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**13 CFR Chapter III
Economic Development Administration
Reauthorization Act of 2004
Implementation; Regulatory Revision;
Final Rules**

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

[Docket No.: 050729210–5210–01]

RIN 0610–AA63

Economic Development Administration Reauthorization Act of 2004 Implementation; Regulatory Revision

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Interim final rule.

SUMMARY: On October 27, 2004, President Bush signed the Economic Development Administration Reauthorization Act of 2004 (the “2004 Act”) into law. The Economic Development Administration (“EDA”) publishes this interim final rule to reflect the amendments made to EDA’s authorizing statute, the Public Works and Economic Development Act of 1965 (“PWEDA”), by the 2004 Act. In addition to tracking the statutory amendments to PWEDA, 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 regulations. The interim final rule also reorders and re-titles certain parts of the existing regulations in a more logical sequence, expands the construction and use of defined terms, and presents information to the reader in a more concise and overall user-friendly format.

DATES: This interim final rule is effective October 1, 2005. Comments on this interim final rule must be received by EDA’s Office of Chief Counsel no later than 5 p.m. e.s.t. on October 11, 2005.

ADDRESSES: Comments on the interim final rule may be submitted through any of the following:

- Mail: Office of Chief Counsel, Room 7005, Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

- Facsimile: (202) 482–5671, Attention: Office of Chief Counsel. Please indicate “Comments on the Interim Final Rule” on the cover page.

- E-mail: edaregs@eda.doc.gov. Please state “Comments on the Interim Final Rule” in the subject line.

- Federal e-Rulemaking portal <http://www.regulations.gov>.

Comments on the collections of information should be submitted to both EDA and the Office of Management and

Budget (“OMB”) by mail, facsimile or e-mail submissions:

- EDA: Office of Chief Counsel, Room 7005, Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; facsimile: (202) 482–5671; e-mail at edaregs@eda.doc.gov, Attention: Office of Chief Counsel. Please indicate “Comments on Collections of Information in EDA’s Interim Final Rule” on each submission.

- OMB: Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: EDA Desk Officer, 725 17th Street, NW., Washington, DC 20503; facsimile: (202) 395–7285; e-mail at

David_Rostker@omb.eop.gov, Attention: EDA Desk Officer. Please indicate “Comments on Collections of Information in EDA’s Interim Final Rule” on each submission.

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–4687.

SUPPLEMENTARY INFORMATION:**Discussion of the Interim Final Rule**

EDA is publishing this interim final rule (the “Interim Final Rule”) to reflect the amendments made to EDA’s authorizing statute, PWEDA, by the 2004 Act (Pub. L. 108–373). In addition to tracking the statutory amendments to PWEDA, 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 regulations (the “Former Regulations”), codified at 13 CFR Chapter III. The Interim Final Rule also (i) reorders and re-titles certain parts of the Former Regulations in a more logical sequence, (ii) expands the construction and use of defined terms, and (iii) presents information to the reader in a more concise and overall user-friendly format. All capitalized terms not otherwise defined in this discussion have the meanings ascribed to them in the Interim Final Rule.

On February 3, 2005, the President announced the Strengthening America’s Communities initiative, which consists of the intended consolidation and transfer of eighteen (18) federal economic and community development programs to and within the Department of Commerce (“DOC”). In addition, the President’s Fiscal Year 2006 budget anticipates the initiative by proposing \$27 million of administrative funding for EDA while eliminating all program

funding. Despite the proposed elimination of program funding, EDA is promulgating the Interim Final Rule because (i) It is necessary to reflect and implement the amendments to PWEDA in the 2004 Act, (ii) it is necessary for the implementation and monitoring of existing EDA Investments, (iii) it is necessary for new Investments pursuant to appropriations for Fiscal Year 2005, (iv) it would be necessary for new Investments pursuant to appropriations for Fiscal Year 2006 that Congress may enact, and (v) it conforms certain areas of EDA policy and practice to current DOC policy and practice and existing case law.

Part 300—General Information

Part 300 (titled *General Information*) of the Interim Final Rule is EDA’s introduction to the reader and establishes the foundation for the entire chapter. This foundation begins with presenting EDA’s mission in § 300.1, which is “to lead the federal economic agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy.” Section 300.1 has been revised to specifically state EDA’s mission, as well as to highlight 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.

Section 300.2 is similar in scope to § 300.4 of the Former Regulations and provides the contact information for the EDA Headquarters office located in Washington, DC. This section also invites interested parties to visit EDA’s Internet Web site at www.eda.gov for detailed contact information with respect to EDA’s regional offices located throughout the United States. This information is also published by EDA in an annual notice of Federal Funding Opportunity (“FFO”).

The main focus of revising part 300 occurred in § 300.3, which introduces several new defined terms, as well as revised former defined terms, that are referenced throughout the chapter. EDA increased the use of defined terms to ensure clarity, consistency and technical precision, and encourages users of the Interim Final Rule to review the definitions in § 300.3. For example, the added defined terms “Region” or “Regional” reflect EDA’s view that true economic development is measured by economic units of human, natural, technological, capital or other resources, defined geographically, and not necessarily by contiguous geographical areas or geographical areas defined by

political boundaries. The use of the terms "Region" or "Regional" intends to expand the narrowly-tailored "area" concept contained in the Former Regulations. EDA believes this change in scope is necessary in order for EDA's programs to foster meaningful and self-sustaining economic development through the United States.

The new defined terms "*Investment*" or "*Investment Assistance*" generally replace the use of the defined term "*grant*" in the Former Regulations. These defined terms reflect EDA's policy priority that EDA Investments (through the legal mechanism of a Grant or Cooperative Agreement) must generate a "return." In this regard, EDA functions similar to a venture capital organization, although EDA typically measures any return on its Investments in the form of job creation and the generation of private capital investments, rather than a cash return or other more traditional financial measurements.

To create consistency in the Interim Final Rule, the new defined term "*Special Need*" generally tracks the criteria set forth in § 301.2(b)(3) of the Former Regulations, although EDA may enumerate additional circumstances constituting a Special Need in an FFO. Additionally, consistent with the amendment made to Section 3(4) of PWEDA by the 2004 Act, the definition of "*Eligible Recipient*" has been amended to remove an "area" as a qualified Eligible Recipient. The concepts of "cash or in-kind contributions" are referenced in § 301.4(a) of the Former Regulations; however, there are no meanings ascribed to such terms. Accordingly, the Interim Final Rule, in § 300.3, introduces the new defined terms "*In-Kind Contribution*," "*Local Share*" and "*Matching Share*."

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

Part 301 of the Interim Final Rule is an amalgamation of parts 301 and 304 of the Former Regulations, and sets forth (i) general applicant and Project eligibility, (ii) Investment Rate, (iii) proposal and application requirements, and (iv) proposal evaluation criteria common to all PWEDA-enumerated programs (excluding Trade Adjustment Assistance for Firms at part 315). Part 301 presents these general requirements in a more logical sequence than the Former Regulations and provides the user with a helpful roadmap to navigate through these threshold issues.

Part 301 is organized into five (5) subparts. 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 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. Part 301 should be read in conjunction with (i) part 302 (titled *General Terms and Conditions for Investment Assistance*), (ii) the specific part governing the EDA program under which a proponent proposes a Project, and (iii) the applicable FFO. For example, a proponent proposing a Public Works Project should consult subparts A, B, C and E of part 301 to determine its eligibility, the Project's eligibility, and the general proposal and application requirements. The proponent should also read subpart D of part 301 to determine the maximum Investment Rate (and corresponding Matching Share requirement) for the Project, although the Investment Rate for the Project is ultimately determined by EDA. In addition to reviewing part 301, the proponent should consult parts 302 and 305, in order to ascertain general terms and conditions for EDA Investment Assistance and specific Public Works Investment requirements. Finally, the proponent should consult the applicable FFO to determine any additional proposal and application requirements, evaluation criteria and EDA funding priorities, as well as any other information or requirements unique to EDA's competitive solicitation for a particular EDA program.

Subsections 301.1(a)–(d) provide the user with a roadmap (including references to applicable subparts of part 301) to determine (i) who is eligible to apply for Investment Assistance (*i.e.*, whether the applicant is an Eligible Applicant), (ii) whether the Project contemplated by the applicant is located in a Region subject to threshold economic distress levels, (iii) whether the sources of funding fulfill the Investment Rate and Matching Share requirements, and (iv) the proposal evaluation criteria used by EDA to select a Project for potential funding, as well as the formal application requirements that an Eligible Applicant must satisfy once its Project is invited for application by EDA. Subsection 301.1(e) indicates that a Project must also meet the general requirements set forth in part 302 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*). Subsection 301.2(a) is substantively the same as § 301.1(a) in the Former Regulations. This section states who is eligible to apply for EDA Investment Assistance by providing a cross-reference to the definition of Eligible Applicant in § 300.3.

Section 301.2(b) requires a non-profit organization to submit documentation verifying that it is working in cooperation with officials of a political subdivision of a State in order to establish its eligibility for Investment Assistance. See Section 3(4)(A)(vi) of PWEDA. This stipulation is different from the provision in § 301.1(b) of the Former Regulations, which allows a non-profit organization to work in cooperation with a political subdivision of a State or an Indian Tribe. EDA removed the reference to an Indian Tribe in order to track the amendment to Section 207(a)(3) of PWEDA. Section 301.2(b) of the Interim Final Rule also provides that EDA may "waive" this cooperation requirement for certain Projects under parts 306 and 307 of a "significant" Regional or national scope (*see also* §§ 306.3(b), 306.6(b) and 307.5(b)) and in this respect, the Interim Final Rule differs from § 301.1(b) of the Former Regulations. Specifically, § 301.2(b) provides that EDA may "waive" the cooperation requirement, whereas § 301.1(b) of the Former Regulations provides that EDA may determine that the cooperation requirement is "satisfied" by certain Projects of a regional or national scope under parts 306 and 307. The waiver provision in § 301.2(b) is necessary to track the language of Section 207(a)(3) of PWEDA, which specifically contemplates a waiver (and not a deemed satisfaction) of the cooperation requirement. Additionally, § 301.2(b) applies to Projects of a "significant" Regional scope, whereas § 301.1(b) of the Former Regulations (*see* §§ 307.3(b), 307.7(b) and 308.5(a) of the Former Regulations) does not require that Regional Projects be of a significant scope. EDA believes that only those Regional Projects of a significant scope should be excluded from the general requirement that non-profit organizations work in cooperation with representatives of political subdivisions. EDA determines whether a Project is of a "significant" Regional scope on a case-

by-case basis, based on the facts and circumstances surrounding a Project.

Section 301.3 sets forth the economic distress criteria that the Region in which a Project will be located (*e.g.*, a Public Works Investment under part 305 or an Economic Adjustment Assistance Investment under part 307) or the Region comprising an Economic Development District (under part 304) must meet in order for a Project to qualify for Investment Assistance. PWEDA, and accordingly, the Interim Final Rule, sets forth no economic distress criteria for Planning Investments (part 303) and Training, Research and Technical Assistance Investments (part 306).

In general, the economic distress levels referenced in § 301.3(a) of the Interim Final Rule (for Projects under parts 305 and 307) are similar to the “area eligibility” criteria provided in § 301.2(a)–(e) of the Former Regulations. These economic distress criteria track Sections 301 and 405 of PWEDA. The only substantive change in § 301.3(a) is 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 geographical area where substantial direct Project benefits will occur (for Projects seeking to qualify under § 301.3(a)(2)), or (iii) the geographical area of poverty or unemployment (for Projects seeking to qualify under § 301.3(a)(3)). EDA believes that the ACS is the most accurate and reliable metric currently available to measure the economic distress of a Region (or other geographical area). 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. 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) of the Interim Final Rule.

