 301 presents these requirements in a more logical sequence than EDA’s former regulations and provides the user with a helpful

roadmap to navigate through these threshold issues.

In general, subpart A presents an overview of eligibility requirements, subpart B addresses applicant eligibility, subpart C addresses Regional economic distress level requirements, subpart D sets forth the maximum allowable Investment Rates and corresponding Matching Share requirements for various Projects, and subpart E addresses the proposal and application requirements, as well as the evaluation criteria used by EDA in selecting Projects.

The economic distress criteria referenced in § 301.3(a) for Projects under parts 305 and 307 track sections 301 and 405 of PWEDA (42 U.S.C. 3161 and 3175). EDA received one comment stating that, “Requiring the per capita income to be eighty (80) percent or less of the national average [per capita income] will result in ineligibility of distressed areas located in higher income areas such as the northeast United States.” This final rule does not amend § 301.3(a)(1)(ii) because it reflects the statutory provision set forth in section 301(a)(1) of PWEDA (42 U.S.C. 3161), which provides that for a Project to be eligible for a Public Works or Economic Adjustment Assistance Investment, the Project must be located in a Region that meets one or more of the following economic distress criteria: (i) Per capita income of 80 percent or less of the national average; (ii) an unemployment rate that is at least one percent greater than the national average; or (iii) a Special Need, as determined by EDA.

EDA received approximately 100 identical or nearly identical comments on § 301.3(a)(4)(i), which provides that EDA will determine economic distress levels according to unemployment rates or per capita income levels based upon the most recent American Community Survey (“ACS”) published by the U.S. Census Bureau for (i) the applicable Region where the Project will be located (for Projects seeking to qualify under § 301.3(a)(1)), (ii) the geographic area where substantial direct Project benefits will occur (for Projects seeking to qualify under § 301.3(a)(2)), or (iii) the geographic area of poverty or unemployment (for Projects seeking to qualify under § 301.3(a)(3)). These comments stated, “While we support the concept of the ACS tool, the vast majority of the nation’s small metropolitan and rural communities are years away from having access to ACS data.”

While EDA understands that the ACS is still not available for some geographies (e.g., census tracts,

townships, or certain cities and counties), EDA believes that the ACS is the most accurate and reliable metric currently available to measure the economic distress of a Region (or other geographic area). Where a recent ACS is not yet available, or will not be available, the regulation makes clear that EDA will use 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. For improved clarity and understanding, this final rule amends the last sentence in § 301.3(a)(4)(i) by rephrasing “the most recent data available through the government of the State in which the Region is located” as “the most recent data available from the State.”

For economic distress based upon a Special Need, EDA will conduct an independent analysis of the facts and circumstances in a given case. *See* § 301.3(a)(4)(ii).

Section 301.4 reflects the new Investment Rate determination structure in section 204 of PWEDA (42 U.S.C. 3144; *see also* sections 205 and 206 of PWEDA (42 U.S.C. 3145 and 3146)). Generally, as stated in section 204(a) of PWEDA and in § 301.4(b)(1), the maximum Investment Rate for a Project must not exceed the sum of fifty (50) percent, plus an additional thirty (30) percent, based on the “relative needs” of the Region where the Project is located.

EDA received approximately 812 identical or nearly identical comments on the Investment Rate provisions for all EDA programs. The majority of these comments stated: “We are very concerned about changes to EDA matching rates for all agency investments, including planning grants, public works investments and economic adjustment assistance. We fear the increased costs to our local communities for both EDA planning grants and infrastructure projects will put our future economic progress in jeopardy.” We received approximately 153 comments that opposed the change in EDA Investment Rates for Planning grants only. These comments stated that the “new range from a minimum of 30% Federal to 70% local to a maximum of 80% Federal and 20% local” is likely to put a greater financial burden on rural local governments. The December 15, 2005 Rulemaking addressed these two sets of comments, as described in detail below.

In the Interim Final Rule, EDA provided maximum allowable

Investment Rate categories of 30% and 40% for those Regions eligible for Investment Assistance under PWEDA, but which are experiencing lower levels of economic distress. The Conference Report accompanying the 2006 Appropriations Act directed EDA to revise this regulation. Accordingly, the December 15, 2005 Rulemaking provided that Projects located in Regions demonstrating (i) a 24-month unemployment rate at least 1% greater than the national average or (ii) per capita income not more than 80% of the national average will be eligible to receive a maximum allowable Investment Rate of 50%. This revision eliminated the 30% and 40% maximum allowable Investment Rate categories. The higher threshold levels of economic distress for the 60%, 70% and 80% maximum allowable Investment Rate categories remain the same as provided in the Interim Final Rule.

The December 15, 2005 Rulemaking also revised § 301.4(b) to the extent that it applies to Planning Investments, by placing a subsection titled *Projects under part 303* at § 301.4(b)(3), which includes the following provisions for determining the Investment Rates for Planning Investments: (i) All Planning Investments will receive a minimum Investment Rate of 50%; (ii) except as otherwise provided in section 204(c) of PWEDA (42 U.S.C. 3144) and § 301.4(b)(5), the maximum allowable Investment Rate for Planning Investments will be the maximum allowable Investment Rate set forth in Table 1 of § 301.4 for the most economically distressed county or other equivalent political unit (*e.g.*, parish) within the Region; (iii) the maximum allowable Investment Rate will not exceed 80%; and (iv) in compelling circumstances, the Assistant Secretary may waive the requirement in paragraph (ii) above. The Assistant Secretary cannot delegate the authority to grant this waiver.

This final rule revises § 301.4(b)(2) by replacing the phrase “paragraphs (b)(3) and (4)” with “paragraph (b)(5).” References to paragraphs (b)(3) and (b)(4) were inapplicable in the Interim Final Rule, as Special Need Projects concern Investments under parts 305 and 307 only. Such Projects are, however, eligible for a maximum allowable Investment Rate of one hundred (100) percent under § 301.4(b)(5). For subject-verb agreement, this final rule also revises Table 2 of § 301.4 by amending the phrase “Projects of non-profit organizations that the Assistant Secretary determines has exhausted its effective borrowing capacity” to

“Projects of non-profit organizations that the Assistant Secretary determines *have* exhausted *their* effective borrowing capacity.”

Additionally, this final rule revises § 301.7 by replacing the phrase “an EDA Pre-application for Federal Assistance” with the phrase “a Pre-application for Investment Assistance.” This amendment corresponds to a similar change EDA made to the title of its pre-application (Form ED-900P) after publication of the Interim Final Rule. This final rule also designates the paragraph under § 301.7 as (a) and redesignates provisions (a), (b) and (c) as (1), (2) and (3), in order to add a second paragraph (b) which states that for certain programs, EDA may instruct an Eligible Applicant to submit an application for Investment Assistance in lieu of the pre-application for Investment Assistance. EDA adds this provision to ensure clarity regarding EDA’s proposal and application requirements.

To clarify the distinction between proposal evaluation criteria and proposal selection criteria, this final rule deletes the third sentence in § 301.8 in its entirety, and replaces the phrase “the applicable FFO” in § 301.9(a)(3) with “the funding priority considerations identified in the applicable FFO.” In the lead-in statement to paragraphs (a) through (e) of § 301.8, we also replace the word “may” with “will,” to have consonant wording with relevant FFOs. This final rule also adds the word “criteria” to the title of § 301.9.

#### **Part 302—General Terms and Conditions for Investment Assistance**

Part 302 sets forth the general terms and conditions for EDA Investment Assistance. The majority of provisions in this part were transferred from part 316 of EDA’s former regulations. Part 302 applies to all Investments under PWEDA and certain provisions, such as § 302.5, apply to the Trade Adjustment Assistance for Firms program under the Trade Act (*see* part 315). This part covers a variety of EDA requirements for Investment Assistance, including environmental reviews of Projects, relocation assistance and land acquisition requirements, inter-governmental review of Projects, and Recipients’ reporting, record-keeping, post-approval and civil rights requirements. EDA received no public comments on §§ 302.1 through 302.15 of the Interim Final Rule. For consistency throughout the chapter, this final rule amends the last sentence in § 302.1 by replacing the phrase “annual FFO” with “applicable FFO.” This final rule makes

no further revisions to §§ 302.1 through 302.15.

EDA received approximately 109 identical or nearly identical comments on § 302.16(b) of the Interim Final Rule, in connection with Recipients' reporting requirements. This section implements section 212 of PWEDA (42 U.S.C. 3152), which requires recipients to submit reports that contain an evaluation of the effectiveness of the investment assistance provided under PWEDA. These comments expressed concern "about the new requirement that all performance data and information submitted by grantees be from independent sources." Subsection 302.16(b) provides that data used by Recipients in preparing reports must be accurate and verifiable, as determined by EDA, and must come from independent sources (whenever possible). While EDA appreciates that locating independent sources has time and cost implications, we believe it is very important that the data used by a Recipient is verified when possible by a reliable source independent of the Recipient. The Recipient is the primary source for information on the effectiveness of the Investment Assistance provided and fulfillment of the objectives of PWEDA, and therefore, reported data must be accurate and verifiable as determined by EDA. Whenever possible, the Recipient should cross-check these data with an independent secondary source to avoid conscious or unconscious biases and errors. For the reasons stated above, this final rule does not change § 302.16(b).

Section 302.17 of the regulations states EDA's conflicts of interest policy. In the Interim Final Rule, EDA moved the conflicts of interest provisions for revolving loan fund ("RLF") Grants from § 308.15(e) of EDA's former regulations to § 302.17(c) to improve organization and referencing facility. EDA received approximately 87 identical or nearly identical comments on § 302.17(c)(3), which provides that former board members of a Recipient of an RLF Grant and members of his or her Immediate Family cannot receive a loan from the RLF for a period of two years from the date that the board member last served on the RLF's board of directors. Generally, these comments expressed opposition to "the change in the waiting period from one year to two years, along with the elimination of the 'exemption clause' with [regard to] public disclosure." Some comments also expressed concern that § 302.17(c)(3) "place[s] an undue burden on those individuals that serve in the local public arena and are now unable to participate

in the RLF for a proposed two year period."

EDA does not intend for § 302.17(c)(3) to burden or penalize local community business participants for their membership on a District Organization's governing body or on an RLF Recipient's board of directors. We increased the one-year period to a two-year period in § 302.17(c)(3) to be consistent with section 606 of PWEDA (42 U.S.C. 3216), which directs an Eligible Applicant to execute a binding agreement, for the two-year period beginning on the date on which the Investment Assistance is awarded, requiring it to refrain from employing, offering any office or employment to, or retaining for professional services, certain persons associated with EDA or the Department. Because of the importance of section 606 of PWEDA, EDA's formal application for Investment Assistance includes a certification that must be signed by an authorized official of the Eligible Applicant.

Similarly, § 302.17(c)(3) prohibits the conduct of any business (e.g., the issuance of an RLF loan) by a former RLF Recipient board member and the RLF Recipient for a two-year period after leaving the board member position. As a general matter, if a potential or actual conflict arises, a former RLF Recipient board member has a fiduciary duty to disclose the conflict. We removed the conflict waiver exception found in § 308.15(e) of EDA's former regulations because public disclosure of an actual or potential conflict, regardless of whether the benefit conferred is substantial or de minimus, can potentially damage the credibility of the RLF Recipient's decision-making process. The removal of the conflict waiver exception makes EDA's conflicts of interest rules for RLFs consistent with its general conflicts of interest policy (see § 302.17(a)). For these reasons, this final rule does not amend § 302.17(c)(3). EDA received no comments on the conflicts of interest provisions for the Trade Adjustment Assistance for Firms program, as set forth in § 315.15.

EDA received no public comments on §§ 302.18 through 302.20 of the Interim Final Rule. These sections of part 302 remain as provided in the Interim Final Rule.

### Part 303—Planning Investments and Comprehensive Economic Development Strategies

Part 303 was revised in the Interim Final Rule to emphasize that results-driven implementation, not just the writing of a "*Comprehensive Economic Development Strategy*" (or "*CEDS*"), is vital to successful performance under

EDA's Planning program. The CEDS is a crucial part of EDA's program portfolio and is required to be in place before a Recipient may receive a Public Works Investment or Economic Adjustment Assistance under parts 305 or 307. Part 303 discusses the application and award requirements for Planning Investments and the requirements for CEDS, State plans and short-term Planning Investments.

To ensure clarity, this final rule revises the first sentence in § 303.1 by amending the phrase "related to short-term Planning Investments and State plans" to "and for related short-term Planning Investments and State plans." For consistency with the definition of Eligible Recipient in § 300.3, this final rule also amends the second sentence in § 303.1 by replacing the phrase "Economic Development Districts" with "District Organizations." We received one comment stating that § 303.1 "expand[s] eligibility for planning assistance to community development corporations and non-profit regional development organizations." EDA did not expand the list of Eligible Recipients for Planning Investments because public and private non-profit organizations already are included in the definition of Eligible Recipient in § 300.3. Rather, we included community development corporations and non-profit regional development organizations in our introductory discussion addressing the purpose and scope of Planning Investments.

We received approximately 130 identical comments expressing "concern about several of the application requirements, including the primary focus on creating 'higher-skill, higher-wage jobs' and involving business leaders in every phase of the CEDS process." Section 303.1 states that the purpose of EDA Planning Investments in part includes assistance for short-term Planning Investments and State plans designed to create and retain higher-skill, higher-wage jobs. EDA believes this goal must be achieved particularly in the most economically distressed Regions, as that is where high levels of unemployment and underemployment exist. Additionally, in considering an application for a Planning Investment under § 303.3(a), EDA will consider the involvement of the Region's business leadership in the preparation of the CEDS, short-term planning activities, or in the development of State plans. In line with its goal of fostering Regional partnerships, EDA believes that communities and Regions must access expert resources and interact with business leaders and entrepreneurs in

order to improve their economy and to create private sector jobs.

EDA received approximately 136 identical comments on the definition of "Planning Organization" found in § 303.2, which expressed strong opposition to "the removal of the specific reference to District Organizations and Indian tribes as the primary planning partners of the agency." The Interim Final Rule simplified the former definition of Planning Organization by replacing the references to Economic Development Districts and Indian Tribes with the term "Recipient." The definition of Eligible Recipient in § 300.3 includes District Organizations and Indian Tribes; therefore, the definition of Planning Organization in § 303.2 involves no substantive change from EDA's former regulations. To clarify the functions of a Planning Organization, this final rule amends the definition of Planning Organization by inserting the phrase "and implement" after the word "develop."

EDA received two comments on the application requirements for Planning Investments set forth in § 303.3(a). The comments expressed, "It seems redundant to require a 'pre-application' when seeking a planning grant, as mentioned in the interim final rule; it seems that this is unnecessary with the mid-year and annual reports required currently." The commenters questioned whether a pre-application for Investment Assistance is necessary for all Planning Investments. By adding a new subsection to § 301.7 as discussed in detail above, EDA makes it clear in this final rule that in certain circumstances, EDA may instruct an Eligible Applicant or Recipient to submit an application for Investment Assistance rather than a pre-application. To ensure that the title of § 303.3 conforms to its content, this final rule adds "and evaluation criteria" to the title. In addition, we restate the lead-in statement for paragraphs (a)(1) through (5) as "In addition, applications for Planning Investments must include information about the following," and delete the phrase "Quality of" in paragraph (a)(1) to make clear that EDA requires Eligible Applicants to provide the information described in § 303.3(a) for all Planning Investment applications. We also make a grammatical revision to § 303.3(a)(5) by replacing the word "during" with "through."

Section 303.3(b) provides that funded Recipients will be evaluated on the extent of continuing distress within the Region, their past performance, and the overall effectiveness of their CEDS. For

conformity with the revisions we make to § 303.3(a) in this final rule, we replace the phrase "requirements of" with "criteria set forth in" in § 303.3(b).

We received approximately 212 comments on § 303.4(c). The majority of these comments expressed "concern about the lack of details on the funding of [P]lanning grants" and stated that the Interim Final Rule is "vague on the link between receiving a designation as a District Organization and annual and long-term financial support from EDA." EDA did not intend for § 303.4(c) to suggest that Investment Assistance to Planning Organizations would be "one-time only" awards. We fully expect to continue our successful partnership with Planning Organizations representing Economic Development Districts (as well as to fund designated but unfunded Districts). This final rule clarifies the regulation by stating that EDA will provide a Planning Investment for the period of time required to develop, revise or replace, and implement a CEDS, generally in "thirty-six (36) month renewable Investment award periods." The phrase "thirty-six (36) month renewable Investment award periods" clarifies that the regulation contemplates continuation of EDA's historic relationship with Districts.

Consistent with the focus on obtaining a well-prepared and demonstrable CEDS, § 303.5 provides that Planning Investments may be used to pay only direct and indirect costs (administrative or otherwise) attributable to the development and implementation of a CEDS. EDA received approximately 279 identical or nearly identical comments on this provision, which expressed strong opposition to limiting direct and indirect costs to activities related to the CEDS. As provided in § 303.5(a), EDA determines allowable costs by reference to "applicable Federal cost principles," namely, the following Office of Management and Budget ("OMB") Circulars: Circular No. A-122 titled "Cost Principles for Nonprofit Organizations" (2 CFR part 230); Circular No. A-21 titled "Cost Principles for Education Institutions" (2 CFR part 220); and Circular No. A-87 titled "Cost Principles for State, Local and Indian Tribal Governments" (2 CFR part 225). Upon closer examination of § 303.5, EDA believes subsection (c) regarding allowable "indirect costs" is superfluous inasmuch as these costs would be eligible consistent with EDA's application of these OMB circulars to indirect cost rates. Therefore, this final rule removes § 303.5(c) in its entirety.

This final rule also removes § 303.5(b) in its entirety because the express

statement that Planning Investments may only be used to pay the costs attributable to the EDA-approved scope of work (*i.e.*, for the purpose of developing and implementing a CEDS) does not distinguish Planning Investments from any other EDA Investment. Generally, all EDA Investment Assistance may be used to pay costs of activities that are directly attributable to the Project's scope of work. To ensure clarity and better understanding of the concepts explained above, this final rule reformats § 303.5 and revises the sentence to indicate that Planning Investments may be used to pay the direct and indirect costs incurred by a Planning Organization in the development, replacement or revision, and implementation of a CEDS and for related short-term planning activities. Rewritten in this manner, EDA believes § 303.5 is consistent with the Senate Report accompanying the 2004 Act, which states that authorized uses of funds under section 203 of PWEDA include "administrative expenses to support the on-going formulation and implementation of comprehensive economic development strategies." S. Rep. No. 108-382, at 4 (2004).

Section 303.6(a) requires that a Strategy Committee (appointed by a Planning Organization) represent the main economic interests of the relevant Region by including a majority of its representatives from businesses within the Region. The Strategy Committee is tasked with developing (and revising or replacing as necessary) the Planning Organization's CEDS. EDA received approximately 585 identical or nearly identical comments on § 303.6(a), which expressed strong "oppos[ition] to efforts [that] reduce the involvement and control of local government officials in strategic planning and development activities." In order to sustain long-term Regional economic growth, EDA believes that contributions from the private sector are paramount for the CEDS development. We do not believe this requirement is restrictive or that it minimizes local government participation in local development activities. Rather, when § 303.6(a) is read in its entirety, it requires that innovative public and private leaders create a strong sense of Regional cooperation in order to develop a viable CEDS.

