

Small Business Administration

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Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ 147.655 Individual.

Individual means a natural person.

§ 147.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ 147.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 147.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered non-procurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Non-procurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

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PART 300—GENERAL INFORMATION

Sec.

300.1 Introduction and purpose.

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300.3 OMB control numbers.

300.4 Economic Development Administration—Washington, DC, Regional and Economic Development Representatives.

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

SOURCE: 64 FR 5352, Feb. 3, 1999, unless otherwise noted.

§ 300.1 Introduction and purpose.

(a) *Introduction.* Is your community suffering from severe economic distress (e.g., high unemployment, low income, sudden economic changes, etc.)? Are you a representative of a State or local unit of government, Indian tribe, public or private nonprofit organization, educational institution, or community development corporation looking for grant assistance to enhance your opportunities for economic development? If so, these regulations of the Economic Development Administration (EDA) of the U.S. Department of Commerce may be of help. These regulations tell you the purpose of EDA and outline the program requirements, project selection process, project evaluation criteria, and other relevant matters. The information in these regulations covers grant programs of EDA that provide financial awards for the following:

- Public Works and Development Facilities;
- Planning;
- Research, Evaluation, Training and Technical Assistance;
- Trade Adjustment Assistance; and
- Economic Adjustment Assistance.

(b) What is the Purpose of the Economic Development Administration?

(1) Many communities lag behind and suffer economic distress in one form or another, such as:

- High unemployment;
- Low income;
- Underemployment;
- Outmigration;
- Sudden economic changes due to the restructuring or relocation of industrial firms;
- Closing or realignment of defense bases or cutbacks in defense procurement;

- Economic impact of natural disasters or other emergencies;
- Actions of the Federal government (such as environmental requirements) that curtail or remove economic activities; and
- Impacts of foreign trade.

(2) The purpose of the Economic Development Administration is to address economic problems affecting economically distressed rural and urban communities; by helping them:

(i) Develop and strengthen their economic development planning and institutional capacity to design and implement business outreach and development programs; and

(ii) Develop or expand public works and other facilities, financing tools, and resources that will create new job opportunities, save existing jobs, retain existing businesses, and support the development of new businesses.

(3) To promote a strong and growing economy throughout the United States, EDA works in partnership with State and local governments, Indian tribes and local, regional, and State public and private nonprofit organizations. With them EDA develops and carries out comprehensive economic development strategies that address the economic problems of distressed communities. EDA helps such communities increase their economic development capacities so that they can take advantage of existing resources and development opportunities.

§ 300.2 Definitions.

Unless otherwise defined in other parts or sections of this Chapter, the terms listed are defined as follows:

Comprehensive Economic Development Strategy, CEDS, or strategy means a strategy approved by EDA under § 301.3 of this chapter.

Department means the Department of Commerce.

Economic Development District or district:

(1) Means any area in the United States that has been designated by EDA as an Economic Development District under § 302.1 of these regulations; and

(2) Includes any Economic Development District designated by EDA under sec. 403 of the Public Works and Economic Development Act of 1965, as

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amended, as in effect on the day before the effective date of Public Law 105–393.

EDA means the Economic Development Administration in the U.S. Department of Commerce when a place or agency is intended, and refers to the headquarters office in Washington, D.C., or a regional office, as appropriate; or it means the Assistant Secretary of Commerce for Economic Development or his/her designee when a person is intended. The locations of EDA's offices are listed each year in a Notice of Funding Availability (NOFA). The general information telephone number for EDA is (202) 482–2309.

Eligible applicant means:

(1) In general,—

(i) An entity qualified to be an eligible recipient, or

(ii) Its authorized representative.

(2) Except in the case of Research, Evaluation, Training, or Technical Assistance grants under part 307, a private individual or for-profit organization cannot be an eligible applicant.

Eligible recipient means

(1) In general,—

(i) An area described in §301.2 of these regulations;

(ii) An Economic Development District;

(iii) An Indian tribe or a consortium of Indian tribes;

(iv) A State;

(v) A city or other political subdivision of a State or a consortium of political subdivisions;

(vi) An institution of higher education or a consortium of institutions of higher education; or

(vii) A public or private nonprofit organization or association acting in cooperation with officials of a political subdivision of a State.

(2) In the case of Research, Evaluation, Training, and Technical Assistance grants under part 307, eligible recipient also includes private individuals and for-profit organizations.

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

Federally-declared disaster means a Presidentially-declared disaster or a Federally-declared disaster pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Public

Law 94–265) as amended by the Sustainable Fisheries Act (Public Law 104–297), or a Federal declaration pursuant to the Consolidated Farm and Rural Development Act, as amended (Public Laws 92–419, 96–438, 97–35, 98–258, 99–198, 100–233, 100–387, and 101–624), or a Federally-declared disaster pursuant to the Small Business Act, as amended (Public Law 85–536).

Financial assistance means grant.

Grant means the non-procurement award of EDA funds to an eligible recipient under PWEDA or the Trade Act, as applicable. The term includes a cooperative agreement, within the meaning of chapter 63 of title 31, United States Code.

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 (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. The term includes: The governing body of a tribe, nonprofit Indian corporation (restricted to Indians), Indian authority, or other nonprofit tribal organization or entity, provided that the tribal organization or entity is wholly owned by, and established for the benefit of, the tribe or Alaska Native Village.

Local share, matching share or local share match are used interchangeably to mean non-Federal funds or goods and services provided by recipients or third parties that are required as a condition of a grant, and includes funds from other Federal agencies only if there is statutory authority allowing such use.

Notice of Funding Availability or *NOFA*, refers to the notice or notices EDA publishes each year in the FEDERAL REGISTER and on EDA's internet web site, <http://www.doc.gov/eda>, describing the available amounts, particular procedures, priorities, and special circumstances for the EDA grant programs for that year.

PWEDA means the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121 *et seq.*), including the comprehensive

amendments by the Economic Development Administration Reform Act of 1998 (Pub. L. 105-393). (The term “PWEDA” was used to refer to EDA’s authorizing legislation as it was in effect before the effective date of Public Law 105-393, signed into law on November 13, 1998. In these regulations, the term “PWEDA” refers to the legislation as currently amended by the 1998 law.)

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

Project means the activity or activities the purpose of which fulfills EDA program requirements and that EDA funds in whole or in part.

Proposed District means a geographic entity composed of one or more eligible areas proposed for designation as an Economic Development District.

Recipient and *grantee* are used interchangeably to mean an entity receiving funds from EDA under PWEDA or the Trade Act, as applicable, and includes any EDA approved successor to such recipient.

State means a State, 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.

The 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.

[64 FR 5352, Feb. 3, 1999, as amended at 64 FR 69873, Dec. 14, 1999]

§ 300.3 OMB control numbers.

(a) This table displays control numbers assigned to EDA’s information collection requirements by the Office of Management and Budget (“OMB”) pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. EDA intends that this table comply with Section 3507(f) of the Paperwork Reduction Act, requiring agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) Control number table:

13 CFR part or section where identified an described	Current OMB control No.
301	0610-0094
302	0610-0094
303	0610-0093
304	0610-0094
305	0610-0094 and 0610-0096
306	0610-0094
307	0610-0094
308	0610-0094 and 0610-0095
314	0610-0094
315	0610-0091 and 0610-0094
316	0610-0094

[64 FR 5352, Feb. 3, 1999, as amended at 65 FR 71024, Nov. 28, 2000]

§ 300.4 Economic Development Administration-Washington, D.C., Regional and Economic Development Representatives.

For addresses and phone numbers of the Economic Development Administration in Washington, D.C., Regional and Field Offices and Economic Development Representatives, refer to EDA’s annual Fiscal Year (FY) Notice of Funding Availability (NOFA).

PART 301—GENERAL ELIGIBILITY AND GRANT RATE REQUIREMENTS

- Sec.
- 301.1 Applicants.
- 301.2 Area eligibility.
- 301.3 Strategy required.
- 301.4 Grant rates.

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

SOURCE: 64 FR 5353, Feb. 3, 1999, unless otherwise noted.

§ 301.1 Applicants.

(a) Eligible applicants are defined in § 300.2 of this chapter.

(b) Except as otherwise provided in parts 307 and 308 of this chapter, a public or private nonprofit organization applicant must include in its application for assistance, a resolution passed by, or a letter signed by, an authorized representative of a general purpose political subdivision of a State or an Indian tribe, acknowledging that the applicant is acting in cooperation with officials of the political subdivision or Indian tribe, as applicable.

[64 FR 5353, Feb. 3, 1999, as amended at 64 FR 69873, Dec. 14, 1999; 65 FR 71024, Nov. 28, 2000]

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§ 301.2 Area eligibility.

(a) EDA awards public works and development facilities grants under part 305 and economic adjustment grants under part 308 for projects to enhance economic development in economically distressed areas.

(b) An area is eligible for a project grant under part 305 or 308 if it has one of the following:

(1) An unemployment rate that is, for the most recent 24-month period for which data are available, at least one percent greater than the national average unemployment rate. For example, if the national average unemployment rate is 6 percent, an area is eligible under this provision if it has an unemployment rate of 7 percent.

(2) Per capita income that is, for the most recent period for which data are available, 80 percent or less of the national average per capita income.

(3) A special need, as determined by EDA, arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions, for example:

(i) Substantial outmigration or population loss;

(ii) Underemployment, that is, employment of workers at less than full time or at less skilled tasks than their training or abilities permit;

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

(iv) Natural or other major disasters or emergencies;

(v) Extraordinary depletion of natural resources;

(vi) Closure or restructuring of industrial firms, essential to area economies; or

(vii) Destructive impacts of foreign trade.

(c) A non-distressed area [i.e., an area that does not meet the criteria of paragraph (b) of this section] within an Economic Development District is also eligible, provided the project will be of a substantial direct benefit to an area that meets at least one of the criteria of paragraph (b) of this section. A project provides substantial direct benefit if it provides significant employment opportunities for unemployed,

underemployed or low income residents.

(d) Normally an area is defined by geographical/political boundaries, e.g., city, county, Indian reservation. However, a smaller area (without regard to political boundaries) is also eligible even though it may be part of a larger community that overall is experiencing low distress. When the boundaries of the project area differ from established political boundaries, the project area must be of sufficient size appropriate to the proposed project, and the applicant must justify the proposed boundaries in relation to the project's benefits to the area.

(e) Eligibility is determined at the time that EDA receives an application and is based on the most recent Federal data available for the area where the project will be located or where the substantial direct benefits will be received. If no Federal data are available to determine eligibility, an applicant must submit to EDA the most recent data available through the government of the State in which the area is located, i.e., conducted by or at the direction of the State government. Other data may be submitted, as appropriate, to substantiate eligibility based on special needs, under paragraph (b)(3) of this section.

(f) EDA may reject any documentation of eligibility that it determines is inaccurate.

(g) There is no area eligibility requirement for a project grant under part 306 or 307.

(h) EDA describes special needs criteria under paragraph (b)(3) of this section in a NOFA.

[64 FR 5353, Feb. 3, 1999, as amended at 64 FR 69873, Dec. 14, 1999]

§ 301.3 Strategy required.

(a) To be eligible for a project grant under part 305 or 308 of this chapter, the application for assistance must include a CEDS acceptable to EDA. The applicant may, however, incorporate by reference a current strategy previously approved by EDA, as an alternative to including the strategy in the application. (Exception: A strategy is not required when a funding request is for planning assistance, e.g., a strategy grant, under part 308 of this chapter.)

The strategy must be in conformance with CEDS requirements under §303.3 of this chapter.

(b) EDA will approve as acceptable a strategy that it determines meets the requirements of §303.3 of this chapter. The strategy may be one developed:

- (1) With EDA assistance,
- (2) Under another Federally supported program, or
- (3) Through a local, regional, or State process.

(c) In determining acceptability of a strategy, EDA will take into consideration the circumstances of the application, so that for instance a strategy accompanying an application for assistance immediately following a natural disaster will require less depth and detail than would be the case in other circumstances.

(d) To be acceptable, a strategy must be approved, within one year prior to the date of application, by the entity developing the strategy or by the applicant. In the case of a strategy approved by the applicant, approval must be by the applicant's governing body, or in the case of a State, by the governor or the governor's designee(s).

(e) Before EDA approves a strategy for an area all or partly within the boundaries of an EDD, the EDD organization must be given a 30-day opportunity to review and comment upon such strategy.

[64 FR 5353, Feb. 3, 1999, as amended at 64 FR 69873, Dec. 14, 1999]

§ 301.4 Grant rates.

(a) Except as otherwise provided for in this chapter, the amount of the EDA grant may not exceed 50 percent of the cost of the project. Cash or in-kind contributions, fairly evaluated by EDA, including contributions of space, equipment, and services, may provide the non-Federal share of the project cost. In-kind contributions must be eligible project costs and meet applicable Federal cost principles and uniform administrative requirements.

(b) EDA may supplement the Federal share of a grant project where the applicant is able to demonstrate that the non-Federal share that would otherwise be required cannot be provided because of the overall economic situation. It is not necessary for an applicant to prove that it would be impossible to provide a full 50 percent non-Federal share, but it must show circumstances warranting any reduction. In determining whether to provide a Federal share greater than 50 percent for a project, EDA will give due consideration to the applicant's economic situation and the relative needs of the area. In the case of Indian tribes, EDA may reduce or waive the non-Federal share, and in other cases EDA may reduce the non-Federal share of the cost of the project below 50 percent, in accordance with the following table, showing the maximum Federal grant rate, including the supplement:

Projects	Maximum grant rates (percentage)
(1) Projects of Indian tribes where EDA has made a determination to waive the non-Federal share of the cost of the project.	100
(2) Projects under Part 308 located in Presidentially-declared disaster areas for which EDA receives an application for assistance under a supplemental appropriation, within 18 months of the date of declaration, and for which the President established a rate of Federal participation, based on the public assistance grant rate of the Federal Emergency Management Agency (FEMA) for the disaster, of greater than 80 percent.	100
(3) Projects of Indian tribes where EDA has made a determination to reduce the non-Federal share of the cost of the project.	Less than 100
(4) Projects of States or political subdivisions of States that have exhausted their effective taxing and/or borrowing capacity, or nonprofit organizations that have exhausted their borrowing capacity.	Less than 100
(5) Projects under Part 308 located in Presidentially-declared disaster areas for which EDA receives an application for assistance under a supplemental appropriation, within 18 months of the date of declaration.	80
(6) Projects located in Federally-declared disaster areas, for which EDA receives an application for assistance within 18 months of the date of declaration, when the Assistant Secretary determines that the applicant cannot provide the required non-Federal share because of the disaster's impact on the economic situation.	80
(7) Projects located in eligible areas where: <ul style="list-style-type: none"> (i) The 24-month unemployment rate is at least 225% of the national average or (ii) The per capita income (PCI) is not more than 50% of the national average 	80
(8) Projects located in eligible areas that are not eligible for a higher rate, where:	

Projects	Maximum grant rates (percentage)
(i) The 24-month unemployment rate is at least 180% of the national average or (ii) The PCI is not more than 60% of the national average	70
(9) Projects located in eligible areas that are not eligible for a higher rate, where: (1) The 24-month unemployment rate is at least 150% of the national average or (2) The PCI is not more than 70% of the national average	60
(10) Projects in all other eligible areas	50

(c) The table in paragraph (b) of this section does not apply to projects which support the on-going operations of Economic Development Districts or University Centers. Grant rates for those projects are provided in part 306 and subpart B of part 307, of this chapter, respectively.

(d) Projects located in designated Economic Development Districts are eligible for an amount of additional Federal grant assistance not to exceed 10 percent of the estimated cost of the project, provided

(1) The project applicant is actively participating in the economic development activities of the district;

(2) The project is consistent with the strategy of the district; and

(3) The non-Federal share of the project is not less than 20 percent.

(4) The project is not a University Center project under subpart B of part 307, of this chapter; and

(5) The district organization is not itself the sole project applicant. Projects (other than planning projects under part 306 of this chapter) for which the district organization is a co-applicant are eligible for the incentive if the co-applicant with the district is actively participating in the economic development activities of the district and the project is otherwise eligible for such incentive. Planning projects under part 306 of this chapter for which the district organization is an applicant or a co-applicant are not eligible for the 10 percent increase in assistance.

(e) EDA may make grants to supplement grants awarded in other Federal grant programs.

(1) Supplemental grants under paragraph (e) of this section are only available for projects:

(i) Under Federal grant programs that

(A) Provide assistance in the construction or equipping of public works,

public service, or development facilities, and

(B) Are designated by EDA as eligible for supplemental EDA grants, and

(ii) Are consistent with a strategy.

(2) EDA's funds combined with funds from another Federal grant program may be at the maximum EDA grant rate, as set forth above, even if the other Federal program has a lower grant rate. If the other Federal program has a grant rate higher than the maximum EDA grant rate as set forth above, the combination of funds may exceed the EDA rate provided the EDA share does not exceed the EDA rate.

(f) An applicant is eligible for the highest applicable maximum grant rate, as set forth above, in effect between the time EDA invites the application and the time the project is approved. The Federal share of a project receiving EDA grant assistance may be (and often is) less than the maximum grant rate for which the recipient is eligible.

(g) EDA's NOFA will provide additional criteria to ensure that the level of economic distress of an area, rather than a preference for a geographic area or a specific type of economic distress, is the primary factor in allocating assistance.

[64 FR 5353, Feb. 3, 1999, as amended at 64 FR 32975, June 18, 1999; 64 FR 69873, Dec. 14, 1999]

PART 302—ECONOMIC DEVELOPMENT DISTRICTS; STANDARDS FOR DESIGNATION, MODIFICATION AND TERMINATION

Sec.