Certain provisions in § 301.3(a) are reworded and/or reordered for clarity. For example, § 301.3(a)(1)(iii) references a Special Need (now defined in § 300.3), whereas § 301.2(b)(3) of the Former Regulations actually enumerates the special need criteria. Section 301.3(c) sets forth the economic distress level for

a Region to be designated as an Economic Development District. In particular, § 301.3(c)(1) requires that a Region contain at least one (1) geographical area that fulfills the economic distress criteria set forth in § 301.3(a)(1) (consistent with § 302.1(a) of the Former Regulations). Section 301.3(c) contains a cross-reference to § 304.1 for a listing of the remaining eligibility requirements for Economic Development Districts.

Pursuant to § 301.3(d), EDA reserves the right to reject any documentation of Project eligibility that it determines is inaccurate or otherwise unreliable. This requirement is consistent with § 301.2(f) of the Former Regulations.

Section 301.4 of the Interim Final Rule has undergone substantial revision in order to reflect the new Investment Rate determination regime in Section 204 of PWEDA (*see also* Sections 205 and 206 of PWEDA). 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. This is a significant change from the Investment Rate (referred to as “grant rates”) regime in § 301.4 of the Former Regulations. The Former Regulations provide that EDA may increase the Investment Rate above fifty (50) percent, based on the applicant’s demonstration that the non-federal share that would otherwise be required cannot be provided because of the applicant’s overall economic situation. The shift in focus from the applicant’s overall economic situation to the relative needs of the Region where the Project is located ensures that allocations of EDA Investment Assistance are provided to the most economically distressed Regions. *See* Section 206(2) of PWEDA. Additionally, pursuant to the deletion of former Section 403 of PWEDA by the 2004 Act, the ten (10) percent EDA “bonus” funding for certain Projects located in Economic Development Districts has been removed.

There are certain statutory exceptions that allow for maximum Investment Rates in excess of eighty (80) percent. These exceptions are set forth in § 301.4(b)(3)–(4) and are discussed below. As provided in § 301.4(a), there is no minimum Investment Rate for a Project.

Section 301.4(b)(1)(i) establishes the criteria that EDA uses to determine the relative needs of the Region in which a Project is located. *See* Section 204(a)(2)(B) of PWEDA, which requires EDA to promulgate regulations

establishing relative needs criteria. The burden is on the Eligible Applicant to establish the relative needs of the Region in which the Project is located. In making a relative needs determination, EDA will focus on the economic distress level of a Region (rather than on specific geographical areas or types of economic distress), and will evaluate the relative needs of a Region based on the specific facts and circumstances and the criteria in § 301.4(b)(1)(i)(A)(1)–(4). *See* Section 206(2) of PWEDA. 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.

Table 1 in § 301.4(b)(1)(ii) provides the maximum allowable Investment Rates for Projects, in accordance with certain levels of economic distress in relevant Regions. 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 will be the maximum allowable Investment Rate for the Project.

Table 1 provides (i) new maximum Investment Rate categories of 30 and 40 percent for those Regions eligible for Investment Assistance under PWEDA, but which are experiencing lower levels of economic distress, and (ii) higher threshold levels of economic distress for the 50, 60 and 70 percent maximum allowable Investment Rate categories (the economic distress levels for the 80 percent maximum allowable Investment Rate category are the same as in the Former Regulations). These changes are necessary in order to ensure that allocations of Investment Assistance are provided to the most economically distressed Regions. EDA may provide additional Investment Rate criteria and standards in an FFO to ensure that the level of economic distress in a Region, rather than a preference for a geographic area or a specific type of economic distress, is the primary factor in making Investments. *See* § 301.4(c).

Subsection 301.4(b)(2) provides that EDA will determine the maximum allowable Investment Rate for a Project subject to a Special Need based on the actual or threatened overall economic situation of the Region in which the Project is located. Due to the nature and circumstances that may give rise to a Region possibly having a Special Need, EDA has the flexibility to determine the maximum Investment Rate for such a Project on a case-specific basis and,

therefore, may take into account both the actual and threatened economic situation of the effected Region. For example, in the case of a Special Need based on severe damage caused by a natural disaster, EDA may determine the Project's Investment Rate based on an assessment of the threatened economic situation of the Region resulting from the natural disaster. However, unless the Project is eligible for a higher Investment Rate pursuant to § 301.4(b)(3) or (4), the maximum Investment Rate for any Project subject to a Special Need will be eighty (80) percent.

Section 301.4(b)(3) provides that the maximum allowable Investment Rate for a Training, Research and Technical Assistance Project under part 306 is based on the relative needs (as determined by § 301.4(b)(1)) of the Region which the Project will serve. However, § 301.4(b)(3) also provides that for (i) Projects of a national scope under part 306 (*i.e.*, where the relative needs of a particular Region cannot be evaluated due to the national scope of the Project) and (ii) for all other Projects under part 306 (after the application of § 301.4(b)(1)), 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 in the Investment Rate, or (ii) will be of no or only incidental benefit to the Eligible Recipient. Section 301.4(b)(3) replaces the Investment Rate determinations for Training, Research and Technical Assistance Investments under §§ 307.3(c), 307.7(c) and 307.11(c) of the Former Regulations and tracks Section 204(c)(3) of PWEDA.

Table 2 in § 301.4(b)(4) reflects the statutory authority of PWEDA, which provides that certain projects are eligible for a maximum Investment Rate of one hundred (100) percent. This table provides that the following Projects are eligible for a maximum Investment Rate of one hundred (100) percent:

- (i) Projects of Indian Tribes (Section 204(c)(1) of PWEDA);
- (ii) Economic Adjustment Assistance Investments (under part 307) awarded in Presidentially-Declared Disaster areas where EDA received an application for assistance in post-disaster economic recovery efforts pursuant to a supplemental appropriation within eighteen (18) months of the date of such declaration (Section 703 of PWEDA);
- (iii) 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 (Section 204(c)(2) of PWEDA);

(iv) Projects under parts 305 or 307 that receive performance awards pursuant to § 308.2 (Section 215(e) of PWEDA); and

(v) Projects located in an Economic Development District that receive planning performance awards pursuant to § 308.3 (Section 216(e) of PWEDA).

With respect to item (ii) above (certain Economic Adjustment Assistance Projects in Presidentially-Declared Disaster areas), EDA has removed the requirement contained in § 301.4(b) of the Former Regulations that the Federal Emergency Management Agency ("FEMA") grant rate for the Region must be greater than eighty (80) percent in order for the Project to be eligible for a one hundred (100) percent Investment Rate. The FEMA rate is not required by Section 703 of PWEDA and EDA believes that the association unnecessarily creates an artificial threshold, since the FEMA rate is often based on criteria different from that used to set the EDA Investment Rate.

Section 301.5 provides that the required Matching Share of any Project's eligible costs may consist of cash or In-Kind Contributions. This is consistent with Section 204(b) of PWEDA and § 301.4(a) of the Former Regulations. Section 301.5 requires the Eligible Applicant to 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 Investment Assistance requirements. This latter requirement is stated in various places throughout the Former Regulations (*see* §§ 305.3(c), 308.5(c) and 316.17 of the Former Regulations) and has been moved to § 301.5, since it applies to all EDA Investments.

Section 301.6 follows Section 205 of PWEDA. It provides that, pursuant to a request by an Eligible Applicant, EDA Investment Assistance may supplement a grant awarded by another "designated federal grant program," provided the Eligible Applicant qualifies for financial assistance under such program but is unable to supply the required Matching Share because of its economic situation.

Sections 301.7 through 301.10 stipulate proposal and application requirements, as well as proposal evaluation criteria that EDA uses to select Projects for possible Investment awards. These sections have been moved from part 304 of the Former Regulations and redrafted to reflect more accurately the proposal and

application process and the evaluation criteria that EDA uses in Project selection. The Investment Assistance process begins with the submission of an Investment Assistance proposal by an Eligible Applicant on a Form ED-900P. EDA will review completed proposal materials for compliance with the requirements set forth in PWEDA, the Interim Final Rule, the applicable FFO and other applicable federal statutes and regulations. From those proposals that meet EDA's technical and legal requirements, EDA will invite certain applicants to apply formally for further consideration.

EDA evaluates the competitiveness of varying proposals based on strategic areas of interest and priority considerations identified in the applicable FFO and the degree to which an Investment in the proposed Project will satisfy one (1) or more of the criteria set forth in § 301.8(a)-(f). These criteria have been added to the Interim Final Rule to draw attention to the overarching principles that EDA uses to evaluate the competitiveness of a Project. Proponents should use these criteria as a roadmap for Project development and proposal submission. The applicable regional office will provide application materials and guidance to applicants who are invited to complete formal Investment Assistance applications. Each formal application must include the items set forth in § 301.10(b).

Part 302—General Terms and Conditions for Investment Assistance

Part 316 of the Former Regulations (titled *General Requirements for Financial Assistance*) has been moved to part 302 and re-titled *General Terms and Conditions for Investment Assistance*. Part 302 applies to all Investments under PWEDA and certain provisions, such as § 302.5, apply to Adjustment Assistance under the Trade Act (*see* part 315).

Section 302.1 addresses the environmental reviews that EDA undertakes 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.*), and all applicable federal environmental statutes, regulations and Executive Orders. This section is substantively the same as § 316.1 of the Former Regulations, although the specific references to the various environmental authorities in § 316.1(b) of the Former Regulations have been removed. These authorities continue to apply to Projects under PWEDA, as applicable.

Section 316.2 of the Former Regulations requires an "excess capacity study" in connection with certain EDA Investments. This reference has been removed to track the deletion of Section 208 of PWEDA by the 2004 Act. Similarly, § 316.3 of the Former Regulations also has been removed because the 2004 Act deleted the Congressional finding underlying this section (formerly, Section 2(a)(8) of PWEDA).

The next two sections, 302.2 and 302.3, are substantively the same as their counterparts in the Former Regulations (§§ 316.4 and 316.5). Section 302.2 allows EDA to waive non-statutory administrative or procedural conditions for Investment Assistance when such requirements cannot be met by an Eligible Applicant as the result of a disaster. Section 302.3 is consistent with the powers granted to the Assistant Secretary under Section 601 of PWEDA to take necessary actions to protect or further EDA's interest in connection with loans, loan guaranties and Investment Assistance under PWEDA.

With respect to Recipients, §§ 302.4, 302.5 and 302.6 address access to EDA records, relocation assistance and land acquisition requirements, and the general applicability of federal laws and DOC regulations, policies and procedures with respect to federal financial assistance. These sections are substantively the same as §§ 316.6, 316.7 and 316.8 of the Former Regulations. Similarly, § 302.7 is substantively the same as § 316.9 of the Former Regulations, except that EDA has added the non-payment of costs (or other applicable procedure) to the list of actions that EDA may take when a Recipient makes any change to a Project without obtaining prior EDA approval. The non-payment of costs is consistent with current EDA practices and Recipients should be aware that EDA may take this course of action as appropriate. Section 302.8 addresses pre-approval Investment Assistance costs and is substantively the same as § 316.10 of the Former Regulations.

Section 302.9 is substantively the same as § 316.11 of the Former Regulations, except that the Interim Final Rule clarifies that inter-governmental reviews of Economic Adjustment Assistance Projects under part 307 apply to construction Projects or RLF Grants only, rather than to *all* Economic Adjustment Assistance Projects under part 307.