We received one comment on § 303.6(c). This section requires Planning Organizations to be accountable to EDA for updated CEDS performance. The commenter opined that this provision "does not go far enough," and stated that "[t]here needs

to be some requirement that [Planning] [O]rganizations put a plan for self-sufficiency in each CEDS, and that they attain self-sufficiency within 10 years of first receiving EDA Investment Assistance.” EDA does not intend to implement such a requirement absent Congressional authorization.

To improve the structure of § 303.7(a) and improve readability, this final rule amends the second sentence in § 303.7(a) by deleting the phrase “, and assigning lead organizations responsibilities for execution of the CEDS” and placing “and” before the word “identifying.” We received one comment asking for EDA to define the word “critical” in the last sentence of § 303.7(a). This final rule does not revise this sentence in § 303.7(a) at this time because EDA believes it sufficiently relates that the creation of a successful CEDS depends heavily on its participants. If CEDS development galvanizes a partnership between business and government, it will play a “critical” or essential role in enabling and strengthening Regional economies.

Section 303.7(b) lists specific technical requirements related to the preparation of the CEDS document. These requirements include (i) a discussion of private sector participation in the CEDS work, rather than community participation, (ii) a specific plan of action with certain criteria for gauging the implementation of the goals and objectives of the CEDS, and (iii) specific performance measures for appraising the Planning Organization’s development and execution of the CEDS. We received approximately 83 identical comments stating support of these requirements. The commenters stated that “the new technical requirements of the CEDS process are sound and beneficial to local development efforts.” This final rule amends § 303.7(b)(7) by replacing the phrase, “A section identifying economic clusters that are growing or in decline within the Region” with “A section identifying economic clusters within the Region, focusing on those that are growing or in decline.” We revise § 303.7(b)(7) as such to clarify that Planning Organizations should identify all economic clusters in the Region and specify those that are growing or in decline. For clarity, we also insert the word “development” after “economic” in § 303.7(b)(10).

Section 303.9 outlines EDA’s requirements for short-term Planning Investment Assistance. This final rule amends § 303.9(c) by replacing the phrase “program reports” with “progress reports,” as the incorrect use

of the word “program” in the Interim Final Rule was an oversight.

EDA received two comments expressing that part 303 “focus[es] solely on the CEDS without clearly defining who will be responsible for implementation of the [CEDS].” As noted earlier, the Strategy Committee is tasked with developing (and revising or replacing as necessary) the CEDS. EDA believes it is the responsibility of the District Organization as a whole to implement the technical elements of the CEDS, which are set forth in § 303.7(b).

We received one comment asking if there are any changes in the Interim Final Rule for Planning Investments to Indian Tribes. All Planning Investments, whether awarded to District Organizations, Indian Tribes, community development corporations, non-profit regional planning organizations or other Eligible Recipients (as listed in § 303.1), are governed by the requirements of part 303. The Interim Final Rule made no specific changes to this part with respect to Planning Investments to Indian Tribes. Investments to Indian Tribes are subject to the same requirements as other Eligible Recipients and the discussion in this preamble applies equally to them.

EDA received approximately 81 identical comments expressing concern that the Interim Final Rule is “silent on the transition period and guidelines for thousands of local communities already covered by an existing CEDS, whether prepared by a District Organization, Indian [T]ribe or other [P]lanning [O]rganization.” EDA does not believe that administrative or instructional guidelines on how Planning Organizations will transition to comply with the requirements of parts 303 and 304 belong in a set of regulations. This final rule does not amend the regulations at this time. However, EDA is cognizant that Recipients require a reasonable amount of time to comply with the new requirements. To that end, EDA is providing a one-year period for all Planning Organizations to demonstrate compliance with the requirements with parts 303 and 304. For all awards made in FY 2006, the Planning Organization must demonstrate compliance with all new requirements one year from the date of receiving EDA Investment Assistance.

#### **Part 304—Economic Development Districts**

Part 304 on Economic Development Districts (also referred to as a “*District*” or an “*EDD*” in § 300.3) sets forth the Regional eligibility requirements that must be satisfied in order for EDA to

consider a District Organization’s request to designate a Region as an EDD, including submission of an EDA-approved CEDS, and the District Organization’s formation and organizational requirements. This part also contains provisions relating to termination and performance evaluations of District Organizations. As described in detail below, the December 15, 2005 Rulemaking revised sections in this part in accordance with the Conference Report accompanying the 2006 Appropriations Act.

All provisions with respect to formation, organization and operation of a District Organization are contained in § 304.2. EDA received over one thousand identical or nearly identical comments on the provision in § 304.2(c)(2), which requires a District Organization’s governing body to include a majority of Private Sector Representatives (as defined in § 300.3). The majority of these comments “adamantly opposed [ ] the new requirements that shift the governing bodies of [District Organizations] from the majority control of local government officials to unnamed private sector representatives.” Section 304.2(c)(2) never became effective on October 1, 2005, as the September 30, 2005 and November 14, 2005 final rules delayed its effective date until January 31, 2006.

As directed in the Conference Report accompanying the 2006 Appropriations Act, EDA revised § 304.2(c)(2) in the December 15, 2005 Rulemaking as follows: (i) A District Organization’s governing body must, unless otherwise prohibited by applicable State or local law, include at least one (1) Private Sector Representative, together with one (1) or more of the following: Executive directors of chambers of commerce, or representatives of institutions of post-secondary education, workforce development groups, or labor groups, all of which (including the Private Sector Representative) must comprise in the aggregate a minimum of 35% of the District Organization’s governing body; and (ii) if the District Organization demonstrates an inability to locate a Private Sector Representative to serve on its governing body following extensive due diligence (as determined by EDA), the Assistant Secretary may waive the Private Sector Representative requirement. The December 15, 2005 Rulemaking also added a provision stating that the District Organization’s governing body will also have at least a simple majority of its membership who are elected officials and/or employees of a general purpose unit of local government who have been appointed to represent the government.

EDA received approximately 795 identical or nearly identical comments on § 304.2(d), which provides that District Organizations may contract for services to accomplish approved scopes of work for Planning Investments. The majority of these comments stated, “We are specifically opposed to \* \* \* minimizing local government participation in local planning and development activities.” As directed in the Conference Report accompanying the 2006 Appropriations Act, EDA revised § 304.2(d) in the December 15, 2005 Rulemaking to specify that a District Organization will engage in the full range of economic development activities listed in its EDA-approved CEDS, which 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. This subsection continues to give District Organizations the discretion to contract for services as necessary.

EDA also received public comment on sections describing District termination, specifically subsections 304.3(b) and (c). EDA received approximately 520 identical or nearly identical comments on § 304.3(b). These comments expressed concern “that the agency has added new criteria for the termination of District Organizations that are subjective and lack any appeals process.” We received approximately 87 identical or nearly identical comments on § 304.3(c), which expressed concern “that the agency may use the [Federal Funding Opportunity] process to change its policies, guidelines and performance standards without public comment.”

Section 304.3(b)(2) provides that EDA may terminate a Region’s designation as an Economic Development District when EDA determines that the District Organization fails to execute its CEDS according to the development, implementation and other performance measures set forth in the CEDS. In accordance with the Conference Report accompanying the 2006 Appropriations Act, the December 15, 2005 Rulemaking added a new subsection (c) to § 304.3 to clarify that prior to terminating a District’s designation under subsection 304.3(b)(2), EDA will consult with the District Organization and consider all facts and circumstances surrounding the District Organization’s operations. Section 304.3(c) also provides that 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).

This final rule does not amend § 304.3(d). We believe that the December 15, 2005 Rulemaking changes to § 304.3 safeguard District Organizations adequately with respect to District termination. EDA cannot use the Federal Funding Opportunity announcement process to change the regulatory standards for termination or modification of the designation of Economic Development Districts.

Information with respect to the performance evaluations of District Organizations, formerly codified in part 318 of EDA’s former regulations, is now incorporated into § 304.4. Pursuant to PWEDA, EDA will evaluate each District Organization within three (3) years after the initial Investment award and at least once every three (3) years thereafter, so long as the District Organization continues to receive Investment Assistance. On § 304.4(a), we received approximately 415 identical comments stating that “most of the requirements for grantee performance measurements are very vague and open to varying agency interpretations among the different regional offices.” We do not believe that the provisions of § 304.4(a) are vague. In fact, unlike EDA’s former regulations, the performance evaluation provisions of § 304.4(a) contain specific requirements for Economic Development Districts, such as the continuation of Regional eligibility of the District, the management of the District Organization, and the implementation of its CEDS. EDA’s regional offices are directed to interpret and apply EDA’s regulations consistently and uniformly across all regions in the United States. For these reasons, this final rule does not amend § 304.4(a).

Last, EDA received four comments expressing “concern with the elimination of up to 10% additional assistance if a project is located within a designated Economic Development District.” Because former section 403 of PWEDA was eliminated by the 2004 Act, EDA removed from its regulations the ten (10) percent EDA “bonus” funding for certain Projects located in Economic Development Districts. Because EDA must implement its statutory mandate of PWEDA, EDA is unable to reinstate the ten (10) percent bonus.

### Part 305—Public Works and Economic Development Investments

Part 305 describes general information about the scope of EDA’s Public Works program, award and application requirements, and provisions for EDA’s and Recipients’ duties. EDA received no public comments on this part. Section 305.1 provides information on the purpose and scope of Public Works and Economic Development Investments. The criteria section (§ 305.2) specifies the scope of activities eligible for consideration of a Public Works Investment in subsection (a), and sets forth a list of determinations in subsection (b) that EDA must reach in order to award a Public Works Investment.

The application requirements for Public Works Investments are set forth in § 305.3. The section on Public Works Projects for design and engineering work was moved from subpart B and placed as § 305.4 under subpart A. This section includes a provision to ensure awareness that EDA’s funding of a Project for design and engineering work does not in any way commit EDA to fund construction of the Project.

The first section under subpart B is § 305.5, titled *Project administration by District Organization*. These provisions are included in this subpart because the provisions are applicable to construction projects only. Section 305.6 combines two former sections titled *Construction Management services* and *Design/Build method of construction* (§§ 305.10 and 305.11 of EDA’s former regulations) and addresses and accounts for the majority of Public Works Investments that lend themselves to the traditional design/build method of construction. However, Recipients may employ other construction methods, too. This final rule amends the second sentence of § 305.6(a) by replacing the phrase “design-build” with “design/bid/build.”

Similar to the provisions in § 305.6, § 305.7 includes information that the Recipient must submit to EDA to justify the use of “in-house forces.” Section 305.8 provides that Recipients of EDA construction awards must obtain prior approval for the use of furnished equipment and materials. Requests must show that costs claimed for furnished equipment and materials are competitive with local market costs for similar equipment and materials. Section 305.9 contains specific information that the Recipient must provide to EDA for approval of any Project that necessitates phasing, including a description of elements to be completed in each phase and

detailed construction cost estimates for each phase. The last five (5) sections in subpart B, §§ 305.10 (*Bid underrun*), 305.11 (*Contract awards; early construction start*), 305.12 (*Project sign*), 305.13 (*Contract change orders*) and 305.14 (*Occupancy prior to completion*), contain the same substance as found in EDA's former regulations. However, EDA rewrote these sections in the Interim Final Rule to eliminate ambiguity or extraneous provisions.

Except for the revision made in § 305.6(a) stated above, this final rule does not amend part 305 of the Interim Final Rule.

### Part 306—Training, Research and Technical Assistance Investments

Part 306 was primarily reorganized, shortened and rewritten in the Interim Final Rule for increased understanding and inclusiveness of all pertinent information. Section 306.1(a), dealing with the scope of Local and National Technical Assistance Investments, captures diverse purposes for such Investments. Section 306.2, titled *Award requirements*, is the combination of §§ 307.2 and 307.10 of EDA's former regulations. Similarly, the content of §§ 307.3 and 307.11 in EDA's former regulations was merged into § 306.3 and re-titled *Application requirements*. Section 306.3(c) specifically cross-references § 301.4(b)(4), which sets forth the governing provisions for determining applicable Investment Rates for Projects under part 306. A cross-reference to § 301.4(b) is made in applicable sections of all parts relating to specific EDA programs (i.e., parts 303–307).

EDA received approximately seven comments on § 306.3(c) which stated that the provision is “much too demanding in terms of local match required.” Section 301.4(b)(4) ties the maximum allowable Investment Rate for Local and National Technical Assistance Projects to that otherwise applicable to the Region in which the Project will be located. Section 301.4(b)(4) also authorizes a maximum Investment Rate of up to a one hundred (100) percent for Projects of a national scope under 13 CFR part 306 and for all other projects under 13 CFR part 306, in appropriate circumstances. We believe the maximum allowable Investment Rates for Local and National Technical Assistance Investments are fair and will preserve the Local Share requirement to make certain Recipients commit their own funds to help ensure the success of the Projects.

In the Interim Final Rule, the title of subpart B was changed from *University Center Program* to *University Center*

*Economic Development Program*. To mirror the organization and sequence of §§ 306.2 and 306.3 in subpart A, §§ 306.5 and 306.6 are named *Award requirements* and *Application requirements*, respectively. Section 306.5 states that EDA provides Investment Assistance to University Center Projects based on the selection criteria in part 301, the competitive selection process outlined in the applicable FFO, and the extent to which the Eligible Applicant demonstrates other more specific, related criteria.

Section 306.6 sets forth application requirements for University Center Projects. Section 306.6(c) cross-references § 301.4(b)(4) for information regarding the applicable Investment Rate for University Center Projects. EDA received approximately fourteen comments on § 306.6(c), each that stated “we are very troubled by the proposal to change the match requirements on the EDA [U]niversity [C]enter grant[s] and strongly oppose such a move.” Section 206 of PWEDA (42 U.S.C. 3146) requires EDA to consider the “relative needs” of eligible areas. As noted above, we believe § 301.4(b) appropriately takes “relative needs” into account for purposes of determining the maximum allowable Investment Rates and the Local Share requirements for EDA Investments. Accordingly, this final rule does not amend § 306.6(c).

The University Center Economic Development Program establishes a three-year competitive cycle in which performance evaluations occurring within three (3) years after the initial Investment award will determine if a University Center may qualify to compete again for Investment Assistance. Consistent with section 506(d)(2) of PWEDA (42 U.S.C. 3196), § 306.7 contains an additional performance evaluation standard by which University Centers will be evaluated. At a minimum, University Centers will be evaluated specifically with regard to their contributions to providing technical assistance, conducting applied research, meeting program performance objectives and disseminating Project results in accordance with the scope of work funded during the evaluation period.

This final rule adopts part 306 of the Interim Final Rule in its entirety.

### Part 307—Economic Adjustment Assistance Investments

EDA extensively considered and examined part 308 of EDA's former regulations in order to draft part 307 of the Interim Final Rule. This part was greatly improved by making effective use of defined terms in subpart A

(covering Economic Adjustment Assistance Investments) and in subpart B (covering special requirements for RLF Grants). EDA did not receive any public comments on subpart A of part 307, covering §§ 307.1 through 307.6. This final rule amends §§ 307.1, 307.2 and 307.4 as described below.

To ensure conformity between the titles of §§ 307.1 and 307.2 and their respective contents, this final rule changes the title of § 307.1 to *Purpose* and the title of § 307.2 to *Criteria for Economic Adjustment Assistance Investments*. For improved clarity, we also move § 307.1(b) to § 307.2 and delete § 307.2(b) in its entirety because an identical statement is already in § 307.4(d). This final rule revises § 307.4(d) to read as “Funding priority considerations for Economic Adjustment Assistance may be set forth in an FFO.”

In drafting the Interim Final Rule, EDA revised subpart A to follow PWEDA and read more concisely. For example, in § 307.3 (titled *Use of Economic Adjustment Assistance Investments*), EDA introduced the new defined terms “*Strategy Grant*,” referring to Economic Adjustment Assistance Investments that help develop CEDS to alleviate long-term economic deterioration or a sudden and severe economic dislocation, and “*Implementation Grant*,” defined as an Economic Adjustment Assistance Investment used to fund a Project implementing a CEDS. Section 308.4 in EDA's former regulations, titled *Selection and evaluation factors*, was renamed *Award requirements* in § 307.4, parallel with similar provisions in other program parts, and reorganized and sub-titled for clarity.

EDA redrafted in the Interim Final Rule § 307.6 to emphasize and cross-reference relevant parts or subparts in the chapter with respect to Strategy Grants and Implementation Grants. For instance, Implementation Grants involving construction must meet the requirements for Public Works Investments, whereas Implementation Grants not involving construction must follow the requirements for Local and National Technical Assistance Investments. Accordingly, the Interim Final Rule references parts 303, 305 and 306 in § 307.6 for additional requirements that Strategy Grants and Implementation Grants, as appropriate, must fulfill (in addition to the post-approval stipulations set forth in § 302.18).

Except for an amendment made to § 307.9 as explained below, this final rule does not substantively amend subpart B of part 307. However, we have



re-ordered some of the sections in subpart B to logically separate pre-approval actions from post-approval actions. The following discussion summarizes the provisions of this subpart. The first section, § 307.7, states that subpart B sets forth the requirements applicable to Economic Adjustment Assistance Grants used to capitalize or recapitalize RLFs. To ensure accuracy and completeness in this subpart, EDA rewrote in the Interim Final Rule the defined terms in § 307.8, which relate to RLF Grants. EDA also introduced new defined terms, such as “*Exempt Security*,” “*Sale*,” “*SEC*,” “*Security*” and “*RLF Third Party*,” in large part to interpret the provisions of section 209(d)(2) and (4) of PWEDA (42 U.S.C. 3149).

The requirements for RLF Plans are set forth in § 307.9, which states that EDA will evaluate an RLF Plan based on its ability to “demonstrate an adequate understanding of commercial loan portfolio management procedures, including loan processing, underwriting, closing, disbursements, collections, monitoring, and foreclosures” (see § 307.9(b)(3)). We received two comments opposing the provision in § 307.9 that requires the RLF Plan be submitted to and approved by EDA and passed by resolution of the RLF Recipient’s governing board prior to initial disbursement of EDA funds. The commenters indicated that from a practical standpoint, it may not be possible for a State or large city to pass a resolution accepting an RLF Plan; however, a resolution requirement may be more reasonable for a non-profit organization. In response to these comments and in order to maintain necessary flexibility in EDA’s grant-making processes and requirements, this final rule revises the second sentence in § 307.9 to require that the Plan be submitted to and approved by EDA. EDA will require a resolution by the RLF Recipient’s governing board on a case-by-case basis.