302.1 Designation of Economic Development Districts.

302.2 Designation of nonfunded districts.

302.3 District organizations.

302.4 District organization functions and responsibilities.

302.5 Modification of district boundaries.

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302.6 Termination and suspension of district designation.

302.7 Eligibility of non-distressed areas.

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

SOURCE: 64 FR 5355, Feb. 3, 1999, unless otherwise noted.

§ 302.1 Designation of Economic Development Districts.

EDA will designate a proposed district as an Economic Development District with the concurrence of the State or States in which the District will be wholly or partially located, when the proposed district meets the following requirements:

(a) It is of sufficient size or population, and contains sufficient resources, to foster economic development on a scale involving more than a single eligible area;

(b) It has an EDA approved strategy which meets CEDS requirements under § 303.3 of this chapter.

(c) It contains at least one area, eligible for assistance under § 301.2, that has been identified in an approved strategy;

(d) At least a majority of the counties, or other areas as determined by EDA, within the proposed district boundaries have submitted documentation of their commitment to support the economic development activities of the district;

(e) A district organization has been established in the proposed district which meets the requirements of § 302.4; and

(f) The proposed district organization requests such designation.

[64 FR 5355, Feb. 3, 1999, as amended at 65 FR 71024, Nov. 28, 2000]

§ 302.2 Designation of nonfunded districts.

The continuing designation of any Economic Development District is subject to the criteria and organization requirements of this part whether or not the Economic Development District organization receives any EDA financial assistance.

§ 302.3 District organizations.

(a) The district shall be organized in one of the following ways:

(1) As a public organization through an intergovernmental agreement for the joint exercise of local government powers; or

(2) As a public organization established under State enabling legislation for the creation of multi-jurisdictional area wide planning organizations; or

(3) As a non-profit organization incorporated under the laws of the State in which it is located.

(b) Each district organization must meet EDA requirements concerning membership composition [§ 302.3(c)], the maintenance of adequate staff support to perform its economic development functions [§ 302.3(d)], and its authorities and responsibilities for carrying out economic development functions [§ 302.4]. Such requirements must also be met by the board of directors (or other governing body of the organization) as a whole.

(c) The district organization shall demonstrate that its governing body meets all of the following requirements:

(1) It is broadly representative of the principal economic interests of the district area including the interests of its minority and low-income populations;

(2) There is at least a simple majority of its membership who are elected officials and/or employees of a general purpose unit of local government who have been appointed to represent the government; and

(3) At least 20 percent of its membership who are private citizens, i.e., neither elected officials of a general purpose unit of local government nor employees of such a government who have been appointed to represent that government.

(d) The district organization shall be assisted by a professional staff drawn from qualified persons in economic development, planning or related disciplines. EDA may provide planning grants to Economic Development Districts to employ professional staff in accordance with part 306 of this chapter.

(e) The governing bodies of district organizations shall provide access for persons who are not members to make their views known concerning ongoing

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and proposed district activities in accordance with the following requirements:

(1) The economic development district organization must hold meetings open to the public at least once a year and shall also publish the date and agenda of the meeting enough in advance to allow the public a reasonable time to prepare to participate effectively.

(2) The district organization shall adopt a system of parliamentary procedures to assure that board members and others have access to and an effective opportunity to participate in the affairs of the district.

(3) Information should be provided sufficiently in advance of public decisions to give the public adequate opportunity to review and react to proposals. District organizations should seek to relate technical data and other material to the public so they may understand the impact of public programs, available options and alternative decisions.

§ 302.4 District organization functions and responsibilities.

(a) All Economic Development District organizations are responsible for seeing that the following are provided on a continuing basis, consistent with the requirements of § 302.3:

(1) Organizational actions, including:

(i) Arranging the legal form of organization which will be used;

(ii) Arranging for the membership of the governing body to meet § 302.3 requirements;

(iii) Recruiting staff to carry out the economic development functions;

(iv) Establishing a management system;

(v) The inclusion of private citizens who are not officials of or employees appointed by the officials of a general purpose unit of local government;

(vi) Contracting for services to carry out district functions;

(vii) Establishing and directing activities of economic development subcommittees; and

(viii) Submitting reports as determined by EDA to comply with civil rights requirements under part 317 of this chapter.

(2) Actions to develop and maintain the required district strategy, and any subsequent supplements or revisions, including:

(i) Preparing the analytic, strategic and implementation components of the strategy;

(ii) Adopting the strategy by formal action of the Economic Development District governing board;

(iii) Submitting the strategy, any supplements or revisions and annual reports for reviews by appropriate governmental bodies and interested organized groups, and attaching dissenting opinions and comments received; and

(iv) Submitting to EDA an approvable strategy.

(b) District organizations receiving EDA financial assistance for the development and implementation of Comprehensive Economic Development Strategies must also:

(1) Coordinate and implement economic development activities in the district, including:

(i) Assisting other eligible units within the district to apply for grant assistance for economic development purposes;

(ii) Carrying out economic development related research, planning, implementation and advisory functions as are necessary to the development and implementation of the strategy;

(2) Coordinate the development and implementation of the strategy with other local, State, Federal and private organizations (including minority organizations);

(3) Carry out the annual strategy for implementation; and

(4) Comply with the requirements of part 303 of this chapter.

[64 FR 5355, Feb. 3, 1999, as amended at 64 FR 69874, Dec. 14, 1999; 65 FR 71024, Nov. 28, 2000]

§ 302.5 Modification of district boundaries.

EDA, at the request of a district and with concurrence of the State or States affected (unless such concurrence is waived by the Assistant Secretary), may modify the boundaries of a district, if it determines that such modification will contribute to a more effective program for economic development.

§ 302.6 Termination and suspension of district designation.

EDA may, upon 60 days prior written notice to the district organization, member counties or other areas as determined by EDA, and each affected State, terminate the designation status of an Economic Development District:

(a) When the district no longer meets the standards for designation as set forth above;

(b) When a district has not maintained a currently approved strategy in accordance with part 303 of this chapter; or

(c) When a district has requested termination.

[64 FR 5355, Feb. 3, 1999, as amended at 64 FR 69874, Dec. 14, 1999]

§ 302.7 Eligibility of non-distressed areas.

Areas in districts which are not themselves eligible for assistance under parts 305 or 308 may be eligible, as provided in § 301.2(c).

PART 303—PLANNING PROCESS AND STRATEGIES FOR DISTRICT AND OTHER PLANNING ORGANIZATIONS SUPPORTED BY EDA

Sec.

303.1 Definitions, purpose and scope.

303.2 Planning process.

303.3 Requirements for a strategy.

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

SOURCE: 64 FR 5356, Feb. 3, 1999, unless otherwise noted.

§ 303.1 Definitions, purpose and scope.

(a) As used in this part 303. (1) *Planning organization* means an Economic Development District organization, Indian tribe, or other recipient of an EDA grant under part 306 of this chapter which grant is awarded in whole or in part to develop, update, or replace a CEDS, and

(2) *Strategy committee* means that committee or other entity identified by the planning organization as responsible for developing, updating, or replacing a strategy.

(b) This part describes the planning process of and requirements for strate-

gies developed and implemented by planning organizations supported by EDA. Though the strategy requirements are the same under all EDA programs which call for a strategy, the planning process and reporting and updating requirements for EDA supported planning organizations are more stringent.

[64 FR 5356, Feb. 3, 1999, as amended at 64 FR 69874, Dec. 14, 1999]

§ 303.2 Planning process.

(a) The strategy committee must be inclusive and representative of the main economic interests of the area covered by the strategy. Such interests include public officials, community leaders, private individuals, business leaders, labor groups, minorities, and others who can contribute to and benefit from improved economic development in the area covered.

(b) The planning organization must support the strategy committee with a staff skilled in economic planning or related fields.

(c) The planning organization must conduct an initial and continuous study and analysis of the opportunities for economic development and of problems contributing to economic and related distress in the area covered, such as, for example, unemployment, underemployment, outmigration, or low per capita income, and possible solutions to such problems.

(d) Planning organizations covered by this part 303 must submit an initial strategy to EDA in compliance with the requirements of § 303.3, as determined by EDA. Each year thereafter, the planning organization must submit an annual strategy report, acceptable to EDA.

(e) A new or revised strategy is required at least every five years, or sooner if EDA or the planning organization determines that the strategy is inadequate due to changed circumstances. Each strategy must be available for review and comment by appropriate government bodies and interest groups in the area covered. Strategies submitted by Districts require a 30 day opportunity for review and comment by the Governor or Governors, or designee(s), of the State or

§ 303.3

States in which they are located, prior to EDA approval.

(f) If EDA identifies any deficiencies, it will notify the organization in writing and provide the organization a reasonable opportunity to remedy such deficiencies.

(g) If any part of a district is in the Appalachian region (as defined in section 403 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.)) the district shall ensure that a copy of the district's CEDS is provided to the Appalachian Regional Commission.

[64 FR 5356, Feb. 3, 1999, as amended at 64 FR 69874, Dec. 14, 1999; 65 FR 71024, Nov. 28, 2000]

§ 303.3 Requirements for a strategy.

A strategy must be the result of a continuing economic development planning process, developed with broad-based and diverse community participation, and contain the following:

(a) An analysis of economic and community development problems and opportunities including incorporation of any relevant material or suggestions from other government sponsored or supported plans;

(b) Background and history of the economic development situation of the area covered, with a discussion of the economy, including as appropriate, geography, population, labor force, resources, infrastructure, transportation systems, and the environment;

(c) A discussion of community participation in the planning efforts;

(d) A section setting forth goals and objectives for taking advantage of the opportunities of and solving the economic development problems of the area serviced;

(e) A plan of action, including suggested projects to implement objectives and goals set forth in the strategy; and

(f) Performance measures that will be used to evaluate whether and to what extent goals and objectives have been or are being met.

[64 FR 5356, Feb. 3, 1999, as amended at 64 FR 69874, Dec. 14, 1999]

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PART 304—GENERAL SELECTION PROCESS AND EVALUATION CRITERIA

Sec.

304.1 Project proposal, application, selection and evaluation for programs under PWEDA.

304.2 How EDA evaluates proposals and applications for projects funded under PWEDA.

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

SOURCE: 64 FR 5357, Feb. 3, 1999, unless otherwise noted.

§ 304.1 Project proposal, application, selection and evaluation for programs under PWEDA.

(a) *Local projects.* If you are or represent a party eligible to be an applicant, and are interested in a public works, economic adjustment, planning, local technical assistance or university center project grant, you should contact the appropriate Economic Development Representative (EDR) (or EDA Regional or headquarters office), identified in the NOFA. The EDR or other EDA official is available to provide program information, including the current published NOFA; provide a proposal form approved by the U.S. Office of Management and Budget (OMB), and provide assistance as needed in filling out the proposal form.

(1) After submission of the proposal to the appropriate EDR or Regional Office of EDA, the appropriate Regional Office Project Review Committee (PRC), consisting of at least three EDA officials, will review the proposal. The EDR or other appropriate EDA official will evaluate the proposal under § 304.2, program specific sections of this rule, and the NOFA, if applicable, before submitting it to the EDA Regional Office for its review.

(2) After review by the PRC, EDA will send a letter in a timely manner to each submitter advising either that:

(i) EDA invites the submitter to prepare and present a formal application on a standard application form, with attachments for the type of grant being requested; or

(ii) EDA returns the proposal because of specified deficiencies and suggests

resubmission when the deficiencies are cured; or

(iii) EDA denies the proposal for specifically stated reasons.

(b) *National technical assistance, training, research, or evaluation projects.* If you are or represent a party eligible to be an applicant, and are interested in a national technical assistance, training, research, or evaluation project under PWEDA, you should make initial contact with EDA in Washington, D.C., at locations identified in the NOFA, for information and assistance concerning proposals and to obtain program information, including a copy of the current NOFA, and OMB approved proposal form. After submission of the proposal to the appropriate EDA Washington, D.C. office, generally, three or more technically knowledgeable EDA officials will review the proposal for relevance and quality.

(1) If EDA determines that the proposal is acceptable under §304.2, program specific sections of this chapter, and the NOFA, if applicable, EDA may by letter invite the submitter to provide an application with a more detailed and comprehensive project narrative.

(2) If EDA determines that the proposal is not acceptable because of specified deficiencies, EDA will so notify the submitter in writing in a timely manner.

(c) Additional criteria, or priority consideration factors for assistance, may be set forth in a NOFA.

(d) EDA expects that applications will generally be submitted within 30 days after receipt of an invitation letter. EDA's invitation to submit an application does not assure EDA funding.

[64 FR 5357, Feb. 3, 1999, as amended at 64 FR 69874, Dec. 14, 1999]

§304.2 How EDA evaluates proposals and applications for projects funded under PWEDA.

(a) General proposal and application evaluation criteria for projects funded under PWEDA are as follows: EDA will screen all proposals/applications for conformance to statutory and regulatory requirements, the reasonableness of the budget presented, and the following criteria:

(1) The relative severity of the economic problem of the area,

(2) The quality of the scope of work proposed to address the problem,

(3) The merits of the activity(ies) for which funding is requested, and

(4) The ability of the prospective applicant to carry out the proposed activity(ies) successfully.

(b) EDA will also review applications for conformance with any additional program specific evaluation criteria as stated in applicable sections of these rules or the NOFA.

(c) The NOFA may identify special areas of interest or priority consideration for the period of such NOFA.

[64 FR 5357, Feb. 3, 1999, as amended at 64 FR 69875, Dec. 14, 1999]

PART 305—GRANTS FOR PUBLIC WORKS AND DEVELOPMENT FACILITIES

Subpart A—General

Sec.

- 305.1 Purpose and scope.
- 305.2 Criteria.
- 305.3 Application requirements.
- 305.4 Selection and evaluation.

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- 305.10 Construction Management services.
- 305.11 Design/Build method of construction.
- 305.12 Advertising for bids.
- 305.13 Bid overrun.
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- 305.23 Public Works projects for design and engineering work.
- 305.24 Disbursements of funds for grants.
- 305.25 Final inspection.
- 305.26 Reports.

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

§ 305.1

SOURCE: 64 FR 5358, Feb. 3, 1999, unless otherwise noted.

Subpart A—General

§ 305.1 Purpose and scope.

The purpose of Public Works and Development Facilities grants is to help the Nation's distressed communities revitalize and expand their physical and economic infrastructure and thereby provide support for the creation or retention of jobs for area residents by helping eligible recipients with their efforts to promote the economic development of distressed areas. The primary focus is on the creation of new, or the retention of existing, long-term private sector job opportunities in communities experiencing significant economic distress as evidenced by high unemployment, low income, or a special need arising from actual or threatened severe unemployment or severe changes in local economic conditions. These grants are intended to help communities achieve sustainable economic development by developing and expanding new and existing public works and other infrastructure facilities that will help generate long-term jobs and economic growth, improve economic conditions or otherwise enhance and promote the economic recovery of the area.

§ 305.2 Criteria.

(a) A grant may be made under part 305 for the following purposes:

(1) For the acquisition or development of land and improvements for use for a public works, public service or other type of development facility; or

(2) For the acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment.

(b) A grant may be made under part 305 only when:

(1) The project for which the grant is applied for will, directly or indirectly—

(i) Improve the opportunities, in the area where the project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities;

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(ii) Assist in the creation of additional long-term employment opportunities in the area; or

(iii) Primarily benefit the long-term unemployed and members of low-income families;

(2) The project for which the grant is applied for will fulfill a pressing need of the area, or a part of the area, in which the project is or will be located; and

(3) The area for which the project is to be carried out has a strategy and the project is consistent with the strategy.

(c) Maximum assistance for each State. Not more than 15 percent of the annual appropriations available to carry out this part may be expended in any one State.

[64 FR 5358, Feb. 3, 1999, as amended at 64 FR 69875, Dec. 14, 1999]

§ 305.3 Application requirements.

Each application for a grant under part 305 must:

(a) Include evidence of area and applicant eligibility;

(b) Include, or incorporate by reference, a strategy, as provided in § 301.3;

(c) Identify the sources of the 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. The application must show that such other funds are committed to the project and will be available as needed. The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant; and

(d) Explain how the proposed project meets the criteria of § 305.2.

§ 305.4 Selection and evaluation.

(a) Projects will be selected in accordance with the application evaluation criteria set forth in § 304.2 of this chapter.

(b) In addition to the evaluation criteria set forth in part 304 of this chapter, project selection and evaluation will be made on the basis of whether, and to what extent, the proposed project will:

(1) Assist in creating new or retaining existing private sector jobs and assist in the creation of additional long-

term employment opportunities rather than merely transferring jobs from one area of the country to another;

(2) Be supported by significant private sector investment;

(3) Leverage or be a catalyst for the effective use of private, local government, State or other Federal funding that is available;

(4) Likely be started and completed in a timely fashion; and

(5) If the project is located in an area with a stable economy and low distress, provide employment opportunities for residents of nearby areas of high distress.

Subpart B—Requirements for Approved Projects

§ 305.5 Pilot program.

(a) EDA's Regional Offices may, upon approval of the Deputy Assistant Secretary for Program Operations, institute pilot programs for post-approval construction monitoring, thereby continuing EDA's efforts to streamline and simplify procedures for monitoring approved EDA construction projects. The knowledge and efficiencies gained from the pilot programs will be evaluated and used to improve and revise EDA's post-approval project management requirements and procedures.

(b) As part of a pilot program, the procedures developed by a Regional Office may vary from those listed in this subpart B. No additional requirements are imposed by pilot program procedures. A Regional Office will provide guidelines, in its version of the "Requirements for Approved Projects," to all recipients of grants for construction projects monitored by the Office. The recipient may not be required to submit to EDA certain documentation at any set time, but will be required to maintain all documentation supporting any and all certifications submitted to the Regional Office, for the period of time provided in 15 CFR part 14 or 24, as appropriate.