Subsection 302.10(a) is substantively the same as § 302.12 of the Former Regulations. Subsection 302.10(b) follows Section 606 of PWEDA. Specifically, § 302.10(b)(1) sets forth the

requirement that an Eligible Applicant must certify to EDA the names of any attorneys, agents and other persons engaged by it or on its behalf for the purpose of expediting an application for Investment Assistance and the fees paid or to be paid to the person for expediting the application. Subsection 302.10(b)(2) allows EDA to request the Eligible Applicant to execute an agreement that binds the Eligible Applicant (for the two-year (2) period beginning on the date on which the Investment Assistance is awarded) to refrain from employing, offering any office or employment to or retaining for professional services certain persons associated with EDA or DOC.

Section 302.11 references the economic development information clearinghouse maintained by EDA on its Internet Web site (www.eda.gov) pursuant to Section 502 of PWEDA. Section 302.11 amends § 316.13 of the Former Regulations by removing specific references to the various information maintained by EDA and inviting interested parties to visit EDA's Internet Web site.

Sections 302.12 and 302.13 of the Interim Final Rule, addressing project administration, operation and maintenance of standards, are substantively similar to §§ 316.14 and 316.15 in the Former Regulations. EDA has included the statutory language of Section 602 of PWEDA in § 302.13, rather than a reference to Section 602 of PWEDA as in the Former Regulations.

Section 302.14 is substantively similar to § 316.16 of the Former Regulations and establishes the Recipient's recordkeeping requirements and the right of EDA, the DOC's Office of Inspector General and the Comptroller General of the United States (and any of their respective agents or representatives) to examine such records to verify the Recipient's compliance with Investment Assistance requirements (generally in the context of an audit). *See also* Section 608 of PWEDA. In describing the records to which these parties have access, § 302.14(b) includes a specific reference to computer programs and data processing software. EDA believes these materials (in addition to hardcopy records) are inherently part of the Eligible Recipient's records and, therefore, access to these materials is essential in order to perform a thorough and effective audit or examination.

Section 302.15 (consistent with Section 610 of PWEDA) provides that EDA will accept a certification from an Eligible Applicant, when such certification is accompanied by evidence satisfactory to EDA, that the

Eligible Applicant meets the requirements for receiving Investment Assistance. Section 302.15 is substantively the same as § 316.17 in the Former Regulations (the reference to the availability of the Matching Share in § 316.17 of the Former Regulations is now contained in § 301.5 of the Interim Final Rule).

Section 302.16 (consistent with Section 212 of PWEDA) addresses Recipients' reporting requirements. This section generally follows § 316.18 of the Former Regulations; however, § 302.16(b) contains an explanatory sentence informing Recipients that EDA will use the reported data 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.

Subsection 302.16(b) also 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). Additionally, to enable EDA to determine the economic development effect of Projects that provide service benefits, § 302.16(c) allows EDA to require that Recipients submit a Project service map and information from which EDA may determine whether services are provided to all segments of the assisted Region.

Section 302.17 states EDA's conflicts of interest policy. Users should also review the DOC regulations at 15 CFR 14.42 and 24.36(b)(3) for additional rules and requirements. Section 302.17 provides that an Interested Party shall not receive, directly or indirectly, any financial or personal benefits in connection with an Investment Assistance award. An Interested Party also shall not, directly or indirectly, solicit or accept any gift, gratuity, favor, entertainment or any other benefit having a monetary value for himself or herself or for another person or entity, from any person or organization that has obtained or seeks EDA Investment Assistance. These policies are consistent with internal EDA conflicts of interest rules and EDA believes that it is important to promulgate these provisions in the Interim Final Rule to ensure express public knowledge.

Section 302.18 sets forth a Recipient's post-approval requirements. Such requirements are generally applicable to all Projects assisted under PWEDA. These requirements are contained in various parts of the Former Regulations (*e.g.*, § 306.4) and have been moved to § 302.18 of the Interim Final Rule

because of their applicability to all EDA Investments. For Economic Adjustment Assistance Investments, Recipients must comply with the post-approval requirements set forth in § 307.6.

Section 316.19 of the Former Regulations is moved to § 305.5 for clarity and organization. In the event that an Economic Development District is not the Recipient of an Investment award involving construction, § 305.5 allows a District Organization to administer the Project for the Recipient upon the fulfillment of certain requirements. Section 305.5 is substantively the same as § 316.19 in the Former Regulations. Section 302.19 of the Interim Final Rule requires that a Recipient must, to the maximum extent permitted by law, indemnify and hold EDA harmless from any liability that EDA may incur due to the actions or omissions of the Recipient. This provision generally applies to all EDA Investments and is intended to insulate EDA where it is subject to a liability vis-à-vis any Recipient's actions or omissions.

Section 302.20 replaces part 317 (titled *Civil Rights*) in the Former Regulations and conforms EDA's civil rights policy and practice to existing DOC policy and practice (specifically, DOC's effectuation of Title VI of the Civil Rights Act of 1964, as amended ("Title VI")) and existing case law. The introduction in § 317.1(a) in the Former Regulations has been rewritten to make clear that discrimination is prohibited with respect to Investment Assistance under PWEDA and Adjustment Assistance under the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*) (the "*Trade Act*"). The statutes under § 317.1(a)(1)–(5) have been revised to increase clarity and utility.

The express anti-retaliatory provision in § 317.1(b) of the Former Regulations was not included in subsection 302.20(a)(1) of the Interim Final Rule because Section 601 of Title VI is covered by DOC's implementing regulations at 15 CFR part 8, specifically, the anti-retaliatory provision in 15 CFR 8.9. Similarly, subsections 302.20(a)(3) and (4) refer to DOC's implementing regulations at 15 CFR parts 8b and 20, respectively, because (i) 15 CFR 8b.26 makes Title VI enforcement provisions applicable to Section 504 of the Rehabilitation Act of 1973, as amended, and (ii) 15 CFR 20.14 contains a non-retaliatory provision in connection with the Age Discrimination Act of 1975, as amended. For the stand-alone gender discrimination provisions at 42 U.S.C. 3123 and 42 U.S.C. 6709, covered in subsection 302.20(a)(2), we have (i) placed a specific anti-retaliatory

provision in § 302.20(c) and (ii) provided a cross-reference to the procedures set forth in 15 CFR 8.7 through 8.15.

Subsections 317.1(d)(2)–(5) were not included in the Interim Final Rule because 15 CFR 8.7 covers the compliance report and review requirements of all Recipients and Other Parties subject to 15 CFR part 8. This elimination was also based on the rationale that Recipients and Other Parties should not be subject to more rigorous reporting requirements than Recipients or beneficiaries of funding from other DOC bureaus also subject to 15 CFR part 8 (see Appendix A to 15 CFR part 8 for a full list of DOC bureaus). Specifically, 15 CFR 8.7(b) provides that "[e]ach recipient and other party subject to this part shall keep such [racial and ethnic data] records and submit * * * timely, complete and accurate compliance reports at such times and * * * containing such information as the responsible Department official may determine to be necessary to enable him to ascertain whether the recipient or such other party subject to this part has complied with this part."

Subsections 317.1(f) and (g) were not included in part because EDA no longer maintains an Office of Civil Rights, the result of an agency-wide reorganization that took effect in January 2004. For the same reason, EDA will no longer use its Civil Rights Guidelines (referenced in part 317 of the Former Regulations) in pre-approval or post-approval operations of EDA Investments. However, to measure the economic development impact of EDA's programs across a broad population, the Interim Final Rule makes clear that EDA will evaluate Planning Investment applications based on the "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" (§ 303.3(a)(4)) and that Planning Organizations should ensure that their Strategy Committees include representatives of minority and labor groups (§ 303.6(a)). Additionally, subsections 317.1(f) and (g) were not included in the Interim Final Rule in an effort to bring EDA's program requirements and policies in line with other DOC bureaus.

The reporting requirement found at § 317.1(e) has been eliminated and redrafted at § 302.16(c) to emphasize EDA's goal to assess the economic development impact of its programs. Finally, § 302.20(d) effects the essential reporting requirement that Eligible

Applicants provide assurances that they will comply with applicable laws, EDA and DOC regulations, and other applicable requirements prohibiting discrimination.

Part 303—Planning Investments and Comprehensive Economic Development Strategies

Part 303 combines the content of part 303 (*Planning Process and Strategies for District and other Planning Organizations supported by EDA*) and part 306 (*Planning Assistance*) in the Former Regulations. The major revision focus emphasizes that results-driven implementation, not just the writing of a "*Comprehensive Economic Development Strategy*" (or "*CEDS*"), is vital to successful performance under this program. The CEDES is also a crucial part of EDA's program portfolio, as part of an application for Investment Assistance under parts 305 (*Public Works and Economic Development Investments*) and 307 (*Economic Adjustment Assistance Investments*).

In § 303.1, "planning assistance" is revised to refer to "*Planning Investments*" as a defined term, referring to an Investment awarded under Section 203 of PWEDA. The first sentence of § 303.1 informs the reader that Planning Investments provide support to Planning Organizations for the development, implementation, revision or replacement of a CEDES. This language requires EDA to issue reimbursements to a Planning Organization solely on the basis of its preparation and delivery of an executed CEDES. The former definition of "*Planning Organization*" was simplified for clarity and a CEDES is referred to as such or as a Comprehensive Economic Development Strategy only. The alternate definition of "*Strategy*" in reference to a CEDES was removed from the chapter altogether, to avoid any possible confusion with the defined term "*Strategy Grant*" in part 307.

In § 303.3, the application evaluation criteria used for awarding Planning Investments to Planning Organizations is revised to correlate directly with the quality of work accomplished to develop a CEDES, the qualifications of an Eligible Applicant to implement the goals and objectives of a CEDES, and the involvement of the Region's business leadership in the preparation of a CEDES. Consistent with the focus on a well-prepared and demonstrable CEDES, a new section has been introduced, § 303.5, which states 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.

The requirements for an EDA-funded CEDS process, set forth in § 303.6, are revised to increase clarity and to introduce new provisions. One of the most important changes made is that a Strategy Committee (appointed for a Planning Organization) must represent the main economic interests of the relevant Region by including a majority of its representatives from businesses within the Region. This section also requires a Planning Organization to submit an initial CEDS that contains an analysis of the (a) opportunities for economic development and (b) problems contributing to economic distress in the relevant Region, rather than conduct an initial study on such issues. This obligation is revised primarily to make clear to Planning Organizations that a CEDS is required to be delivered to EDA prior to any implementation action.

Section 303.7 is organized with sub-headings to direct the reader's attention to specific technical requirements related to the preparation of a CEDS. Certain technical requirements have been enhanced; for example, the CEDS must include (a) a discussion of private sector participation in the CEDS work, rather than community participation, (b) a specific plan of action with certain criteria for gauging the implementation of the goals and objectives of the CEDS, and (c) specific performance measures for appraising the Planning Organization's development and execution of the CEDS. Additional technical requirements are new, including a required section in the CEDS that lists all suggested Projects for the applicable Region and a separate section involving a prioritization process for ranking Projects, programs and activities as they best address the Region's greatest needs.

EDA Planning Investments provide support in two (2) additional, specialized areas: Short-term Planning Investments and State plans. However, former part 306 has no individual sections addressing the requirements for Investment Assistance in these areas. In the Interim Final Rule, we have added specific sections, §§ 303.8 and 303.9, that distinguish the requirements for short-term Planning Investments and State plans. Unlike the Former Regulations, the assistance given to support short-term planning activities is laid out in detail. An applicant for short-term Planning Investments must provide performance measures similar to the ones required to be included in a CEDS and program reports during the term of the Planning Investment.