This final rule moves § 307.16, titled *Disbursement of funds to Revolving Loan Funds*, to § 307.11 because it describes certain pre-approval requirements that must be satisfied prior to any disbursement of EDA funds (e.g., evidence of fidelity bond coverage; establishment of an EDA funds account). This section was revised and reorganized in the Interim Final Rule from § 308.16 of EDA’s former regulations. Section 307.12 makes explicit the general rule that 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. Section 307.12(c) provides a priority of payment schedule for proceeds on a defaulted RLF loan that is not subject to liquidation pursuant to § 307.20.

The next three sections, §§ 307.13, 307.14 and 307.15 (titled *Records and retention; Revolving Loan Fund semi-annual and annual reports*; and *Prudent management of Revolving Loan Funds*), are substantively the same as §§ 308.13, 308.14 and 308.15 of EDA’s former regulations. The main focus of the revision to these sections, as seen in the Interim Final Rule, was to incorporate defined terms to improve the explanation of the specific documentation, accounting and reporting requirements. Additionally, the conflicts of interest provisions in § 308.15(e) in EDA’s former regulations were moved to § 302.17(c) to improve organization and referencing facility.

This final rule moves § 307.17 (titled *Effective utilization of Revolving Loan Funds*) to § 307.16. This section was slightly reworded in the Interim Final Rule from what appeared in § 308.17 of EDA’s former regulations. Those revisions largely incorporated the use of defined terms (e.g., *Closed Loan*; *RLF Capital*). This final rule also moves § 307.18 (titled *Uses of capital*) to § 307.17. This section sets forth specific restrictions on the use of RLF Capital. Section 307.17(d) clarifies that In-Kind Contributions may satisfy Matching Share requirements when specifically authorized in the RLF Grant and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs.

This final rule moves § 307.11, which addresses the addition of lending areas and the merger of RLFs, to § 307.18. In this section, EDA (i) correlated the substance of the section to applicable provisions in section 209 of PWEDA (42 U.S.C. 3149), (ii) eliminated information no longer applicable due to the passage of the 2004 Act, and (iii) explained and expanded important concepts in an orderly, coherent manner with the use of defined terms. In the Interim Final Rule, EDA changed the title of the section from *Lending areas and modification of lending areas* to *Addition of lending areas; merger of RLFs*, to highlight the increased flexibility that PWEDA affords to RLF Recipients for consolidating and merging RLF Grants. Section 307.18(a)(1) sets forth the preconditions that must be met in order for EDA to approve the creation of a “*New Lending Area*.” Similarly, § 307.18(b) sets forth the preconditions for EDA to approve a single RLF Recipient’s or multiple RLF Recipients’ merger of RLFs. The

requirements in subparagraphs (1) and (2) are substantively the same regarding single RLF Recipients and multiple RLF Recipients. Each must meet the requirements to obtain annual report status (set forth in § 307.14) and amend and consolidate the RLF Plans to account for the merger. Prior to EDA’s disbursement of additional funds to the RLF Recipient (or surviving RLF Recipient), EDA must determine a new Investment Rate for the New Lending Area.

EDA drafted §§ 307.19 and 307.20 of the Interim Final Rule as new provisions to accomplish the authorization for EDA’s Assistant Secretary to “assign or transfer assets of a revolving loan fund to a third party for the purpose of liquidation” and “take such actions as are appropriate to enable revolving loan fund operators to sell or securitize loans” (see section 209(d)(2)(B) and (C) of PWEDA (42 U.S.C. 3149)). First, in any Sale or Securitization in which an RLF Recipient may participate, § 307.19 requires compliance with the Securities Act of 1933, the Securities Exchange Act of 1934 and any rule or regulation made public by the Securities and Exchange Commission (see section 209(d)(4) of PWEDA (42 U.S.C. 3149)). The RLF Recipient must use all proceeds from any Sale or Securitization to make additional RLF loans. Second, § 307.20 provides the terms that will govern any partial or full liquidation of an RLF Recipient’s RLF loans. In the case of an EDA-approved termination of an RLF Grant, EDA may assign or transfer assets of the RLF to an RLF Third Party for liquidation.

Section 307.21 provides the process for termination of RLFs. Subsection 307.21(b) provides a new authority that allows EDA to approve a request from an RLF Recipient to terminate an RLF Grant. The last section, § 307.22, was rephrased in the Interim Final Rule for clarity and completeness and covers the same material found at § 308.19 of EDA’s former regulations.

EDA did not receive any specific comments on §§ 307.7 through 307.21 of subpart B. However, we received approximately 87 identical or nearly identical comments expressing general “concern that RLF administrators are required to receive regular approval from EDA for a variety of activities and decisions.” Other comments stated, “The EDA RLF program should not have additional constraining administrative oversight requirements imposed on it so as to interfere with the core mission of the program to provide capital and credit to regions and businesses not served by traditional lenders.” EDA

believes the new RLF provisions in subpart B are consistent with the Senate Report accompanying the 2004 Act, which calls for the Assistant Secretary to “promulgate regulations to improve the administration of [RLFs], consolidate [RLFs] at the grantee’s request and transfer RLF portfolio assets to third parties for liquidation.” S. Rep. No. 108–382, at 6 (2004). Specifically, the strengthened audit and reporting requirements do not alter the original intent and scope of the RLF program or impose new cost burdens on RLF Recipients.

#### **Part 308—Performance Incentives**

Part 308 incorporates new sections 215 and 216 of PWEDA (42 U.S.C. 3154a; 42 U.S.C. 3154b). EDA received no comments on this part, nor does this final rule amend this part. The discussion below summarizes the part 308 provisions.

For any construction Project awarded under parts 305 or 307 that is completed under projected cost pursuant to section 211 of PWEDA (42 U.S.C. 3151), § 308.1(a) provides that EDA may in its discretion allow the Recipient to use the excess funds to either increase the Investment Rate of the Project to the maximum percentage allowable under § 301.4 for which the Project was eligible at the time of the Investment award, or further improve the Project consistent with its purpose.

Additionally, section 215 of PWEDA (42 U.S.C. 3154a) authorizes the Assistant Secretary to make performance awards in connection with grants to Recipients for Public Works or Economic Adjustment Assistance Investments. Section 308.2(a) provides that, with respect to any such Investment, the Assistant Secretary may grant a performance award to the Recipient (on a discretionary basis) in an amount not to exceed ten (10) percent of the Project’s Investment award. As discussed in the Conference Report accompanying the 2006 Appropriations Act, EDA revised § 308.2(b) in the December 15, 2005 Rulemaking to better adhere to section 215 of PWEDA (42 U.S.C. 3154a). Specifically, EDA replaced the requirement that project performance be “exceptional” with the “meet or exceeds” threshold in section 215(b)(2) of PWEDA (42 U.S.C. 3154a).

Section 308.2(c) provides that a Recipient may receive a performance award no later than three (3) years following the Project’s closeout. Following section 215(e)–(f) of PWEDA (42 U.S.C. 3154a), § 308.2(d) provides that performance awards may fund up to one hundred (100) percent of the cost

of an eligible Project or any other authorized activity under PWEDA, and for the purpose of meeting the non-Federal share requirement of PWEDA or any other statute, the performance award amount will be treated as non-Federal funds. Additionally, EDA will set forth in an applicable FFO the requirements, qualifications, guidelines and procedures for performance awards, with all performance awards being subject to the availability of funds (see § 308.2(e)).

With respect to planning performance awards, § 308.3 tracks the language of section 216 of PWEDA (42 U.S.C. 3154b). Section 308.3 introduces that a Recipient may be eligible to receive a planning performance award in an amount not to exceed five (5) percent of the amount of the applicable Investment. As with performance awards made to Recipients of Public Works or Economic Adjustment Assistance Investments, the Assistant Secretary will make such awards on a discretionary basis. As set forth in § 308.3(a), such awards are predicated on a finding that the Recipient actively participated in the economic development activities of the District and that the Project demonstrated exceptional fulfillment of one (1) or more components of the applicable CEDS.

#### **Part 309—Redistributions of Investment Assistance**

The provisions in part 309 of the Interim Final Rule are new and were not in EDA’s former regulations. EDA received no comments on this part. Except for a minor revision made to § 309.1(a) as described below, this final rule does not amend this part. The discussion below summarizes part 309.

In accordance with new section 217 of PWEDA (42 U.S.C. 3154c), information with respect to redistributions of Investment funds for Planning, Public Works, and Training, Research and Technical Assistance Investments is presented in § 309.1. Specifically, § 309.1(a) provides that a Recipient under any program governed by parts 303, 305 and 306 may directly expend the Investment Assistance, or, with prior EDA approval, redistribute such funds in the form of a subgrant to another Eligible Recipient that qualifies for EDA Investment Assistance under the same program part as the Recipient. All subgrants must be subject to the same terms and conditions applicable to the Recipient under the original Investment award. To improve sentence structure, this final rule changes the phrase “Except as provided by \* \* \*.” to “Except as provided in \* \* \*.” in the

first sentence of § 309.1(a). Subsection 309.1(b) stipulates that Investment Assistance received under parts 303 or 305 may not be redistributed to a for-profit entity.

Section 309.2 addresses redistributions under part 307 for Economic Adjustment Assistance Investments. This section reads similarly to § 309.1. However, a Recipient under part 307 may redistribute Investment funds to another Eligible Recipient in the form of a Grant or to a non-profit and private for-profit entity in the form of a loan (or loan guarantee) under subpart B of part 307.

#### **Part 310—Special Impact Areas**

Part 310 corresponds to new section 214 of PWEDA (42 U.S.C. 3154), which allows the Assistant Secretary to waive the CEDS requirements of section 302 of PWEDA (42 U.S.C. 3162) for a Project that will fulfill a “pressing need” of the Region or prominently address or alleviate Regional underemployment or unemployment. EDA did not receive any public comments on part 310. EDA does not make any changes to this part.

Section 310.1 generally tracks section 214 of PWEDA (42 U.S.C. 3154), but makes clear that any waiver of the requirements of section 302 of PWEDA (42 U.S.C. 3162) applies only to an individual Project, *not* to all Projects located within the Region.

Section 310.2(a) interprets the “pressing need” language of the new PWEDA provision and reflects standard EDA policy priorities, based on, among other things, assistance to Indian Tribes, rural and severely distressed Regions, and the existence of a Special Need. Similarly, subsections 310.2 (b) and (c) set forth quantitative measures of excessive unemployment and as indicators of useful employment opportunities, such as the Project’s prospective job creation, commitment of financial investment by private entities, and application of innovative technology.

#### **Part 311—[Reserved]**

#### **Part 312—[Reserved]**

#### **Part 313—[Reserved]**

#### **Part 314—Property**

Part 314 sets forth the rules governing the uses of and EDA’s interests in Property acquired, in whole or in part, or improved with EDA Investment Assistance. The changes made by the Interim Final Rule to the Real Property provisions in subpart B primarily reflect EDA policies regarding the increasing use of “public-private” partnerships to spur Regional economic development. EDA received no comments on this part.

The discussion below explains changes made to §§ 314.1, 314.4, 314.6, 314.7 and 314.10 by this final rule and summarizes changes previously made by the Interim Final Rule to specific sections of part 314.

In the Interim Final Rule, EDA revised defined terms from EDA's former regulations and added new defined terms in § 314.1 for clarity and consistency. For example, the definition of "*Adequate Consideration*" includes the concept of "fair market value" (*i.e.*, the purchase price agreed upon between a buyer and a seller acting in good faith, both having full knowledge of the material facts and circumstances surrounding the contemplated transaction). In comparison, EDA's former regulations used a "fair and reasonable" determination to define Adequate Consideration. This final rule removes the defined terms "*Encumbrance*" and "*Encumber*." These terms were defined in § 314.1 as having the meaning ascribed to them in § 314.6. Inasmuch as the title of § 314.6 is *Encumbrances*, the reader will have no difficulty in finding and understanding EDA's discussion of these terms. For improved accuracy and understanding, this final rule also amends the definition of "*Estimated Useful Life*" to make clear that this term refers to the time span over which EDA participates and realizes the economic development benefits of its Investment in a Project.

Section 314.2(a) provides that (i) Property acquired or improved, in whole or in part, with Investment Assistance is held in trust by the Recipient for the benefit of the Project and (ii) EDA maintains an equitable reversionary interest in such Property for the Estimated Useful Life of the Project (defined as the "*Federal Interest*"). Section 314.2(b) is the same as the provisions set forth in EDA's former regulations and provides that when the Federal government is fully compensated for the Federal Share of Property acquired or improved, in whole or in part, with Investment Assistance, the Federal Interest is extinguished and the Federal government has no further interest in the Property.

Section 314.3, titled *Authorized use of Property*, provides the circumstances in which Recipients may use Property acquired or improved, in whole or in part, with Investment Assistance. For example, § 314.3(d) allows EDA to approve the transfer of Property from a Recipient to a Successor Recipient (or between two Successor Recipients) and clarifies that the process necessary to effectuate a substitution of the Recipient

(or Successor Recipient) involves transferring the Project Property between the parties. The provision in § 314.3(f) was introduced in the Interim Final Rule and was not present in EDA's former regulations. This provision authorizes EDA to approve, and a Recipient to undertake, an incidental use of Property that does not interfere with the scope or economic purpose of the Project. This incidental use is conditioned upon the Recipient's compliance with applicable law and the terms and conditions of the Investment Assistance.

Section 314.4(a) provides that, with certain exceptions, the Federal government must be compensated for the Federal Share whenever, during the Estimated Useful Life of the Project, any Property acquired or improved (in whole in part) with Investment Assistance is Disposed of, encumbered, or no longer used for the purpose of the Project. This final rule amends § 314.4(a) by replacing the phrase "Uniform Administrative Requirements for Grants at 15 CFR parts 14 and 24" with the phrase "requirements at 15 CFR parts 14 or 24, as applicable." Section 314.4(b) sets out additional Unauthorized Uses of Property prior to the release of EDA's interest. Section 314.4(c) generally tracks § 314.4(b) of EDA's former regulations and sets forth the remedies available to EDA to recover the Federal Share in the event of an Unauthorized Use. This final rule adds a new sentence to subsection (c) to restore the language that previously was set out in § 314.5(d) of EDA's former regulations, which specifies that payment of the Federal Share in accord with this section extinguishes the Federal Interest in the Property. Section 314.5(d) of EDA's former regulations was moved to § 314.2(b) in the Interim Final Rule, which covers Federal Interest provisions. We are adding a similar statement to § 314.4(c) concerning Unauthorized Use of Property to clarify that once the Federal Share is repaid, EDA has no continuing interest in the ownership, use or Disposition of the Property.

Section 314.5 defines "*Federal Share*" and is substantively the same as § 314.5(a) of EDA's former regulations. Similarly, § 314.6 is substantively the same as § 314.6 of EDA's former regulations (although the provisions are reordered to present the general rule and exceptions in a more logical sequence) and, with certain exceptions, prohibits the encumbrance of Recipient-owned Property. To improve clarity, this final rule revises the first sentence in § 314.6(a) by eliminating the phrase "(collectively, an "*Encumbrance*" or to

"*Encumber*")." Further, this final rule adds the phrase " , except to secure a grant or loan made by a Federal Agency or State agency or other public body participating in the same Project" after the words "or otherwise encumbered" in the first sentence of § 314.6(a). This revision aims to simplify program administration by allowing such encumbrances to remain on EDA-assisted Properties without requiring the administrative step of requesting and obtaining specific EDA approval. As a matter of policy, EDA automatically approves such requests and, therefore, the extra step is unnecessary. Section 314.6(b)(1) sets out a similar provision that authorized EDA to approve an encumbrance on Project Property when the Recipient has encumbered the Property at the behest of another Federal Agency. This final rule removes § 314.6(b)(1) in its entirety and renumbers paragraphs (b)(2), (b)(3) and (b)(4) as paragraphs (b)(1), (b)(2) and (b)(3), respectively.

Section 314.7(a) sets forth the requirement that a Recipient must hold title to the Real Property required for a Project at the time Investment Assistance is awarded and must maintain title at all times during the Estimated Useful Life of the Project (the "*General Rule*"). Section 314.7(c) sets forth the exceptions to the General Rule. For example, § 314.7(c)(1) addresses the situation where Investment Assistance will be used to purchase Real Property required for a Project. Under § 314.7(c)(1), EDA may determine that the Recipient satisfies the title ownership requirement of § 314.7(a) if the Recipient has entered into a Real Property purchase agreement and provides reasonable assurances that it will obtain fee title for the Real Property needed for a Project prior to or concurrent with the initial disbursement of Investment Assistance.

Subsections 314.7(c)(5) and (6) address situations where the EDA-approved purpose of the Project is to construct facilities benefiting Real Property owned by the Recipient (§ 314.7(c)(5)) or privately-owned Real Property (§ 314.7(c)(6)), where the benefited Real Property will ultimately be sold or leased to private parties. These provisions replace § 314.7(c)(3) and (4) in EDA's former regulations and generally apply to all types of Real Property, including but not limited to industrial and commercial parks. For improved sentence structure and accuracy, this final rule reformats subsections (c)(5)(i)(D) and (c)(6)(i)(D) of § 314.7 to clarify that the sale or lease of any portion of a Project during its 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 the sale or lease. EDA may waive these requirements under the specific circumstance provided in both subsections, namely, after the ten (10) year anniversary of the date upon which the Investment Assistance was awarded. This final rule also removes the references in §§ 314.7(c)(5)(i)(E) and 314.7(c)(6)(i)(E) to the number of times a Project is transferred, because EDA believes that the five (5) year anniversary periods (similar to the ten (10) year anniversary period noted above) are more accurate measures of whether a Project is continuing to serve the purpose(s) for which the underlying EDA Investment was made.

Section 314.8 is substantively the same as § 314.8 of EDA's former regulations and generally provides that for all Projects involving the acquisition, construction or improvement of a building, the Recipient must execute a lien, covenant or other statement of EDA's interest in such Real Property. Any lien, covenant or statement of EDA's interest must be perfected and recorded (in accordance with local law) in the jurisdiction in which the Real Property is located. Section 314.9 is substantively the same as § 314.9 of EDA's former regulations and provides that for all Projects involving the acquisition or improvement of significant items of Personal Property, the Recipient must execute a security interest or other statement of EDA's interest in such Personal Property. Any security interest or statement must be perfected and recorded in accordance with applicable law and with continuances re-filed, as appropriate.

Subsections 314.10(a) through (c) are substantively the same as subsections 314.11(a) through (c) of EDA's former regulations. This final rule eliminates the phrase “, in whole or in part,” from § 314.10(a). In addition, in § 314.10(c)(1), we replace the phrase “paragraph (a)” with “paragraphs (a) or (b),” for conformance with § 314.11(c)(1) of EDA's former regulations.

The Interim Final Rule added a new section to EDA's regulations at § 314.10(d). This section sets forth the procedures for requesting a release of EDA's Real Property or tangible Personal Property interest pursuant to section 601(d)(2) of PWEDA (42 U.S.C. 3211) and § 314.10. This final rule revises the second sentence of § 314.10(d)(1) to read as follows: “In addition to the restrictions set forth in paragraph (c) of this section, the release may be conditioned upon some activity

of the Recipient intended to be pursued as a consequence of the release.” EDA makes these revisions to ensure clarity and to ensure consistency among different provisions of § 314.10.