[65 FR 71024, Nov. 28, 2000]

§ 305.6 Project management conference.

After the EDA financial assistance award has been accepted by the recipi-

ent, EDA may schedule a planning conference with the recipient's representatives to explain the post-approval requirements for administration of the EDA assisted project.

[64 FR 69875, Dec. 14, 1999]

§ 305.7 Selection of the Architect/Engineer.

Guidelines for the selection of the Architect/Engineer (A/E), services to be performed by the A/E, contract provisions for those services and eligible fees for the A/E are as follows:

(a) Selection of the A/E may be by sealed bids using formal advertising or by competitive proposal procedures subject to negotiation of fair and reasonable compensation. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(b) The A/E agreement shall provide for all services required by the recipient for the engineering feasibility, design and contract administration of the proposed project. Appropriate standards or guides developed by such professional organizations as the American Consulting Engineers Council, American Society of Civil Engineers, National Society of Professional Engineers, and/or the American Institute of Architects may be used where the grantee does not have standard procurement/contract documents.

(c) Exhibit A-1, Checklist for Architect/Engineer Services, in the EDA publication, *Requirements for Approved Construction Projects*, displayed at EDA's Web Site, <http://www.doc.gov/eda> (a copy of this publication is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance), lists the contract provisions which EDA recommends for the A/E contract. The A/E agreement must be furnished to EDA in order for the allowability of the costs of A/E services to be determined.

(d) Eligible project costs may include, but not be limited to, costs for A/E fees, resident inspection, test borings, and the testing of materials provided under an agreement or contract with the recipient. The A/E fees should

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be in conformity with similar costs and projects in the area.

[64 FR 69875, Dec. 14, 1999]

§ 305.8 Project phasing.

The recipient is strongly urged to award all contracts for construction at one time.

(a) Where compelling reasons justify phasing the project, the recipient must secure the approval of EDA for phasing prior to advertising any portion for bid.

(b) The recipient's request for approval of phasing must include valid reasons justifying the request and a statement from the recipient that it can, and will, fund any overrun that arises in the later phases.

(c) Normally, EDA will not disburse funds until all construction contracts have been awarded, (an exception is the development of an underground source of water when required to determine the availability of an adequate source of water supply in terms of both quality and quantity as described in the grant application).

(d) Disbursement of grant funds by phases must be approved by EDA. Such approvals will be given only if the recipient can demonstrate that a severe hardship will result if such approval is not given and there are compelling reasons why all phases cannot be contracted for at the same time.

(e) The recipient must be capable of paying incurred costs prior to the first disbursement of EDA grant funds.

[64 FR 69875, Dec. 14, 1999]

§ 305.9 Recipient furnished equipment and materials.

The recipient may wish to incorporate into the project equipment and/or materials which it will secure through its own efforts.

(a) It is the responsibility of the recipient to assure that such equipment and/or materials are adequate for the proposed use.

(b) The use of such equipment and materials must be approved by EDA to be eligible for EDA financial participation. The recipient shall be required to submit with its request for approval either a paid invoice or current quotes from not less than three suppliers who

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normally distribute such equipment and/or 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.

(c) The recipient must be prepared to show that the cost claimed for such equipment and/or materials is competitive with local market costs.

(d) Acquisitions of recipient furnished equipment and/or materials under this section is subject to the requirements of 15 CFR part 24 or 15 CFR part 14.

[64 FR 69875, Dec. 14, 1999]

§ 305.10 Construction Management services.

Construction Management is defined as the services of a firm with competent and experienced staff to act as the recipient's agent to perform all or part of project administration. EDA will not normally approve the use of a Construction Management firm for projects costing less than \$5 million. EDA will participate in such cost only if EDA approves the contract for such services.

[64 FR 69876, Dec. 14, 1999]

§ 305.11 Design/Build method of construction.

EDA discourages the use of the same entity to both design and to build EDA assisted facilities. If the recipient desires to use such a method, its use must be justified and EDA must approve the contract. The procurement of, and the compensation to, the designer/builder will be subject to the same rules as for the procurement of construction services.

[64 FR 69876, Dec. 14, 1999]

§ 305.12 Advertising for bids.

In the absence of State or local law to the contrary, the advertisement for bids for construction projects should appear in publications of general circulation a minimum of four times within a 30-day period prior to the opening of bids. Additional circulation of the invitation for bids is encouraged if it is needed to obtain the coverage necessary to secure competitive bids.

Generally, a minimum of 30 days should be allowed for submission of bids.

[64 FR 69876, Dec. 14, 1999]

§ 305.13 Bid overrun.

If at the construction contract bid opening the lowest responsive bid less deductive alternates, if any, exceeds the funds available for construction, the recipient may reject all bids or augment the funds available in an amount sufficient to enable the award to be made to the low bidder. If available, the recipient may take deductive alternates in the order given in the Invitation for Bids until at least one of the responsive bids less deductive alternates results in a price within the funds announced as available prior to the bid opening. The award then may be made to that bidder. Additional information on the procedures to be followed is in the EDA publication, *Requirements for Approved Construction Projects*.

[64 FR 69876, Dec. 14, 1999]

§ 305.14 Bid underrun.

If at the construction contract bid opening, the lowest responsive bid is less than the funds available for construction, EDA must be notified immediately to determine whether any unneeded grant funds should be deobligated.

[64 FR 69876, Dec. 14, 1999]

§ 305.15 Contract award.

EDA must concur in the award of all necessary contracts for design and construction of the EDA assisted facility in order for the cost to be eligible for EDA reimbursement. Pending EDA approval of the construction contract(s), the recipient may issue the notice to proceed permitting the work to go forward. If the work does go forward prior to EDA approval, the recipient will be proceeding at its own risk pending EDA review and concurrence. The EDA regional office will advise the recipient of the documents that are required to obtain EDA approval.

[64 FR 69876, Dec. 14, 1999]

§ 305.16 Construction progress schedule.

If requested by EDA, the recipient will secure from the contractor or A/E and furnish a copy to EDA of the estimated construction progress chart and a schedule of amounts for contract payments. The construction progress chart should be updated monthly by the recipient, the A/E or the contractor, and an up-to-date copy furnished to EDA quarterly throughout the construction of the project.

[64 FR 69876, Dec. 14, 1999]

§ 305.17 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, (recommended specifications for the sign are included as an exhibit to the EDA publication, *Requirements for Approved Construction Projects*) at the project site in a conspicuous place indicating that the Federal government is participating in the project. EDA may require more than one sign if the project's location so warrants. The recipient should confer with the EDA regional office for suggestions on where the sign(s) should be located.

[64 FR 69876, Dec. 14, 1999]

§ 305.18 Occupancy prior to completion.

If the project or any part of it is to be occupied or used prior to the project's acceptance from the contractor, the recipient must notify EDA of the intent to occupy or use the facility and the effective date of the occupancy or use, secure the written consent of the contractor; secure an endorsement from the insurance carrier and consent of the surety company permitting occupancy or use during the period of construction; secure permanent fire and extended coverage insurance and, when required, secure a permit to occupy the facility from the appropriate authority, e.g. the local building inspector.

[64 FR 69876, Dec. 14, 1999]

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§ 305.19 Contract change orders.

After construction contracts have been executed, it may become necessary to alter them. This requires a formal contract change order, issued by the recipient and accepted by the contractor.

(a) All contract change orders must be concurred in by EDA even if the recipient is to pay for all additional costs resulting from the change or the contract price is to be reduced.

(b) The work on the project may continue pending EDA review and concurrence in the change order but the recipient should be aware that all such work will be at the recipient's risk as to whether the cost for the work will be an eligible project cost for EDA participation until EDA concurrence is received.

(c) EDA will not approve financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun of one or more of the items in the approved project budget.

(d) When a change order is for a project funded with one-year funds, EDA approval of such change order must be based on a finding by EDA that the work called for in the change order is within the project scope and is required for satisfactory operation or functioning of the project.

[64 FR 69876, Dec. 14, 1999, as amended at 65 FR 71025, Nov. 28, 2000]

§ 305.20 Project development time schedule.

The recipient is responsible for expeditiously prosecuting the implementation of the project in accordance with the project development time schedule contained in the EDA grant award. As soon as the recipient becomes aware that it will not be possible to meet the time schedule, it must notify the EDA Regional Office.

[64 FR 69876, Dec. 14, 1999]

§ 305.21 Controlling budget.

The tabulation of estimated project costs contained in the EDA grant award is the controlling budget for the project.

(a) Budget line item revisions, including the addition of a new line item,

which do not involve a change of scope may be approved by EDA if no new EDA funds are involved; another budget line item (preferably the contingency line item, although this is not mandatory) has funds which can be used without significantly adversely affecting the object of that line item; and unless the line item that is proposed to be supplemented is supplemented, the activity associated with that line item cannot be completed.

(b) The recipient shall notify EDA of any proposed transfer of funds from one budget line item to another. The recipient's attention is called to the fact that the addition of a new line item to the approved budget may involve an impermissible change of scope and, therefore, may result in such costs being excluded from EDA's participation. Accordingly, the recipient is advised to discuss the need to add a new line item to the approved budget with EDA regional office staff before any costs are incurred under such new line item.

[64 FR 69877, Dec. 14, 1999]

§ 305.22 Services performed by the recipient's own forces.

The recipient may wish to have 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 or part time (in-house). Due to the difficulty in monitoring in-house construction and the limited EDA staff available to perform the monitoring, in-house construction is discouraged.

(a) If EDA approves the use of the recipient's in-house forces to construct all or part of the EDA assisted project and the in-house forces are to be augmented by personnel hired specifically for the EDA assisted project, the hourly wages to be paid to such personnel shall be the same as the hourly wages paid to full time personnel of the recipient doing the same or similar work. If the nature of the work is not similar and/or there is not an established wage scale, the prevailing state or county hourly wage for public employees shall be obtained from the appropriate state or county agency and used for the

newly established position. However, non-profit recipients must pay all personnel employed for the construction of the EDA assisted project the prevailing hourly wages for the area as established by the U.S. Department of Labor.

(b) The use of in-house forces for construction may be approved by EDA if:

(1) The recipient has a special skill required for the construction of the project, *e.g.*, construction of unique Indian structures, or

(2) 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 project area, or

(3) Substantial cost savings can be demonstrated.

[64 FR 69877, Dec. 14, 1999]

§ 305.23 Public Works projects for design and engineering work.

In general, EDA prefers to award a Public Works grant that includes all of the costs required for the successful completion of a project, including the design and engineering work.

(a) When the purpose of the Public Works project is to accomplish only the design and engineering work for a proposed future construction project, EDA may award a grant for the design and engineering work with the understanding that EDA cannot make a commitment against a future fiscal year appropriation to fund the proposed construction project.

(b) The purpose of the EDA assisted project for design and engineering work is to produce all of the documents required for the construction of the proposed future project in a format and in sufficient quantity to permit a construction contract to be advertised and awarded soon after the project's construction financing has been arranged. The EDA document, *Requirements for Approved Construction Projects*, should be used to ensure that the proposed construction project meets all applicable Federal requirements.

(c) Design and engineering projects will not generally be considered unless the nature of the proposed project to be considered is complex or environ-

mentally sensitive and EDA makes a determination that it is in the best interest of the Government to award a separate grant for design and engineering.

(d) EDA requires the design/engineering contract to be submitted to and approved by EDA before any EDA grant funds can be disbursed.

[64 FR 69877, Dec. 14, 1999]

§ 305.24 Disbursements of funds for grants.

(a) Disbursements of funds for construction grants are generally made on a reimbursable basis on request of the recipient for reimbursement. Disbursements may be made only:

(1) After execution of all contracts required for the completion of the project. This condition may be waived by EDA if the grantee can demonstrate that enforcement of the condition would place an undue burden on it;

(2) For itemized and certified eligible costs incurred, as substantiated by such documentary evidence as EDA may require;

(3) On the basis of the work accomplished and the percentage of EDA participation, but in no event for more than the total sum stated in the financial assistance award accepted by the grantee;

(4) Upon such evidence as EDA may require that grantee's proportionate share of funds not yet expended is on deposit;

(5) After a determination by EDA that all applicable terms and conditions of the grant have been met; and

(6) After meeting such other requirements as EDA may establish in accordance with other Federal laws, rules and regulations.

(b) Disbursements are generally made in installments, based upon grantee's actual rate of disbursement in accordance with the grant rate.

(c) Advances of funds are allowable when disbursement on a reimbursable basis would impose an undue burden, as determined by EDA, upon the recipient.

[64 FR 5358, Feb. 3, 1999. Redesignated and amended at 64 FR 69875, 69877, Dec. 14, 1999]

§ 305.25

§ 305.25 Final inspection.

A final inspection will be scheduled by the recipient and appropriate notification given to EDA, when the project has been completed and all deficiencies have been corrected. EDA personnel may attend and participate in the final inspection and, in any event, EDA must be advised of the outcome of such final inspection and the recipient's acceptance of the work.

[64 FR 69877, Dec. 14, 1999]

§ 305.26 Reports.

Financial and performance reports requirements will be specified in the Special Award Conditions of the grant. Construction progress schedule reports will be required in §305.16.

[64 FR 69877, Dec. 14, 1999]

PART 306—PLANNING ASSISTANCE

Sec.

306.1 Purpose and scope.

306.2 Application evaluation criteria.

306.3 Award requirements.

306.4 Post-approval requirements.

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

SOURCE: 64 FR 5427, Feb. 3, 1999, unless otherwise noted.

§ 306.1 Purpose and scope.

The primary objective of planning assistance is to provide funding for administrative expenses to support the formulation and implementation of economic development planning programs and for the conduct of planning activities designed to create and retain permanent jobs and increase incomes, particularly for the unemployed and underemployed in the nation's most economically distressed areas. EDA's planning assistance is for partnership planning grants with Districts, Indian Tribes and other eligible applicants, as well as for short term grants to eligible grantees. Planning activities supported by these funds must be part of a continuous process involving the active participation of public officials and private citizens, and include the following:

(a) Analyzing local economies;

(b) Defining economic development goals;

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(c) Determining project opportunities; and

(d) Formulating and implementing an economic development program that includes systematic efforts to reduce unemployment and increase incomes.

[64 FR 5427, Feb. 3, 1999, as amended at 65 FR 71025, Nov. 28, 2000]

§ 306.2 Application evaluation criteria.

(a) EDA uses the application evaluation criteria set forth in part 304 of this chapter. In addition, EDA evaluates applications on the following:

(1) Quality of the proposed work program;

(2) Management and staff capacity and qualifications of the applicant organization; and

(3) Extent of broad-based representation including for example, involvement of the local civic, business, leadership, labor, minority, and other community interests in the applicant's economic development activities.

(b) Previously funded grantees, in addition to the requirements of paragraph (a) of this section, will also be evaluated on the basis of the quality of their past performance.

§ 306.3 Award requirements.

(a) Planning assistance shall be used in conjunction with any other available Federal planning assistance to ensure adequate and effective planning and economical use of funds.

(b) Grant rate: (1) The maximum Federal grant rate for a project under this part for recipients other than Economic Development Districts is 50 percent, except as supplemented as provided in §301.4(b) of this chapter.

(2) The maximum Federal grant rate for a project under this part for a district is:

(i) 50 percent, or

(ii) 75 percent, if the project meets the criteria of paragraph (b)(3) of this section.

(3) A district project is eligible for a supplemental grant increasing the Federal share up to and including 75 percent when the applicant is able to demonstrate that:

(i) The project is intended to address problems arising from actual or threatened high unemployment, low per capita income, or a special need that qualifies an area for eligibility under §301.2(b) of this chapter,

(ii) The project is in significant part devoted to activities addressing the needs of the most economically distressed parts of the total area served by the applicant,

(iii) The applicant is uniquely qualified to address the major causes of actual or threatened economic distress in the area served by the applicant, and

(iv) The applicant cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere.

(4) A project receiving a supplemental grant increasing the Federal share under paragraph (b)(3) of this section is not eligible for additional Federal grant assistance under §301.4(d) of this chapter, i.e., the 10 percent incentive increase for certain projects in districts.

(c) As a condition of the receipt of assistance by a State under this part 306:

(1) The State must have or develop a CEDS;

(2) Any State plan developed with such assistance must be developed cooperatively by the State, political subdivisions of the State, and the economic development districts located wholly or partially within the State;

(3) Any overall State economic development planning assisted under this section shall be a part of a comprehensive planning process that shall consider the provision of public works to:

(i) Promote economic development and opportunity,

(ii) Foster effective transportation access,

(iii) Enhance and protect the environment, and

(iv) Balance resources through the sound management of physical development;

(4) Upon completion of the State plan, the State must,

(i) Certify to EDA that, in the development of the State plan, local and economic development district plans were considered and, to the maximum

extent practicable, the State plan is consistent with the local and economic development district plans; and

(ii) Identify any inconsistencies between the State plan and the local and economic development district plans and provide a justification for each inconsistency; and

(5) The State must submit to EDA an annual report on the planning process so assisted.

[64 FR 5427, Feb. 3, 1999, as amended at 64 FR 69877, Dec. 14, 1999]

§306.4 Post-approval requirements.

Financial, performance and progress reports, and project products will be as specified in the Special Award Conditions of the grant.

[64 FR 5427, Feb. 3, 1999]

PART 307—LOCAL TECHNICAL ASSISTANCE, UNIVERSITY CENTER TECHNICAL ASSISTANCE, NATIONAL TECHNICAL ASSISTANCE, TRAINING, RESEARCH, AND EVALUATION

Subpart A—Local Technical Assistance

Sec.