Part 304—Economic Development Districts

The part on Economic Development Districts (also referred to as a "District" or an "EDD" in § 300.3) has been revised for clarity and completeness, particularly by amending section titles and placing sub-headings within sections.

Section 304.1 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. This section cross-references § 301.3(a)(1) to relate the economic distress criteria that at least one (1) geographic area in the Region must meet in order to be considered for a District designation. All provisions with respect to formation, organization and operation of a "District Organization" are contained in § 304.2. One major achievement of § 304.2 is that a District Organization's governing body's reporting requirements now conform to current legislative and DOC requirements. Two (2) new actions are required of a governing body: the District Organization and its board of directors must (a) make available to the public any audited statements, annual budgets and minutes of public meetings that are reasonably requested and (b) comply with all federal and State financial assistance reporting requirements and the conflicts of interest provisions set forth in § 302.17 of the chapter. Another new requirement (to the extent not in violation of State or local law) is a majority of "Private Sector Representatives" on the board of directors of a District Organization, which is defined in § 300.3 as any senior management official or executive holding a key decision-making position in any for-profit enterprise. Similarly, the governing body must include private sector delegates of workforce development boards, institutions of higher education, minority groups and labor groups.

The sections on District modification and District termination (§§ 302.4 and 302.6 in the Former Regulations) are combined into one new section, § 304.3. In addition to EDA's ability to terminate a Region's designation if the District no longer maintains the requirements for such designation (*i.e.*, regional eligibility and formation or organization requirements) or if the District requests termination, EDA may now terminate a Region's District designation based on performance. In this regard, poor performance with respect to the

execution of its CEDS may be grounds for termination.

Information with respect to the performance evaluations of Economic Development Districts are incorporated into § 304.4 from another part of the Former Regulations (part 318). Pursuant to PWEDA, EDA will evaluate each District within three (3) years after the initial Investment award and at least once every three (3) years thereafter, so long as the District continues to receive Investment Assistance. Unlike the information formerly provided in § 318.2, the performance evaluation provisions of § 304.4 in the Interim Final Rule contain detailed standards by which an EDD will be evaluated, namely, the continuing Regional eligibility of the District, the management of the District Organization, and the implementation of its CEDS, including its contribution towards the retention and creation of employment.

Part 305—Public Works and Economic Development Investments

Part 305 is revised from current part 305 (*Grants for Public Works and Development Facilities*). This part was streamlined and organized in substance, in order to clarify only those obligations assumed by EDA or an Eligible Recipient, as the case may be. Public Works Investments comprise EDA's largest investment program. Subpart A lays out general information regarding this program's scope and award and application requirements. The first section, § 305.1, is reworded to provide specific information on the purpose and scope of Public Works and Economic Development Investments. The criteria section (§ 305.2) remains unchanged and continues to specify 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 for a Public Works Investment to be made. In § 305.2(c), in line with Section 201 of PWEDA, the Interim Final Rule clearly indicates that 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.

The application requirements for Public Works Investments are set forth in § 305.3. This section is present in the Former Regulations; however, the reference to a mandatory identification of "other funds, both eligible federal and non-federal, that will make up the balance of the proposed project's financing, including any private sources of financing," is removed. Rather,

§ 305.3(a)(4) instructs that any application for Public Works Investment Assistance must demonstrate how the proposed Project meets the proposal evaluation criteria set forth in § 301.8 of the chapter (e.g., how the Investment exhibits a high level of local government or non-profit Matching Share). The purpose of this cross-reference to § 301.8 is to improve the readability and usefulness of the Interim Final Rule, and also to highlight the importance that EDA places on proposal and application requirements set forth in subpart E of part 301.

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 was largely rewritten and reorganized for clarity, and now 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 programmatic emphasis on revising subpart B was to eliminate unnecessary provisions and establish clear guidance for EDA's and Recipients' duties. The following section titles and related text in the Former Regulations were removed in their entirety: (a) *Pilot program*; (b) *Project management conference*; (c) *Selection of the architect/engineer*; (d) *Advertising for bids*; (e) *Bid overrun*; (f) *Construction progress schedule*; (g) *Project development time schedule*; (h) *Controlling budget*; (i) *Disbursement of funds for grants*; (j) *Final inspection*; and (k) *Reports*.

Pilot program (§ 305.5 in the Former Regulations) was initially created to allow EDA's Chicago regional office to develop a pilot program to waive certain EDA post-approval requirements. This provision is no longer necessary under PWEDA; therefore, it was eliminated. The section titled *Project management conference* (§ 305.6 in the Former Regulations) was eliminated because it addresses an administrative matter with respect to an accepted Investment award. The section titled *Selection of the architect/engineer* (§ 305.7 in the Former Regulations) was also eliminated, as requirements for the procurement of architect/engineer services and construction services are provided in 15 CFR parts 14 and 24, by which EDA is bound. Title 15 CFR part 14 establishes the uniform requirements for DOC grants awarded to institutions of higher education, hospitals, other non-profits and commercial organizations. Title 15 CFR part 24 establishes administrative rules for grants to State, local and Indian tribal

governments. Therefore, EDA determined that there is no need to provide identical guidance in the Interim Final Rule and decided that the content of former §§ 305.6 and 305.7 be placed in a revised EDA guidance publication titled *Guidance for Approved Construction Projects*.

The section titles (a) *Advertising for bids*, (b) *Bid overrun*, (c) *Construction progress schedule*, (d) *Project development time schedule*, (e) *Controlling budget*, (f) *Disbursement of funds for grants*, (g) *Final inspection*, and (h) *Reports* (§§ 305.12, 305.13, 305.16, 305.20, 305.21, 305.24, 305.25 and 305.26 in the Former Regulations) and related text were all removed as administrative processes that are more suitable for the *Guidance for Approved Construction Projects*.

The first section under subpart B is § 305.5 titled *Project administration by District Organization*. This section was moved from former § 316.19 to part 305 because the provisions are applicable to construction projects only. The content of § 316.19 was reorganized and rewritten in line with applicable defined terms in § 300.3.

The sections *Construction Management services and Design/Build method of construction* (§§ 305.10 and 305.11 in the Former Regulations) are combined into one new section, § 305.6, and redrafted to address and account for the majority of EDA Public Works Investments that lend themselves to the traditional design/build method of construction. However, Recipients may employ other construction methods, too. If any method other than the design/build method is used, the Recipient is required to submit to EDA for approval a construction management services procurement plan and hire a third party design professional to oversee the construction services. The new section also includes specific procurement elements that the Recipient must address in its submitted plan, including the justification for the proposed method for procurement of construction management services and the scope of work with cost estimates and schedules. Additionally, a cross-reference to 15 CFR parts 14 and 24 informs the reader that any DOC requirements therein must be followed with respect to any selected procurement method.

Similar to the provisions placed in § 305.6 to inform the Recipient of necessary items that must be addressed in any construction management services procurement plan submitted to EDA, § 305.7 (*Services performed by the Recipient's own forces*) is revised to include information that the Recipient must submit to EDA to justify the use of

“in-house forces.” One new specification is evidence that the in-house services requiring approval are routinely performed by the Recipient for all construction Projects performed by the Recipient (for example, inspection or legal). Further, § 305.8, *Recipient-furnished equipment and materials*, is revised to remove subsection (a) of § 305.9 in the Former Regulations as unnecessary text, largely because a Recipient should inherently select equipment and/or materials suitable for a desired use. The requirement that a Recipient submit with a “request for EDA approval either a paid invoice or current quotes from not less than three suppliers who normally distribute such equipment and/or materials,” is also removed because this competitive procurement concern is covered by applicable provisions of 15 CFR parts 14 and 24.

The section titled *Project phasing* (§ 305.8 in the Former Regulations) was entirely redrafted to increase clarity and utility. The section title is renamed *Project phasing and Investment disbursement* (§ 305.9 in the Interim Final Rule) to closely associate the concept of Project phasing with EDA funds disbursement. Unlike § 305.8 in the Former Regulations, this revised section 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 the Former Regulations. However, all of these sections have been rewritten to eliminate any ambiguity or extraneous provisions. For example, the section on *Contract change orders* removes subsections (c) and (d) of § 305.19 in the Former Regulations, which provide that “EDA will not approve financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun” and, with respect to a change order for a Project funded with one-year funds, EDA approval of the change order must be based on a determination that the required work is necessary and within the Project scope.

Part 306—Training, Research and Technical Assistance Investments

The content of part 306 with respect to Local and National Technical

Assistance Investments and University Center Projects was primarily reorganized, shortened and rewritten for increased understanding and inclusiveness of all pertinent information. Subpart A (*Local Technical Assistance*) is combined with the substance of subpart C (*National Technical Assistance, Training, Research, and Evaluation*) and re-titled *Local and National Technical Assistance*. Specifically, § 306.1(a), dealing with the scope of Local and National Technical Assistance Investments, captures all possible purposes for such Investments, including those laid out in Section 207 of PWEDA. Two new purposes, as provided in PWEDA, include (a) studies that evaluate the effectiveness of EDA Investments coordinated with projects funded under other federal statutes and agencies and (b) the assessment, marketing and establishment of business clusters and associations. Section 306.1(d) tracks the language in Section 207(b) of PWEDA, which states that EDA may provide Local and National Technical Assistance (i) through officers or employees of DOC, (ii) pay funds made available to carry out subpart A to Federal Agencies, and (iii) employ private individuals, partnerships, businesses, corporations, or appropriate institutions under contracts entered into for Local and National Technical Assistance Investments.

Sections 307.2 and 307.10 in the Former Regulations are combined into one new section and re-titled *Award requirements* (§ 306.2 in the Interim Final Rule). In addition to the evaluation criteria listed under both of these sections, EDA will also evaluate the extent to which the proposed Project meets the criteria outlined in the applicable FFO. Similarly, the content of §§ 307.3 and 307.11 in the Former Regulations is merged into § 306.3 and re-titled *Application requirements* (in the Former Regulations, each section is called *Award and grant rate requirements*). With regard to the Investment Rate for Local and National Technical Assistance Investments, the detailed information provided in subsection (c) of each section is removed and replaced with a cross-reference to § 301.4(b)(3), which tables the relevant Investment Rates for all EDA Investments. The cross-reference to § 301.4(b)(3) is made in applicable sections of all parts relating to specific EDA programs (*i.e.*, parts 303–307) to draw attention to the new organization of the Interim Final Rule.

The title of Subpart B is changed from *University Center Program to University Center Economic Development Program*.

The second sentence under § 307.5 (*Purpose and scope*) in the Former Regulations was replaced with two sentences that communicate: “institutions of higher education have many assets* * *that can address local economic problems” and with EDA Investment Assistance, such institutions establish research centers (“*University Centers*”) that provide technical assistance to public and private sector organizations.

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. In § 306.5, in addition to the general evaluation and selection criteria set forth in part 301, the first sentence provides that EDA will evaluate a proposed Project subject to the competitive selection process outlined in the applicable FFO. Further, the following criteria provision replaces subsection (e) in § 307.6 in the Former Regulations: “Addresses the economic development needs, issues and opportunities of the Region and will benefit distressed areas in the Region.” In § 306.6, instead of stipulating a timeframe “generally not to exceed twelve months,” the revised section states that EDA will provide Investment Assistance under subpart B for the period of time required to complete the Project’s scope of work, as outlined in the applicable FFO. A cross-reference to § 301.4(b)(3) is given for information regarding the applicable Investment Rate for University Center Projects.