#### Part 315—Trade Adjustment Assistance for Firms

The Interim Final Rule substantially revised the Trade Adjustment Assistance for Firms (“TAA”) program provisions of EDA's former regulations. In the Interim Final Rule, part 315 was reorganized and simplified primarily by expanding the use of defined terms and by adding a new subpart D on Adjustment Proposals. This final rule adopts part 315 without substantive change except for amendments made to §§ 315.5, 315.6, 315.7, 315.8 and 315.16.

Among the new definitions in § 315.2, the defined terms “*Increase in Imports*” and “*Contributed Importantly*” describe two (2) of the most important concepts of the TAA program. In order for EDA to determine that a petitioning Firm demonstrates injury, the petitioning Firm must show that An Increase in Imports Contributed Importantly to its (i) decline in sales or production and (ii) loss of employment. EDA received two (2) comments suggesting that the defined term “*Increase in Imports*” is an “outdated condition required to qualify domestic manufacturers for needed TAA.” The commenters stated that “when significant market-share has been captured by imports, there may not be an increase in imports because of general economic conditions whereby the demand for a particular product may decline.” This final rule does not amend the definition of “*Increase in Imports*” because the definition tracks section 251(c) of the Trade Act (19 U.S.C. 2341) precisely and is intended to provide for more consistent application in injury determinations.

The new term “*Decreased Absolutely*” imposes a five (5) percent minimum injury threshold requirement in the measurement of a Firm's decline in sales or production. EDA received approximately seven comments on this defined term which stated that the five (5) percent minimum injury threshold requirement will deny access to further qualified Firms, making it more difficult for them to qualify for the TAA program. This final rule does not amend the definition of “*Decreased Absolutely*.” EDA has imposed this new threshold to (i) eliminate certification of Firms whose decline in sales or production is *de minimis* and, therefore, less certain to be attributable to an Increase in Imports, and (ii) help ensure that limited TAA program funds are provided to the most merit-worthy

Firms facing difficult adjustment problems as a result of an Increase in Imports. Similarly, the definitions of “*Predecessor*” and “*Successor*” Firms set forth in the Interim Final Rule provide guidance for the circumstance where a petitioning Firm relies on the economic injury suffered by a corporate predecessor. These defined terms make clear that the Successor must have been in business less than two (2) years and must have purchased substantially all of the assets of the Predecessor.

Section 315.5 consolidates into one section the scope of operations, selection, evaluation and award requirements of the Trade Adjustment Assistance Centers (“TAACs”), the non-profit and university-affiliated organizations that administer the TAA program nationwide through Cooperative Agreements with EDA. For consistency throughout the chapter, we amend the last sentence in § 315.5(a)(1) by replacing the phrase “annual FFO” with “applicable FFO.” For improved understanding and formatting, this final rule also deletes the lead-in phrase in § 315.5(b) and replaces the semicolon in § 315.5(b)(1) with a period. Additionally, we revise § 315.5(b)(2) by making clear that EDA may invite new TAAC proposals through an FFO.

Section 315.6 consolidates into one section the eligibility, evaluation and award requirements for Firms seeking Adjustment Assistance under the TAA program. This final rule amends the title of § 315.6 to read as *Firm eligibility for Adjustment Assistance*, to more accurately reflect the section's contents, and removes the subtitles in paragraphs (a) through (c). Further, for clarity and conciseness, we replace the first sentence in § 315.6(a)(3) with the sentence in § 315.6(a)(4), and marginally revise the second sentence in § 315.6(a)(3).

Section 315.7 outlines the requirements for injury determinations based on a twelve-month (12) decline (§ 315.7(b)(1)), an interim sales or production decline (§ 315.7(b)(2)), or an interim employment decline (§ 315.7(b)(3)). This section makes clear that in order to be certified under any of these circumstances, a Firm must meet all of the requirements of the applicable subsection. We received approximately eight comments on § 315.7(b), three of which expressed opposition to the applicable twelve-month (12) and six-month (6) periods of comparison outlined in §§ 315.7(b)(1) and 315.7(b)(3), and five of which expressed that the “change to require six-month interim periods from the currently quarterly interim periods [in § 315.7(b)(2)] will limit the number of

potentially eligible [F]irms to enter the program.” EDA increased the injury periods for an interim sales or production decline and an interim employment decline to help ensure that limited TAA program funds are provided to the most merit-worthy Firms facing difficult adjustment problems as a result of an Increase in Imports into the United States. Section 315.7 as set forth in the Interim Final Rule adds consistency and integrity to these injury determination requirements by ensuring that (i) injury has occurred recently and (ii) injury is not due to seasonal fluctuations in sales, production or employment. This final rule amends the second sentence in § 315.7(a) by deleting the phrase “all of” and replacing the word “requirements” with “circumstances.”

Section 315.8, titled *Processing petitions for certification*, generally tracks § 315.10 of EDA’s former regulations. This final rule amends this section to include a reference to Form ED-840P, which a petitioning Firm must complete and submit to EDA in order to apply for Adjustment Assistance. This final rule also replaces the lead-in sentence of § 315.8(b) to include the new title of the form. Additionally, in response to comments received on this regulation, § 315.8(b)(5) is revised to add the requirement that a petitioning Firm also must submit to EDA one (1) copy of a complete auditor’s certified financial report for the entire period covering the petition, or if not available, one (1) 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. Public companies should submit copies of their 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. This final rule also eliminates § 315.8(b)(6) and re-designates subsections (b)(7) and (b)(8) as (b)(6) and (b)(7), respectively. As requested, EDA is eliminating the requirement that Firms submit Federal income tax returns and State employment tax returns in order to reduce respondent burden in completing and submitting petitions (on Form ED-840P).

Although the substantive provisions in § 315.8 were not modified in the Interim Final Rule, one commenter raised a concern on the process prescribed in paragraphs (c) (relating to formal EDA acceptance of a petition for certification) and (g) (relating to the time of the determination after acceptance of

a petition). The commenter contended that these paragraphs do not comport with the underlying statutory provision that requires EDA to make a determination about certification not later than 60 days after the date the petition is “filed” (see 19 U.S.C. § 2341(d)). EDA believes the requirements of paragraphs (c) and (g) of this section (discussed below) are fully consistent with the statute. Moreover, these provisions have been in the EDA regulations without substantive change since 1995 (although the Interim Final Rule provides that EDA will send notice of a technically deficient petition to the sponsoring TAAC instead of to the petitioning firm). This final rule does not change either paragraph (c) or (g) of § 315.8 from the version published in the Interim Final Rule.

In evaluating petitions for determinations of certification under paragraphs (c) and (g) of § 315.8 of the Interim Final Rule, EDA employs a two-stage process. First, EDA conducts a technical review based on the requirements set forth in paragraph (b) of § 315.8 to determine if a petition has been properly filed and can be accepted for investigation. Second, EDA examines the “accepted” petition to determine whether the firm is eligible for program benefits based on the claims set forth in the petition. EDA works closely with the TAACs upon receipt of a petition and during the early stages of the petition evaluation process to ensure that eligible firms are not denied access to the TAA program due to technical defects in their petitions. The submission of accurate petitions also decreases the time it takes EDA to certify firm eligibility. EDA intends to work more closely with the TAACs to ensure that petitions submitted by firms through the TAACs meet technical petition filing requirements. For its part, EDA will endeavor to process accepted petitions in an expeditious manner and well in advance of the 60-day review period required by the statute and by paragraph (g) of § 315.8 of the Interim Final Rule.

The commenter also recommended that EDA drop the new regulations and look for ways to streamline the certification process. For the reasons noted above, EDA believes it has streamlined significant aspects of the certification process in response to comments. Moreover, in addition to these new regulations, EDA has placed into service a new petition for certification that streamlines the petition process. This final rule includes those provisions necessary to enable EDA to demonstrate it is administering the Trade Adjustment Assistance

Program in a manner consistent with the requirements of law.

Section 315.9, titled *Hearings*, and § 315.11, titled *Appeals, final determinations and termination of certification*, divide § 315.11 of EDA’s former regulations to address separately these distinct topics. As set forth in the Interim Final Rule, subpart C, titled *Protective Provisions*, contains standard provisions consistent with the Trade Act and EDA policy on recordkeeping (§ 315.12), audit and examination (§ 315.13), certifications (§ 315.14) and conflicts of interest (§ 315.15).

Subpart D, titled *Adjustment Proposals*, presents provisions reflecting long-standing practices of EDA and the TAACs in evaluating Adjustment Proposals. This final rule changes the title of § 315.16 to *Adjustment Proposal Requirements* and removes the word “process” in the lead-in statement. To clarify the appropriate uses of TAA program funds, this final rule also adds a new subsection (d) to § 315.16 to read as follows: “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 this purpose, 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.”

Finally, subpart E, titled *Assistance to Industries*, is effectively unchanged from EDA’s former regulations, tracking the current statutory provisions of the Trade Act.

#### Classification

Prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

#### Executive Order No. 12866

It has been determined that this final rule is significant for purposes of Executive Order 12866.

**Congressional Review Act**

This final rule is not major under the Congressional Review Act (5 U.S.C. 801 *et seq.*)

**Executive Order No. 13132**

Executive Order 13132 requires agencies to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in Executive Order 13132 to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government.” It has been determined that this final rule does not contain policies that have federalism implications.

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (“PRA”) requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a

collection of information subject to the PRA unless that collection displays a currently valid OMB Control Number.

The following table provides a complete list of the collections of information (and corresponding OMB Control Numbers) set forth in this final rule. These collections of information are necessary for the proper performance and functions of EDA. Subsequent to the August 11, 2005 publication of the Interim Final Rule (as amended by the December 15, 2005 Rulemaking), EDA undertook an extensive review of its collections of information, and thereby changed the title of four (4) of its collections of information and consolidated three (3) collections of information into existing information collections.

Part or section of this final rule	Nature of request	Form/title/OMB Control Number
301.2; 301.10 .....	With an application for Investment Assistance, a non-profit Eligible Applicant must include a resolution passed by an authorized representative of a political subdivision of a State.	ED-900A, Application for Investment Assistance (0610-0094).
301.3(a); 301.10; 305.3(a)(1)	An Eligible Applicant must substantiate Regional eligibility and justify the requested EDA Investment Assistance based on, for example, the unemployment rate, per capita income levels, or a Special Need (as determined by EDA) in the Region in which the Project will be located. The Eligible Applicant also must identify and submit to EDA the source of data used to substantiate Regional eligibility ( <i>e.g.</i> , ACS data, other Federal data for the Region in which the Project will be located, or data available through the State government).	ED-900P, Pre-Application for Investment Assistance (0610-0094).
301.4(b)(1)(i); 305.3(a)(1) ....	An Eligible Applicant must provide information on the severity of the Region’s unemployment and its duration, the per capita income levels and extent of the Region’s unemployment or outmigration.	ED-900P, Pre-Application for Investment Assistance (0610-0094).
301.4(b)(4) .....	An Eligible Applicant for a Project under part 306 must provide information to show that the Project merits an increase to the Investment Rate because of the Project’s infeasibility without such an increase, or because the Project will be of no or only incidental benefit to the Eligible Applicant.	ED-900P, Pre-Application for Investment Assistance (0610-0094).
301.5; 301.10 .....	An Eligible Applicant must provide information to show that Matching Share funds will be available for the Project.	ED-900A, Application for Investment Assistance (0610-0094).
301.7 .....	An Eligible Applicant must submit an Investment proposal on EDA’s pre-application (on Form ED-900P or any successor form).	ED-900P, Pre-Application for Investment Assistance (0610-0094).
301.7(a)(1); 301.10(a) and (b).	For Projects selected from successful pre-applications, EDA will invite those Eligible Applicants to submit formal applications for Investment Assistance (on Form ED-900A or any successor form).	ED-900A, Application for Investment Assistance (0610-0094).
301.10(b)(3) .....	An Eligible Applicant for a construction Project under parts 305 or 307 must include with its application for Investment Assistance a CEDS acceptable to EDA (pursuant to part 303) or otherwise incorporate by reference a current CEDS that EDA approves for the proposed Project.	ED-900A, Application for Investment Assistance (0610-0094).
302.7(a) .....	Recipients must submit requests for amendments to Investment awards in writing to EDA for approval and provide information and documentation as EDA deems necessary.	Award Amendment Request (0610-0102).
302.9(a) .....	An Eligible Applicant must furnish comments on the Project from the relevant governmental authority in the Region or proof of efforts to obtain comments if none were provided by the governmental authority.	ED-900A, Application for Investment Assistance (0610-0094).

Part or section of this final rule	Nature of request	Form/title/OMB Control Number
302.10(b)(1) .....	An Eligible Applicant must certify to EDA the names of any persons engaged by or on behalf of the Eligible Applicant for the purpose of expediting Investment Assistance applications made to EDA.	ED-900A, Application for Investment Assistance (0610-0094).
302.14(a) .....	Recipients shall keep records of the amount and disposition of awards of Investment Assistance, the total cost of the Project, the amount and nature of the portion of the Project costs provided by other sources and other records that would facilitate an effective audit.	Audits of States, Local Governments, and Non-Profit Organizations, OMB Circular A-133.
302.15 .....	An Eligible Applicant must certify (and submit evidence thereof satisfactory to EDA) that it meets the requirements for receiving Investment Assistance.	ED-900P, Pre-Application for Investment Assistance (0610-0094).
302.16(b) .....	Recipients are required to submit reports consisting of data-specific evaluations of the Project's effectiveness.	Government Performance and Results Act ("GPRA") Performance Validation Forms (0610-0098).
302.16(c) .....	EDA may require a Recipient to provide a "Project service map" and other information in order to determine which segments of the Region are being assisted with the Investment Assistance.	Project Service Map (0610-0102).
302.20(d) .....	Recipients and Other Parties must submit written assurances to EDA that they will comply with anti-discriminatory laws and regulations.	ED-900A, Application for Investment Assistance (0610-0094).
303.9(c) .....	Eligible Applicants for short-term Planning Investment Assistance must provide performance measures acceptable to EDA, and provide EDA with progress reports during the term of the Planning Investment.	GPRA Performance Validation Forms (0610-0098).
304.1; 304.4(a) .....	To have a Region certified as an EDD, a District Organization must submit information showing that the Region contains at least one area subject to the relevant economic distress criteria, is able to foster development on a larger scale than in a single area, has an EDA-approved CEDS and obtains commitments from a majority of the relevant counties and States.	Comprehensive Economic Development Strategies and Planning Investments (0610-0093).
304.2(c)(2); 304.4(b) .....	The District Organization must demonstrate that its governing body is broadly representative of the principal economic interests of the Region.	ED-900A, Application for Investment Assistance (0610-0094); Comprehensive Economic Development Strategies and Planning Investments (0610-0093).
304.2(c)(4) .....	The District Organization must notify the public of its annual meetings, its decisions, the results of programs, and as reasonably requested, the results of audited statements, annual budgets, and minutes of public meetings.	Comprehensive Economic Development Strategies and Planning Investments (0610-0093).
305.2(b); 305.3(a)(3) .....	An Eligible Applicant must show that the Public Works Project will promote: the growth of industrial or commercial plants, the creation of long-term employment opportunities primarily for low-income families, and the fulfillment of the Region's pressing needs.	ED-900A, Application for Investment Assistance (0610-0094); Construction Investments (0610-0096).
305.4(c) .....	In order to receive any portion of the Investment Assistance for design and engineering work, an Eligible Applicant must submit and certify information that documents compliance with the Investment awards of all design and engineering contracts.	ED-900A, Application for Investment Assistance (0610-0094); Construction Investments (0610-0096).
305.5 .....	In order to allow a District Organization to administer the Project for another Recipient, the Recipient must make this request and submit information to EDA showing that the Recipient does not have the current staff capacity to administer the project, the District Organization would be more effective than another local business or organization, the District Organization would not subcontract the work, and the costs of District Organization administration will not exceed the allowable costs were the Recipient administering it.	ED-900A, Application for Investment Assistance (0610-0094); Construction Investments (0610-0096).
305.6 .....	A Recipient may use an alternate construction procurement method to the traditional design/bid/build. If an alternate method is used, the Recipient must submit to EDA for approval a construction services procurement plan and the Recipient must use a design professional to oversee the process.	ED-900A, Application for Investment Assistance (0610-0094); Construction Investments (0610-0096).

Part or section of this final rule	Nature of request	Form/title/OMB Control Number
305.7 .....	The Recipient may use "in-house forces" for design, construction, inspection, legal services or other work on the Project if it submits a sufficient justification to EDA.	ED-900A, Application for Investment Assistance (0610-0094); Construction Investments (0610-0096).
305.8(a); 305.8(b) .....	Recipients of EDA construction awards must obtain prior approval for the use of furnished equipment and materials. Requests must show that costs claimed for furnished equipment and materials are competitive with local market costs for similar equipment and materials.	ED-900A, Application for Investment Assistance (0610-0094); Construction Investments (0610-0096).
305.9 .....	An EDA construction award Recipient must submit information to EDA regarding why phasing is necessary, a description of the phasing, related costs and schedules, and certification that the Recipient will pay for overruns and that it is capable of paying for incurred costs before the first disbursement.	ED-900A, Application for Investment Assistance (0610-0094); Construction Investments (0610-0096).
305.10 .....	If at the construction contract bid opening, the lowest responsive bid is less than total Project cost, the Recipient will notify EDA to determine whether Investment funds should be deobligated from the Project.	Construction Investments (0610-0096).
305.11 .....	Recipients may issue a notice permitting construction under contract to commence prior to an EDA determination of award compliance and eligibility for cost reimbursement, but will proceed at their own risk until EDA review and concurrence. The EDA regional office may request information from the Recipient to make a determination of award compliance.	Construction Investments (0610-0096).
305.12 .....	EDA requires a Recipient to erect a project sign or signs at the Project construction site to indicate that the Federal government is participating in the Project. The regional office will provide mandatory specifications for Project signage.	Construction Investments (0610-0096).
305.13 .....	Recipients involved in a contract change order must submit them to EDA for review.	Construction Investments (0610-0096).
306.2 .....	EDA selects Projects for Local and National Technical Assistance based on the criteria in part 301 and the extent to which the Eligible Applicant demonstrates that the Project will achieve more specific objectives in the Region (as set forth in §306.2) and meets the criteria in the applicable FFO.	ED-900P, Pre-Application for Investment Assistance (0610-0094).
306.5 .....	EDA provides Investment Assistance to University Center Projects based on the selection criteria in part 301, the competitive selection process outlined in the applicable FFO, and the extent to which the Eligible Applicant demonstrates other more specific, related criteria.	ED-900P, Pre-Application for Investment Assistance (0610-0094).
307.5(a) .....	Each application for Economic Adjustment Assistance must include or incorporate by reference (if so approved by EDA) a CEDS.	ED-900A, Application for Investment Assistance (0610-0094).
307.9 .....	All RLF Recipients must submit to EDA an RLF Plan ...	RLF Standard Terms and Conditions (0610-0095).
307.11(a) .....	Prior to the disbursement of EDA funds, RLF Recipients must provide in a form acceptable to EDA evidence of fidelity bond coverage and evidence of certification in accordance with §307.15(b)(1).	RLF Standard Terms and Conditions (0610-0095).
307.11(e) .....	If the Recipient receives Grant funds and the RLF loan disbursement is subsequently delayed beyond 30 days, the Recipient must notify the applicable grants officer and return such non-disbursed funds to EDA.	RLF Standard Terms and Conditions (0610-0095).
307.12(a)(4) .....	RLF Recipients must complete an RLF Income and Expense Statement.	ED-209I, Income and Expense Statement (0610-0095).
307.13(a) .....	RLF Recipients must 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.	RLF Standard Terms and Conditions (0610-0095).
307.13(b) .....	RLF Recipients must maintain adequate accounting records to substantiate the amount of RLF Income expended for eligible administrative costs and retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF.	RLF Standard Terms and Conditions (0610-0095).