307.1 Purpose and scope.

307.2 Application evaluation criteria.

307.3 Award and grant rate requirements.

Subpart B—University Center Program

307.4 Post-approval requirements.

307.5 Purpose and scope.

307.6 Application evaluation criteria.

307.7 Award and grant rate requirements.

307.8 Post-approval requirements.

Subpart C—National Technical Assistance, Training, Research, and Evaluation

307.9 Purpose and scope.

307.10 Application evaluation criteria.

307.11 Award and grant rate requirements.

307.12 Post-approval requirements.

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

SOURCE: 64 FR 5427, Feb. 3, 1999, unless otherwise noted.

Subpart A—Local Technical Assistance

§ 307.1 Purpose and scope.

Local Technical Assistance projects are intended to:

- (a) Determine the causes of excessive unemployment, underemployment, low per capita income, or high poverty rates in areas and regions of the Nation;
- (b) Assist in formulating and implementing new economic development tools, models, and innovative techniques that will raise employment and income levels; and
- (c) Assist distressed communities in formulating and implementing new economic development programs to increase the technology and human capacity of the communities. Local Technical Assistance funds may not be used to start or expand a private business.

§ 307.2 Application evaluation criteria.

EDA selects local technical assistance projects for grant awards according to the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

- (a) Strengthens the local capacity to undertake and promote effective economic development programs targeted to people and areas of distress;
- (b) Benefits distressed areas;
- (c) Helps to diversify distressed economies;
- (d) Demonstrates innovative approaches to stimulating economic development in distressed areas; and
- (e) Is consistent with the CEDS or other strategy accepted by EDA for the area in which the project is located.

[64 FR 5427, Feb. 3, 1999, as amended at 64 FR 69878, Dec. 14, 1999]

§ 307.3 Award and grant rate requirements.

- (a) EDA will provide assistance for the period of time required to complete the project scope of work, generally not to exceed twelve months.
- (b) If the project is regional in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision

of a State is satisfied by the nature of the project;

(c) Grant rate:

- (1) The maximum Federal grant rate for a project under this subpart is:
 - (i) 50 percent, except as supplemented as provided in §301.4(b); or
 - (ii) Up to and including 100 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in §301.4(b).
- (2) A project is eligible for a supplemental grant increasing the Federal share up to and including 100 percent when the applicant is able to demonstrate that,
 - (i) It cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere;
 - (ii) The project is addressing major causes of distress in the service area and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or
 - (iii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

(3) A project receiving a supplemental grant increasing the Federal share under paragraph (c)(2) of this section is not eligible for additional Federal grant assistance under §301.4(d) of this chapter, *i.e.*, the 10 percent incentive increase for certain projects in districts.

(4) A local technical assistance project is eligible for a Federal grant rate of more than 75 percent, up to 100 percent, only if approved by the Assistant Secretary.

[64 FR 5427, Feb. 3, 1999, as amended at 64 FR 69878, Dec. 14, 1999]

Subpart B—University Center Program

§ 307.4 Post-approval requirements.

Financial reports, progress reports, and project products will be specified

in the Special Award Conditions of the grant or cooperative agreement.

[64 FR 69878, Dec. 14, 1999]

§ 307.5 Purpose and scope.

The University Center technical assistance program is designed to help improve the economies of distressed areas. It helps institutions of higher education (or other applicants) use their own and other resources to address the economic development problems and opportunities of areas serviced.

[64 FR 5427, Feb. 3, 1999. Redesignated at 64 FR 69878, Dec. 14, 1999]

§ 307.6 Application evaluation criteria.

EDA selects University Center projects for grant awards according to the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

- (a) Has the commitment of the highest management levels of the sponsoring institution;
- (b) Provides evidence of adequate non-Federal financial support, either from the sponsoring institution or other sources;
- (c) Outlines activities consistent with the expertise of the proposed staff, the academic programs, and other resources available within the sponsoring institution;
- (d) Documents past experience of the sponsoring institution in operating technical assistance programs; and
- (e) Balances the geographic distribution of University Centers across the country. Only the Assistant Secretary has the authority to approve the selection for grant assistance of a University Center that has not received University Center assistance for the previous year.

[64 FR 5427, Feb. 3, 1999. Redesignated and amended at 64 FR 69878, Dec. 14, 1999]

§ 307.7 Award and grant rate requirements.

- (a) EDA will provide assistance for the period of time required to complete the project scope of work, generally not to exceed twelve months.
- (b) If the project is regional in scope, EDA may determine that the require-

ment that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(c) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

- (i) 50 percent, or
- (ii) 75 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share.

(2) A project is eligible for a supplemental grant increasing the Federal share up to and including 75 percent when the applicant is able to demonstrate that:

- (i) It cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere;
- (ii) The project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or
- (iii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

(3) A project awarded under this subpart is not eligible for additional Federal grant assistance under the table in § 301.4(b) or the provisions of § 301.4(d) of this chapter, i.e., the 10 percent incentive increase for certain projects in districts.

(d) Direct costs: At least 80 percent of EDA funding must be allocated to direct costs of program delivery.

[64 FR 5427, Feb. 3, 1999. Redesignated and amended at 64 FR 69878, Dec. 14, 1999; 65 FR 71025, Nov. 28, 2000]

§ 307.8 Post-approval requirements.

Financial reports, progress reports, and project products will be specified in the special award conditions of the grant or cooperative agreement.

[64 FR 69878, Dec. 14, 1999]

Subpart C—National Technical Assistance, Training, Research, and Evaluation

§ 307.9 Purpose and scope.

(a) The purposes of National Technical Assistance, Training, Research, and Evaluation projects are:

(1) To determine the causes of excessive unemployment, underemployment, outmigration or other problems indicating economic distress in areas and regions of the Nation;

(2) To assist in formulating and implementing new economic development tools and national, State, and local programs that will raise employment and income levels and otherwise produce solutions to problems resulting from the above conditions;

(3) To evaluate the effectiveness and economic impact of programs, projects, and techniques used to alleviate economic distress and promote economic development, and

(4) To assist in disseminating information about effective programs, projects and techniques that alleviate economic distress and promote economic development.

(b) EDA may during the course of the year, identify specific national technical assistance, training, research or evaluation projects it wishes to have conducted. Ordinarily, EDA specifies these projects in a NOFA, which also provides the appropriate point of contact and address.

(c) National technical assistance, research, training, and evaluation funds may not be used to start or expand a private business.

[64 FR 5427, Feb. 3, 1999. Redesignated at 64 FR 69878, Dec. 14, 1999]

§ 307.10 Application evaluation criteria.

EDA selects projects for national technical assistance, training, research or evaluation grant awards according to the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

(a) Does not depend upon further EDA or other Federal funding assistance to achieve results;

(b) Strengthens the capability of local, State, or national organizations and institutions, including nonprofit economic development groups, to undertake and promote effective economic development programs targeted to people and areas of distress;

(c) Benefits severely distressed areas;

(d) Helps to diversify distressed economies; and

(e) Demonstrates innovative approaches to stimulating economic development in distressed areas.

[64 FR 5427, Feb. 3, 1999. Redesignated at 64 FR 69878, Dec. 14, 1999]

§ 307.11 Award and grant rate requirements.

(a) EDA will provide assistance for the period of time required to complete the project scope of work. Normally, this does not exceed twelve months.

(b) If the project is regional or national in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(c) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, except as supplemented as provided in § 301.4(b); or

(ii) Up to and including 100 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b) of this chapter.

(2) A project is eligible for a supplemental grant increasing the Federal share up to and including 100 percent when the applicant is able to demonstrate that:

(i) The project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or

(ii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

[64 FR 5427, Feb. 3, 1999. Redesignated and amended at 64 FR 69878, Dec. 14, 1999]

§ 307.12 Post-approval requirements.

Financial reports, progress reports, and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

[64 FR 69879, Dec. 14, 1999]

PART 308—REQUIREMENTS FOR ECONOMIC ADJUSTMENT GRANTS

Sec.

Subpart A—General

- 308.1 Purpose and scope.
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- 308.3 Use of Economic Adjustment grants.
- 308.4 Selection and evaluation factors.
- 308.5 Applicant requirements.
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- 308.7 Revolving Loan Funds established for business lending.
- 308.8 Definitions.
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- 308.15 Prudent management of Revolving Loan Funds.
- 308.16 Disbursement of funds to Revolving Loan Funds.
- 308.17 Effective utilization of Revolving Loan Funds.
- 308.18 Uses of capital.
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AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

SOURCE: 64 FR 5429, Feb. 3, 1999, unless otherwise noted.

Subpart A—General

§ 308.1 Purpose and scope.

(a) The purpose of economic adjustment grants 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 Department of Energy defense-related funding reductions,

(2) Disasters or emergencies, in areas with respect to which a major disaster or emergency has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*),

(3) International trade,

(4) Fishery failures, in areas with respect to which a determination that there is a commercial fishery failure has been made under sec. 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)),

(5) Long-term economic deterioration, or

(6) Loss of a major community employer.

(b) Economic Adjustment grants 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 organize and carry out 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 strategy;

(4) Enable communities to plan and coordinate: The use of Federal and other resources available to support economic recovery, development of regional economies, or recovery from natural or other disasters; and

(5) Encourage the development of innovative public/private approaches to economic restructuring and revitalization.

[64 FR 5429, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999]

§ 308.2 Criteria.

(a) A grant may be made under this part only when the project will help the area to meet a special need arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe changes in economic conditions; and the area for which a project is to be carried out has a strategy and the project is consistent with the strategy, except that

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the strategy requirement shall not apply to planning projects.

(b) The term “special need” in paragraph (a) of this section means conditions of unemployment, per capita income, or special need that qualify an area for eligibility under §301.2(b).

(c) Additional criteria, and/or priority consideration factors for assistance, may be set forth in a NOFA.

§ 308.3 Use of Economic Adjustment grants.

(a) Grants may be used to pay for developing a strategy to alleviate long-term economic deterioration or a sudden and severe economic dislocation, or to pay for a project in implementation of such a strategy.

(1) Strategy grants may support developing, updating, or refining a strategy.

(2) Implementation grants support activities identified in an EDA-approved strategy. Specific activities may be funded as separate grants or as multiple elements of a single grant. Examples of implementation activities include:

(i) Infrastructure improvements, such as site acquisition, site preparation, construction, rehabilitation and/or equipping of facilities;

(ii) Provision of business or infrastructure financing through the funding of locally administered Revolving Loan Funds (RLFs), which may include interest rate buy downs;

(iii) Market or industry research and analysis;

(iv) Technical assistance, including organizational development such as business networking, restructuring or improving the delivery of business services, or feasibility studies;

(v) Public services;

(vi) Training (provided that it does not duplicate Department of Labor, Department of Education or other Federally-supported training programs), and

(vii) Other activities as justified by the strategy which meet statutory and regulatory requirements.

(b) Economic Adjustment grants may be spent directly by the grantee or redistributed to other entities.

(1) Redistribution in the form of grants may only be to eligible recipients of grants under part 308.

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(2) Redistribution in the form of loans, loan guarantees, or equivalent assistance may be to public or private entities, including private for-profit entities.

[64 FR 5429, Feb. 3, 1999, as amended at 65 FR 2532, Jan. 18, 2000]

§ 308.4 Selection and evaluation factors.

(a) Projects will be selected in accordance with part 304 of this chapter and the additional criteria as provided in subsections (b) and (c), as applicable.

(b) *Strategy grants.* EDA will, as appropriate, review strategy grant applications for assurances that the proposed activities will conform to the CEDS requirements in §303.3 of this chapter.

(c) *Implementation Grants.* (1) EDA will review implementation grant applications for the extent to which,

(i) If appropriate, strategy meets the CEDS requirements in §303.3 of this chapter.

(ii) The proposed project is identified as a necessary element of or consistent with the strategy.

(2) *Revolving Loan Fund (RLF) Grants.* For applicants asking to capitalize or recapitalize an RLF, EDA will review the application for:

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

(ii) The types of financing activities anticipated;

(iii) The capacity of the RLF organization to manage lending, create networks between the business community and other financial providers, and contribute to the adjustment strategy; and

(iv) Use of in-kind match. When in-kind match is included in a project, such match will be used for borrower technical assistance or general RLF administrative costs (e.g. the training of new RLF staff).

(d) Additional criteria, or priority consideration factors for assistance, may be set forth in a NOFA.

[64 FR 5429, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999; 65 FR 2532, Jan. 18, 2000; 65 FR 71025, Nov. 28, 2000]

§ 308.5 Applicant requirements.

Each application for a grant under part 308 must:

(a) Include evidence of area and applicant eligibility (see part 301 of this chapter). For Technical Assistance under the Economic Adjustment program, if the project is regional or national in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(b) Include, or incorporate by reference, if so approved by EDA, a strategy, as provided in §301.3 of this chapter (except that a strategy is not required when a funding request is for planning assistance, *e.g.*, a strategy grant);

(c) Identify the sources of the 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. The application must show that such other funds are committed to the project and will be available as needed. The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant; and

(d) Explain how the proposed project meets the criteria of §308.2.

[64 FR 5429, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999; 65 FR 71025, Nov. 28, 2000]

§ 308.6 Post-approval requirements.

(a) Financial, performance, and progress reports will be specified in the Special Award Conditions of the grant.

(b) Projects involving construction shall comply with the provisions of subpart B of part 305.

(c) RLF Supplemental Requirements and Guidelines—RLF grants are subject to the requirements set forth in this part and the publications: EDA's RLF Standard Terms, EDA's RLF Administrative Manual, and EDA's RLF Audit Guidelines, Appendixes B–D of this part displayed at EDA's web site, <http://www.doc.gov/eda>. A copy of these documents is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance.

Subpart B—Special Requirements for Revolving Loan Fund Projects and Uses of Grant Funds

SOURCE: 65 FR 2532, Jan. 18, 2000, unless otherwise noted.

§ 308.7 Revolving Loan Funds established for business lending.

EDA grants to capitalize or recapitalize Revolving Loan Funds are most commonly used for business lending, but may also be established for public infrastructure lending or other authorized purposes involving lending. The RLF requirements in this subpart B are applicable to RLFs established for business lending. Appropriate modifications of these requirements will be addressed in special award conditions to accommodate non-business RLF awards.

§ 308.8 Definitions.

As used in this part:

Closed loan means any loan for which all required documentation has been executed, received, and reviewed.

Guaranteed loan means a loan made and serviced by a lending institution under the agreement that a third party (*e.g.*, a governmental agency) will purchase the guaranteed portion if the borrower defaults.

Program income means gross income received by the grant RLF recipient or the sub-recipient directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. Program income includes principal repayments and RLF income.

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

Recapitalization grants are additional grant funds awarded to increase the capital base of an RLF.

RLF capital includes the funds which capitalized the RLF plus such earnings and fees generated by RLF activities as may be added to the RLF capital base to be used for lending. The original sources of capital for EDA RLFs are normally comprised of EDA grant funds and local cash matching share.

RLF income means interest earned on outstanding loan principal, interest earned on accounts holding RLF funds not needed for immediate lending, all loan fees and loan-related charges received from RLF borrowers, and other income generated from RLF operations. The RLF recipient may use RLF income only to capitalize the RLF and/or 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 principal repayments.

Secondary market includes those entities that purchase an interest in a loan from an original lender.

Securitization refers to the technique of securing an investment of new capital with the stream of income generated by one or more (usually a large group of) existing loans. EDA broadly defines securitization transactions to include techniques such as the sale of loans, pledging the future income stream of a loan, and similar activities, to access investor capital to increase available funds for lending.

§ 308.9 Revolving Loan Fund Plan.

All RLF recipients must manage RLFs in accordance with an RLF Plan (Plan) as described in this part. For all RLF recipients, the Plan must be submitted to and approved by EDA prior to the grant award. For RLF recipients other than states, the RLF Plan must have been approved by resolution of the organizations' governing board and such resolution must be submitted to EDA along with the Plan prior to the grant award; with EDA's approval, political subdivisions of states may be exempted from the resolution requirement.

(a) *Format and content.* (1) The title page of the Plan should show the RLF

recipient organization's name and the date the Plan was adopted.

(2) Part I of the Plan, titled Revolving Loan Fund Strategy, summarizes the area CEDS and business development objectives, and describes the RLF's financing strategy, policy and portfolio standards. Organization of the material and the level of detail provided in the subsections of Part I may be varied to improve the narrative flow, provided the substantive content is adequately covered.

(3) Part II of the Plan, titled Operational Procedures, serves as the internal operating manual for the RLF.

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

(1) The Plan must flow from and be consistent with the EDA-approved CEDS for the area.

(2) The Plan must be an internally consistent, coherent statement of the strategic purpose of the particular RLF and the various considerations influencing the selection of its financing strategy, policies, and loan selection criteria encompassing:

(i) A financing strategy that demonstrates a knowledgeable 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.

(3) The strategic objectives defined must be sufficiently meaningful, though not necessarily quantified, so that progress toward them can be assessed over time.

(4) The administrative procedures for operating the RLF must be consistent with generally accepted prudent lending practices for public lending institutions.

[65 FR 2532, Jan. 18, 2000, as amended at 65 FR 71025, Nov. 28, 2000]

§ 308.10 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 the disapproval of any loan project that adversely (without mitigation) impacts flood plains, wetlands, significant historic or cultural properties,

drinking water resources, or nonrenewable natural resources. In administering the RLF, the RLF recipient must adopt procedures to comply, and ensure that potential borrowers comply, with applicable laws and regulations including, but not limited to §§ 316.1, 316.3, 316.7, 316.8, 316.15, and 317 of this chapter.

(b) RLF recipients are responsible for ensuring compliance with the applicable requirements of this chapter prior to providing any loan assistance under the RLF. RLF recipients are responsible for ensuring 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 recipients must develop loan agreements that include applicable Federal requirements to ensure compliance. RLF recipients must adopt procedures to diligently correct instances of non-compliance, including the calling of loans, if necessary. RLF recipient loan documents and procedures must protect and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an award to assist (directly or indirectly) in site preparation or construction as well as the renovation or repair of any facility or site. This applies to the extent that such liabilities are incurred because of ground water, surface, soil or other conditions caused by operations of the RLF recipient or any of its predecessors on the property.