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. Section 306.7 incorporates information regarding the performance evaluations of University Centers from another part of the Former Regulations (part 318). Consistent with Section 506(d)(2) of PWEDA, § 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.

Part 307—Economic Adjustment Assistance Investments

EDA has extensively considered, examined and revised part 308 in the Former Regulations, resulting in a set of provisions in part 307 of the Interim Final Rule that improves the understanding of some rather complex provisions. The reading of this part has been greatly improved by making effective use of defined terms in subparts A and B.

Subpart A, covering Economic Adjustment Assistance Investments, is revised to follow PWEDA and read more concisely. In § 307.1(a), the list of causes of adverse economic changes was condensed by creating a definition of “*Federally-Declared Disaster*” that includes fishery failures and fishery resource disasters pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1861a(a)). This list now also includes “loss of manufacturing jobs.” Similarly, because the term “Special Need” is defined in § 300.3 of the chapter, § 307.2 has been shortened.

Section 308.3 in the Former Regulations, titled *Use of Economic Adjustment grants*, is renamed *Use of Economic Adjustment Assistance Investments* in § 307.3 of the Interim Final Rule. Substantively, this section contains the same content as in the Former Regulations. However, “Strategy Grant” is a new defined term specific to subpart A, referring to Economic Adjustment Assistance Investments that help develop CEDS to alleviate long-term economic deterioration or a sudden and severe economic dislocation. Likewise, an “*Implementation Grant*” is defined as an Economic Adjustment Assistance Investment used to fund a Project implementing a CEDS. Any use of the word “strategy” outside of the defined term “Strategy Grant” is replaced with the defined term “CEDS” to help distinguish and enhance understanding of both terms. The content of § 308.3(b) has been moved to a new part of the Interim Final Rule, part 309 (titled *Redistributions of Investment Assistance*), in line with Section 217 of PWEDA, and restated for accuracy.

Section 308.4 in the Former Regulations, titled *Selection and evaluation factors*, is renamed *Award requirements* in § 307.4 of the Interim Final Rule, parallel with similar provisions in other program parts. This section has been reorganized and sub-titled for clarity and substantively contains information identical to that in the Former Regulations. Section

308.3(c)(2)(iv), regarding the use of In-Kind Contributions, has been moved to a more suitable subsection in § 307.18(d) of the Interim Final Rule, as this provision is applicable to revolving loan fund (“RLF”) Grants only.

Section 307.5 on application requirements significantly condenses § 308.5 in the Former Regulations for clarity and improved comprehension. For example, subsection (c) was removed in its entirety, as non-EDA funds and In-Kind Contributions may comprise the Matching Share of any Project’s eligible costs, so long as the applicant can show that the Matching Share is committed to the Project, will be available as needed, and is not encumbered in any way that conflicts with the requirements of EDA Investment Assistance. Matching Share sources are part of the general eligibility criteria applicable to all EDA programs. Therefore, this provision has been placed in a new section of part 301 called *Matching Share requirements* (§ 301.5).

The last section in subpart A, § 308.6 in the Former Regulations, has been redrafted at § 307.6 in the Interim Final Rule (titled *Economic Adjustment Assistance post-approval requirements*) 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, § 307.6 now references parts 305 and 306 for additional requirements that Implementation Grants must fulfill (in addition to the post-approval stipulations set forth in § 302.18), and part 303 for additional requirements that Strategy Grants must achieve.

The defined terms in § 308.8 in the Former Regulations have been extensively rewritten for accuracy and completeness, and some defined terms have been removed because of infrequent use in subpart B (see § 307.8 in the Interim Final Rule). For instance, “Program income” and “Secondary market” are deleted because these terms are not referenced anywhere in the subpart in the Former Regulations. The defined terms “Exempt Security,” “Sale,” “SEC,” “Security” and “RLF Third Party” are new to § 307.8, and have been introduced in large part to interpret the provisions of Section 209(d)(2) and (4) of PWEDA. The definition for “Securitization” has been

revised to make clear that “techniques such as the sale of loans,” as placed in the current definition of the word, are not Securitization transactions. The new defined term “Sale” explains that after an RLF Recipient sells its RLF portfolio (or a portion thereof) to a third party, the third party may participate in a subsequent Securitization offered in a secondary market transaction.

With respect to RLF Plans, § 308.9 in the Former Regulations is reorganized and rewritten at § 307.9 in the Interim Final Rule. Subsections 308.9(b)(3) and (4) in the Former Regulations concerning the requirement that “strategic objectives” and “administrative procedures” be shown in the RLF Plan have been replaced with the following language to stress the importance on specific components by which EDA will evaluate an RLF Plan:

“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.”

This section also includes a new subsection (c) that indicates that an RLF Recipient must request and obtain EDA approval prior to any modification of an RLF Plan. Similar to § 307.9, § 308.10 (*Pre-loan requirements*) in the Former Regulations is condensed and reorganized in § 307.10 of the Interim Final Rule by placing the substance of subsection (b) into a third subsection.

The major emphasis on rewriting § 307.11, which discusses the addition of lending areas and the merger of RLFs, was to (a) correlate the substance of the section to applicable provisions in Section 209 of PWEDA, (b) eliminate information no longer applicable due to the passage of the 2004 Act, and (c) explain and expand important concepts in an orderly, coherent manner with the use of defined terms. The title of the section has been changed from *Lending areas and modification of lending areas* to *Addition of lending areas; merger of RLFs*, which highlights the increased flexibility that PWEDA affords to RLF Recipients for consolidating and merging RLF Grants. Subsection (a)(1) lays out the preconditions that must be met in order for EDA to approve the creation of a “New Lending Area.” Some of these conditions are: (a) EDA must have disbursed the full amount of its Investment Assistance to the RLF Recipient, and (b) the RLF Recipient must show that the “Additional Lending Area” is consistent with its CEDS, or

modify its CEDS for any such Additional Lending Area, both of which were not in the Former Regulations. Subsections (a)(1) and (2) have been deleted, as February 1, 1999 was the effective date of the Economic Development Administration Reform Act of 1998 (the “1998 Act”). The purpose of the language was to ensure that no disparity would exist between RLFs in various stages of funding at the time of the passage of the 1998 Act. With the enactment of the 2004 Act on October 27, 2004, the February 1, 1999 reference is no longer applicable.

Section 307.11(b) lays out 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. For example, a single RLF Recipient and multiple RLF Recipients 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.

The revisions to § 308.12 in the Former Regulations make explicit in § 307.12 in the Interim Final Rule 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. The text of subsections (b) and (e) are incorporated into subsection (a), which lays out the general rule. Subsection (b) follows the substance of subsection (d) (in the Former Regulations), with a subheading called *Compliance Guidelines* for efficient referencing. In subsection (c), subtitled *Priority of Payments on Defaulted RLF Loans*, the consideration of proceeds on defaulted RLF loans has been clarified and expounded by including priority payment specifications.

The next three sections, §§ 307.13, 307.14 and 307.15 (titled *Record 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 in the Former Regulations. The main focus in revising these sections has been to incorporate defined terms to improve the understanding of specific documentation, accounting and reporting requirements. For example, § 308.13(a) in the Former Regulations refers to “loan files” when discussing documents and records that an RLF

Recipient must retain. The correct phrase that should be referenced is "Closed Loan files" because this term includes the defined term "Closed Loan," which refers to a loan for which all required documentation has been received, reviewed and executed by an RLF Recipient. The conflicts of interest provisions in § 308.15(e) in the Former Regulations have been moved to § 302.17(c) in the Interim Final Rule to improve organization and referencing facility. Section 302.17(c) also has been condensed by the use of defined terms.

Section 307.16 (titled *Disbursement of funds to Revolving Loan Funds*) is a considerably revised and reorganized adaptation of § 308.16 in the Former Regulations. As a matter of organization, subsection (d) (subtitled *Pre-Disbursement Requirements*) in the Former Regulations has been moved to subsection (a). Former subsections (a), (b) and (c) have been re-numbered accordingly. The subtitle of subsection (d) has been changed from *Interest-bearing account* to *EDA Funds Account*. The degree of detail in subsection (e) on delayed disbursements of Grant funds was considered inappropriate for a set of regulations, and, therefore, reduced from two paragraphs to one paragraph. Similarly, subsection (f) on the terms that govern the cash Local Share and/or In-Kind Contributions in an RLF has been shortened.

The section titled *Effective utilization of Revolving Loan Funds* (§ 307.17) is a marginal rewording of § 308.17 in the Former Regulations. The revisions largely incorporate the use of defined terms (e.g., Closed Loan; RLF Capital). In contrast, portions of § 307.18 on the *Uses of Capital* have been significantly modified from § 308.18 in the Former Regulations. For example, the first paragraph under § 308.18 in the Former Regulations has been made into subsection (a), which states two general premises that (a) RLF Capital must be used to make RLF loans that are consistent with an RLF Plan and (b) each loan agreement must clearly present the purpose of the loan. Subsection (b) follows subtitled *Restrictions on the Use of RLF Capital* and therein, subsection (b)(6)(i) has been reworded for clarity to the following:

"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;"

The content of subsection (c) has been condensed and the subtitle has been changed for accuracy from *Credit otherwise available* to *Credit Not Otherwise Available*. Additionally, § 307.18 adds an additional subsection (subsection (d), *Use of In-Kind Contributions*) to clarify 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. Last, subsection (e) encompasses revised content of subsection (a) in the Former Regulations, concerning loan guaranty agreements. The subtitle has been changed to refer to *Loan Guaranty Agreements* rather than *Loan guarantees*.

The next two sections, 307.19 and 307.20, are entirely new provisions that are written to accomplish the authorization, as provided in PWEDA, 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" (Section 209(d)(2)(B) and (C)). First, in any Sale or Securitization in which an RLF Recipient may participate, § 307.19 (*RLF loan portfolio Sales and Securitization*) 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 (PWEDA, Section 209(d)(4)). The RLF Recipient must use all proceeds from any Sale or Securitization to make additional RLF loans. Second, § 307.20 (*Partial liquidation and liquidation upon termination*) 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 § 307.20 also contains a subsection on the priority of payments applicable to proceeds resulting from a liquidation upon termination.

The provisions of the next section, § 307.21 on the *Termination of Revolving Loan Funds*, have been expanded from the provisions set forth in § 314.4(c) (titled *Unauthorized use*) in the Former Regulations. However, § 307.21(b) introduces a new EDA authority: EDA may approve a request from an RLF Recipient to terminate an

RLF Grant. With respect to variances, the last section, § 307.22, is rephrased for clarity and completeness and covers the same material found at § 308.19 in the Former Regulations.

Part 308—Performance Incentives

Part 308 of the Interim Final Rule has been incorporated based on new Sections 215 and 216 of PWEDA. For any Public Works or Economic Adjustment Assistance Investment that is completed under projected cost, § 308.1(a) states that EDA may in its discretion allow the Recipient to use the excess funds to either (i) increase the Investment Rate of the Project to the maximum percentage allowable under § 301.4 of the Interim Final Rule for which the Project was eligible at the time of the Investment award or (ii) further improve the Project consistent with its purpose.