Part or section of this final rule	Nature of request	Form/title/OMB Control Number
307.14(a) .....	All RLF Recipients must submit semi-annual reports to EDA.	ED-209S, Semi-Annual Report (0610-0095).
307.14(a) .....	EDA may approve the substitution of annual reports for semi-annual reports upon written request by the RLF Recipient if the conditions set forth in § 307.14(a)(1)-(4) are met.	ED-209A, Annual Report (0610-0095).
307.14(b) .....	All Recipients must certify as part of the semi-annual or annual report that the RLF is operating in accordance with the RLF Plan, and describe any modifications to the RLF Plan to ensure effective use of the RLF.	ED-209S, Semi-Annual Report (0610-0095). ED-209A, Annual Report (0610-0095).
307.14(c) .....	An RLF Recipient using either fifty percent or more (or more than \$100,000) of RLF Income for administrative costs in a 12-month reporting period must submit a completed Income and Expense Statement annually to the appropriate EDA regional office.	ED-209I, Income and Expense Statement (0610-0095).
307.15(b)(1) .....	Within sixty (60) days prior to the initial disbursement of EDA funds, an independent accountant familiar with the Recipient's accounting system shall certify to EDA and the Recipient that such system is adequate to identify, safeguard and account for all RLF operations.	RLF Standard Terms and Conditions (0610-0095).
307.15(b)(2) .....	Prior to the disbursement of any EDA funds, an RLF Recipient must certify that standard loan documents necessary for lending are in place and that these documents have been reviewed by its legal counsel for adequacy and compliance with the terms and conditions of the Grant and applicable State and local law.	RLF Standard Terms and Conditions (0610-0095).
307.16(b) .....	Recipients must promptly notify EDA in writing of any condition that may adversely affect their ability to meet prescribed schedule deadlines. Recipients must submit a written request for continued use of Grant funds beyond a missed deadline for disbursement of RLF funds.	RLF Standard Terms and Conditions (0610-0095).
307.17(e) .....	After the full disbursement of Grant funds, RLF Capital may be used to guarantee loans of private lenders, provided the Recipient has obtained prior written approval from EDA of its proposed loan activities and submitted to EDA the three listed items. The Recipient must also amend its RLF Plan to accommodate any EDA-approved loan guaranty activities.	RLF Standard Terms and Conditions (0610-0095)
307.19 .....	With prior approval from EDA, a Recipient may enter into a Sale or Securitization of all or a portion of its RLF loan portfolio.	RLF Standard Terms and Conditions (0610-0095).
307.21(b) .....	EDA may approve a request from a Recipient to terminate an RLF Grant.	RLF Standard Terms and Conditions (0610-0095).
part 310 .....	Upon the application of an Eligible Applicant, EDA may designate the Region which the Project will serve as a Special Impact Area and waive the CEDS requirement if the Eligible Applicant demonstrates that its proposed Project will directly fulfill a pressing need and assist in preventing excessive unemployment.	Comprehensive Economic Development Strategies and Planning Investments (0610-0093).
314.3(f) .....	With EDA's prior written approval, a Recipient may undertake an incidental use of Property that does not interfere with the scope of the Project or the economic purpose for which the Investment was made, provided it satisfies the conditions set forth in § 314.3(f).	Property Management 0610-0103.
314.6(b) .....	In order to use EDA-funded property to secure a mortgage or deed of trust or encumber the property, the Recipient must provide information that satisfies one or more of the exceptions set forth in § 314.6(b).	ED-900A, Application for Investment Assistance (0610-0094); Construction Investments (0610-0096).
314.7(a) and (c) .....	The Recipient must provide information that satisfies EDA that the Recipient has title to the Real Property and all easements, rights-of-way, permits or long-term leases, unless it can provide information proving it meets an exception to the rule.	ED-900A, Application for Investment Assistance (0610-0094); Construction Investments (0610-0096).
314.7(b) .....	The Recipient must provide information regarding all encumbrances on the Real Property to EDA.	ED-900A, Application for Investment Assistance (0610-0094); Construction Investments (0610-0096).

Part or section of this final rule	Nature of request	Form/title/OMB Control Number
314.8 .....	Recipients must execute a lien, covenant or other statement of EDA's interest in all Property acquired or improved with EDA Investment Assistance and record it in the proper jurisdiction.	ED-900A, Application for Investment Assistance (0610-0094); Construction Investments (0610-0096).
314.9 .....	Recipients must execute a security interest or other statement of EDA's interest in Personal Property acquired or improved by EDA funds and record the interest in accordance with applicable law.	ED-900A, Application for Investment Assistance (0610-0094); Construction Investments (0610-0096).
314.10 .....	If a Recipient wishes for EDA to release its Real Property or tangible Personal Property interest before the expiration of the Property's Estimated Useful Life, it must submit a request to EDA and either file a covenant of use precluding inherently religious activities or purchase EDA's Federal Share in such Property.	0610-0103.
315.5(b) .....	Current or prospective TAACs must submit either a new or amended application to EDA, along with a proposed budget, narrative scope of work and other information as may be requested by EDA.	ED-900A, Application for Investment Assistance (0610-0094).
315.5(c) .....	TAACs must submit information regarding performance to be evaluated by EDA.	GPRA Performance Validation Form (0610-0098).
315.6(a)(1); 315.7; 315.8 .....	Firms must provide specific information to EDA in order to be certified for participation in the TAA program.	ED-840P, Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance (0610-0091).
315.6(a)(2); 315.6(a)(3); 315.16.	A Certified Firm must submit an Adjustment Proposal to EDA for approval. If EDA approves the Adjustment Proposal, the Firm may then request Adjustment Assistance from the TAAC.	ED-840P, Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance (0610-0091).
315.9 .....	In order to have a public hearing, a Person with a Substantial Interest in an accepted petition for TAA certification must submit a request that follows this section's procedures.	ED-840P, Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance (0610-0091).
315.12 .....	Each TAAC shall keep records disclosing the use of all TAA funds.	GPRA Performance Validation Form (0610-0098).

**List of Subjects**

*13 CFR Part 300*

Financial assistance, Distressed region, Headquarters, Regional offices.

*13 CFR Part 301*

Eligibility requirements, Applicant requirements, Economic distress levels, Investment rates, Match share requirements, Application requirements, Proposal selection.

*13 CFR Part 302*

Environmental review, Federal policy and procedures, Inter-governmental review, Fees, Pre-approval requirements, Project administration, Reporting and audit requirements, Conflicts of interest, Post-approval requirements, Civil rights.

*13 CFR Part 303*

Planning, Award and application requirements, Comprehensive economic development strategy, State plans, Short-term planning investments.

*13 CFR Part 304*

Economic development district, Organizational requirements, District modification and termination, Performance evaluations.

*13 CFR Part 305*

Public works, Economic development, Award and application requirements, Requirements for approved projects.

*13 CFR Part 306*

Training, Research, Technical assistance, Award and application requirements, University centers, Performance evaluations.

*13 CFR Part 307*

Economic adjustment assistance, Award and application requirements, Revolving loan fund, Pre-loan requirements, Merger, Income, Record and reporting requirements, Sales and securitizations, Liquidation, Termination.

*13 CFR Part 308*

Performance awards, Planning performance awards.

*13 CFR Part 309*

Redistribution requirements, Investment assistance.

*13 CFR Part 310*

Special impact area, Excessive unemployment, Special need.

*13 CFR Part 311*

[Reserved]

*13 CFR Part 312*

[Reserved]

*13 CFR Part 313*

[Reserved]

*13 CFR Part 314*

Federal interest, Authorized use, Property, Federal share, Title, Release, Property interest.

*13 CFR Part 315*

Administrative practice and procedure, Trade adjustment assistance, Eligible petitioner, Firm selection, Certification requirements, Recordkeeping and audit requirements, Adjustment proposals.

**Regulatory Text**

■ For reasons discussed above, 13 CFR chapter III is revised to read as follows:

**13 CFR CHAPTER III**

**Economic Development Administration, Department of Commerce**

Part

300 General Information

301 Eligibility, Investment Rate and Proposal and Application Requirements

302 General Terms and Conditions for Investment Assistance

- 303 Planning Investments and Comprehensive Economic Development Strategies
- 304 Economic Development Districts
- 305 Public Works and Economic Development Investments
- 306 Training, Research and Technical Assistance Investments
- 307 Economic Adjustment Assistance Investments
- 308 Performance Incentives
- 309 Redistributions of Investment Assistance
- 310 Special Impact Areas
- 311 [Reserved]
- 312 [Reserved]
- 313 [Reserved]
- 314 Property
- 315 Trade Adjustment Assistance for Firms

## PART 300—GENERAL INFORMATION

Sec.

- 300.1 Introduction and mission.
- 300.2 EDA Headquarters and regional offices.
- 300.3 Definitions.

**Authority:** 42 U.S.C. 3121; 42 U.S.C. 3122; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

### § 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 higher-skill, higher-wage 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.

### § 300.2 EDA Headquarters and regional offices.

(a) EDA's Headquarters Office is located at: U.S. Department of Commerce, Economic Development Administration, 14th Street and

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 notice of Federal Funding Opportunity published annually by EDA. Please contact the appropriate regional office to learn about EDA Investment opportunities in your Region.

### § 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 under PWEDA, where substantial involvement is expected between EDA and the Eligible Recipient in carrying out the activities contemplated in an agreement between the parties. See 31 U.S.C. 6305.

*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 under part 306 of this chapter.

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

*Federal Funding Opportunity* or *FFO* means the notice EDA publishes annually at <http://www.grants.gov> and on EDA's Internet Web site at <http://www.eda.gov> that describes the amounts, particular application procedures, funding priorities, special circumstances and other relevant information concerning EDA's Investment programs for the year. EDA may also 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 PWEDA, where the Eligible Recipient bears responsibility for carrying out the activities contemplated in an agreement between the parties. See 31 U.S.C. 6304.

*Immediate Family* means a person's spouse, 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 cost principles and the requirements of 15 CFR parts 14 or 24, as applicable.

*Indian Tribe* means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native Village or Regional Corporation as defined in or established under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. 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 an EDA 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 costs.

*Local Share or Matching Share* means the non-EDA funds and any In-Kind Contributions that are approved by EDA and provided by Recipients or third parties as a condition of an Investment. The Matching Share may include funds from other Federal Agencies 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.*).

*Private Sector Representative* means, with respect to any for-profit enterprise, any senior management official or executive holding a key decision-making position, or that person's designee.

*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 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.*), including the comprehensive amendments made by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108-373, 118 Stat. 1756).

*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 may also 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.*).

*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.

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

*United States* means all of the States.

## PART 301—ELIGIBILITY, INVESTMENT RATE AND PROPOSAL AND APPLICATION REQUIREMENTS

### Subpart A—General

Sec.

301.1 Overview of eligibility requirements.

### Subpart B—Applicant Eligibility

301.2 Applicant eligibility.

### Subpart C—Economic Distress Criteria

301.3 Economic distress levels.

### Subpart D—Investment Rates and Matching Share Requirements

301.4 Investment rates.

301.5 Matching share requirements.

301.6 Supplementary investment assistance.

### Subpart E—Proposal and Application Requirements; Evaluation Criteria

301.7 Investment assistance proposal.

301.8 Proposal evaluation criteria.

301.9 Proposal selection criteria.

301.10 Formal 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.

### Subpart A—General

#### § 301.1 Overview of eligibility requirements.

In order to receive EDA Investment Assistance, an applicant and the Project proposed by the applicant must satisfy each of the following requirements:

(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) EDA must select the Eligible Applicant's Project and the Eligible Applicant must satisfy the formal application requirements set forth in subpart E of this part; and

(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.

#### 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 may waive this cooperation requirement for certain Projects of a significant Regional or national scope under parts 306 or 307 of this chapter. See §§ 306.3(b), 306.6(b) and 307.5(b) of this chapter.

#### 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 twenty-four (24) month period for which data are available, at least one (1) percent greater than the national average unemployment rate;

(ii) Per capita income that is, for the most recent period for which data are available, eighty (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 of paragraph (a)(1) of this section, is also 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) 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 the unemployment rate or 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 either: 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. Where a recent ACS is not 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.

(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 (1) 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.

#### 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, after the application of Table 1 in paragraph (b)(1)(ii) of this subsection, not exceed the sum of: (x) Fifty (50) percent, plus (y) up to an additional thirty (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 (1) 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 twenty-four (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 twenty-four (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 twenty-four (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 twenty-four (24) month unemployment rate is at least 1% 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 Investment Rate for any Project subject to a Special Need shall be eighty (80) percent.

(3) *Projects under part 303.*

(i) The minimum Investment Rate for Projects under part 303 of this chapter shall be fifty (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 eighty (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. The Assistant Secretary shall not delegate the authority to grant a waiver under this paragraph.

(4) *Projects under part 306.* 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. However, for Projects of a national scope under part 306 of this chapter and for all other Projects under part 306 of this chapter (after the application of paragraph (b)(1) of this section), the Assistant Secretary has the discretion to establish a maximum Investment Rate of up to one hundred (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 of Indian Tribes .....	100
Projects under part 307 of this chapter located in Presidentially-Declared Disaster areas for which EDA receives an application for Investment Assistance for post-disaster economic recovery efforts pursuant to a supplemental appropriation within eighteen (18) months of the date of such declaration .....	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 notices 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.

**§ 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 show 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.

**§ 301.6 Supplementary investment assistance.**

(a) Pursuant to a request by an Eligible Applicant, EDA Investment Assistance may supplement grants 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 any 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 Projects located in Regions meeting the criteria of § 301.3(a), the EDA 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 combination of EDA Investment and other Federal funds may exceed the EDA Investment Rate; provided, the EDA share of total funding does not exceed the maximum allowable Investment Rate.

**Subpart E—Proposal and Application Requirements; Evaluation Criteria****§ 301.7 Investment Assistance proposal.**

(a) The EDA Investment Assistance process begins with the submission of an Investment Assistance proposal. Investment proposals are submitted on a Pre-application for Investment Assistance (Form ED-900P or any successor form) that may be obtained from EDA's Internet Web site at <http://www.eda.gov> or from the appropriate regional office. EDA generally accepts

proposals on a competitive and continuing basis to respond to market forces in Regional economies. The timing with which competitive investment opportunities arise, as determined by the criteria set forth in § 301.8, paired with the availability of funds in a given fiscal year, will affect EDA's ability to participate in any given Project. EDA will evaluate all proposals using the criteria set forth in § 301.8 and will:

- (1) Solicit a formal application from the proponent;
  - (2) Return the proposal to the proponent for specified deficiencies and suggest resubmission upon corrections; or
  - (3) Deny the proposal for specifically stated reasons and notify the proponent.
- (b) For certain programs, EDA may instruct an Eligible Applicant to submit an Application for Investment Assistance (Form ED-900A or any successor form) in lieu of the Pre-application for Investment Assistance (Form ED-900P or any successor form).

**§ 301.8 Proposal evaluation criteria.**

EDA will screen all proposals for the feasibility of the budget presented and conformance with EDA 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 proponent to implement the proposed Project. EDA will also consider the degree to which an Investment in the proposed Project will satisfy one (1) or more of the following criteria:

(a) *Is market-based and results driven.* An Investment will capitalize on a Region's competitive strengths and will positively move a Regional economic indicator measured and evaluated by EDA on a performance matrix system, such as EDA's Balanced Scorecard or other performance matrix. These Regional economic indicators include measures such as an increased number of higher-skill, higher-wage jobs, increased tax revenue, or increased private sector investment resulting from an Investment.

(b) *Has strong organizational leadership.* An Investment will have strong leadership, relevant Project management experience and a significant commitment of human resources talent to ensure a Project's successful execution.

(c) *Advances productivity, innovation and entrepreneurship.* An Investment will embrace the principles of entrepreneurship, enhance Regional industry clusters and leverage and link technology innovators and local

universities to the private sector to create the conditions for greater productivity, innovation, and job creation.

(d) *Looks beyond the immediate economic horizon, anticipates economic changes and diversifies the local and Regional economy.* An Investment will be part of an overarching, long-term Comprehensive Economic Development Strategy that enhances a Region's success in achieving a rising standard of living by supporting existing industry clusters, developing emerging new clusters or attracting new Regional economic drivers.

(e) *Demonstrates a high degree of local commitment.* An Investment will exhibit:

- (1) High levels of local government or non-profit Matching Share and private sector leverage;
- (2) Clear and unified leadership and support by local elected officials; and
- (3) Strong cooperation among the business sector, relevant Regional partners and Federal, State and local governments.

(f) Other criteria as set forth in the applicable FFO.

**§ 301.9 Proposal selection criteria.**

(a) EDA will review completed proposal materials for compliance with the requirements set forth in PWEDA, this chapter, the applicable FFO and other applicable Federal statutes and regulations. From those proposals that meet EDA's technical and legal requirements, EDA will select proposals for further consideration based on:

- (1) The availability of funds;
- (2) The competitiveness of the proposals based on the criteria set forth in § 301.8; and
- (3) The funding priority considerations identified in the applicable FFO.

(b) EDA will endeavor to notify proponents regarding whether their proposals are selected as soon as practicable.

**§ 301.10 Formal application requirements.**

(a) *General.* For Projects selected from successful proposals, EDA will invite the proponents to submit a formal application for Investment Assistance. The appropriate regional office will provide application materials and guidance in completing them. The applicant will generally have thirty (30) days to submit the completed application materials to the applicable regional office. EDA staff will work with the applicant to resolve application deficiencies.

(b) *Formal application.* Each formal application for EDA Investment Assistance must:

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

(2) 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

(3) For construction 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 of the preceding sentence shall not apply to:

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

(ii) Projects located in a Region designated as a Special Impact Area pursuant to part 310 of this chapter.

## PART 302—GENERAL TERMS AND CONDITIONS FOR INVESTMENT ASSISTANCE

Sec.