§ 308.11 Lending areas and modification of lending areas.

(a) The economic activity and benefits of RLF loans must be located within the eligible areas identified in the grant award. For a determination of eligibility for new RLF lending areas, such areas must be included in or added to a CEDS in accordance with requirements under § 301.3 of this chapter.

(1) Where such RLFs have a grant condition that permits new areas that subsequently become eligible to be added to the lending area, RLFs that were awarded assistance (RLF capitalization or recapitalization) before February 11, 1999, whether fully disbursed

or not, and fully disbursed RLFs that were awarded assistance (RLF capitalization or recapitalization) on or after February 11, 1999, may add such areas with EDA approval.

(2) In the case of existing RLFs that are not fully disbursed that were awarded assistance (RLF capitalization or recapitalization) on or after February 11, 1999, the area proposed to be added must also be eligible to receive an EDA grant rate equal to or greater than that of the original grant.

(b) Whenever an area is added, modification to the RLF Plan incorporating the new area and outlining the RLF lending strategy is required. Once approved, area eligibility is retained indefinitely.

[65 FR 2532, Jan. 18, 2000, as amended at 65 FR 71025, Nov. 28, 2000]

§ 308.12 Revolving Loan Fund income.

(a) RLF income can be used to pay for eligible and reasonable administrative costs for the project. RLF recipients are expected to add RLF income to the RLF capital base where practicable. To determine the appropriate amount of RLF income to return to the RLF capital base, RLF operators must consider the costs necessary to operate an RLF program, the availability of other monetary resources, the portfolio risk level and projected capital erosions from loan losses and inflation, the community's (or area's) commitment to the RLF, and the anticipated demand for RLF loans.

(b) RLF income that is not used for administrative costs during the selected twelve-month reporting period in which it is earned, must be added to the RLF capital base for lending purposes at the end of the twelve-month reporting period. Only RLF income earned during a current period may be used for current administrative expenses. RLF income may not be withdrawn from an RLF in a subsequent period for any uses, other than lending, without the written consent of EDA.

(c) In accounting for RLF income, any net proceeds from the sale, collection, or liquidation of a defaulted loan, up to the amount of the unpaid principal, will be treated as repayments of RLF principal and placed in the RLF

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for lending purposes only. Any proceeds in excess of the unpaid principal will be treated as RLF income.

(d) RLF recipients must comply with applicable OMB cost principles (as found in OMB Circular A-87 for State, Local or 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 that circular, and OMB Circular A-21 for educational institutions) and with RLF Audit Guidelines (as found in OMB Circular A-133, Single Audit Act Requirements for State and Local Governments, Indian tribal governments, Institutions of Higher Education and Other Nonprofit Organizations, or the Compliance Supplement, as appropriate) when charging costs against RLF income. For availability of OMB circulars, see 5 CFR 1310.3.

(e) When a RLF recipients uses RLF income to cover all or part of RLF administrative costs it must complete an RLF Income and Expense Statement required under §308.14(c) of this chapter.

[65 FR 2532, Jan. 18, 2000, as amended at 65 FR 71025, Nov. 28, 2000]

§ 308.13 Records and retention.

(a) *Loan files and related documents and records.* Loan files and related documents and records must be retained by RLF recipients over the life of the loan and for a three year period from the date of final disposition of the loan. The date of final disposition of the loan is defined as the date of:

(1) Full payment of the principal, interest, fees, penalties, and other costs associated with the loan; or

(2) Final settlement or write-off of any unpaid amounts associated with the loan.

(b) *Administrative records.* RLF recipients must:

(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 costs incurred for activities and equipment relating to the operation of the RLF for three years from the actual

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submission date of the last semi-annual or annual report which covers the period that such costs were claimed, or for five years from the date the costs were claimed, whichever is less.

(3) Make any retained records, even those retained for longer than the period described, available for inspection. The record retention periods, described in this §308.13, are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement. In any event, EDA will not question claimed administrative costs that are more than three years old, unless fraud is an issue.

§ 308.14 Revolving Loan Fund semi-annual and annual reports.

(a) *Frequency of reports.* All RLF recipients, including existing RLFs that receive recapitalization grants, must submit semi-annual reports until they qualify or requalify for "Annual Report" status. RLF recipients may apply for "Annual Report" status if:

(1) All grant funds have been disbursed for at least one year;

(2) Accurate semi-annual reports have been submitted on-time for the preceding two years;

(3) Required periodic audits have been completed and submitted to EDA for the most recent audit period within the last two 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 being operated in accordance with the Plan referenced in §308.9 of this part. RLF recipients must request EDA approval of modifications to the Plan at any time there is evidence that such modifications are needed to ensure effective use of the RLF as a strategic financing tool.

(c) *RLF income statement.* (1) RLF recipients using RLF income equivalent to 50 percent or more or at least \$100,000 of RLF income for RLF administrative expenses during the selected twelve month period, must submit a completed RLF Income and Expense Statement per §308.12(e) to the appropriate EDA Regional Office within 90

days of either September 30 or the RLF recipient's fiscal year end, whichever period is selected by the RLF recipient. RLF recipients using less than 50 percent and less than \$100,000 of RLF income for administrative expenses in the twelve-month period will retain the RLF Income and Expense Statement for three years. RLF recipients are required to make this statement available to EDA personnel upon request.

(2) *Performance Measures.* RLF recipients will submit to EDA as part of the semi-annual or annual report, the information identified as the Core Performance Measures in the special conditions accompanying the grant award. EDA will advise RLF recipients in writing, within a reasonable time for submission, in the event there are any modifications in the information required to be submitted.

§ 308.15 Prudent management of Revolving Loan Funds.

(a) *Accounting principles.* (1) RLFs are expected to be operated in accordance with the generally accepted accounting principles (GAAP) and the provisions outlined in OMB Circular A-133 and Compliance Supplements as applicable.

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

(b) *Loan and accounting system documents.* (1) RLF recipients are required to provide certification by an independent accountant familiar with the RLF recipient's accounting system that its accounting system is adequate to identify, safeguard, and account for all RLF funds, including RLF income.

(2) RLF recipients are required to certify that standard RLF 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 laws. 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) Personal Guaranty Agreement (for officers or owners of corporate borrowers, as applicable).

(c) *Interest rates.* A RLF recipient can make loans and loan guarantees to eligible borrowers at interest rates and under conditions determined by the RLF recipient to be most appropriate in achieving the goals of the RLF. However, the minimum interest rate an RLF can charge is four (4) percentage points below the current money center prime rate quoted in the Wall Street Journal or the maximum interest rate allowed under state law, whichever is lower. In no event may the interest rate be less than four (4) percent. However, should the prime interest rate 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 be used to leverage private investment of at least two dollars for every one dollar of RLF investment. This leveraging requirement applies to the portfolio as a whole, rather than to individual loans and is effective for the life of the RLF. Private investment, to be classified as leveraged, must be made concurrently with 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 unguaranteed portion and 90 percent of the guaranteed portions of SBA 7(a) and SBA 504 debenture loans.

(2) Private investments do not include equity build-up in a borrower's assets or prior capital investments by a borrower unless the investment is made within nine months of the RLF loan and is recognized by the RLF recipient.

(e) *Conflict of interest.* (1) No officer, employee, or member of the RLF recipient's Board of Directors, or other Board (hereinafter referred to as "other board") that advises, approves,

recommends or otherwise participates in decisions concerning loans or the use of RLF grant funds, or person related to the officer, another employee, or any member of the Board by immediate family, law, or business arrangement, may receive any benefits resulting from the use of the RLF loan or grant funds. In addition, the RLF recipient may not lend RLF funds to an employee of the RLF recipient or any member of the RLF recipient's Board of Directors, or a member of any other Board. Immediate family is defined as parents, grandparents, siblings, children and grandchildren, but does not include more distant relatives, including cousins, unless they live in the same household. Exception: A benefit or loan may be conferred if the officer, employee, or Board member affected first discloses to the RLF recipient on the public record the proposed or potential benefit and receives the RLF recipient's written determination that the benefit involved is not so substantial as to reflect adversely upon or affect the integrity of the RLF recipient's decision process or the services of the officer, employee or board member.

(2) An officer, employee or board member of the RLF recipient will not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment or any other thing of monetary value, for himself or for another person, from any person or organization seeking to obtain a loan or any portion of the grant funds.

(3) Former board members and/or officers are ineligible to apply for or receive an RLF loan for a period of one year from the date of termination of his/her services. Exception: A benefit or loan may be conferred if the officer, or Board member affected first discloses to the RLF recipient on the public record the proposed or potential benefit and receives the RLF recipient's written determination that the benefit involved is not so substantial as to reflect adversely upon the integrity of the RLF recipient's decision process.

§ 308.16 Disbursement of funds to Relieving Loan Funds.

(a) *Timing of request for disbursement.* A RLF recipient must request disburse-

ments from EDA only at the time and in the amount immediately needed to close a loan or disburse funds to a borrower. Grant funds must be requested only for immediate use, *i.e.*, when the intent is to disburse the funds within 14 days of receipt.

(b) *Amount of disbursement.* As each new loan is made, the grant RLF recipient may request a disbursement of grant funds only for the difference, if any, between the amount of funds available for relending (from repayments of loan principal and RLF income) and the amount of the new loan, less an amount for local matching funds as may be required to be disbursed concurrent with the grant. However, RLF income received during the grant period may be held to cover eligible administrative expenses and need not be disbursed in order to draw additional grant funds.

(c) *Interest-bearing accounts.* All RLF grant funds disbursed by EDA to reimburse RLF recipients for loan obligations already incurred must be held in interest bearing accounts by RLF recipients until disbursed to the borrower.

(d) *Pre-disbursement requirements.* RLF recipients are required to provide:

(1) Evidence to EDA that they have 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. Note that such insurance coverage must exist at all times during the life of the RLF; and

(2) Certification in accordance with § 308.15(b)(1) of this part.

(e) *Delays.* (1) If grant funds are requested and the loan disbursement is subsequently delayed, a RLF recipient may hold the funds up to 30 days from the date of receipt. In the event that a loan disbursement is delayed beyond 30 days from the date of receipt of the Federal disbursement, the undisbursed funds must be returned to the Government for credit to the RLF recipient's account. Returned funds will be available to the RLF recipient for future draw down. When returning prematurely drawn funds, checks should identify on their face the name of the grantor agency—"EDA" followed by

the grant award number and the words "Premature Draw."

(2) The interest earned on prematurely withdrawn funds must be returned to the Government (with the exception of \$100 per year which may be retained for administrative expenses by states, local governments and Indian tribes in accordance with 15 CFR Part 24, and \$250 for those subject to 15 CFR Part 14 as appropriate) and should be remitted promptly, but no less frequently than quarterly. All checks submitted should state "EDA" on their face and the award number followed by the word "INTEREST" in order to identify the check in question as remittance of interest income.

(f) *Local share.* (1) When some portion of the local share of the RLF project is cash, it may only be used for lending. If the RLF project has an all-cash matching share, EDA's funds will be disbursed as needed for loan closing. The cash matching funds must be used either in proportion to the EDA funds, or at a faster rate than EDA funds.

(2) When an RLF project has a combination of in-kind and cash matching share, the non-federal cash together with the Federal cash constitute the funds available for making loans and will be disbursed proportionately as needed for loan closing, provided that the last 20 percent of the Federal funds may not be disbursed until all local in-kind match has been expended. The full amount of the local cash matching share will be expected to remain for use in the RLF.

(3) Upon repayment, local cash share funds are treated the same as EDA funds. Repayments of principal must be placed in the RLF for relending and interest payments must be used either for relending or for eligible RLF administrative costs. The local cash matching share must be available when needed for lending and must be under the control of the RLF recipient for the duration of the RLF for use in accordance with the terms of the grant.

§ 308.17 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 time schedule for

loan closings and disbursements to eligible RLF borrowers as prescribed in the award conditions. The time schedule requires that the initial round of lending (*i.e.*, the grant disbursement phase) be completed within three years of the grant award.

(2) If a RLF recipient substantially fails to meet the prescribed time schedules for loan closings and disbursements, EDA may terminate the undisbursed balance of the award. Exceptions may be granted where:

(i) Funds are needed to close and disburse funds on loans approved prior to the deadline and will be disbursed within 45 days of the deadline,

(ii) Funds are needed to meet continuing disbursement obligations on loans closed prior to the deadline, or

(iii) EDA has approved a time schedule extension.

(b) *Time schedule extension.* (1) RLF recipients are responsible for contacting EDA as soon as conditions become known that may materially affect their ability to meet the approved time schedules. RLF recipients must submit a written request to EDA for continued use of grant funds beyond a missed deadline. Extension requests must provide good reason for the delay and demonstrate that:

(i) The delay was unforeseen or generally beyond the control of the RLF recipient;

(ii) The 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;

(iv) The achievement of a new proposed time schedule is reasonable; and

(v) An explanation why no further delays are foreseen.

(2) EDA is under no obligation to grant a time extension, and in the event an extension is denied, EDA may deobligate (terminate) all or part of the unused portion of the grant.

(c) *Capital Utilization Standard.* (1) During the revolving phase, RLF recipients must manage their repayment and lending schedules such that at least 75 percent of the RLF's capital is loaned out or committed at all times. RLF income earned during a current reporting period is not included as RLF

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capital when calculating the capital utilization percentage. Exception:

(i) RLF recipients that anticipate making large loans relative to the size of the capital base, may propose RLF Plans that call for holding more than 25 percent.

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

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

(i) *Sequestration of excess funds.* If the capital utilization standard is not met for two consecutive reporting intervals, EDA may require the RLF recipient to deposit "excess funds" in an interest bearing account; the portion of the interest earned on that account, attributable to the EDA grant, will be remitted to the U.S. Treasury. EDA approval is required to withdraw sequestered funds.

(ii) *Persistent noncompliance.* A RLF recipient will normally be provided a reasonable period of time to lend "excess funds" and achieve the standard. However, if a RLF recipient fails to achieve the standard after a reasonable period of time as determined by EDA, the grant may be subject to sanctions for suspension and/or termination.

§ 308.18 Uses of capital.

Generally, eligible loans to borrowers include loans for fixed assets, the acquisition of equipment, working capital, or other authorized uses. The EDA grant and the local cash matching funds will be used only for the purpose of making loans under an RLF. To preclude borrowers from using RLF funds inappropriately, the purpose of each RLF loan should be clearly stated in the loan agreement. RLFs established for business lending must conform to the following:

(a) *Loan guarantees.* Prior to full disbursement of grant funds, the RLF recipient may not use the RLF to guarantee loans made by other lenders. In the revolving phase, after the full dis-

bursement of grant funds, the RLF may be used to guarantee loans of private lenders provided the RLF recipient has obtained EDA's prior written approval of its proposed loan guarantee activities. The Plan for any loan guarantee activities should include the following information:

(1) The maximum guarantee percentage that will be offered;

(2) A certification from the RLF attorney that the guarantee agreement is valid under state law. At a minimum, the guarantee agreement must address the following:

(i) The maximum reserve requirement;

(ii) The rights and duties of each party in regard to loan collections, servicing, delinquencies and defaults;

(iii) Foreclosures;

(iv) Bankruptcies;

(v) Collateral disposition and the call provisions of the guarantee; and

(vi) Interest income and loan fees, if any, which will accrue to the RLF.

(b) *Restrictions on RLF capital.* RLF capital may not be used to:

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

(2) Subsidize interest payments on an existing loan;

(3) Provide the equity contribution required of borrowers under other Federal loan programs;

(4) Enable an RLF borrower to acquire an interest in a business, either through the purchase of stock or through the acquisition of assets, unless the need for RLF financing is sufficiently justified and documented in the loan write-up. Acceptable justification could include acquiring a business to substantially save it from imminent foreclosure, or acquiring it to facilitate a significant expansion or increased investment. In any case, the resulting economic benefits should be clearly consistent with the strategic objectives of the RLF;

(5) Provide loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposit, or other investments not related to the objectives of the RLF;

(6) Refinance existing debt unless:

(i) There is sound economic justification and the RLF recipient sufficiently documents in the loan write-up that

the RLF is not replacing private capital solely for the purpose of reducing the risk of loss to an existing lender(s) or to lower the cost of financing to a borrower, or

(ii) An RLF uses RLF income sources and/or recycled RLF funds to purchase the rights of a prior lien holder during an in-process foreclosure action in order to preclude a significant loss on an RLF loan. This action may be undertaken only if there is a high probability of receiving compensation within 18 months from the sale of assets sufficient to cover an RLF's expenses plus a reasonable portion of the outstanding loan obligation; or

(7) Finance any activity that serves to relocate jobs from one commuting area to another. (Commuting area is that area defined by the distance people travel to work in the locality of the project receiving RLF financial assistance.) An RLF's standard loan agreement must include a provision for calling the loan if it is determined that:

(i) The business used the RLF loan to relocate jobs from another commuting area, or

(ii) The activity financed was subsequently moved to a different commuting area to the detriment of local workers.

(c) *Credit otherwise available.* Unless otherwise provided for in the grant agreement or modified in writing by EDA, a borrower is not eligible for RLF financing if credit is otherwise available on terms and conditions that permit the completion or successful operation of the project activity to be financed. The RLF recipient is responsible for determining that each borrower meets this requirement and for documenting the basis for its determination in the loan write-up.

§ 308.19 Variances.