Additionally, PWEDA now authorizes the Assistant Secretary to make performance awards in connection with grants to Recipients for construction-related 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) no later than three (3) years following the Project's closeout in an amount not to exceed ten (10) percent of the Project's Investment award. As required by Section 215(b)(2) of PWEDA, § 308.2(b) specifies factors that the Assistant Secretary will consider in making performance awards, including whether the Recipient meets or exceeds (i) targeted start and completion dates and (ii) projections for job creation and private sector capital investment.

The provisions of § 308.2(c) mirror those in Section 215(e) and (f) of PWEDA. Performance awards may fund up to one hundred (100) percent of the cost of eligible Projects or any other authorized activities under PWEDA. Further, for the purpose of meeting the non-federal share requirement of PWEDA or any other statute, the amount of a performance award will be treated as non-federal funds.

With respect to planning performance awards, § 308.3 tracks the language of Section 216 of PWEDA. Section 308.3 introduces, as stated in Section 216(a) of PWEDA, that a District Organization 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. Performance awards and planning performance awards are mutually exclusive, although not specifically designated as such in part 308.

Part 309—Redistributions of Investment Assistance

Similar to part 308, the provisions of part 309 are new and were not in the Former Regulations. Information with respect to redistributions of Investment funds under parts 303, 305 and 306 (for Planning, Public Works, and Training, Research and Technical Assistance Investments) is presented in § 309.1. In some instances, a Recipient may need to fund specific components of the scope of work that EDA has approved for the Project. These situations may necessitate the need to redistribute EDA Investment funds to another entity, in order to get the specific component completed.

Under a new section of PWEDA, Section 217, 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 applicable program part as the Recipient. Accordingly, § 309.1(a) presents this information; all subgrants must be subject to the same terms and conditions applicable to the Recipient under the original Investment award. 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 (i) another Eligible Recipient in the form of a Grant or (ii) 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 of the Interim Final Rule corresponds to new Section 214 of PWEDA titled *Special Impact Areas*,

which allows the Assistant Secretary to waive the requirements of Section 302 of PWEDA (regarding CEDS requirements) for Projects that fulfill a pressing need of the area or prominently address or alleviate area underemployment or unemployment. Section 310.1 of the Interim Final Rule generally tracks PWEDA Section 214, but makes clear that any waiver of the requirements of PWEDA Section 302 applies only to an individual Project, *not* to all Projects located within the area.

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, §§ 310.2 (b) and (c) set forth quantitative measures of excessive unemployment and as indicators of useful employment opportunities such as job creation, financial investment and application of innovative technology.

Part 311—[Reserved]

Part 312—[Reserved]

Part 313—[Reserved]

Part 314—Property

Part 314 of the Interim Final Rule 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. Substantive changes have been made to the Real Property provisions contained in subpart B primarily to reflect EDA policies regarding the increasing use of “public-private” partnerships to spur economic development. Section 314.1 contains the definitions specifically applicable to part 314 (many of these definitions appear in § 314.2 and other sections of part 314 in the Former Regulations). EDA has added new defined terms in part 314 for clarity and consistency.

Notably, the defined term “*Adequate Consideration*” now appears in § 314.1 and differs materially from the definition contained in § 314.3(c) of the Former Regulations. The concept of Adequate Consideration is revised to begin with a fair market value concept (*i.e.*, the purchase price agreed upon by a willing buyer and willing seller, both having full knowledge of the material facts and circumstances surrounding the contemplated sale/purchase). In determining Adequate Consideration, § 314.1 provides that EDA may adjust the Property’s fair market value (which is usually established by a third party appraisal) to account for any services, property exchanges, contractual

commitments, acts of forbearance or other considerations that are in furtherance of the authorized purposes of the Investment Assistance that are received by the Recipient or Owner in exchange for such Property. In comparison, the Former Regulations use a “fair and reasonable” determination to establish Adequate Consideration. EDA believes that Adequate Consideration may be determined with greater precision by starting at fair market value and adjusting this amount downward (or possibly upward) to account for the facts and circumstances in a given case.

Additionally, the defined terms “*Encumbrance*” or “*Encumber*,” “*Federal Share*,” “*Federal Interest*,” “*Successor Recipient*” and “*Unauthorized Use*” are defined in § 314.1 by a cross-reference to the applicable section in part 314 and are discussed in turn below. Section 314.1 removes the defined terms of “*Project*” and “*Recipient*,” which are defined in § 314.2 of the Former Regulations, as these terms are now defined in § 300.3 since they have general applicability to all EDA programs. Subsection 314.2(a) is redrafted to clarify 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. Subsection 314.2(a) also illustrates the overarching scope of the Federal Interest by providing an example of how EDA’s Real Property interest in a building construction Project protects the Federal Interest by securing the Recipient’s compliance with matters such as the purpose, scope and use of the Project. Subsection 314.2(b) follows § 314.5(d) of the 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 of the Interim Final Rule is re-titled *Authorized use of Property* (§ 314.3 of the Former Regulations is titled *Use of property*) and provides the circumstances in which Recipients may use Property acquired or improved, in whole or in part, with Investment Assistance. Subsections 314.3(a), (b), (c) and (e) are substantively the same as the corresponding provisions in the Former Regulations (as discussed above, the definition of Adequate Consideration is revised to reflect a fair market value

concept). Subsection 314.3(d) allows EDA to approve the transfer of Property from a Recipient to a Successor Recipient (or between Successor Recipients) and clarifies the substitution concept (set forth in § 314.1(c) of the Former Regulations) by stating that the mechanism to effectuate a substitution of the Recipient (or Successor Recipient) is the transfer of the Project Property between the parties. Finally, new subsection 314.3(f) 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 no adverse effect of the incidental use on the economic useful life of the Property.

Subsection 314.4(a) of the Interim Final Rule generally follows § 314.4(a) of the Former Regulations and 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. Section 314.4(b) provides additional Unauthorized Uses of Property prior to the release of EDA's interest. Subsection 314.4(b) is substantively the same as § 314.11(c)(1) of the Former Regulations with respect to the Unauthorized Use of Property prior to the release of EDA's interest in such Property, except that the Interim Final Rule now references "any purpose prohibited by applicable law." EDA made this change to make clear that a Recipient may not use Project Property for any purpose in violation of applicable law. Subsection 314.4(c) of the Interim Final Rule generally tracks § 314.4(b) of the Former Regulations and sets forth the remedies available to EDA to recover the Federal Share in the event of an Unauthorized Use. Additionally, a specific cross-reference to the RLF Grant termination provisions contained in § 307.21 is added to § 314.4(c) to preserve EDA's remedies for the Unauthorized Use of RLF Grant funds.

Section 314.5 explains the definition of "Federal Share" and is substantively the same as § 314.5(a) of the Former Regulations. EDA added an example of a Federal Share calculation to assist the user in understanding the Federal Share concept. Subsection 314.5(b) of the Former Regulations is removed, as EDA believes that discounting the Federal Share for a Recipient's leasehold interest in Property (where such leasehold interest is less than the remaining depreciable life of the

Property) does not accurately account for the current fair market value of the Property attributable to EDA's Investment in the Project and may, therefore, result in unjust enrichment to the owner of the Property. In such circumstances, a Recipient may wish to seek a contribution or reimbursement from the owner of the Property for that portion of the Federal Share attributable to the Property's value that will ultimately benefit the owner.

Subsection 314.5(c) of the Former Regulations is removed, as EDA believes that requiring the Recipient to compensate EDA for the Federal Share in the event of an EDA-approved transfer of Project Property is inconsistent with § 314.3(d), which provides that a Successor Recipient is subject to the terms and conditions of the Investment Assistance (*i.e.*, the Successor Recipient takes the place of the Recipient and the Project continues). If a Recipient were to reimburse EDA for the Federal Share upon an EDA-approved transfer, EDA would have no further interest in the Property pursuant to § 314.2(b) of the Interim Final Rule and the Recipient would in essence be effectuating a "buyout" of EDA's interest and not a transfer of the Property. Section 314.6 is substantively the same as § 314.6 of the 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.

Subsection 314.7(a) sets forth the general rule (with certain exceptions which are discussed below) 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"). Subsection 314.7(a) clarifies § 314.7(a) of the Former Regulations, which did not provide for when and how long a Recipient must hold title to Real Property. In addition, § 314.7(a) follows § 314.7(a) of the Former Regulations by providing that a Recipient must furnish satisfactory evidence 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 EDA-determined acceptable time period. Subsection 314.7(b) is substantively the same as § 314.7(b) of the Former Regulations and requires the Recipient

to disclose to EDA all Encumbrances with respect to Real Property.

In general, § 314.7(c) sets forth the exceptions to the General Rule. Subsection 314.7(c)(1) is added to address situations where Investment Assistance will be used to purchase Real Property required for a Project. Pursuant to § 314.7(c)(1), EDA may determine that certain Real Property purchase agreements, along with reasonable assurances from the Recipient that it will obtain fee title for the Real Property needed for a Project, will be acceptable for purposes of the Recipient meeting the title ownership requirements. Subsections 314.7(c)(2), (3) and (4) are substantively the same as the introduction and subsections (c)(1) and (2) of § 314.7(c) in the Former Regulations.

Subsections 314.7(c)(5) and (6) address situations where the EDA-approved purpose of a 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 the Former Regulations and generally apply to all types of Real Property, including but not limited to industrial and commercial parks. In comparison, the Former Regulations apply only to industrial or commercial parks. The Interim Final Rule intends to balance established principles of Federal grant law that prevent direct private benefits resulting from EDA Investment Assistance with marketplace realities of public-private partnerships in developing private property and subsequent alienations of such Real Property to spur economic development. EDA is interested in receiving comments from economic development practitioners and property developers concerning whether these provisions present a workable framework in which to facilitate these types of public-private partnerships.

Section 314.8 is substantively the same as § 314.8 of the 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. Subsection 314.8(c) tracks § 314.8(c) of the Former Regulations and provides an exemption from this requirement where the EDA

Investment is only a small part of a larger project.

Section 314.9 is substantively the same as § 314.9 of the Former Regulations and generally 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. Section 314.10 of the Former Regulations (providing rules relating to RLFs) has been incorporated into the RLF provisions contained in subpart B of part 307 of the Interim Final Rule.

Subsections 314.10(a) through (c) are substantively the same as §§ 314.11(a) through (c) of the Former Regulations. Subsection 314.10(d) is new to the Interim Final Rule and 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 and § 314.10.

Under subsection 314.10(d), a Recipient must disclose to EDA the intended future use of the Real Property or tangible Personal Property for which the release is sought. 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 prohibiting (at a minimum) the use of the Real Property or tangible Personal Property for (i) inherently religious activities in violation of applicable federal law, and (ii) any purpose in violation of the nondiscrimination requirements set forth in § 302.20. The covenant of use must be recorded in the appropriate jurisdiction in accordance with §§ 314.8 or 314.9, as applicable (see § 314.10(d)(2)(i)). A Recipient (or successor Recipient) who intends or foresees the use of the Real Property or tangible Personal Property for inherently religious activities following the release of EDA's interest may be required to compensate EDA for the Federal Share of such Property. In subsection 314.10(d)(2)(ii), EDA recommends that a Recipient who intends or foresees the use of the Real Property or tangible Personal Property (including by any successor Recipient) for inherently religious activities should contact EDA well in advance of requesting a release pursuant to § 314.10.

Part 315—Trade Adjustment Assistance for Firms

Part 315 substantially revises the Former Regulations for the Trade Adjustment Assistance for Firms ("TAA") program, pursuant to Chapter 3 of Title II of the Trade Act. The new part reorganizes, clarifies and simplifies the Former Regulations, primarily by expanding the use of defined terms and by adding a new subpart D on Adjustment Proposals.