- 302.1 Environment.
- 302.2 Procedures in disaster areas.
- 302.3 Project servicing for loans, loan guaranties and Investment Assistance.
- 302.4 Public information.
- 302.5 Relocation assistance and land acquisition policies.
- 302.6 Additional requirements; Federal policies and procedures.
- 302.7 Amendments and changes.
- 302.8 Pre-approval Investment Assistance costs.
- 302.9 Inter-governmental review of Projects.
- 302.10 Attorneys' and consultants' fees; employment of expeditors and administrative employees.
- 302.11 Economic development information clearinghouse.
- 302.12 Project administration, operation and maintenance.
- 302.13 Maintenance of standards.
- 302.14 Records and audits.
- 302.15 Acceptance of certifications by Eligible Applicants.
- 302.16 Reports by recipients.
- 302.17 Conflicts of interest.
- 302.18 Post-approval requirements.
- 302.19 Indemnification.
- 302.20 Civil rights.

**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; Department of Commerce Delegation Order 10–4.

### § 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 can be obtained from the Environmental Officer in the appropriate EDA regional office as listed in the applicable FFO.

### § 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 any EDA-administered program. Project servicing includes but is not limited to 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.

### § 302.4 Public information.

The rules and procedures regarding public access to EDA’s records pursuant to the Freedom of Information Act of 1967, as amended (5 U.S.C. 552), and the Privacy Act of 1974, as amended (5 U.S.C. 552a), are at 15 CFR part 4.

### § 302.5 Relocation assistance and land acquisition policies.

Recipients of EDA Investment Assistance under PWEDA and the Trade Act (States and political subdivisions of States and non-profits organizations, as applicable) are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. 91–646; 42 U.S.C. 4601 *et seq.*). *See* 15 CFR part 11 and 49 CFR part 24 for specific compliance requirements.

### § 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 but not limited to 15 CFR part 14, the Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, other Non-Profit and Commercial Organizations, and 15 CFR part 24, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable.

### § 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 but not limited to procurement requirements, civil rights requirements, Federal labor standards, or Federal environmental, historic preservation and related requirements.

**§ 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 fifteen (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, Eligible Applicants shall furnish the following with their applications: If no comments are received from the Authority, a statement of efforts made to obtain such comments; or, 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 must also 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.

**§ 302.10 Attorneys' and consultants' fees; employment of expeditors and administrative employees.**

(a) *General.* 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.

(b) *Employment of expeditors and administrative employees.* Investment Assistance under PWEDA shall not be awarded to any Eligible Applicant, unless the owners, partners or officers of the Eligible Applicant:

(1) 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 applications made to EDA in connection with obtaining Investment Assistance under PWEDA and the fees paid or to be paid to the person for expediting the applications; and

(2) Upon EDA's request, execute an agreement binding the Eligible Applicant, for the two-year (2) period beginning on the date on which the Investment Assistance is awarded to the Eligible Applicant, to 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 (1) 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.

**§ 302.11 Economic development information clearinghouse.**

Pursuant to section 502 of PWEDA, EDA maintains an economic development information clearinghouse on its Internet Web site at <http://www.eda.gov>.

**§ 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.

**§ 302.14 Records and audits.**

(a) *Records.* Recipients of Investment Assistance under PWEDA shall keep such records as EDA shall require, including records that fully disclose:

(1) The amount and the disposition by the Recipient of the proceeds of the awarded Investment Assistance;

(2) The total cost of the Project that the Investment Assistance funds;

(3) The amount and nature of the portion of Project costs provided by other sources; and

(4) Such other records as EDA determines will facilitate an effective audit.

(b) *Audits.* The Recipient shall permit the Assistant Secretary, the Inspector General of the Department, the Comptroller General of the United States and/or any of their respective agents or representatives access to its properties in order to examine all books, correspondence, and records, including without limitation computer programs and data processing software, to verify the Recipient's compliance with Investment Assistance requirements.

**§ 302.15 Acceptance of certifications 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 Reports by Recipients.**

(a) In 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 (10) years after the date of closeout of the Investment Assistance.

(b) 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 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 and to monitor internal, Investment and Project performance through an internal performance measurement system, such as the EDA Balanced Scorecard or other system.

(c) To enable EDA to determine the economic development effect of Projects that provide service benefits, EDA may require that Recipients submit a Project service map and information from which to determine whether services are provided to all segments of the Region being assisted.

### § 302.17 Conflicts of interest.

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

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

(1) An Interested Party shall not receive any direct or indirect, financial or personal benefits in connection with the award of Investment Assistance or its use for payment or reimbursement of costs by or to the Recipient. Recipients shall establish safeguards to prohibit an Interested Party from using its position for a purpose that constitutes or presents the appearance of personal or organizational conflicts of interest or of personal gain. *See also* 15 CFR 14.42

and 24.36(b)(3); Forms SF-424B and SF-424D.

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

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

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

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

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

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

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

### § 302.18 Post-approval requirements.

(a) *General.* 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 terms 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.

(b) *Part 307 (Economic Adjustment Assistance Investments).* Recipients of Economic Adjustment Assistance Investments under part 307 of this chapter must comply with the Post-Approval Requirements set forth in § 307.6 of this chapter.

### § 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 by an entity receiving Adjustment Assistance (as defined in § 315.2 of this chapter) under the Trade Act, 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) and 42 U.S.C. 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program), and the Department's implementing regulations found at 15 CFR 8.7 through 8.15;

(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 fifteen (15) or more permanent jobs as a result of Investment Assistance; provided that such entity is also 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 Investment Assistance 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, all Other Parties and all entities receiving Adjustment Assistance under the Trade Act 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.

### **PART 303—PLANNING INVESTMENTS AND COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES**

Sec.

303.1 Purpose and scope.

303.2 Definitions.

303.3 Application requirements and evaluation criteria.

303.4 Award requirements.

303.5 Eligible administrative expenses.

303.6 EDA-funded CEDS process.

303.7 Requirements for Comprehensive Economic Development Strategies.

303.8 Requirements for State plans.

303.9 Requirements for short-term Planning Investments.

**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.

#### **§ 303.1 Purpose and scope.**

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 short-term Planning Investments and State plans designed to create and retain higher-skill, higher-wage 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 Private Sector Representatives, public officials 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.

#### **§ 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 higher-skill, higher-wage 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 shall also 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.

#### **§ 303.4 Award requirements.**

(a) Planning Investments shall function in conjunction with any other available Federal, State or local planning assistance to ensure adequate and effective planning and economical use of funds.

(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 thirty-six (36) month renewable Investment award periods.

#### **§ 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.

#### **§ 303.6 EDA-funded 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:

(a) The Planning Organization must appoint a Strategy Committee. The Strategy Committee must represent the main economic interests of the Region and must include Private Sector Representatives as a majority of its membership. In addition, the Planning Organization should ensure that the Strategy Committee includes public officials, community leaders, representatives of workforce development boards, institutions of higher education, minority and labor groups, and private individuals. The Strategy Committee representing Indian Tribes or States may vary.

(b) The Planning Organization must develop and submit to EDA a CEDS that:

(1) Complies with the requirements of § 303.7; and

(2) Was made available for review and comment by the public for a period of at least thirty (30) days prior to submission to EDA.

(c)(1) After obtaining EDA approval of the CEDS, the Planning Organization must submit annually an updated CEDS performance report to EDA.

(2) The Planning Organization must submit a new or revised CEDS to EDA at least every five (5) years, unless EDA or the Planning Organization determines

that a new or revised CEDS is required earlier due to changed circumstances.

(3) Any updated CEDS performance report that results in a change of the requirements set forth in § 303.7(b)(3) 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.

(d) 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.

(e) 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).

### § 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) *Technical requirements.* A CEDS must be the result of a continuing economic development planning process, developed with broad-based and diverse public and private sector participation, and shall contain the following:

(1) A background of the economic development situation of the Region with a discussion of the economy, population, geography, workforce development and use, transportation access, resources, environment and other pertinent information;

(2) An in-depth analysis of economic and community development problems and opportunities, including:

(i) Incorporation of relevant material from other government-sponsored or supported plans and consistency with applicable State and local workforce investment strategies; and

(ii) An identification of past, present and projected future economic development investments in the Region covered;

(3) A section setting forth goals and objectives necessary to solve the economic development problems of the Region;

(4) A discussion of community and private sector participation in the CEDS effort;

(5) A section listing all suggested Projects and the projected numbers of jobs to be created as a result thereof;

(6) A section identifying and prioritizing vital Projects, programs and activities that address the Region's greatest needs or that will best enhance the Region's competitiveness, including sources of funding for past and potential future Investments;

(7) A section identifying economic clusters within the Region, focusing on those that are growing or in decline;

(8) A plan of action to implement the goals and objectives of the CEDS, including:

(i) Promoting economic development and opportunity;

(ii) Fostering effective transportation access;

(iii) Enhancing and protecting the environment;

(iv) Maximizing effective development and use of the workforce consistent with any applicable State or local workforce investment strategy;

(v) Promoting the use of technology in economic development, including access to high-speed telecommunications;

(vi) Balancing resources through sound management of physical development; and

(vii) Obtaining and utilizing adequate funds and other resources; and

(9) A list of performance measures used to evaluate the Planning Organization's successful development and implementation of the CEDS, including but not limited to the following:

(i) Number of jobs created after implementation of the CEDS;

(ii) Number and types of investments undertaken in the Region;

(iii) Number of jobs retained in the Region;

(iv) Amount of private sector investment in the Region after implementation of the CEDS; and

(v) Changes in the economic environment of the Region; and

(10) A section outlining the methodology for cooperating and integrating the CEDS with a State's economic development priorities.

(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 without fulfilling all the requirements of 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.

### § 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 may also 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 but are not limited to 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.

## PART 304—ECONOMIC DEVELOPMENT DISTRICTS

Sec.

304.1 Designation of Economic Development Districts: Regional eligibility.

304.2 District Organizations: Formation, organizational requirements and operations.

304.3 District modification and termination.

304.4 Performance evaluations.

**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.

### § 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 (1) 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.

### § 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) must also meet these requirements.

(2) The District Organization must demonstrate that its governing body is broadly representative of the principal economic interests of the Region, and, unless otherwise prohibited by applicable State or local law, must include at least one (1) Private Sector Representative and one (1) or more of the following: Executive Directors of Chambers of Commerce, or representatives of institutions of post-secondary education, workforce development groups or labor groups, all of which must comprise in the aggregate a minimum of thirty-five (35) percent of the District Organization’s governing body. The governing body shall also have at least a simple majority of its membership who are elected officials and/or employees of a general purpose unit of State, local or Indian tribal government who have been appointed to represent the government. Upon the District Organization’s showing of its inability to locate a Private Sector Representative to serve on its governing body following extensive due diligence, the Assistant Secretary may waive the Private Sector Representative requirement. The Assistant Secretary shall not delegate the authority to grant a waiver under this paragraph.

(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 once a year and shall also 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.

### § 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 sixty (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.

#### § 304.4 Performance evaluations.

(a) EDA shall evaluate the management standards, financial accountability and program performance of each District Organization within three (3) years after the initial Investment award and at least once every three (3) 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 on this chapter.

(b) For peer review, EDA shall ensure the participation of at least one (1) other District Organization in the performance

evaluation on a cost-reimbursement basis.

## PART 305—PUBLIC WORKS AND ECONOMIC DEVELOPMENT INVESTMENTS

### Subpart A—General

Sec.

305.1 Purpose and scope.

305.2 Award requirements.

305.3 Application requirements.

305.4 Projects for design and engineering work.

### Subpart B—Requirements for Approved Projects

305.5 Project administration by District Organization.

305.6 Allowable methods of procurement for construction services.

305.7 Services performed by the Recipient's own forces.

305.8 Recipient-furnished equipment and materials.

305.9 Project phasing and Investment disbursement.

305.10 Bid underrun.

305.11 Contract awards; early construction start.

305.12 Project sign.

305.13 Contract change orders.

305.14 Occupancy prior to completion.

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

### 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 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 the creation of new, or the retention of 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 higher-skill, higher-wage job opportunities and to promote the successful long-term economic recovery of a Region.

#### § 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 fifteen (15) percent of the annual appropriations made available to EDA to fund Public Works Investments may be made in any one (1) State.

#### § 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 proposal 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.

#### § 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 may use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). These methods include but are not

limited to design/bid/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;

(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 procurement standards set forth in 15 CFR parts 14 or 24, as applicable.

#### **§ 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 may also 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 and/or materials under this section is also subject to the requirements of 15 CFR parts 14 or 24, as applicable.

#### **§ 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 overrun.**

If at the construction contract bid opening, the lowest responsive bid is less than the total Project cost, the Recipient will notify EDA to determine whether Investment funds should be deobligated from the Project.

#### **§ 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**

#### **Subpart A—Local and National Technical Assistance**

Sec.

- 306.1 Purpose and scope.
- 306.2 Award requirements.
- 306.3 Application requirements.

#### **Subpart B—University Center Economic Development Program**

- 306.4 Purpose and scope.
- 306.5 Award requirements.
- 306.6 Application requirements.
- 306.7 Performance evaluations of University Centers.

**Authority:** 42 U.S.C. 3147; 42 U.S.C. 3196; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

#### **Subpart A—Local and National Technical Assistance**

##### **§ 306.1 Purpose and scope.**

(a) Local and National Technical Assistance Investments may:

(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.

##### **§ 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 twelve (12) to eighteen (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.

#### **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.

##### **§ 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 eighty (80) percent of EDA funding must be allocated to direct costs of program delivery.

#### § 306.7 Performance evaluations of University Centers.

(a) EDA will:

(1) Evaluate each University Center within three (3) years after the initial Investment award and at least once every three (3) 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 (1) other University Center in the performance evaluation on a cost-reimbursement basis.

### PART 307—ECONOMIC ADJUSTMENT ASSISTANCE INVESTMENTS

#### Subpart A—General

Sec.

307.1 Purpose.

307.2 Criteria for Economic Adjustment Assistance Investments.

307.3 Use of Economic Adjustment Assistance Investments.

307.4 Award requirements.

307.5 Application requirements.

307.6 Economic Adjustment Assistance post-approval requirements.

#### Subpart B—Special Requirements for Revolving Loan Funds and Use of Grant Funds

307.7 Revolving Loan Funds established for business lending.

307.8 Definitions.

307.9 Revolving Loan Fund Plan.

307.10 Pre-loan requirements.

307.11 Disbursement of funds to Revolving Loan Funds.

307.12 Revolving Loan Fund Income.

307.13 Records and retention.

307.14 Revolving Loan Fund semi-annual and annual reports.

307.15 Prudent management of Revolving Loan Funds.

307.16 Effective utilization of Revolving Loan Funds.

307.17 Uses of capital.

307.18 Addition of lending areas; merger of RLFs.

307.19 RLF loan portfolio Sales and Securitizations.

307.20 Partial liquidation and liquidation upon termination.

307.21 Termination of Revolving Loan Funds.

307.22 Variances.

**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.

#### 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 but not limited to 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 Disasters;

(c) International trade;

(d) Long-term economic deterioration;

(e) Loss of a major community employer; or

(f) Loss of manufacturing jobs.

##### § 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 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, loan guarantees 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.

**§ 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) and (c) of this section, as applicable.

(b) *Strategy Grants.* EDA will review Strategy Grant proposals to ensure that the proposed activities conform to the CEDS requirements set forth in § 303.7 of this chapter.

(c) *Implementation Grants.*

(1) EDA will review Implementation Grant proposals for the extent to which:

(i) The applicable CEDS meets the requirements in § 303.7 of this chapter; and

(ii) The proposed Project is identified as a necessary element of or consistent with the applicable CEDS.

(2) *Revolving Loan Fund Grants.* For Eligible Applicants seeking to capitalize or recapitalize an RLF, EDA will review the proposals for:

(i) The need for a new or expanded public financing tool to enhance other business assistance programs and services targeting economic sectors and locations described in the CEDS;

(ii) The types of financing activities anticipated; and

(iii) The capacity of the RLF organization to manage lending activities, create networks between the business community and other financial providers, and implement the CEDS.

(d) Funding priority considerations for Economic Adjustment Assistance may be set forth in an FFO.

**§ 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.

**§ 307.6 Economic Adjustment Assistance post-approval requirements.**

In addition to the post-approval requirements set forth in § 302.18 of this chapter:

(a) Strategy Grants shall comply with the applicable provisions of part 303 of this chapter;

(b) Implementation Grants involving construction shall comply with the

provisions of subpart B of part 305 of this chapter;

(c) Implementation Grants not involving construction shall comply with the applicable provisions of subpart A of part 306 of this chapter; and

(d) RLF Grants shall comply with the requirements set forth in this part and in the following publications:

(1) EDA's RLF Standard Terms and Conditions; and

(2) The compliance supplement to OMB Circular A-133 (the "*Compliance Supplement*"). The Compliance Supplement is available via the Internet at <http://www.omb.gov>.

**Subpart B—Special Requirements for Revolving Loan Funds and Use of Grant Funds****§ 307.7 Revolving Loan Funds established for business lending.**

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

**§ 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:

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

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

*Guaranteed Loan* means a loan made and serviced by a third party lending institution under a loan guaranty agreement providing that an RLF Recipient will purchase the guaranteed portion of the loan in the event of borrower default.

*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 capital base of an RLF.

*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.

*RLF Capital* means, at any point in time, the aggregate amount of cash held by the RLF Recipient from any of the following sources: Grant funds; Local Share; repayments of principal from RLF loans; and RLF Income. The initial RLF capital base is normally comprised of EDA funds and the cash Local Share.

*RLF Income* means interest earned on outstanding loan principal and RLF accounts holding RLF funds (excluding interest earned on excess funds pursuant to § 307.16(c)(2)), 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 § 307.16(c)(2)(i).

*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 proposals or Cooperative Agreement to facilitate and/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.

**§ 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 to and approved by EDA.

(a) *Format and content.*

(1) Part I of the Plan titled "Revolving Loan Fund Strategy" shall summarize the CEDS 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" shall serve as the internal operating manual for the RLF Recipient. The administrative procedures for operating the RLF must be consistent with Prudent Lending Practices.

(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 strategy 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 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 shall also provide sufficient administrative procedures to prevent conflicts of interest and to ensure accountability, safeguarding of assets and compliance with Federal and local laws.

(c) *Modification of RLF Plans.* An RLF Recipient must request and obtain EDA approval prior to any modification of the Plan.

#### **§ 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 but not limited to parts 302 and 314 of this chapter. The RLF Recipient must also 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. 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.

#### **§ 307.11 Disbursement of funds to Revolving Loan Funds.**

(a) *Pre-disbursement requirements.* Prior to any disbursement of EDA funds, RLF Recipients are required to provide in a form acceptable to EDA:

(1) 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. Such insurance coverage must exist at all times during the duration of the RLF's operation; and

(2) Evidence of certification in accordance with § 307.15(b)(1).

(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 thirty (30) days of receipt of the Grant funds. Any Grant funds not disbursed within the thirty (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 not exceed the difference, if any, between the RLF Capital and the amount of a new RLF loan, less the amount, if any, of the Local Share required to be disbursed concurrent with the Grant funds. However, RLF Income held to reimburse eligible administrative costs need not be disbursed in order to draw additional Grant funds.