EDA may approve variances to the requirements of subpart B of this part provided they:

(a) Are consistent with the goals of the Economic Adjustment Program and with an RLF's strategy,

(b) Are necessary and reasonable for the effective implementation of the RLF,

(c) Are economically and financially sound,

(d) Do not conflict with applicable legal requirements, and

(e) Do not change the scope of the award after the period of availability of the funds for obligation has expired.

PARTS 309–313 [RESERVED]

PART 314—PROPERTY

Subpart A—In General

- Sec.
- 314.1 Federal interest, applicability.
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- 314.3 Use of property.
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- 314.9 Recorded statement—Title.
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Subpart D—Release of EDA's Property Interest

- 314.11 Procedures for release of EDA's property interest.

AUTHORITY: 42 U.S.C. 3211; 19 U.S.C. 2341-2355; 42 U.S.C. 6701; 42 U.S.C. 184; Department of Commerce Organization Order 10-4.

SOURCE: 64 FR 5476, Feb. 3, 1999, unless otherwise noted.

Subpart A—In General

§ 314.1 Federal interest, applicability.

(a) Property that is acquired or improved with EDA grant assistance shall be held in trust by the recipient for the benefit of the purposes of the project under which the property was acquired or improved. Limited exceptions to this requirement are listed in § 314.7(c).

(b) During the estimated useful life of the project, EDA retains an undivided equitable reversionary interest in property acquired or improved with EDA grant assistance, except for the exceptions listed in § 314.7(c).

(c) EDA may approve the substitution of an eligible entity for a recipient. The original recipient remains responsible for the period it was the recipient, and the successor recipient

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holds the project property with the responsibilities of an original recipient under the award.

§ 314.2 Definitions.

As used in this part 314 of this chapter:

Dispose includes sell, lease, abandon, or use for a purpose or purposes not authorized under the grant award or this part.

Estimated useful life means that period of years, determined by EDA as the expected lifespan of the project.

Owner includes fee owner, transferee, lessee, or optionee of real property upon which project facilities or improvements are or will be located, or real property improved under a project which has as its purpose that the property be sold or leased.

Personal Property means all property other than real property.

Project means the activity and property acquired or improved for which a grant is awarded. When property is used in other programs as provided in § 314.3(b), "project" includes such programs.

Property includes all forms of property, real, personal (tangible and intangible), and mixed.

Real property means any land, improved land, structures, appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land which is improved by the construction of such project facilities as roads, sewers, and water lines which are not situated directly on the land but which contribute to the value of such land as a specific part of the project purpose.

Recipient includes any recipient of grant assistance under the Public Works and Economic Development Act of 1965, as amended, prior to or as amended by Public Law 105-393, or under Title II, Chapters 3 and 5 of the Trade Act of 1974, Title I of the Public Works Employment Act of 1976, the Public Works Employment Act of 1977, or the Community Emergency Drought Relief Act of 1977, and any EDA-approved successor to such recipient.

§ 314.3 Use of property.

(a) The recipient or owner must use any property acquired or improved in

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whole or in part with grant assistance only for the authorized purpose of the project and such property must not be leased, sold, disposed of or encumbered without the written authorization of EDA.

(b) However, in the event that EDA and the recipient determine that property acquired or improved in whole or in part with grant assistance is no longer needed for the original grant purpose, it may be used in other Federal grant programs, or programs that have purposes consistent with those authorized for support by EDA, but only if EDA approves such use.

(c) When the authorized purpose of the EDA grant is to develop real property to be leased or sold, as determined by EDA, such sale or lease is permitted provided it is for adequate consideration and the sale is consistent with the authorized purpose of the grant and with applicable EDA requirements concerning, but not limited to, non-discrimination and environmental compliance. The term "adequate consideration" means consideration that is fair and reasonable under the circumstances of the sale or lease, and may include money, services, property exchanges, contractual commitments, or acts of forbearance.

(d) When acquiring replacement personal property of equal or greater value, the recipient may, with EDA's approval, trade-in the property originally acquired or sell the original property and use the proceeds in the acquisition of the replacement property, provided that the replacement property shall be used for the project and be subject to the same requirements as the original property. In extraordinary and compelling circumstances, EDA may allow replacement of real property, with the approval of the Assistant Secretary.

[64 FR 5476, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999]

§ 314.4 Unauthorized use.

(a) Except as provided in §§ 314.3(b), (c) or (d), whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of, or no longer used for the authorized purpose of the project, the

Federal Government must be compensated by the recipient for the Federal share of the value of the property; provided that for equipment and supplies, the standards of the Uniform Administrative Requirements for Grants at 15 CFR parts 14 and 24 or any supplements or successors thereto, as applicable, shall apply.

(b) If property is disposed of or encumbered without EDA approval, EDA may assert its interest in the property to recover the Federal share of the value of the property for the Federal Government. To that end, EDA may take such actions as are provided in connection with loans and loan guarantees, in § 316.5(c) of this chapter. EDA may pursue its rights under both paragraphs (a) and (b) of this section to recover the Federal share, plus costs and interest.

(c) *RLF grant projects.* (1) EDA may suspend or terminate any RLF grant for cause based on, but not limited to, the following:

(i) Failure to make loans in accordance with the RLF Plan, including the time-schedule for loan closings;

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

(iii) Failure to submit progress, financial or audit reports as required by the terms and conditions of the grant agreement;

(iv) Failure to comply with prohibitions against conflict-of-interest for any transactions involving the use of RLF funds; or

(v) Failure to operate the RLF in accordance with the RLF Plan and the terms and conditions of the grant agreement.

(2) Whenever an RLF recipient fails in its fiduciary responsibilities or is unable or unwilling to perform as trustee of the grant, EDA may suspend, terminate or transfer the grant to an eligible successor with jurisdiction over the project area, to administer it as such trustee (replacement grantee).

(3) Whenever EDA terminates any RLF grant for cause, in whole or in part, it has the right to recover residual funds and assets of the RLF grant in accordance with the legal rights of the parties.

(4) If there is a partial termination of an RLF grant, the full amount of the original non-federal matching share is expected to be retained in the RLF for lending purposes unless otherwise provided for in the grant agreement or agreed to in writing by EDA.

[64 FR 5476, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999; 65 FR 2536, Jan. 18, 2000]

§ 314.5 Federal share.

(a) For purposes of this part, the Federal share of the value of property is that percentage of the current fair market value of the property attributable to the EDA participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale). The Federal share excludes that value of the property attributable to acquisition or improvements before or after EDA's participation in the project and not included in project costs.

(b) Where the recipient's interest in property is a leasehold for a term of years less than the depreciable remaining life of the property, that factor will be considered in determining the percentage of the Federal share.

(c) If property is transferred from the recipient to another eligible entity, as provided in § 314.1(c), the Federal Government must be compensated the Federal share of any money or money equivalent paid by or on behalf of the successor recipient to or for the benefit of the original recipient, provided that EDA may first permit the recovery by the original recipient of an amount not exceeding its investment in the project nor exceeding that percentage of the value of the property that is not attributable to the EDA participation in the project.

(d) When the Federal Government is fully compensated for the Federal share of the value of property acquired or improved in whole or in part with grant assistance, EDA has no further interest in the ownership, use, or disposition of the property.

§ 314.6 Encumbrances.

(a) Except as provided in § 314.6(c), recipient-owned property acquired or improved in whole or in part with grant assistance may not be used to secure a

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mortgage or deed of trust or otherwise be used as collateral or encumbered except to secure a grant or loan made by a State or Federal agency or other public body participating in the same project. This provision does not prevent projects from being developed on previously encumbered property, if the requirements of §314.7(b) are met.

(b) Encumbering project property other than as permitted in this section is an unauthorized use of the property requiring compensation to the Federal Government as provided in §§314.4 and 314.5.

(c) EDA may waive the provisions of §314.6(a) for good cause when EDA determines all of the following:

(1) All proceeds from the grant/loan to be secured by the encumbrance on the property shall be available only to the recipient, and all proceeds from such secured grant/loan shall be used only on the project for which the EDA grant was awarded or on related activities of which the project is an essential part;

(2) The grantor/lender would not provide funds without the security of a lien on the project property; and

(3) There is a reasonable expectation that the borrower/recipient will not default on its obligation.

(d) EDA may waive the provisions of §314.6(a) as to an encumbrance on property which is acquired and/or improved by an EDA grant when EDA determines that the encumbrance arises solely from the requirements of a pre-existing water or sewer facility or other utility encumbrance which by its terms extends to additional property connected to such facilities.

Subpart B—Real Property

§314.7 Title.

(a) The recipient must hold title to the real property required for a project, except in limited cases as provided in paragraph 314.7(c) of this section. Except in those limited cases, the recipient must 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 such easements, rights-of-way, State permits, or long-term

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leases as are 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:

- (i) Liens,
- (ii) Mortgages,
- (iii) Other encumbrances,
- (iv) Reservations,
- (v) Reversionary interests, or
- (vi) Other restrictions on title or the recipient's interest in the property.

(2) No such encumbrance or restriction will be acceptable if, as determined by EDA, the encumbrance or restriction will interfere with the construction, use, operation or maintenance of the project during its estimated useful life.

(c) EDA may determine that a long-term leasehold interest for a period not less than the estimated useful life of the project, or an agreement for the recipient to purchase the property, will be acceptable, but only if fee title is not obtainable and the lease or purchase agreement provisions adequately safeguard the Federal Government's interest in the project. Also, EDA may permit the following exceptions to the requirement that the recipient hold title to the real property required for a project.

(1) When a project includes construction within a railroad's right-of-way or over a railroad crossing, it may be 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 this is a minor but essential component of the project.

(2) When a project includes construction on a State-owned or local government-owned highway, it may be 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 this 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:

(i) That the State or local government will operate and maintain the improvements for the useful life of the project as determined by EDA;

(ii) That the State or local government will not sell the improvements for the useful life of the project, as determined by EDA; and

(iii) That the use of the property will be consistent with the authorized purpose of the project.

(3) When the authorized purpose of the project is to construct facilities to serve industrial or commercial parks or sites owned by the recipient for sale or lease to private parties, such sale or lease is permitted so long as EDA requirements continue to be met. EDA may require evidence that the recipient has title to the park or site prior to such sale or lease.

(4) When the authorized purpose of the project is to construct facilities to serve privately owned industrial or commercial parks or sites for sale or lease, such ownership, sale or lease is permitted so long as EDA requirements continue to be met. EDA may require evidence that the private party has title to the park or site prior to such sale or lease, and may condition the award of project assistance upon assurances by the private party relating to the sale or lease that EDA determines are necessary to assure consistency with the project purposes.

§ 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 funds made available under the award. The statement shall specify in years the estimated useful life of the project and shall include, but not be limited to disposition, encumbrance, and compensation of Federal share requirements of this part 314. 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 property is located, all in accordance with local 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 tangible 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 property, acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with local law, with continuances refiled 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.

§ 314.10 Revolving loan funds.

(a) With EDA's consent, recipients holding revolving loan fund (RLF) property (including but not limited to money, notes, and security interests) may sell such property or encumber such property as part of a securitization of the RLF portfolio. The net transaction proceeds must be used for additional loans as part of the RLF project;

(b) When a recipient determines that it is no longer necessary or desirable to operate an RLF, the RLF may be terminated; provided that, unless otherwise stated in the award, the recipient must compensate the Federal Government for the Federal share of the value of the RLF property. The Federal share is that percentage of the capitalized RLF contributed by EDA applied to all RLF property, including the present value of all outstanding loans. However, with EDA's prior approval, upon termination the recipient may use for other economic development purposes that portion of such RLF property that EDA determines is attributable to the payment of interest.

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(c) In the event of the sale, collection, or liquidation of RLF loans, any proceeds, net of repaid principal and reasonable administrative costs incurred, up to the amount of the outstanding loan principal, must be returned to the RLF for relending. Any net proceeds from loan sales above the outstanding loan principal is considered RLF income and must either be added to the RLF capital base for lending or used to cover eligible costs for administering the RLF in accordance with the rules for use of RLF income. The net transaction proceeds must be used for additional loans as part of the RLF project.

[64 FR 5476, Feb. 3, 1999, as amended at 65 FR 2536, Jan. 18, 2000]

Subpart D—Release of EDA's Property Interest

§ 314.11 Procedures for release of EDA's property interest.

(a) Before the expiration of the estimated useful life of the grant project, EDA may release, in whole or in part, any real property interest, or tangible personal property interest, in connection with a grant after the date that is 20 years after the date on which the grant was awarded. (The term "tangible personal property" excludes debt instruments, currency, and accounts in financial institutions.) Except as provided in paragraph (b) of this section, such release is not automatic; it requires EDA's approval, which will not be withheld except for good cause. 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.

(b) EDA hereby releases all of its real and tangible personal property interests in projects awarded under the Public Works Employment Act of 1976 (Pub. L. 94-369) and under that act as amended by the Public Works Employment Act of 1977 (Pub. L. 95-28).

(c)(1) Notwithstanding §§ 314.11(a) and (b), in no event, either before or after the release of EDA's interest, may project property be used:

(i) In violation of the nondiscrimination requirements of the project award, or

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(ii) For religious purposes prohibited by the holding of the U.S. Supreme Court in *Tilton v. Richardson*, 403 U.S. 672 (1971).

(2) Such use voids the release, and is an unauthorized use of the property, as provided in § 314.4.

PART 315—CERTIFICATION AND ADJUSTMENT ASSISTANCE FOR FIRMS

Subpart A—General Provisions

Sec.

- 315.1 Purpose and scope.
- 315.2 Definitions.
- 315.3 Confidential business information.
- 315.4 Eligible applicants.
- 315.5 Selection process.
- 315.6 Evaluation criteria.
- 315.7 Award requirements.

Subpart B—Trade Adjustment Assistance Centers

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- 315.9 Certification requirements.
- 315.10 Processing petitions for certification.
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- 315.12 Termination of certification and procedure.
- 315.13 Loss of certification benefits.

Subpart D—Assistance to Industries

- 315.14 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.

SOURCE: 64 FR 5478, Feb. 3, 1999, unless otherwise noted.

Subpart A—General Provisions

§ 315.1 Purpose and scope.

The regulations in this part implement certain changes to responsibilities of the Secretary of Commerce under Chapter 3 of Title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*) (Trade Act), concerning adjustment assistance for firms. The statutory authority and responsibilities of the Secretary of Commerce relating to adjustment assistance are delegated to EDA. EDA has the duties of certifying

firms as eligible to apply for adjustment assistance, providing technical adjustment assistance to eligible recipients, and providing assistance to organizations representing trade injured industries.

§315.2 Definitions.

As used in this part 315 of this chapter:

Adjustment assistance is 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 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. 552b(c)(4) and 15 CFR part 4.

Decreased absolutely means a firm's sales or production has declined:

- (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 below, 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;
- (2) Successor;
- (3) Affiliate; or
- (4) Subsidiary.

A group of workers threatened with total or partial separation means there is reasonable evidence that such total or partial separation is imminent.

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

Partial separation means either:

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

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

Person means individual, organization or group.

The record means:

(1) A petition for certification of eligibility to qualify for adjustment assistance;

(2) Any supporting information submitted by the petitioner;

(3) Report of the EDA investigation in regard to the petition; and

(4) Any information developed during the investigation or in connection with any public hearing held on the petition.

Recipient means a firm, Trade Adjustment Assistance Center or other party receiving adjustment assistance or through which adjustment assistance is provided under the Trade Act.

A significant number or proportion of workers means 5 percent of the firm's work force or 50 workers, whichever is less. An individual farmer is considered a significant number or proportion of workers.

Substantial interest means a direct, material, economic interest in the certification or noncertification of the petitioner.

Technical Assistance means assistance provided to firms or industries under Chapter 3 of Title II of the Trade Act.

A totally separated worker means an employee who has been laid off or

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whose employment has been terminated by his/her employer for lack of work.

§ 315.3 Confidential business information.

EDA will follow the procedures set forth in 15 CFR §4.7, and submitters should so designate any information they believe confidential.

§ 315.4 Eligible applicants.

(a) Trade Adjustment Assistance Centers (TAACs) are eligible applicants. A TAAC can be:

- (1) A university affiliate;
 - (2) State or local government affiliate;
 - (3) Non-profit organization.
- (b) Firms;
- (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 the following:
- (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 Selection process.

(a) TAACs are selected in accordance with the following:

(1) Currently funded TAACs are invited by EDA 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) New TAACs will be invited to submit proposals, and if they are acceptable, EDA will invite an application on

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a form approved by OMB. An application will be accompanied by 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.

(b) Firms are selected in accordance with the following:

(1) Firms may apply for certification generally through a TAAC by filling out a petition for certification. The TAAC will provide technical assistance to firms wishing to fill out such petitions;

(2) Once firms are certified in accordance with the procedures described in §§315.9 and 315.10, an adjustment proposal is usually prepared with technical assistance from a party independent of the firm, usually the TAAC, and submitted to EDA;

(3) Certified firms which have submitted acceptable adjustment proposals within the time limits described in §315.13 below, may begin implementation of such proposal, generally through the TAAC and often with Technical Assistance from the TAAC, by submitting a request to the TAAC to provide assistance in implementing an accepted adjustment proposal; and

(4) EDA determines whether or not to provide assistance for adjustment proposals based upon §315.6(c)(2).

(c) Organizations representing trade injured industries must meet with an EDA representative to discuss the industry problems, opportunities and assistance needs, and if invited by EDA may then submit an application as approved by OMB, as well as a scope of work and proposed budget.

§ 315.6 Evaluation criteria.

(a) Currently funded TAACs are generally evaluated based on the following:

(1) How well they have performed under cooperative agreements with EDA and if they are in compliance with the terms and conditions of such cooperative agreements;

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

(3) The availability of funds.

(b) New TAACs are generally evaluated on the following:

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(1) Demonstrates competence in administering business assistance programs;

(2) Background and experience of staff;

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

(4) The availability of funding.