Among the new definitions in § 315.2, the defined terms "*Increase in Imports*" and "*Contributed Importantly*" greatly enhance the readability of the part by incorporating in single defined terms two (2) of the most important concepts of the TAA program. An Increase in Imports that Contributed Importantly to a petitioning Firm's (i) decline in sales or production and (ii) loss of employment is a necessary component of every finding of injury under the TAA program. These definitions track the Trade Act precisely and intend to provide for more consistent application in injury determinations.

The new defined term "*Decreased Absolutely*" imposes a five percent (5%) threshold minimum injury requirement in the measurement of a Firm's decline in sales or production. EDA has imposed this threshold to 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. Similarly, new definitions of "*Predecessor*" and "*Successor*" Firms provide new guidance for the circumstance, often encountered in administration of the TAA program, where a petitioning Firm relies on the economic injury suffered by a corporate predecessor. The new definitions 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. Further, the Successor must have continued virtually all of the Predecessor's operations by producing the same type of products, in the same plant, utilizing most of the same machinery and most of its former workers; finally, the Predecessor may no longer be in operation.

Section 315.5 consolidates into one (1) section the scope of operations, selection, evaluation and award requirements of Trade Adjustment Assistance Centers ("TAACs"), the non-profit organizations that administer the TAA program nationwide through Cooperative Agreements with EDA. While the substance of these provisions remains essentially unchanged, the

consolidation of these provisions into one (1) section should enhance understanding and operation of this key program relationship.

Section 315.6 consolidates into one (1) section the selection, evaluation and award requirements for Firms seeking Adjustment Assistance under the TAA program. As with § 315.5, the substance of these provisions has not changed significantly from the Former Regulations, but the re-organization and presentation greatly clarifies basic program requirements.

Section 315.7 consolidates and simplifies TAA program certification requirements. This section outlines the requirements for injury determinations based on a twelve-month (12) decline (§ 315.7(a)), an interim sales decline (§ 315.7(b)) and an interim employment decline (§ 315.7(c)). The section makes clear that in order to be certified under any of these subsections, a Firm must meet all of the requirements of that subsection; a Firm cannot meet some of the requirements of one (1) subsection and some of another to attain certification. Substantively, in addition to the minimum injury threshold requirement for a decline in sales or production incorporated into the defined term "*Decreased Absolutely*" described above, this section increases the injury periods for interim sales or production decline and interim employment decline to "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." This change 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.

Section 315.8, titled *Processing petitions for certification*, generally tracks current § 315.10. Among the minor changes is confirmation in subsection (a) of the TAAC's mandatory role in processing the certification petition. Section 315.9, titled *Hearings*, and § 315.11, titled *Appeals, final determinations and termination of certification*, divide § 315.11 in the Former Regulations to address separately these distinct topics. Further, § 315.11 in the Interim Final Rule incorporates the provisions of former § 315.12, given the logical connection of appeals, final determinations and terminations. While § 315.9 continues to track the statutory hearing requirements of the Trade Act, it eliminates many of the procedural provisions of former

§ 315.11, since EDA has no record of any hearings having been requested or conducted during its administration of the TAA program.

Section 315.10, titled *Loss of Certification Benefits*, eliminates the extension currently available to Firms in § 315.13(b) of the Former Regulations to provide supplemental documentation for its Adjustment Proposal according to an amended schedule. EDA believes that this provision is inconsistent with the provisions of the Trade Act.

New subpart C, titled *Protective Provisions*, incorporates new but standard provisions, all 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 new provisions reflecting long-standing practices of EDA and the TAACs in evaluating Adjustment Proposals. Essentially, the Adjustment Proposal must: (i) Be reasonably calculated to contribute materially to the economic well-being of the Firm; (ii) give adequate consideration to the interests of a sufficient number of separated workers of the Firm; and (iii) demonstrate that the Firm will make all reasonable efforts to use its own resources for its recovery. Finally, subpart E, titled *Assistance to Industries*, remains effectively unchanged from the 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 rule is economically significant for purposes of Executive Order 12866.

Congressional Review Act

This Interim 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 interim 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.

The following table provides a list of collections of information and the corresponding OMB Control Numbers. Public comments are sought regarding whether these proposed collections of information are necessary for the proper performance and function of the agency, including (i) the practical utility of the information; (ii) the accuracy of the burden estimate; (iii) the opportunities to enhance the quality, utility, and clarity of the information to be collected; and (iv) ways to minimize the burden of each collection of information, including the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collections of information to EDA and OMB as provided under **ADDRESSES**.

Part or section in IFR	Nature of request	Form/OMB control number
301.2, 301.10	Along 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 (0610-0094).
301.3(a), 301.10, 305.3(a)(1)	Eligible Applicant must describe the economic distress levels justifying the Investment Assistance (unemployment, per capita income, Special Need, substantial direct benefit or pocket of poverty).	ED-900P (0610-0094).
301.4(b)(1)(i), 305.3(a)(1)	Eligible Applicant must provide information on the severity of the Region’s unemployment rate and its duration, the per capita income levels and extent of Region’s unemployment or outmigration.	ED-900P (0610-0094).
301.4(b)(3)	Eligible Applicant must provide information to show that the Project merits an otherwise increased Investment Rate because of a Project’s infeasibility with the normal Investment Rate or the lack of benefit to the Eligible Applicant.	ED-900P (0610-0094).
301.5, 301.10	Eligible Applicant must provide information to show that Matching Share funds will be available to the Project.	ED-900A (0610-0094).
301.7	Eligible Applicant must submit its Investment proposal on a preapplication form.	ED-900P (0610-0094).
301.7(a)	Eligible Applicant must submit information on a formal application	ED-900A (0610-0094).
301.10(a), (b)	Eligible Applicant must submit a formal application for Investment Assistance.	ED-900A (0610-0094).
301.10(b)(3)	Eligible Applicant must provide CEDS acceptable to EDA pursuant to part 303.	ED-900P (0610-0094).
302.7(a)	Recipients must submit requests for amendments to Investment awards and provide such information and documentation as EDA deems necessary.	0610-0102.
302.9(a)	Eligible Applicant must furnish comments on the Project from the relevant government authority or proof of efforts to receive comments if none were provided.	ED-900A (0610-0094).

Part or section in IFR	Nature of request	Form/OMB control number
302.10(b)(1)	Eligible Applicant must certify the names of persons involved in expediting applications made to EDA.	ED-900A (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 for an effective audit.	OMB Circular A-133.
302.15	Eligible Applicant must certify that it meets the requirements for Investment Assistance.	ED-900P (0610-0094).
302.16(b)	Recipients are required to submit reports consisting of data-specific evaluations of the Project's effectiveness.	GPRA Performance Validation Forms (0610-0098).
302.16(c)	Recipient may be required to provide a "Project service map" to determine which segments of the Region are being assisted.	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 (0610-0094).
303.9(c)	Eligible Applicant for a short-term Planning Investment must provide performance measures and program reports to EDA.	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 Strategy Guidelines (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 (0610-0094); Comprehensive Economic Development Strategy Guidelines (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 Strategy Guidelines (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 (0610-0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (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 (0610-0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610-0096).
305.5	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 (0610-0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610-0096).
305.6	The Recipient must submit a construction services procurement plan if using an alternate method.	ED-900A (0610-0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610-0096).
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 (0610-0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610-0096).
305.8(a); 305.8(b)	Recipients wishing to use their own equipment and materials must have them approved by EDA, may be required to submit a statement regarding their expected useful life, and may be required to establish that their price is competitive with current market value.	ED-900A (0610-0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610-0096).
305.9	To award construction contracts in phases, a Recipient must submit information to EDA regarding why phasing is necessary, a description of the phasing, its costs, its schedule, and certifications that the Recipient will pay for overruns and that it is capable of paying for incurred costs before the first disbursement.	ED-900A (0610-0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610-0096).
305.10	Recipient must notify EDA if there is a bid underrun	Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610-0096).
305.13	Recipients involved in a contract change order must submit them to EDA for review.	Requirements for Approved Construction Investments—Ninth Edition (Revised), (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 Project achieves more specific, related objectives in the Region and meets the criteria in the applicable FFO.	ED-900P (0610-0094).

Part or section in IFR	Nature of request	Form/OMB control number
306.5	University Center Projects receive Investment Assistance based on the selection criteria in part 301, the selection process in the relevant FFO, and other more specific, related criteria.	ED-900P (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 (0610-0094).
307.9	All RLF Recipients must submit to EDA an RLF Plan	RLF Standard Terms and Conditions (0610-0095).
307.12(a)(4)	RLF Recipients must complete an RLF Income and Expense Statement.	ED-209I (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).
307.14(a)	All RLF Recipients must provide EDA with semi-annual reports	ED-209S (0610-0095).
307.14(a)	Submission to EDA of an annual report	ED-209A (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 (0610-0095). ED-209A (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 (0610-0095).
307.15(b)(1)	Within 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(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).
307.16(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).
307.17(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).
307.18(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 if the Eligible Applicant demonstrates that its proposed Project will directly fulfill a pressing need and assist in preventing excessive unemployment.	0610-0104.
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).	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 (0610-0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610-096).

Part or section in IFR	Nature of request	Form/OMB control number
314.7(a) and 314.7(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 (0610-0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610-096).
314.7(b)	The Recipient must provide information regarding all encumbrances on the Real Property to EDA.	ED-900A (0610-0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610-096).
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 (0610-0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610-096).
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 (0610-0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610-096).
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 TAAC's must submit either new or amended applications to EDA along with a budget, narrative scope of work and other information.	ED-900A (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 supply information to be certified for participation in TAA	ED-840P (0610-0091).
315.6(a)(2), 315.6(a)(3), 315.16	Certified firms must submit an adjustment proposal to the TAAC and EDA and, if approved, may then request assistance from the TAAC.	0610-0105.
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 the section's procedures.	0610-0106.
315.12	Each TAAC shall keep records disclosing the use of all TAA funds	GPRA Performance Validation Form (0610-0098).

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.

List of Subjects

13 CFR Part 300

Organization and functions (Government agencies), Reporting and recordkeeping requirements.

13 CFR Part 301

Community development, Grant programs—housing and community development.

13 CFR Part 302

Community development, Grant programs—business, Grant programs—housing and community development, Technical assistance.

13 CFR Part 303

Community development, Reporting and recordkeeping requirements.

13 CFR Part 304

Community development.

13 CFR Part 305

Community development, Community facilities, Grant programs—housing and community development.

13 CFR Part 306

Community development, Grant programs—housing and community development, Research, Technical assistance.

13 CFR Part 307

Business and industry, Community development, Grant programs—business, Grant programs—housing and community development, Reporting and recordkeeping requirements, Research, Technical assistance.

13 CFR Part 308

Community development, Grant programs—business, Grant programs—housing and community development, Reporting and recordkeeping requirements, Technical assistance.

13 CFR Part 309

Community development, Grant programs—housing and community development.

13 CFR Part 310

Community development, Grant programs—housing and community

development, Manpower training programs.

13 CFR Part 314

Community development, Grant programs—housing and community development.

13 CFR Part 315

Administrative practice and procedure, Community development, Grant programs—business, Reporting and recordkeeping requirements, Trade adjustment assistance.

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 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 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 a(n):

(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

(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 Uniform Administrative Requirements of 15 CFR parts 14 and 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.

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(s) 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.

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 (Public Law 108-373).

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) Closure or restructuring of industrial firms;

(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.

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 is 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 is 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 geographical 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 geographical area within the District.