(d) *EDA funds account.* The RLF Recipient shall establish and maintain an interest-bearing account designated as the "EDA funds account," indicating that monies deposited therein are held for funding approved Closed Loans. The RLF Recipient shall withdraw funds or order a transfer from the EDA funds

account for lending to eligible borrowers or return of funds to EDA.

(e) *Delays.* If the RLF Recipient receives Grant funds and the RLF loan disbursement is subsequently delayed beyond thirty (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 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 twenty (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.

#### **§ 307.12 Revolving Loan Fund Income.**

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

(1) Such RLF Income and the administrative costs are incurred in the same twelve-month (12) reporting period;

(2) RLF Income that is not used for administrative costs during the twelve-month (12) reporting period is made available for lending activities;

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

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

(b) *Compliance guidelines.* When charging costs against RLF Income, RLF Recipients must comply with applicable OMB cost principles and RLF audit guidelines as found in:

(1) OMB Circular A-87 for State, local, and Indian tribal governments, 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 OMB Circular A-21 for educational institutions; and

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

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

- (1) *First*, towards any costs of collection;
- (2) *Second*, towards outstanding penalties and fees;
- (3) *Third*, towards any accrued interest to the extent due and payable; and
- (4) *Fourth*, towards any outstanding principal balance.

#### § 307.13 Records and retention.

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

- (1) Principal, interest, fees, penalties and all other costs associated with the Closed Loan have been paid in full; or
- (2) Final settlement or discharge and cessation of collection efforts of any unpaid amounts associated with the Closed Loan have occurred.

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

- (1) Maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs.
- (2) Retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF for three (3) years from the actual submission date of the last semi-annual or annual report that covers the period that such costs were claimed, or for five (5) years from the date the costs were claimed, whichever is less.

(3) Make available for inspection retained records, including those retained for longer than the required period. The record retention periods

described in this section are minimum periods and such prescription does not limit any other record retention requirement of law or agreement. In no event will EDA question claimed administrative costs that are more than three (3) years old, unless fraud is at issue.

#### § 307.14 Revolving Loan Fund semi-annual and annual reports.

(a) *Frequency of reports.* All RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, must submit semi-annual reports. EDA may approve the substitution of annual reports for semi-annual reports upon written request by the Recipient if the following conditions have been met:

- (1) At least one (1) year has passed from the date that the RLF has loaned an aggregate amount equal to its initial RLF Capital base;
- (2) The RLF Recipient has timely submitted accurate semi-annual reports for the preceding two (2) years;
- (3) The RLF Recipient has ensured completion and submission to EDA of required periodic audits for the most recent audit period within the preceding two (2) years; and
- (4) EDA determines that the RLF is in compliance with all applicable RLF requirements.

(b) *Report contents.* RLF Recipients must certify as part of the semi-annual or annual report to EDA that the RLF is operating in accordance with the applicable RLF Plan. RLF Recipients must also describe (and propose pursuant to § 307.9) any modifications to the RLF Plan to ensure effective use of the RLF as a strategic financing tool.

(c) *RLF Income and Expense Statement.*

(1) An RLF Recipient using either fifty (50) percent or more (or more than \$100,000) of RLF Income for administrative costs in the twelve-month (12) reporting period must submit a completed Income and Expense Statement annually to the appropriate regional office within ninety (90) days of the end of its fiscal year. An RLF Recipient using less than fifty (50) percent and less than \$100,000 of RLF Income for administrative costs in the twelve-month (12) reporting period must prepare and retain for four (4) years a completed Income and Expense Statement for the applicable fiscal year, which shall be made available to EDA upon request.

(2) *Performance measures.* As part of the semi-annual or annual report, RLF Recipients shall submit to EDA the information identified as the "Core Performance Measures" in the special award conditions of the Grant

documents. EDA will advise RLF Recipients within a reasonable time of any required modifications to the information submitted.

#### § 307.15 Prudent management of Revolving Loan Funds.

(a) *Accounting principles.*

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

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

(b) *Loan and accounting system documents.*

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

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

- (i) Loan application;
- (ii) Loan agreement;
- (iii) Promissory note;
- (iv) Security agreement(s);
- (v) Deed of trust or mortgage (as applicable);
- (vi) Agreement of prior lien holder (as applicable); and
- (vii) Guaranty agreement (as applicable).

(c) *Interest rates.* An RLF Recipient may make loans and may guarantee 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. However, the minimum interest rate an RLF can charge is four (4) percentage points below the lesser of the current money center prime interest rate quoted in the *Wall Street Journal*, or the maximum interest rate allowed under State law. In no event shall the interest rate be less than four (4) percent.

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

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

(i) Capital invested by the borrower or others;

(ii) Financing from private entities; or

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

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

#### **§ 307.16 Effective utilization of Revolving Loan Funds.**

(a) *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 initial RLF Capital base within three (3) 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 forty-five (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 § 307.16(b).

(b) *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 requests 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 and in the event an extension is denied, EDA may deobligate all or part of the unused Grant funds and terminate the Grant.

(c) *Capital utilization standard.*

(1) During the Revolving Phase, RLF Recipients must manage their repayment and lending schedules to provide that at all times at least seventy-five (75) percent of the RLF Capital is loaned or committed. The following exceptions apply:

(i) An RLF Recipient that anticipates making large loans relative to the size of its RLF Capital base may propose a Plan that provides for maintaining a capital utilization percentage greater than twenty-five (25) percent; and

(ii) EDA may require an RLF Recipient with an RLF Capital base in excess of \$4 million to adopt a Plan that maintains a proportionately higher percentage of its funds loaned.

(2) When the percentage of loaned RLF Capital falls below the applicable capital utilization percentage, the dollar amount of the RLF funds equivalent to the difference between the actual percentage of RLF Capital loaned and the applicable capital utilization percentage is referred to as "excess funds."

(i) *Sequestration of excess funds.* If the RLF Recipient fails to satisfy the applicable capital utilization percentage requirement for two (2) consecutive reporting intervals, EDA may require the RLF Recipient to deposit excess funds in an interest-bearing account separate from the EDA funds account. The portion of interest earned on the account holding excess funds attributable to the RLF Grant shall be remitted to the U.S. Treasury. RLF Recipients must obtain EDA's written authorization to withdraw any sequestered funds.

(ii) *Persistent non-compliance.* An RLF Recipient will generally be allowed a reasonable period of time to lend

excess funds and achieve the applicable capital utilization percentage. However, if an RLF Recipient fails to achieve the applicable capital utilization percentage after a reasonable period of time, as determined by EDA, it may be subject to sanctions such as suspension or termination.

#### **§ 307.17 Uses of capital.**

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

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

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

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

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

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

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

(6) Refinance existing debt, unless:

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

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

(18) months following the date of refinancing;

(c) *Credit not otherwise available.* RLF Recipients must determine and clearly demonstrate in the loan documentation for each RLF loan that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed.

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

(e) *Loan guaranty agreements.* Prior to the full disbursement of Grant funds, the RLF Recipient shall not use RLF Capital to guarantee loans made by other lending institutions. After the full disbursement of Grant funds, RLF Capital may be used to guarantee loans of private lenders, provided the RLF Recipient has obtained prior written approval from EDA of its proposed loan guaranty activities and submitted to EDA:

(1) The maximum guaranty percentage offered by the RLF Recipient and accepted by the lender;

(2) The loan guaranty agreement which must (at a minimum) document:

(i) The RLF Recipient's maximum liability;

(ii) The respective rights, representations and obligations of the RLF Recipient and lender with regard to collection procedures, servicing requirements, borrower delinquency, events of defaults and termination of the loan guaranty agreement;

(iii) The responsible party's obligations in the event of any foreclosure, bankruptcy or insolvency proceeding;

(iv) The responsible party's obligations with respect to collateral disposition and the call provisions for the Guaranteed Loan; and

(v) The distribution of interest income and loan fees, if any, to the RLF; and

(3) Certification from the RLF Recipient's legal counsel that the loan guaranty agreement is valid and enforceable under applicable State law; and

(4) An amended RLF Plan accommodating the loan guaranty activities approved by EDA (as necessary).

### **§ 307.18 Addition of lending areas; merger of RLFs.**

(a)(1) *Addition of Lending Areas.* An RLF Recipient shall make loans to implement and assist economic activity

only within its EDA-approved lending area, as set forth and defined in the RLF Grant and the Plan. An RLF Recipient may add an additional lending area (an "Additional Lending Area") to its existing lending area to create a new merged lending area (the "New Lending Area") only with EDA's prior written approval and subject to the following provisions and conditions:

(i) EDA shall have disbursed the full amount of its Investment Assistance to the RLF Recipient;

(ii) The Additional Lending Area must fulfill the economic distress criteria for Economic Adjustment Investments under this part and in accordance with § 301.3(a) of this chapter;

(iii) 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;

(iv) 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);

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

(vi) The RLF Recipient shall execute an amended RLF Grant award agreement, as necessary; and

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

(2) The New Lending Area designation shall remain in place indefinitely following EDA approval.

(b) *Merger of RLFs.*

(1) *Single RLF Recipient.* An RLF Recipient with more than one (1) EDA-funded RLF Grant may consolidate two (2) or more EDA-funded RLFs into one (1) surviving RLF with EDA's prior written approval and provided:

(i) It meets the requirements to obtain annual report status identified in paragraphs (a)(2) through (a)(4) of § 307.14;

(ii) It demonstrates a rational basis for undertaking the merger (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 merger 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 (2) or more RLF Recipients may consolidate their EDA-funded RLFs into one (1) surviving RLF with EDA's prior written approval; and provided:

(i) The surviving RLF Recipient meets the requirements to obtain annual report status identified in paragraphs (a)(2) through (a)(4) of § 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.

### **§ 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) An RLF Recipient must request EDA to subordinate its interest in all or a portion of any RLF loan portfolio sold or securitized;

(c) 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

(d) Except as provided in paragraph (c), 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.

### § 307.20 Partial liquidation and liquidation upon termination.

(a) *Partial liquidation.* EDA may require an RLF Recipient to transfer any RLF loans that are more than one hundred and twenty (120) days delinquent to an RLF Third Party for liquidation.

(b) *Liquidation upon termination.* When EDA approves the termination of an RLF Grant, EDA may assign or transfer assets of the RLF to an RLF Third Party for liquidation.

(c) *Terms.* 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 (1) 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 (c)(3) of this section, as reasonable compensation for services rendered in the liquidation; and

(5) EDA may require additional reasonable terms and conditions.

(d) *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 (as defined in § 314.5 of this chapter); and

(3) *Third*, if any proceeds remain, to the RLF Recipient.

### § 307.21 Termination of Revolving Loan Funds.

(a) EDA may suspend or terminate an RLF Grant for cause, including but not limited to the following reasons:

(1) Failure to operate the RLF in accordance with the Plan, the RLF Grant or this part;

(2) Failure to obtain prior EDA approval for material changes to the Plan, including provisions for administering the RLF;

(3) Failure to submit timely progress, financial and audit reports as required by the RLF Grant and § 307.14; and

(4) Failure to comply with the conflicts of interest provisions set forth in § 302.17.

(b) EDA may approve a request from an RLF Recipient to terminate an RLF Grant. The RLF Recipient must compensate the Federal government for the Federal Share of the RLF property, including the current value of all outstanding RLF loans. However, with EDA’s prior approval, upon a showing of compelling circumstances, the RLF Recipient may use for other economic development activities a portion of RLF property that EDA determines is attributable to RLF Income.

(c) Upon termination, distribution of proceeds shall occur in accordance with § 307.20(d).

### § 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

Sec.

308.1 Use of funds in Projects constructed under projected cost.

308.2 Performance awards.

308.3 Planning performance awards.

**Authority:** 42 U.S.C. 3151; 42 U.S.C. 3154a; 42 U.S.C. 3154b; Department of Commerce Delegation Order 10–4.

### § 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 ten (10) percent of the amount of the Investment award.

(b) To receive a performance award, a Recipient must demonstrate Project performance in one (1) 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 proposal 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 (3) years following the Project’s closeout.

(d) A performance award may fund up to one hundred (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.

### § 308.3 Planning performance awards.

(a) At the discretion of the Assistant Secretary, a Recipient of Investment Assistance awarded on or after the date of enactment of section 216 of PWEDA located in an EDA-funded Economic Development District may receive a planning performance award in an amount not to exceed five (5) percent of the amount of the applicable Investment award if EDA determines no later than three (3) years following 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 (1) 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 one hundred (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.

## PART 309—REDISTRIBUTIONS OF INVESTMENT ASSISTANCE

Sec.

309.1 Redistributions under parts 303, 305 and 306.

309.2 Redistributions under part 307.

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

### § 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 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.

(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.

### § 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 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.

## PART 310—SPECIAL IMPACT AREAS

Sec.

310.1 Special Impact Area.

310.2 Pressing need; alleviation of unemployment or underemployment.

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

### § 310.1 Special Impact Area.

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

### § 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 twenty-four (24) month unemployment rate is at least 225% of the national average or the per capita income is not more than 50% 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 Recipients seeking a Special Impact Area designation under this criterion must present appropriate and compelling economic and demographic data.

(c) Eligible Recipients 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.

## PART 311 [RESERVED]

## PART 312 [RESERVED]

## PART 313 [RESERVED]

## PART 314—PROPERTY

### Subpart A—General

Sec.

314.1 Definitions.

314.2 Federal Interest.

314.3 Authorized use of Property.

314.4 Unauthorized Use of Property.

314.5 Federal Share.

314.6 Encumbrances.

### Subpart B—Real Property

314.7 Title.

314.8 Recorded statement.

### Subpart C—Personal Property

314.9 Recorded statement—title.

### Subpart D—Release of EDA's Property Interest

314.10 Procedures for release of EDA's Property interest.



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

## Subpart A—General

### § 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.

*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 improved by the construction of Project infrastructure such as, but not limited to, roads, sewers and water lines that are not situated on or under the land, 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.

### § 314.2 Federal Interest.

(a) Property that is acquired or improved, in whole or in part, with Investment Assistance 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 secures compliance with matters such as the purpose, scope and use of a Project and is often reflected by 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 Property acquired or improved, in whole or in part, with Investment Assistance, the Federal Interest is extinguished and the Federal government has no further interest in the Property.

### § 314.3 Authorized Use of Property.

(a) The Recipient or Owner must use any Property acquired or improved in whole or in part with Investment Assistance only for the authorized purpose of the Project and such Property must not be Disposed of or encumbered without EDA's prior written authorization.

(b) Where EDA and the Recipient determine that Property acquired or improved in whole or in part with Investment Assistance is no 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) 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 but not limited to nondiscrimination and environmental compliance.

(d) EDA, in its sole discretion, may approve the transfer of any 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) 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. In extraordinary and compelling circumstances, the Assistant Secretary may approve the replacement of Real Property used in a Project.

(f) With EDA's prior written approval, a Recipient may undertake an incidental use of 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 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 Property.

(a) Except as provided in §§ 314.3 (regarding the authorized use of Property) or 314.10 (regarding the release of EDA's 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 Property acquired or improved in whole or in part with Investment Assistance is Disposed of, encumbered, or no longer

used for the purpose of the Project; provided that for equipment and supplies, the requirements at 15 CFR parts 14 or 24, as applicable, including any supplements or amendments thereto, shall apply.

(b) Additionally, prior to the release of EDA's interest, Real Property or tangible Personal Property acquired or improved with EDA Investment Assistance 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) Where the Disposition, encumbrance or use of any Property violates paragraphs (a) or (b) of this section, EDA may assert its interest in the Property to recover the Federal Share for the Federal government and may take such actions as authorized by PWEDA and this chapter, including but not limited to the actions provided in §§ 302.3 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.

#### § 314.5 Federal Share.

For purposes of this part, "*Federal Share*" means that portion of the current fair market value of any Property (after deducting actual and reasonable selling and repair expenses, if any, incurred to put the Property into marketable condition) attributable to EDA's participation in the Project. 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 fifty (50) percent. If the Property is disposed of when its current fair market is \$250, the Federal Share is \$125 (*i.e.*, fifty (50) percent of \$250). If \$10 is spent to put the Property into salable condition, the Federal Share is \$120 (*i.e.*, fifty (50) percent of (\$250-\$10)).

#### § 314.6 Encumbrances.

(a) *General.* Except as provided in paragraph (b) of this section or as

otherwise authorized by EDA, Recipient-owned Property acquired or improved in whole or in part with Investment Assistance must not be used to secure a mortgage or deed of trust or in any way collateralized or 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. An encumbrance includes but is not limited to easements, rights-of-way or other restrictions on the use of any Property.

(b) *Exceptions.* Subject to EDA's approval, which will not be unreasonably withheld or unduly delayed, paragraph (a) of this section does not apply to:

(1) Recipient-owned Property that is subject to an encumbrance at the time EDA approves the Project, where EDA determines that the requirements of § 314.7(b) are met;

(2) 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; and

(3) Encumbrances in cases where all of the following are met:

(i) EDA, in its sole discretion, determines that there is good cause for a waiver of 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 or for related activities of which the Project is an essential part;

(iii) A grantor/lender will not provide funds without the security of a lien on the Property; and

(iv) There is a reasonable expectation, as determined by EDA, that the Recipient will not default on its obligations.

(c) Encumbering Recipient-owned Property, other than as permitted in this section, is an Unauthorized Use of the Property under § 314.4.

#### Subpart B—Real Property

##### § 314.7 Title.

(a) *General.* The Recipient must hold title to the Real Property required for a Project at the time the Investment Assistance is awarded or as provided by paragraph (c) of this section and must maintain title 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 must also furnish evidence, satisfactory in form and substance to EDA, that title to Real Property required for a Project (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)(1) The Recipient must disclose to EDA all encumbrances, including but not limited to 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 the Real Property required for a Project.

(1) Where the acquisition of Real Property required for a Project is contemplated as part of an Investment Assistance award, EDA may determine that an agreement for the Recipient to purchase the 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 Real Property.

(2) EDA may determine that a long-term leasehold interest for a period not less than the Estimated Useful Life of the Real Property required for a Project 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.

(3) 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) When a Project includes construction on a State-owned or local government-owned highway (*i.e.*, where the Recipient is not the State or local government owner), EDA may find it acceptable for the State or local government to own, operate and maintain that portion of the Project, if required by the State or local government; provided that, construction is a minor but essential component of the Project, the construction is completed in accordance with EDA requirements, and the State or local government provides assurances to EDA that the:

(i) State or local government will operate and maintain the improvements for the Estimated Useful Life of the Project;

(ii) State or local government will not sell the improvements for the Estimated Useful Life of the Project; and

(iii) Use of the Property will be consistent with the authorized purposes of the Project.