(c) Firms are generally evaluated based on the following:

(1) For certification, firms' petitions are selected strictly on the basis of conformance with requirements set forth in §315.9 below;

(2) An adjustment proposal is evaluated on the basis of the following:

(i) The proposal must be submitted to EDA within 2 years after the date of the certification of the firm; and

(ii) The adjustment proposal must include a description of any technical assistance requested to implement such proposal including financial and other supporting documentation as EDA determines is necessary, based upon either:

(A) An analysis of the firm's problems, strengths and weaknesses and an assessment of its prospects for recovery; or

(B) If EDA so determines, an acceptable adjustment proposal can be prepared on the basis of other available information.

(iii) The adjustment proposal must be evaluated to determine that it:

(A) Is reasonably calculated to contribute materially to the economic adjustment of the firm, i.e., that such proposal will be a constructive aid to the firm in establishing a competitive position in the same or a different industry;

(B) Gives adequate consideration to the interests of a sufficient number of separated workers of the firm, by providing for example that the firm will:

(1) Give a rehiring preference to such workers;

(2) Make efforts to find new work for a number of such workers; and

(3) Assist such workers in obtaining benefits under available programs.

(C) Demonstrates that the firm will make all reasonable efforts to use its own resources for economic development, though under certain circumstances, resources of related firms

or major stockholders will also be considered.

(d) Organizations representing trade injured industries must demonstrate that the industry is injured by increased imports and that the activities to be funded will yield some short-term actions that the industry itself (and individual firms) can and will take toward the restoration of the industry's international competitiveness.

(1) The emphasis is on practical results that can be implemented in the near term, and long-term research and development activities are given low priority.

(2) It is also expected that the industry will continue activities on its own without the need for continued Federal assistance.

§315.7 Award requirements.

(a) Award periods are as follows:

(1) TAACs are generally funded for 12 months;

(2) Firms are generally provided assistance over a 2-year period; and

(3) Organizations representing trade injured industries are generally funded for 12 months.

(b) Matching requirements are as follows:

(1) There are no matching requirements for certification assistance provided by the TAACs to firms or for administrative expenses for the TAACs;

(2) All adjustment proposals and implementation assistance must include not less than 25% nonfederal match, provided to the extent practicable, by firms being assisted; and

(3) Contributions of at least 50% of the total project cash cost, in addition to appropriate in kind contributions, are expected from organizations representing trade injured industries.

Subpart B—Trade Adjustment Assistance Centers

§315.8 Purpose and scope.

(a) Trade Adjustment Assistance Centers (TAACs) are available to assist firms in all fifty states, the District of Columbia and the Commonwealth of Puerto Rico in obtaining adjustment assistance. TAACs provide technical assistance in accordance with this subpart either through their own staffs or

by arrangements with outside consultants. Information concerning TAACs serving particular areas can be obtained from EDA. See the annual FY NOFA for the appropriate point of contact and address.

(b) Prior to submitting a request for technical assistance to EDA, a firm should determine the extent to which the required technical assistance can be provided through a TAAC. EDA will provide technical assistance through TAACs whenever EDA determines that such assistance can be provided most effectively in this manner. Requests for technical assistance will normally be made through TAACs.

(c) TAACs generally provide technical assistance to a firm by providing the following:

(1) Assistance to a firm in preparing its petition for certification;

(2) Assistance to a certified firm in diagnosing its strengths and weaknesses and developing an adjustment proposal for the firm; and

(3) Assistance to a certified firm in the implementation of the adjustment proposal for the firm.

Subpart C—Certification of Firms

§ 315.9 Certification requirements.

A firm will be certified eligible to apply for adjustment assistance based upon the petition for certification if EDA determines, under section 251(c) of the Trade Act, that:

(a) Based upon a comparison of the most recent 12 month period for which data are available and the immediately preceding 12 month period, the following conditions have been met:

(1) A significant number or proportion of workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) Either sales or production, or both of the firm have decreased absolutely; or sales or production, or both of any article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely; and

(3) Increases of imports (absolute or relative to domestic production) of ar-

ticles like or directly competitive with articles produced by such firm contributed importantly to such total or partial separation or threat thereof, and to such decline in sales or production; provided that 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; or

(b) Based upon an interim sales or production decline, the following conditions have been met:

(1) There has been an absolute decrease in sales or production for, at minimum, a three month period during the most recent 12 month period for which data are available as compared to the same period of time during the immediately preceding 12 month period;

(2) During the same base and comparative period of time as the period of absolute decrease in sales or production, a significant number or proportion of workers in such firm have become totally or partially separated; and

(3) During the same base and comparative period of time as the period of absolute decrease in sales or production, there has been an increase of imports (absolute or relative to domestic production) of articles like or directly competitive with articles produced by such firm which contributed importantly to such total or partial separation, and to such decline in sales or production; provided that 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 decline in sales or production would have been essentially the same irrespective of the influence of imports; or

(c) Based upon an interim employment decline, the following conditions have been met:

(1) A significant number or proportion of workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated during, at a minimum, the most recent month during

the most recent 12 month period for which data are available as compared to the same period of time during the immediately preceding 12 month period; and

(2) Either sales or production, or both of the firm have decreased absolutely during the 12-month period preceding the most recent 12-month period for which data are available; and

(3) There has been an increase of imports (absolute or relative to domestic production) of articles like or directly competitive with articles produced by such firm which contributed importantly to such total or partial separation or threat thereof, and to such decline in sales or production; provided that 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.

[65 FR 71026, Nov. 28, 2000]

§ 315.10 Processing petitions for certification.

(a) Firms are encouraged to consult with a TAAC or EDA for guidance and assistance in the preparation of their petitions for certification.

(b) A firm seeking certification shall complete a petition (OMB Control Number 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 articles like or directly competitive 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 and Federal income tax returns for the two most recent years;

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

(7) Information concerning its major customers and their purchases; and

(8) Such other information as EDA may consider material.

(c) EDA shall determine whether the petition has been properly prepared and can be accepted. Immediately thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the petitioner that the petition has not been accepted, but may be resubmitted at any time without prejudice when the specified deficiencies have been corrected and the resubmission will be treated as a new petition.

(d) A notice of acceptance of a petition shall be published in the FEDERAL REGISTER.

(e) An investigation shall be initiated by EDA to determine whether the petitioner meets requirements set forth in section 251(c) of the Trade Act and §315.9 above. The investigation can be terminated at any time for failure to meet such requirements. A report of this investigation shall become part of the record upon which a determination of the petitioner's eligibility to apply for adjustment assistance shall be made.

(f) A petitioner may withdraw a petition for certification if a request for withdrawal is received by EDA before a certification determination or denial is made. Such firm may submit a new petition at any time thereafter in accordance with the requirements of this section and §315.9.

(g) Following acceptance, EDA shall decide what action to take on petitions for certification as follows:

(1) Make a determination based on the record as soon as possible after all material has been submitted. In no event may the period exceed 60 days from the date on which the petition was accepted; and

(2) Either certify the petitioner eligible to apply for adjustment assistance or deny the petition, and in either event EDA shall promptly give notice of the action in writing to the petitioner. A notice to the petitioner or

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any parties requesting notice as specified in § 315.10(d) of a denial of a petition shall specify the reasons upon which the denial is based. If a petition is denied, the petitioner shall not be entitled to resubmit its petition within one year from the date of the denial. At the time of the denial of a petition EDA may waive the 1-year limitation for good cause.

§ 315.11 Hearings, appeals and final determinations.

(a) Any petitioner may appeal to EDA from a denial of certification provided that the appeal is received by EDA in writing by personal delivery or by registered mail within 60 days from the date of notice of denial under § 315.10(g). The appeal shall state the grounds on which the appeal is based, including a concise statement of the supporting facts and law. The decision of EDA on the appeal shall be the final determination within the Department of Commerce. In the absence of an appeal by the petitioner under this paragraph, such final determination shall be determined under § 315.10(g).

(b) A firm, its representative or any other interested domestic party aggrieved by a final determination under paragraph (a) of this section may, within 60 days after notice of such determination, begin a civil action in the United States Court of International Trade for review of such determination in accordance with section 284 of the Trade Act (19 U.S.C. 2395).

(c) EDA will hold a public hearing on an accepted petition not later than 10 days after the date of publication of the Notice of Acceptance in the FEDERAL REGISTER if requested by either the petitioner or any other person found by EDA to have a substantial interest in the proceedings, under procedures, as follows:

(1) The petitioner and other interested persons shall have an opportunity to be present, to produce evidence, and to be heard;

(2) 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:

(i) The name, address, and telephone number of the person requesting the hearing; and

(ii) 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.

(3) 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;

(4) 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 hearing;

(5) EDA shall appoint the presiding officer of the hearing who shall determine all procedural questions;

(6) Procedures for requests to appear are as follows:

(i) Within 5 days after publication of the Notice of Public Hearing in the FEDERAL REGISTER, each party wishing to be heard must file a request to appear with EDA. Such request may be filed by:

(A) The party requesting such hearing;

(B) Any other party with substantial interest; or

(C) Any other party demonstrating to the satisfaction of the presiding officer that it should be allowed to be heard.

(ii) The party filing the request shall submit the names of the witnesses and a summary of the evidence it wishes to present; and

(iii) Such requests to appear may be approved as deemed appropriate by the presiding officer.

(7) Witnesses will testify in the order and for the time designated by the presiding officer, except that the petitioner shall have the opportunity to make its presentation first. After testifying, a witness may be questioned by the presiding officer or his/her designee. The presiding officer may allow any person who has been granted permission to appear to question the witnesses for the purpose of assisting him/her in obtaining relevant and material facts on the subject matter of the hearing;

(8) The presiding officer may exclude evidence which s/he deems improper or irrelevant. Formal rules of evidence

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shall not be applicable. Documentary material must be of a size consistent with ease of handling, transportation, and filing. Large exhibits may be used during the hearing, but copies of such exhibits must be provided in reduced size for submission as evidence. Two copies of all documentary evidence must be furnished to the presiding officer during the hearing;

(9) Briefs may be presented to the presiding officer by parties who have entered an appearance. Three copies of such briefs shall be filed with the presiding officer within 10 days of the completion of the hearing; and

(10) Procedures for transcripts are as follows:

(i) All hearings will be transcribed. Persons interested in transcripts of the hearings may inspect them at the U.S. Department of Commerce in Washington, D.C., or purchase copies as provided in 15 CFR part 4, Public Information; and

(ii) Confidential business information as determined by EDA shall not be a part of the transcripts. Any confidential business information may be submitted directly to the presiding officer prior to the hearing. Such information shall be labeled Confidential Business Information. For the purpose of the public record, a brief description of the nature of the information shall be submitted to the presiding officer during the hearing.

§ 315.12 Termination of certification and procedure.

(a) 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 Notice.

(b) EDA shall immediately notify the petitioner and shall state the reasons for such termination.

§ 315.13 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 2 years

after date of certification. While approval of an adjustment proposal may occur after the expiration of such 2-year period, an acceptable adjustment proposal must be submitted 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 6 months after approval of the adjustment proposal and 2 years have elapsed since the date of certification. If the firm anticipates that a longer period will be required to submit documentation, such longer period should be indicated in its adjustment proposal. If the firm becomes 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) If the firm's request for adjustment assistance has been denied, the time period allowed for the submission of any documentation in support of such request has expired, and 2 years have elapsed since the date of certification; or

(d) Failure to diligently pursue an approved adjustment proposal, and 2 years have elapsed since the date of certification.

Subpart D—Assistance to Industries

§ 315.14 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 technical 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 this part.

(c) Expenditures for technical assistance under this section may be up to \$10,000,000 annually per industry and shall be made under such terms and conditions as EDA deems appropriate.

PART 316—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

- Sec.
- 316.1 Environment.
 - 316.2 Excess capacity.
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 - 316.4 Procedures in disaster areas.
 - 316.5 Project servicing for loans and loan guarantees.
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 - 316.15 Maintenance of standards.
 - 316.16 Records and audits.
 - 316.17 Acceptance of certifications by applicants.
 - 316.18 Reports by recipients.
 - 316.19 Project administration by District organization.

AUTHORITY: 42 U.S.C. 3211, 42 U.S.C. 5141; 19 U.S.C. 2341, *et seq.*, Department of Commerce Organization Order 10-4.

SOURCE: 64 FR 5482, Feb. 3, 1999, unless otherwise noted.

§ 316.1 Environment.

(a) The purpose of this section is to ensure proper environmental review of EDA's actions under PWEDA and the Trade Act and to comply with the Federal environmental statutes and regulations in making a determination that balances economic development and environmental enhancement and mitigates adverse environmental impacts to the extent possible.

(b) Environmental assessments of EDA actions will be conducted in accordance with the statutes, regulations, and Executive Orders listed

below. This list will be supplemented and modified, as applicable, in EDA's annual FY NOFA.

(1) Requirements under the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, as amended, 42 U.S.C. 4321 *et seq.* as implemented under 40 CFR parts 1500 *et seq.* including the following:

(i) The implementing regulations of NEPA require 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, records of decision etc., to the affected public as specified in 40 CFR 1506.6(b); and

(ii) Depending on the project location, environmental information concerning specific projects can be obtained from the Environmental Officer in the appropriate Washington, D.C. or regional office listed in the NOFA;

(2) Clean Air Act, Pub. L. 88-206 as amended, 42 U.S.C. 7401 *et seq.*;

(3) Clean Water Act (Federal Water Pollution Control Act), c. 758, 62 Stat. 1152 as amended, 33 U.S.C. 1251 *et seq.*;

(4) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Pub. L. 96-510, as amended, 42 U.S.C. 9601 *et seq.* and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, as amended;

(5) Floodplain Management Executive Order 11988 (May 24, 1977);

(6) Protection of Wetlands Executive Order 11990 (May 24, 1977);

(7) Resource Conservation and Recovery Act of 1976, Pub.L. 94-580 as amended, 42 U.S.C. 6901 *et seq.*;

(8) Historical and Archeological Data Preservation Act, Pub. L. 86-523, as amended, 16 U.S.C. § 469a-1 *et seq.*;

(9) National Historic Preservation Act of 1966, Pub. L. 89-665, as amended, 16 U.S.C. § 470 *et seq.*;

(10) Endangered Species Act of 1973, Pub. L. 93-205, as amended, 16 U.S.C. § 1531 *et seq.*;

(11) Coastal Zone Management Act of 1972, Pub. L. 92-583, as amended, 16 U.S.C. § 1451 *et seq.*;

(12) Flood Disaster Protection Act of 1973, Pub. L. 93-234, as amended, 42 U.S.C. § 4002 *et seq.*;

(13) Safe Drinking Water Act of 1974, Pub. L. 92-523, as amended, 42 U.S.C. §300f-j26;

(14) Wild and Scenic Rivers Act, Pub. L. 90-542, as amended, 16 U.S.C. §1271 et seq.;

(15) Environmental Justice in Minority Populations and Low-Income Populations Executive Order 12898 (February 11, 1994);

(16) Farmland Protection Policy Act, Pub. L. 97-98, as amended, 7 U.S.C. §4201 et seq.; and

(17) Other Federal Environmental Statutes and Executive Orders as applicable.

§316.2 Excess capacity.

(a) *Definitions.* For purposes of this section only the following definitions apply:

Beneficiary means a firm or group of firms, a public or private enterprise or organization that provides a commercial product or service and that directly benefits from an EDA-assisted project.

Capacity means the maximum amount of a product or service that can be supplied to the market area over a sustained period by existing enterprises through the use of present facilities and customary work schedules for the industry.

Commercial product or service means a product or service sold on the open market in competition with another provider's product or service of the same kind.

Demand means the actual quantity of a commercial product or service that users are willing to purchase in the market area served by the intended beneficiary of the EDA assisted project.

Efficient capacity means that part of capacity derived from the use of contemporary structures, machinery and equipment, designs, and technologies.

Existing competitive enterprise means an established operation which either produces or delivers the same kind of commercial product or service to all or a substantial part of the market area served by the intended beneficiary of the EDA assisted project.

Firm means any enterprise which produces or sells a commercial product or service.

Market Area means the geographic area within which commercial products or services compete for purchase by customers.

Product or service means a good, material, or commodity, or the availability of a service or facility.

Section 208 means section 208 of PWEDA.

(1) A section 208 study is a detailed economic analysis/evaluation of competitive impact.

(2) A section 208 report is a summary of supply/demand factors.

(3) A section 208 exemption may apply to a project having one or more of the characteristics listed in paragraph (e) of this section.

(b) Under section 208:

(1) No financial assistance under PWEDA shall be extended to any project when the result would be to increase the production of products or services when there is not sufficient demand for such products or services, to employ the efficient capacity of existing competitive commercial or industrial enterprises; and

(2) When EDA considers extending assistance for a project that benefits a firm or industry that provides a commercial product or service, the beneficiary is subject to a 208 report, study, or exemption, resulting in a finding that the project will or will not violate section 208. A section 208 study or report is required, except as provided in paragraph (e) of this section.

(c) The following procedures shall be followed to the extent necessary to provide EDA with sufficient information to prepare a 208 study or report:

(1) The beneficiary shall submit, as early as possible, the following information with regard to each commercial product or service affected by the project:

(i) A detailed description of the commercial product or service;

(ii) Current and projected amount and value of annual sales or receipts;

(iii) Market area; and

(iv) Name of other suppliers and amount of commercial product or service presently available in the market area.

(2) If the beneficiary has conducted or commissioned a relevant market study, it shall be made available to

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EDA as early as possible, for possible use by EDA in the 208 study or report.

(d) A section 208 report will form an acceptable basis on which to make a section 208 compliance finding when the beneficiary's projected new or additional annual output is less than one percent of the last recorded annual output in the market area, or when it is otherwise apparent that a 208 study is not required to determine that the project will not violate section 208.