(3) A Project located in a geographical 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 geographical area where substantial direct Project benefits will occur (paragraph (a)(2) of this section), or the geographical 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 is available, an Eligible Applicant must submit to EDA the most recent data available through the government of the State in which the Region is located.

(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) geographical 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 (c) of this section, the maximum EDA Investment Rate for all Projects shall, after the application of Table 1 in paragraph (b)(i)(ii) of this section, 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 150% of the national average; or	50
(H) The per capita income is not more than 70% of the national average	50
(I) The twenty-four (24) month unemployment rate is at least 133% of the national average; or	40
(J) The per capita income is not more than 75% of the national average	40
(K) The twenty-four (24) month unemployment rate is at least 1% greater than the national average; or	30
(L) The per capita income is not more than 80% of the national average	30

(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 paragraphs (b)(3) or (4) of this section, the maximum Investment Rate for any

Project subject to a Special Need shall be eighty (80) percent.
 (3) *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.

(4) *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 has exhausted its 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.

The EDA Investment Assistance process begins with the submission of an Investment Assistance proposal. Investment proposals are submitted on an EDA Pre-application for Federal 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:

(a) Solicit a formal application from the proponent;

(b) Return the proposal to the proponent for specified deficiencies and suggest resubmission upon corrections; or

(c) Deny the proposal for specifically stated reasons and notify the proponent.

§ 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. Furthermore, EDA will select proposals competitively based on strategic areas of interest and priority considerations identified in the applicable FFO. EDA may 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 between 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.

(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 meeting EDA's technical and legal requirements, EDA will select proposals for further consideration based on:

(1) The availability of funds; and

(2) The competitiveness of the proposals, judging by the criteria and priorities set forth in § 301.8; and

(3) 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.

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- 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 annual 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 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 conflict of interest rules contained in this chapter or in violation of any assurances by the Recipient may be denied for 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.
- 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 (CEDS), related to 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 Economic Development Districts, 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 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.

(a) For Planning Investment awards, EDA uses the general application evaluation criteria set forth in § 301.8 of this chapter. In addition, EDA evaluates Planning Investment applications based on the following criteria:

- (1) Quality of 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 during implementation of the CEDS.

(b) In addition to the requirements of 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 Rate 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 Planning Investments for the period of time required to develop, revise, or replace, and implement a CEDS, generally not to exceed thirty-six (36) months.

§ 303.5 Eligible administrative expenses.

(a) *General.* In accordance with applicable federal cost principles and as set forth in this section, EDA Planning Investments may be used to pay the direct and indirect costs incurred by a Planning Organization in the development and implementation of a CEDS.

(b) *Direct costs.* For purposes of this part, EDA Planning Investments may be used to pay costs of those activities directly attributable to a scope of work, as approved by EDA, for the purpose of developing and implementing a CEDS.

(c) *Indirect costs.* Costs of the Planning Organization's operation, including utilities, rent, technical assistance to customers and clients (e.g., grant writing, planning assistance, other economic development assistance, training, travel expenses), and miscellaneous expenses (e.g., supplies, insurance, overhead), may be eligible for reimbursement, but only to the extent that such costs relate to the development and implementation of a CEDS, involving a proactive continuous planning process that addresses the economic opportunities and constraints of a Region.

§ 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, identifying investment priorities and funding sources, and assigning lead organizations responsibilities for execution of the CEDS. 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 that are growing or in decline within the Region;

(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 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 program

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) geographical 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 geographical 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 Private Sector Representatives as a majority of its board of directors. The governing body of a District Organization should include, to the extent possible, members of:

- (i) Workforce development boards;
- (ii) Institutions of higher education;
- (iii) Minority groups; and
- (iv) Labor groups.

(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.* The District Organization may contract for services to accomplish approved scopes of work for Planning Investments funded under part 303 of this chapter.

§ 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 geographical 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) 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-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 underrun.

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)(3) 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)(3) 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.

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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 and scope.

(a) 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:

(1) Military base closures or realignments, defense contractor reductions in force, or U.S. Department of Energy defense-related funding reductions;

(2) Federally-Declared Disasters;
(3) International trade;
(4) Long-term economic deterioration;
(5) Loss of a major community employer; or

(6) Loss of manufacturing jobs.
(b) 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.

§ 307.2 Criteria.

(a) 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).

(b) Additional criteria or priority consideration factors for Economic Adjustment Assistance may be set forth in an FFO.

§ 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 guaranties 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) Additional criteria or priority consideration factors 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 § 307.17(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 § 307.17(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 and passed by resolution of the RLF Recipient's governing board prior to initial disbursement of EDA funds.

(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 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 of this chapter;

(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 of this chapter;

(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.

§ 307.12 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:

(1) Applicable OMB cost principles and RLF Audit Guidelines (as found in 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) The OMB Circular A-133 for Single Audit Act Requirements for State, 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 the 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 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.

§ 307.17 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 § 307.17(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 and must demonstrate 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.

§ 307.18 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).

§ 307.19 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) At the discretion of the Assistant Secretary, a Recipient of Investment Assistance under parts 305 or 307 of this chapter that is awarded on or after the date of enactment of Section 215 of PWEDA may receive a performance award no later than three (3) years following the Project's closeout in an amount not to exceed ten (10) percent of the Project's Investment award.

(b) To qualify for a performance award, a Recipient must demonstrate exceptional Project performance in one (1) or more of the areas listed in this paragraph (b), 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) Demonstrate exceptional fulfillment of 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 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.

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

§ 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 by 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.

Encumbrance or *Encumber* have the meaning ascribed to them in § 314.6.

Estimated Useful Life means the period of years, as determined by EDA, that constitutes the expected useful lifespan of a Project.

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 a 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 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 Uniform Administrative Requirements for Grants at 15 CFR parts 14 and 24, 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 both paragraph (a) of this section and this paragraph (c) to recover the Federal Share, plus costs and interest.

§ 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 (collectively, an "Encumbrance" or to "Encumber"). 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) The use of Recipient-owned Property to secure a grant or loan made by a federal or State agency or other public body participating in the same Project;

(2) 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;

(3) 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

(4) 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) Any sale or lease of any portion of the Project within the later to occur of the (x) ten (10) year anniversary of the award date of the Investment Assistance or (y) third (3rd) transfer of the Project, must be for Adequate Consideration and the terms and conditions of the Investment Assistance and the purposes 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 this period;

(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 later of the (x) five (5) year anniversary of the award date of the Investment Assistance, or (y) second (2nd) transfer of the Real Property by sale, lease or otherwise, constitutes a failure on behalf of the Recipient to use the Real Property for the economic purposes justifying the Project; and

(F) The Recipient 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) Any sale or lease of any portion of the Project within the later to occur of the (x) ten (10) year anniversary of the award date of the Investment Assistance or (y) third (3rd) transfer of the Project, must be for Adequate Consideration and the terms and conditions of the Investment Assistance and the purposes 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 this period;

(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 later of the (x) five (5) year anniversary of the award date of the Investment Assistance, or (y) second (2nd) transfer of the Real Property by sale, lease or otherwise, 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, in whole or in part, 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 paragraph (a) 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. The release may be unconditional or 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.
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- 315.3 Confidential Business Information.
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- 315.6 Firm selection, evaluation and assistance.

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Subpart C—Protective Provisions

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Subpart D—Adjustment Proposals

- 315.16 Adjustment Proposals.

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- 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 TAACs by Firms 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(c)(4) and 15 CFR part 4.

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

Decreased Absolutely means a Firm's sales or production has declined by a minimum of five percent (5%) 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. When a Firm owns or controls other Firms as described in this definition, for purposes of receiving benefits under this part, 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 4.7 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 annual 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.* TAACs are selected in accordance with the following:

(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; and

(2) EDA will invite new TAACs to submit proposals through an FFO, and if such proposals are acceptable, EDA will invite an application on a form approved by OMB. An application will contain 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 selection, evaluation and assistance.

(a) *Firm selection.* Firms participate in the Trade Adjustment Assistance 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;

(3) Certified Firms that have submitted approvable Adjustment Proposals within the time limits described in § 315.10 may begin implementation of their proposals. The Firm may submit a request to the TAAC for Adjustment Assistance in implementing an accepted Adjustment Proposal; and

(4) 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.

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

(c) *Firm award requirements.*

(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 technical 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 all of the criteria listed under any one of the three (3) requirements 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 or 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;

(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 (OMB Control No. 0610-0091) in the form prescribed by EDA 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) Copies of its audited financial statements, or if not available, unaudited financial statements, copies of its SEC Form 10-K annual reports, and federal income tax returns for the two (2) most recent years;

(6) Copies of unemployment insurance reports for the two (2) most recent years;

(7) Information concerning its major customers and their purchases (or its bids, if there are no major customers); and

(8) 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 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 Proposals.

EDA evaluates Adjustment Proposals based on the following process:

(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; and

(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.

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: July 29, 2005.

Benjamin Erulkar,

Chief Counsel, Economic Development Administration.

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DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Chapter III

[Docket No.: 050729211-5211-01]

Economic Development Administration Reauthorization Act of 2004 Implementation; Public Hearing

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of public hearing.

SUMMARY: In connection with the promulgation of its Interim Final Rule (the "IFR"), also published in this separate part, the Economic Development Administration ("EDA") will hold a public hearing to receive public comments on the IFR.

DATES: Thursday, September 1, 2005, beginning at 3 p.m. (e.d.t.) and ending at approximately 5 p.m. (e.d.t.). All registration requests must be received by the Office of Chief Counsel, Economic Development Administration (*see ADDRESSES*), no later than 4 p.m. (e.d.t.) on August 29, 2005.

ADDRESSES: The hearing will take place in Room 4830 of the Herbert C. Hoover Building, 1401 Constitution Avenue, NW., Washington, DC 20230. All registration requests must be submitted to the Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005,

1401 Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4687; facsimile (202) 482-5671; e-mail: edaregs@eda.doc.gov.

FOR FURTHER INFORMATION CONTACT:

Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4687; facsimile (202) 482-5671; e-mail: edaregs@eda.doc.gov. Please note that any correspondence sent by regular mail may be substantially delayed or suspended in delivery, since all regular mail sent to the Department of Commerce (the "Department") is subject to extensive security screening.

SUPPLEMENTARY INFORMATION: On October 27, 2004, President Bush signed into law the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108-373) (the "2004 Act"). Since reauthorization, EDA has conducted a full scale review and revision of its regulations leading to the promulgation of the IFR. The IFR provides a 60-day notice and comment period for interested members of the public to submit written comments. Individuals wishing to submit written comments only should follow the procedures set forth in the IFR. By way of this notice, EDA will also hold a public hearing to receive oral comments from interested members of the public.

Public comments will be limited to five minutes in duration. Due to time limitations, there is a possibility that not all persons wishing to make comments will be able to do so. Individuals who wish to make comments must register in advance of the hearing on a first-come, first-served basis by submitting a registration request to the Office of Chief Counsel at the addresses listed in the **ADDRESSES** heading no later than 4 p.m. (e.d.t.) on August 29, 2005. The registration request must include a written statement summarizing the public comments and the following contact information: name, address, telephone and fax numbers, e-mail address and organizational affiliation (if any). Upon receipt of a registration request, EDA will contact the individual to schedule a specific public comment time slot.

All comments submitted to EDA, whether oral or written, will become part of EDA's official administrative record in connection with the promulgation of its revised regulations. EDA will not respond to questions asked or oral comments delivered at the public hearing. EDA will respond in writing to all written and oral comments received on the IFR when it promulgates