(5)(i) When an authorized purpose of the Project is to construct facilities to serve Real Property owned by the Recipient, including but not limited to industrial or commercial parks, for sale or lease to private parties, such sale or lease is permitted so long as:

(A) In cases where an authorized purpose of the Project is to sell Real Property, the Recipient provides evidence sufficient to EDA that it holds title to the Real Property required for such Project prior to the disbursement of any portion of the Investment Assistance and will retain title until the sale of the Property;

(B) In cases where an authorized purpose of the Project is to lease Real Property, the Recipient provides evidence sufficient to EDA that it holds title to the Real Property required for such Project prior to the EDA disbursement of any portion of the Investment Assistance and will retain title for the entire Estimated Useful Life of the Project;

(C) The Recipient completes the Project according to the terms of the Investment Assistance;

(D) The sale or lease of any portion of the Project during its 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; provided, however, that EDA may waive this provision for any sale or lease occurring after the ten (10) year anniversary of the award date of the Investment Assistance;

(E) The Recipient agrees that the termination, cessation, abandonment or other failure on behalf of the Recipient, purchaser or lessee to complete the Project by the five (5) year anniversary of the award date of the Investment Assistance constitutes a failure on behalf of the Recipient to use the Real Property for the economic purposes justifying the Project; and

(F) The Recipient further agrees that a violation of this paragraph by the Recipient, purchaser or lessee constitutes an Unauthorized Use of the Real Property and the Recipient must further agree to compensate EDA for the Federal government's Federal Share of the Project in the case of such Unauthorized Use.

(ii) EDA may also condition the sale or lease on the satisfaction by the Recipient, purchaser or lessee (as the case may be) of any additional requirements that EDA may impose, including but not limited to EDA's pre-approval of the sale or lease.

(6)(i) When an authorized purpose of the Project is to construct facilities to serve privately-owned Real Property, including but not limited to industrial or commercial parks, the ownership, sale or lease of such Real Property is permitted so long as:

(A) The Owner provides evidence sufficient to EDA that it holds title to the Real Property improved or benefited by the EDA Investment Assistance prior to the disbursement of any portion of the Investment Assistance and will retain title to the Real Property for the entire Estimated Useful Life of the Property or until the sale of such Real Property;

(B) The Recipient and the Owner agree to use Real Property improved or benefited by the EDA Investment Assistance only for the authorized purposes of the Project and in manner consistent with the terms and conditions of the EDA Investment Assistance for the Estimated Useful Life of the Project;

(C) The Recipient must provide adequate assurances that the Owner will complete the Project according to the terms of the Investment Assistance;

(D) The sale or lease of any portion of the Project during its 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; provided, however, that EDA may waive this provision for any sale or lease occurring after the ten (10) year anniversary of the award date of the Investment Assistance;

(E) The Recipient agrees that the termination, cessation, abandonment or other failure on behalf of the Recipient, Owner, purchaser or lessee to complete the Project by the five (5) year anniversary of the award date of the Investment Assistance constitutes a failure on behalf of the Recipient to use the Real Property for the economic purposes justifying the Project; and

(F) The Recipient further agrees that a violation of this paragraph by the Owner, purchaser or lessee constitutes an Unauthorized Use of the Real Property and the Recipient must further agree to compensate EDA for the Federal government's Federal Share of the Project in the case of such Unauthorized Use.

(ii) EDA may also condition its Investment Assistance on the satisfaction by the Recipient, Owner or by the purchaser or lessee (as the case may be) of any additional requirements that EDA may impose, including but not limited to EDA's pre-approval of a sale or lease.

#### **§ 314.8 Recorded statement.**

(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 EDA's interest in the Property acquired or improved in whole or in part with the EDA Investment Assistance. 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 EDA's interest must be perfected and placed of record in the Real Property records of the jurisdiction in which the 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.

#### **Subpart C—Personal Property**

##### **§ 314.9 Recorded statement—title.**

For all Projects which EDA determines involve the acquisition or improvement of significant items of Personal Property, including but not limited to ships, machinery, equipment, removable fixtures or structural components of buildings, the Recipient shall execute a security interest or other statement of EDA's interest in the 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 the Personal Property acquired or improved as part of the Project, except as otherwise provided in this part.

#### Subpart D—Release of EDA's Property Interest

##### § 314.10 Procedures for release of EDA's Property interest.

(a) *General.* Upon the request of a Recipient and before the expiration of the Estimated Useful Life of a Project, EDA may release any Real Property or tangible Personal Property interest held by EDA, in connection with Investment Assistance after the date that is twenty (20) years after the date on which the Investment Assistance was awarded.

(b) *Exception.* EDA releases all of its Real Property and tangible Personal Property interests in Projects awarded under the Public Works Employment Act of 1976 (Pub. L. 94-369), as amended by the Public Works Employment Act of 1977 (Pub. L. 95-28).

(c)(1) *Unauthorized Use.*

Notwithstanding the release of EDA's interest pursuant to paragraphs (a) or (b) of this section, Real Property or tangible Personal Property acquired or improved with Investment Assistance may not be used:

(i) In violation of the nondiscrimination requirements set forth in § 302.20 of this chapter; or

(ii) For inherently religious activities prohibited by applicable Federal law.

(2) Violation of this paragraph (c) constitutes an Unauthorized Use of the Real Property or of the tangible Personal Property.

(d) *Release.*

(1) Except as provided in paragraph (b) of this section, the release of EDA's interest pursuant to this section is not automatic; it requires EDA's approval, which will not be withheld except for good cause, as determined in EDA's sole discretion. In addition to the restrictions set forth in paragraph (c) of this section, the release may be conditioned upon some activity of the Recipient intended to be pursued as a consequence of the release.

(2) When requesting a release of EDA's interest pursuant to paragraph (a) of 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 inherently 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:

(A) For inherently religious activities in violation of applicable Federal law; and

(B) For any purpose that would violate the nondiscrimination requirements set forth in § 302.20 of this chapter.

(ii) EDA may require a Recipient (or its successors in interest) who intends or foresees the use of Real Property or tangible Personal Property for inherently religious activities following the release of EDA's interest to compensate EDA for the Federal Share of such Property. EDA recommends that a Recipient who intends or foresees the use of Real Property or tangible Personal Property (including by successors of the Recipient) for inherently religious activities to contact EDA well in advance of requesting a release pursuant to this section.

## PART 315—TRADE ADJUSTMENT ASSISTANCE FOR FIRMS

### Subpart A—General Provisions

Sec.

- 315.1 Purpose and scope.
- 315.2 Definitions.
- 315.3 Confidential Business Information.
- 315.4 Eligible petitioners.
- 315.5 TAAC scope, selection, evaluation and awards.
- 315.6 Firm eligibility for Adjustment Assistance.

### Subpart B—Certification of Firms

- 315.7 Certification requirements.
- 315.8 Processing petitions for certification.
- 315.9 Hearings.
- 315.10 Loss of certification benefits.
- 315.11 Appeals, final determinations and termination of certification.

### Subpart C—Protective Provisions

- 315.12 Recordkeeping.
- 315.13 Audit and examination.
- 315.14 Certifications.
- 315.15 Conflicts of interest.

### Subpart D—Adjustment Proposals

- 315.16 Adjustment Proposal Requirements.

### Subpart E—Assistance to Industries

315.17 Assistance to Firms in import-impacted industries.

*Authority:* 42 U.S.C. 3211; 19 U.S.C. 2341 *et seq.*; Department of Commerce Organization Order 10-4.

### Subpart A—General Provisions

#### § 315.1 Purpose and scope.

The regulations in this part set forth the responsibilities of the Secretary of Commerce under chapter 3 of title II of the Trade Act concerning Trade Adjustment Assistance for Firms. The statutory authority and responsibilities of the Secretary of Commerce relating to Adjustment Assistance are delegated to EDA. EDA certifies Firms as eligible to apply for Adjustment Assistance, provides technical Adjustment Assistance to Firms and other recipients, and provides assistance to organizations representing trade injured industries.

#### § 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 following meanings:

*Adjustment Assistance* means technical assistance provided to Firms or industries under chapter 3 of title II of the Trade Act.

*Adjustment Proposal* means a Certified Firm's plan for improving its economic situation.

*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. 552(b)(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 (5) percent relative to its sales or production during the applicable prior time period, and:

(1) Irrespective of industry or market fluctuations; and

(2) Relative only to the previous performance of the Firm.

*Directly Competitive* means:

(1) Articles which are substantially equivalent for commercial purposes (*i.e.*, are adapted to the same function or use and are essentially interchangeable); and

(2) Oil or natural gas (exploration, drilling or otherwise produced).

*Firm* means an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy or receiver under court decree and including fishing, agricultural entities and those which explore, drill or otherwise produce oil or natural gas. 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 like or Directly Competitive articles or are exerting essential economic control over one or more production facilities. Such other Firms include:

(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, 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.

*Increase in Imports* means an increase of imports of Directly Competitive or Like Articles with articles produced by such Firm that Contributed Importantly to the applicable Total or Partial Separation or threat thereof, and to the applicable decline in sales or production.

*Like Articles* means any articles which are substantially identical in their intrinsic characteristics.

*Partial Separation* means, with respect to any employment in a Firm, either:

(1) A reduction in an employee’s work hours to eighty (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 eighty (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.

*Significant Number or Proportion of Workers* means five (5) percent of a Firm’s work force or fifty (50) workers, whichever is less. 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, with respect to any employment in a Firm, the laying off or termination of employment of an employee for lack of work.

### § 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.

### § 315.4 Eligible petitioners.

Eligible petitioners for assistance under this part shall be:

(a) Trade Adjustment Assistance Centers (“TAACs”). A TAAC can be a(n):

- (1) University affiliate;
- (2) State or local government affiliate;

or

(3) Non-profit organization.

(b) Firms; or

(c) Organizations assisting or representing industries in which a substantial number of Firms or workers have been certified as eligible to apply for Adjustment Assistance under sections 223 or 251 of the Trade Act, including:

- (1) Existing agencies;
- (2) Private individuals;
- (3) Firms;
- (4) Universities;
- (5) Institutions;
- (6) Associations;
- (7) Unions; or
- (8) Other non-profit industry organizations.

### § 315.5 TAAC scope, selection, evaluation and awards.

(a) *TAAC purpose and scope.*

(1) TAACs are available to assist Firms in obtaining Adjustment Assistance in all fifty (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 serving particular areas may be obtained from the TAAC Web site at <http://www.taacenters.org> or from EDA. See the applicable FFO for the appropriate points of contact and addresses.

(2) 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 normally be made through TAACs.

(3) TAACs generally provide Adjustment Assistance to a Firm by providing the following:

(i) Assistance to a Firm in preparing its petition for certification;

(ii) Assistance to a Certified Firm in diagnosing its strengths and weaknesses and developing its Adjustment Proposal; and

(iii) Assistance to a Certified Firm in the implementation of its Adjustment Proposal.

(b) *TAAC selection.*

(1) EDA invites currently funded TAACs to submit either new or amended applications; provided they have performed in a satisfactory manner and complied with previous and/or current conditions in their Cooperative Agreements with EDA and contingent upon availability of funds. Such TAACs shall submit an application on a form approved by OMB, as well as a proposed budget, narrative scope of work, and such other information as requested by EDA. Acceptance of an application or amended application for a Cooperative Agreement does not assure funding by EDA.

(2) EDA may invite new TAAC proposals through an FFO. If such a proposal is acceptable, EDA will invite an application on a form approved by OMB. An application will require a narrative scope of work, proposed budget and such other information as requested by EDA. Acceptance of an application does not assure funding by EDA.

(c) *TAAC evaluation.*

(1) EDA generally evaluates currently funded TAACs based on:

(i) Performance under Cooperative Agreements with EDA and compliance with the terms and conditions of such Cooperative Agreements;

(ii) Proposed scope of work, budget and application or amended application; and

(iii) Availability of funds.

(2) EDA generally evaluates new TAACs based on:

(i) Competence in administering business assistance programs;

(ii) Background and experience of staff;

(iii) Proposed scope of work, budget and application; and

(iv) Availability of funding.

(d) *TAAC award requirements.*

(1) EDA generally funds TAACs for twelve (12) months.

(2) There are no Matching Share requirements for Adjustment Assistance provided by the TAACs to Firms for certification or for administrative expenses of the TAACs.

**§ 315.6 Firm eligibility for Adjustment Assistance.**

(a) Firms participate in the Trade Adjustment Assistance for Firms program in accordance with the following:

(1) 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);

(2) Firms certified in accordance with the procedures described in §§ 315.7

and 315.8 must prepare an Adjustment Proposal for Adjustment Assistance from the TAAC, and submit it to EDA for approval; and

(3) EDA determines whether the Adjustment Assistance requested in the Adjustment Proposal is eligible based upon the evaluation criteria set forth in subpart D of this part. A Certified Firm may submit a request to the TAAC for Adjustment Assistance to implement an approved Adjustment Proposal.

(b) For certification, EDA evaluates Firms' petitions strictly on the basis of fulfillment of the requirements set forth in § 315.7.

(c) (1) Firms generally receive Adjustment Assistance over a two-year (2) period.

(2) Matching Share requirements are as follows:

(i) Each Firm must pay at least twenty-five (25) percent of the cost of the preparation of its Adjustment Proposal. Each Firm requesting \$30,000 or less in total Adjustment Assistance in its approved Adjustment Proposal must pay at least twenty-five (25) percent of the cost of that Adjustment Assistance. Each Firm requesting more than \$30,000 in total Adjustment Assistance in its approved Adjustment Proposal must pay at least fifty (50) percent of the cost of that Adjustment Assistance.

(ii) Organizations representing trade-injured industries must pay at least fifty (50) percent of the total cash cost of the Adjustment Assistance, in addition to appropriate in-kind contributions.

**Subpart B—Certification of Firms****§ 315.7 Certification requirements.**

(a) EDA may certify a Firm as eligible to apply for Adjustment Assistance under section 251(c) of the Trade Act if it determines that the petition for certification meets one of the requirements 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 three (3) circumstances in paragraph (b) of this section.

(b)(1) *Twelve-month (12) decline.* Based upon a comparison of the most recent twelve-month (12) period for which data are available and the immediately preceding twelve-month (12) 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 of the Firm has Decreased Absolutely; or sales or production, or both, of any article that accounted for not less than twenty-five (25) percent of the total production

of sales of the Firm during the twelve-month (12) period preceding the most recent twelve-month (12) period for which data are available have Decreased Absolutely; and

(iii) An Increase in Imports has occurred; or

(2) *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 (6) period during the most recent twelve-month (12) period for which data are available as compared to the same six-month (6) period during the immediately preceding twelve-month (12) 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 occurred; or

(3) *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 (6) period during the most recent twelve-month (12) period for which data are available as compared to the same six-month (6) period during the immediately preceding twelve-month (12) period; and

(ii) Either sales or production of the Firm has Decreased Absolutely during the twelve-month (12) period preceding the most recent twelve-month (12) period for which data are available; and

(iii) An Increase in Imports has occurred.

**§ 315.8 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 and services produced and sold;

(3) Description of imported Directly Competitive or Like Articles with those produced;

(4) Data on its sales, production and employment for the two most recent years;

(5) One (1) copy of a complete auditor's certified financial report for the entire period covering the petition, or if not available, one (1) 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; publicly-owned corporations should 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 its major customers and their purchases (or its bids, if there are no major customers); 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 and § 315.7.

(f) A petitioner may withdraw a petition for certification if EDA receives a request for withdrawal before it 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 § 315.7.

(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 material. In no event may the determination period exceed sixty (60) 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 or any parties as specified in § 315.10(d) 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 (1) year from the date of denial, provided, EDA may waive the one-year (1) limitation for good cause.

#### **§ 315.9 Hearings.**

EDA will hold a public hearing on an accepted petition if the petitioner, or any person, organization, or group found by EDA to have a Substantial Interest in the proceedings, submits a request for a hearing no later than ten (10) days after the date of publication of the Notice of Acceptance in the **Federal Register**, under the following procedures:

(a) The petitioner and other interested Persons 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 its 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) 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; and

(e) EDA shall appoint a presiding officer for the hearing who shall respond to all procedural questions.

#### **§ 315.10 Loss of certification benefits.**

A Firm may fail to obtain benefits of certification, regardless of whether its certification is terminated, for any of the following reasons:

(a) Failure to submit an acceptable Adjustment Proposal within two (2) years after date of certification. While approval of an Adjustment Proposal may occur after the expiration of such two-year (2) period, a Firm must submit

an acceptable Adjustment Proposal before such expiration;

(b) Failure to submit documentation necessary to start implementation or modify its request for Adjustment Assistance consistent with its Adjustment Proposal within six (6) months after approval of the Adjustment Proposal, where two (2) 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 (2) years have elapsed since the date of certification; or

(d) Failure to diligently pursue an approved Adjustment Proposal where two (2) years have elapsed since the date of certification.

#### **§ 315.11 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 sixty (60) days from the date of notice of denial under § 315.8(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, the determination under § 315.8(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 sixty (60) 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.

(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.

(d) EDA shall immediately notify the petitioner and shall state the reasons for any termination.

### Subpart C—Protective Provisions

#### § 315.12 Recordkeeping.

Each TAAC shall keep records that fully disclose the amount and disposition of Trade Adjustment Assistance program funds so as to facilitate an effective audit.

#### § 315.13 Audit and examination.

EDA and the Comptroller General of the United States shall have access for the purpose of audit and examination to any books, documents, papers, and records of a Firm, TAAC or other recipient of Adjustment Assistance pertaining to the award of Adjustment Assistance.

#### § 315.14 Certifications.

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

(a) The names of any attorneys, agents, and other Persons engaged by or on behalf of the Firm for the purpose of expediting applications for such Adjustment Assistance; and

(b) The fees paid or to be paid to any such Person.

#### § 315.15 Conflicts of interest.

EDA will provide no Adjustment Assistance to any Firm under this part unless the owners, partners, or officers execute an agreement binding them and the Firm for a period of two (2) 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 (1) 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 D—Adjustment Proposals

#### § 315.16 Adjustment Proposal Requirements.

EDA evaluates Adjustment Proposals based on the following:

(a) EDA must receive the Adjustment Proposal within two (2) years after the date of the certification of the Firm;

(b) 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;

(c) 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

(d) 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 this purpose, 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—Assistance to Industries

#### § 315.17 Assistance to Firms in import-impacted industries.

(a) Whenever the International Trade Commission makes an affirmative finding under section 202(B) of the Trade Act that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, EDA shall provide to the Firms in such industry assistance in the preparation and processing of petitions and applications for benefits under programs which may facilitate the orderly adjustment to import competition of such Firms.

(b) EDA may provide Adjustment Assistance, on such terms and conditions as EDA deems appropriate, for the establishment of industry-wide programs for new product development, new process development, export development or other uses consistent with the purposes of the Trade Act and this part.

(c) Expenditures for Adjustment Assistance under this section may be up to \$10,000,000 annually per industry, subject to availability of funds, and shall be made under such terms and conditions as EDA deems appropriate.

Dated: September 19, 2006.

**Benjamin Erulkar,**

*Deputy Assistant Secretary and Chief Operating Officer, Economic Development Administration.*

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