(e) Unless EDA determines that circumstances require a section 208 study or report, EDA will make a finding of compliance with section 208 without doing a section 208 report or study for those projects with known beneficiaries, and which have one or more of the following characteristics:

(1) The project is primarily for the use and benefit of the community as a whole without significantly expanding the output of commercial products or services;

(2) The project is primarily to be used for non-production or non-distribution purposes;

(3) The project will replace or restore capacity recently destroyed by flood, fire, wind, or other natural disaster, without contributing to significant expansion of the previously existing supply of the same kinds of commercial products or services;

(4) The project will assure the retention of physical capacity and/or employment without significantly expanding the existing supply of the same kinds of commercial products or services;

(5) The project will assure the re-opening of facilities closed within two years of the date of reopening, if the facility will provide the same kinds of products or services as previously provided, without a significant increase in output;

(6) The project will replace, rebuild or modernize, within the same commuting area, facilities which within the previous two years have been, or are to be, displaced by official governmental action, without a change in the kind or significant increase in output of the commercial product or service previously provided;

(7) The project assures completion of a project previously assisted by EDA,

where further funding is required because of revised project cost estimates, rather than for additional productive capacity;

(8) The project is wholly or primarily for planning, technical assistance, research, evaluation, other studies, or for the training of workers, and not for the direct benefit of a firm or an industry that produces a commercial product or service; or

(9) No firm benefitted by the project will use 50 percent or more of any EDA-financed service or facility.

[64 FR 5482, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999]

§316.3 Nonrelocation.

(a) General requirements for non-relocation for funding under PWEDA are as follows:

(1) EDA financial assistance will not be used to assist employers who transfer jobs from one commuting area to another. A commuting area ("area") is that area defined by the distance people travel to work in the locality of the project receiving EDA financial assistance;

(2) Every applicant for EDA financial assistance has an affirmative duty to inform EDA of any employer who will benefit from such assistance who will transfer jobs (not persons) in connection with the EDA grant;

(3) EDA will determine compliance with this requirement prior to grant award based upon information provided by the applicant during the project selection process; and

(4) Each applicant and identified primary beneficiary of EDA assistance, which for purposes of this section means an entity providing economic justification for the project, must submit its certification of compliance with this section, and other applicable information as determined by EDA.

(b) The nonrelocation requirements stated in paragraph (a) of this section shall not apply to businesses which:

(1) Relocated to the area prior to the date of the applicant's request for EDA assistance;

(2) Have moved or will move into the area primarily for reasons which have no connection to the EDA assistance;

(3) Will expand employment in the area where the project is to be located

substantially beyond employment in the area in which the business had originally been located;

(4) Are relocating from technologically obsolete facilities to be competitive;

(5) Are expanding into the new area by adding a branch, affiliate, or subsidiary while maintaining employment levels in the old area or areas; or

(6) Are determined by EDA to be exempt.

§316.4 Procedures in disaster areas.

When non-statutory EDA administrative or procedural conditions for financial assistance awards cannot be met by applicants under PWEDA as the result of a disaster, EDA may waive such conditions.

§316.5 Project servicing for loans and loan guarantees.

EDA will provide project servicing to borrowers and lenders who received EDA loans and/or guaranteed loans under any programs administered by EDA. This includes but is not limited to loans under PWEDA prior to the effective date of Public Law 105-393, the Trade Act and the Community Emergency Drought Relief Act of 1977.

(a) EDA will continue to monitor such loans and guarantees in accordance with the loan or guarantee program.

(b) Borrowers/lenders shall submit to EDA any requests for modifications of their agreements with EDA. EDA shall, in accordance with applicable laws and policies, including the Federal Credit Reform Act of 1990 (2 U.S.C. 661c(e)), consider and respond to such modification requests.

(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 or guarantees made or evidences of indebtedness purchased, 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 financial assistance extended;

(2) Collect or compromise all obligations assigned to or held by it in connection with EDA financial assistance projects until such time as such obligations may be referred to the Attorney General for suit or collection; and

(3) Take any and all other actions determined by it to be necessary or desirable in purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively dealing with or realizing on loans or guaranties made or evidences of indebtedness purchased.

§316.6 Public information.

The rules and procedures regarding public access to the records of the Economic Development Administration are found at 15 CFR part 4.

§316.7 Relocation assistance and land acquisition policies.

Recipients of EDA financial assistance under PWEDA and the Trade Act (States and political subdivisions of States and non-profits as applicable) are subject to requirements set forth at 15 CFR part 11.

§316.8 Additional requirements; Federal policies and procedures.

Recipients, as defined under §314.2 of this chapter, are subject to all Federal laws and to Federal, Department of Commerce, and EDA policies, regulations, and procedures applicable to Federal financial assistance awards, including 15 CFR part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 15 CFR part 14, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Other Non-Profit and Commercial Organizations, whichever is applicable.

§316.9 Amendments and changes.

(a) Requests by recipients for amendments to a grant shall be submitted in writing to EDA for approval, and shall contain such information and documentation necessary to justify the request.

(b) Any changes made without approval by EDA are made at grantee's own risk of suspension or termination of the project.

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(c) Changes of project scope after the time the project grant funds could be obligated will not be approved by EDA. Projects funded with no year funds are not subject to the change of scope rule.

[64 FR 5482, Feb. 3, 1999, as amended at 65 FR 71026, Nov. 28, 2000]

§ 316.10 Preapproval award costs.

Project activities carried out before approval of an application by EDA are carried out at the sole risk of the applicant. Such activity could result in rejection of such project application, the disallowance of costs, or other adverse consequences as a result of non-compliance with Federal requirements, including, but not limited to, civil rights requirements, Federal labor standards, or Federal environmental, historic preservation or related requirements.

§ 316.11 Intergovernmental review of projects.

(a) When the applicant is not a State, Indian tribe or other general-purpose governmental authority, the applicant must afford the appropriate general purpose local governmental authority of the area a minimum of 15 days in which to review and comment on a proposed project under EDA's public works and economic adjustment programs. Under these programs, applicants shall furnish the following with their application: if no comments were received, a statement of the efforts made to obtain such comments; or, if comments were received, a copy of the comments and a statement of any actions taken to address such comments.

(b) Applicants as appropriate, must also give State and local governments a reasonable opportunity to review and comment on the proposed project if the State has a Single Point of Contact review process, including comments from areawide planning organizations in metropolitan areas as provided for in 15 CFR part 13.

[64 FR 5482, Feb. 3, 1999, as amended at 64 FR 69879, Dec. 14, 1999]

§ 316.12 Fees for paying attorneys and consultants.

Grant funds must not be used directly or indirectly to pay for attorney's or consultant's fees in connection

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with obtaining grants and contracts for projects funded under PWEDA.

§ 316.13 Economic development information clearinghouse.

EDA will provide assistance and information as follows:

(a) Maintain a central information clearinghouse on matters relating to economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment programs and activities of the Federal and State governments, including political subdivisions of States;

(b) Assist potential and actual applicants for economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment assistance under Federal, State, and local laws in locating and applying for the assistance; and

(c) Assist areas described in § 301.2(b) and other areas by providing to interested persons, communities, industries, and businesses in the areas any technical information, market research, or other forms of assistance, information, or advice that would be useful in alleviating or preventing conditions of excessive unemployment or underemployment in the areas.

§ 316.14 Project administration, operation, and maintenance.

EDA shall approve Federal assistance under PWEDA only if satisfied that the project for which Federal assistance is granted will be properly and efficiently administered, operated, and maintained.

§ 316.15 Maintenance of standards.

In accordance with sec. 602 of PWEDA all laborers and mechanics employed by contractors or subcontractors on public projects assisted by EDA under PWEDA shall be paid in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5).

§ 316.16 Records and audits.

(a) Each recipient of Federal assistance under PWEDA shall keep such records as the Secretary shall require, including records that fully disclose—

(1) The amount and the disposition by the recipient of the proceeds of the assistance;

(2) The total cost of the project in connection with which the assistance is given or used;

(3) The amount and nature of the portion of the cost of the project provided by other sources; and

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

(b) Access to books for examination and audit—The Secretary, the Inspector General of the Department, and the Comptroller General of the United States, or any duly authorized representative, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that relate to assistance received under PWEDA.

§ 316.17 Acceptance of certifications by applicants.

EDA will accept an applicant's certifications, accompanied by evidence satisfactory to EDA, that the applicant meets the requirements of PWEDA. Each applicant must include in such evidence satisfactory information that any non-Federal funds (or eligible Federal funds) required to match the EDA share of project costs are committed to the project and will be available as needed.

§ 316.18 Reports by recipients.

(a) In general, each recipient of assistance under PWEDA must submit reports to EDA at such intervals and in such manner as EDA shall require, except that no report shall be required to be submitted more than 10 years after the date of closeout of the assistance award.

(b) Each report must contain an evaluation of the effectiveness of the economic assistance provided in meeting the need that the assistance was designed to address and in meeting the objectives of PWEDA.

§ 316.19 Project administration by District organization.

When an Economic Development District is not a recipient or co-recipient of an award for a project involving construction, the District organization may administer the project for such recipient if the following conditions are met, as determined by EDA:

(a) The recipient has requested (either in the application or by separate written request) that the district organization for the area in which the project is located perform the project administration;

(b) The recipient certifies and EDA finds that:

(1) Administration of the project is beyond the capacity of the recipient's current staff to perform and would require hiring additional staff or contracting for such services,

(2) No local organization/business exists that would be able to administer the project in a more efficient or cost-effective manner than the staff of the district, and

(3) The staff of the district would administer the project themselves, without subcontracting the work out;

(c) EDA approves the request either by approving the application in which the request is made, or by separate specific written approval; and

(d) The allowable costs for the administration of the project by the district organization staff will not exceed the customary and reasonable amount that would be allowable if the district were the recipient.

PART 317—CIVIL RIGHTS

AUTHORITY: 42 U.S.C. 3211; 42 U.S.C. 2000d-1; 29 U.S.C. 794; 42 U.S.C. 3123; 42 U.S.C. 6709; 20 U.S.C. 1681; 42 U.S.C. 6101; Department of Commerce Organization Order 10-4.

SOURCE: 64 FR 5485, Feb. 3, 1999, unless otherwise noted.

§ 317.1 Civil rights.

(a) Discrimination is prohibited in programs receiving federal financial assistance from EDA in accordance with the following authorities:

(1) Section 601 of Title VI of the Civil Rights Act of 1964, codified at 42 U.S.C. 2000d *et seq.* (proscribing discrimination on the basis of race, color, or national origin), and the Department of Commerce's implementing regulations found at 15 CFR part 8;

(2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex);

(3) 29 U.S.C. 794, as amended, and the Department of Commerce's implementing regulations found at 15 CFR

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part 8b (proscribing discrimination on the basis of disabilities);

(4) 42 U.S.C. 6101, as amended, and the Department of Commerce's implementing regulations found at 15 CFR part 20; and

(5) 42 U.S.C. 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program; and

(6) Other Federal statutes, regulations and Executive Orders as applicable.

(b) 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 section 601 of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, 42 U.S.C. 3123, 42 U.S.C. 6709, and the Age Discrimination Act of 1975, or because the person has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.

(c) Definitions: (1) *Other Parties* means, as an elaboration of the definition in 15 CFR part 8, entities which, or which are intended to, create and/or save 15 or more permanent jobs as a result of EDA assistance provided that they are also either specifically named in the application as benefitting from the project, or are or will be located in an EDA building, port, facility, or industrial, commercial or business park prior to EDA's final disbursement of funds awarded for the project.

(2) Additional definitions are provided in EDA's Civil Rights Guidelines and 15 CFR part 8.

(d) All recipients of EDA financial assistance under PWEDA and the Trade Act, and Other Parties are required to submit the following to EDA:

(1) Written assurances that they will comply with EDA regulations and other Department of Commerce regulations, and such other requirements as may be applicable, prohibiting discrimination;

(2) Employment data in such form and manner as determined by EDA;

(3) Information on civil rights status and involvement in charges of discrimination in employment or the provision of services during the 2 years

previous to the date of submission of such data as follows:

(i) Description of the status of any lawsuits, complaints or the results of compliance reviews; and

(ii) Statement indicating any administrative findings by a Federal or State agency.

(4) Whenever deemed necessary by EDA to determine that applicants and other parties are in compliance with civil rights regulations, such applicants and other parties shall submit additional information in the form and manner requested by EDA; and

(5) In addition to employment record requirements found in 15 CFR 8.7, complete records on all employees and applicants for employment, including information on race, sex, national origin, age, education and job-related criteria must be retained by employers and made accessible to the responsible Department official.

(e) To enable EDA to determine that there is no discrimination in the distribution of benefits in projects which provide service benefits, EDA may require that applicants submit a project service map and information on which to determine that services are provided to all segments of the area being assisted. Applicants may be required to submit any other information EDA may deem necessary for such determination.

(f) EDA assisted planning organizations must meet the following requirements:

(1) For the selection of representatives, EDA expects planning organizations and CEDS committees to take appropriate steps to ensure, where appropriate to the area, that there is adequate representation of minority and low-income populations, women, people with disabilities and Federal and State recognized American Indian tribes and that such representation is accomplished in a nondiscriminatory manner; and

(2) EDA assisted planning organizations and CEDS committees shall take appropriate steps to ensure that no individual will be subject to discrimination in employment because of their race, color, national origin, sex, age or disability.

(3) Prior to approval of EDA initial funding, and for district designations, each district and other planning organizations so supported by EDA is required to report to EDA the membership of its governing bodies, executive committees, and staff. This report shall include the following items:

(i) The total population and minority population of the area served by the organization;

(ii) A list of organizations in the area representing the interests of minorities, women, and people with disabilities;

(iii) A list of the membership of the governing board, executive committee indicating race, sex, national origin, age, and those who self-identify, as having disabilities;

(iv) A description of actions taken and methods used in its diversity efforts to promote, as much as possible, the participation of all segments of the areas served;

(v) Information regarding how they notified and provided organizations, including neighborhood associations representing the interests of minorities, women, and people with disabilities, the opportunity to select members and their own representatives;

(vi) A list of employees on the staff of the organization by name, position title, salary, funding source, and hiring date, indicating race, sex, national origin, and age; and

(vii) A brief summary of any economic development activities undertaken during the previous 12 months that may have impacted the covered persons in the area. This information is required with the initial application and annually thereafter for continuation planning funding.

(4) Prior to approval of continuation funding for a planning grant each district and other planning organization so supported by EDA is required to submit a report which includes the items outlined in paragraph (f)(3) of this section except items in paragraphs (f)(3)(ii) and (v), (although paragraph (f)(3)(v) may be required when changes to the boards and committees affecting minorities, women, people with disabilities have occurred), and a summary indicating the annual progress made in

the diversity efforts including a list by name, race, national origin, sex, and age of all hires, promotions, terminations, and composition of applicant pools since the last reporting period and steps taken to ensure non-discrimination and to provide equal employment opportunity.

(5) In order to determine whether districts and other planning organizations supported by EDA are complying with the requirements in paragraph (f)(4) of this section, EDA shall conduct annual compliance reviews of these organizations through either an in-depth desk audit or onsite review.

(g) Applicants for Revolving Loan Funds will provide information describing the make-up of the existing or proposed RLF Loan Board members by race, national origin, gender, age, and those who voluntarily self-identify as having disabilities. The reports submitted to EDA by RLF grantees will be used to monitor civil rights compliance. Additional information may be requested as needed to determine compliance. Compliance issues which will be reviewed and monitored include, but are not limited to, the following:

(1) The representation of minorities, women, and those who voluntarily self-identify as having disabilities, as well as the age of members on the RLF Loan Board;

(2) Recipient's plans to openly market the RLF to prospective minority, disabled, and women business borrowers; and

(3) Recipient's monitoring plans for borrowers' compliance with civil rights requirements concerning employees or applicants for employment, and/or providers of goods and services.

(h) Reporting and other procedural matters are set forth in 15 CFR parts 8, 8b, 8c, and 20 and the Civil Rights Guidelines which are available from EDA's Regional Offices. See part 300 of this chapter.

[64 FR 5485, Feb. 3, 1999, as amended at 64 FR 69880, Dec. 14, 1999; 65 FR 71026, Nov. 28, 2000]

PART 318—EVALUATIONS OF UNIVERSITY CENTERS AND ECONOMIC DEVELOPMENT DISTRICTS

Sec.

318.1 University Center performance evaluations.

318.2 Economic Development District performance evaluations.

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

SOURCE: 64 FR 5486, Feb. 3, 1999, unless otherwise noted.

§ 318.1 University Center performance evaluations.

(a) EDA will evaluate the performance of each University Center. EDA will:

(1) Evaluate each University Center at least once every three years;

(2) Assess the University Center's contribution to providing technical assistance, conducting applied research, and disseminating project results, in accordance with the scope(s) of work funded during the evaluation period; and

(3) For peer review, ensure the participation of at least one other University Center, as appropriate, in the evaluation on a cost-reimbursement basis.

(b) A purpose of the evaluation is to determine if the University Center should continue to receive funding under the program.

[64 FR 5486, Feb. 3, 1999, as amended at 64 FR 69881, Dec. 14, 1999]

§ 318.2 Economic Development District performance evaluations.

EDA will evaluate the performance of each Economic Development District. EDA will:

(a) Evaluate each Economic Development District at least once every three years;

(b) Assess the Economic Development District's management standards, financial accountability, and program performance; and

(c) For peer review, ensure the participation of at least one other Economic Development District organization, as appropriate, in the evaluation on a cost-reimbursement basis.

[64 FR 5486, Feb. 3, 1999, as amended at 64 FR 69881, Dec. 14, 1999]