

regulations. From those proposals meeting EDA's technical and legal requirements, EDA will select proposals for further consideration based on:

- (1) The availability of funds; and
 - (2) The competitiveness of the proposals, judging by the criteria and priorities set forth in §301.8; and
 - (3) The applicable FFO.
- (b) EDA will endeavor to notify proponents regarding whether their proposals are selected as soon as practicable.

§301.10 Formal application requirements.

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

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

- (1) Include evidence of applicant eligibility (as set forth in §301.2) and of economic distress (as set forth in §301.3);
- (2) Identify the sources of funds, both eligible federal and non-EDA, and In-Kind Contributions that will constitute the required Matching Share for the Project (*see* the Matching Share requirements under §301.5); and
- (3) For construction Projects under parts 305 or 307 of this chapter, include a CEDS acceptable to EDA pursuant to part 303 of this chapter or otherwise incorporate by reference a current CEDS that EDA approves for the Project. The requirements of the preceding sentence shall not apply to:
 - (i) Strategy Grants, as defined in §307.3 of this chapter; and
 - (ii) Projects located in a Region designated as a Special Impact Area pursuant to part 310 of this chapter.

PART 302—GENERAL TERMS AND CONDITIONS FOR INVESTMENT ASSISTANCE

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AUTHORITY: 19 U.S.C. 2341 *et seq.*; 42 U.S.C. 3150; 42 U.S.C. 3152; 42 U.S.C. 3153; 42 U.S.C. 3192; 42 U.S.C. 3193; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3212; 42 U.S.C. 3216; 42 U.S.C. 3218; 42 U.S.C. 3220; 42 U.S.C. 5141; Department of Commerce Delegation Order 10-4.

SOURCE: 70 FR 47019, Aug. 11, 2005, unless otherwise noted.

§302.1 Environment.

EDA will undertake environmental reviews of Projects in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190; 42 U.S.C. 4321 *et seq.*, as implemented under 40 CFR Chapter V) ("*NEPA*"), and all applicable federal environmental statutes, regulations and Executive Orders. These authorities include the implementing regulations of NEPA requiring EDA to provide public notice of the

availability of project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, to the affected or interested public, as specified in 40 CFR 1506.6(b). Depending on the Project's location, environmental information concerning specific Projects can be obtained from the Environmental Officer in the appropriate EDA regional office as listed in the annual FFO.

§302.2 Procedures in disaster areas.

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

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

EDA will provide Project servicing to borrowers who received EDA loans or EDA-guaranteed loans and to lenders who received EDA loan guaranties under any EDA-administered program. Project servicing includes but is not limited to loans made under PWEDA prior to the effective date of the Economic Development Administration Reform Act of 1998, the Trade Act and the Community Emergency Drought Relief Act of 1977 (Pub. L. 95-31; 42 U.S.C. 5184 note).

(a) EDA will continue to monitor such loans and loan guaranties in accordance with the applicable loans or loan guaranty program(s).

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

(c) In the event that EDA determines it necessary or desirable to take actions to protect or further the interests of EDA in connection with loans, loan guaranties or evidence of purchased debt, EDA may:

(1) Assign or sell at public or private sale or otherwise dispose of for cash or credit, in its discretion and upon such terms and conditions as it shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property, or security assigned to or held by it in connection with any EDA loans, EDA-guaranteed loans or Investment Assistance extended under PWEDA;

(2) Collect or compromise all obligations assigned to or held by it in connection with any EDA loans, EDA-guaranteed loans or Investment Assistance awarded under PWEDA until such time as such obligations may be referred to the Attorney General of the United States for suit or collection; and

(3) Take any and all other actions determined to be necessary or desirable in purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively processing or disposing of loans or loan guaranties made or evidence of purchased debt in connection with any EDA loans, EDA-guaranteed loans or Investment Assistance awarded under PWEDA.

§302.4 Public Information.

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

§302.5 Relocation assistance and land acquisition policies.

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

§302.6 Additional requirements; federal policies and procedures.

Recipients are subject to all federal laws and to federal, Department and

EDA policies, regulations and procedures applicable to federal financial assistance awards, including but not limited to 15 CFR part 14, the Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, other Non-Profit and Commercial Organizations, and 15 CFR part 24, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable.

§302.7 Amendments and changes.

(a) Recipients shall submit requests for amendments to Investment awards in writing to EDA for approval and shall provide such information and documentation as EDA deems necessary to justify the request.

(b) Any changes to Projects made without EDA's approval are made at the Recipient's risk of non-payment of costs, suspension, termination or other applicable EDA action with respect to the Investment.

§302.8 Pre-approval Investment Assistance costs.

Project activities carried out before approval of Investment Assistance shall be carried out at the sole risk of the Eligible Applicant. Such activity is subject to the rejection of the application, the disallowance of costs, or other adverse consequences as a result of non-compliance with EDA or federal requirements, including but not limited to procurement requirements, civil rights requirements, federal labor standards, or federal environmental, historic preservation and related requirements.

§302.9 Inter-governmental review of Projects.

(a) When an Eligible Applicant is not a State, Indian Tribe or other general purpose governmental authority, the Eligible Applicant must afford the appropriate general purpose local governmental authority (the "Authority") in the Region a minimum of fifteen (15) days to review and comment on a proposed Project under EDA's Public Works and Economic Development program or a proposed construction Project or RLF Grant under EDA's

Economic Adjustment Assistance program. Under these programs, Eligible Applicants shall furnish the following with their applications: if no comments are received from the Authority, a statement of efforts made to obtain such comments; or, if comments are received from the Authority, a copy of the comments and a statement of any actions taken to address such comments.

(b) As required by 15 CFR part 13 and Executive Order 12372, "Intergovernmental Review of Federal Programs," as amended, if a State has adopted a process under Executive Order 12372 to review and coordinate proposed federal financial assistance and direct federal development (commonly referred to as the "single point of contact review process"), all Eligible Applicants must also give State and local governments a reasonable opportunity to review and comment on the proposed Project, including review and comment from area-wide planning organizations in metropolitan areas, as provided for in 15 CFR part 13.

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

(a) *General.* Investment Assistance awarded under PWEDA shall not directly or indirectly reimburse any attorneys' or consultants' fees incurred in connection with obtaining Investment Assistance and contracts under PWEDA.

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

(1) Certify to EDA the names of any attorneys, agents and other persons engaged by or on behalf of the Eligible Applicant for the purpose of expediting applications made to EDA in connection with obtaining Investment Assistance under PWEDA and the fees paid or to be paid to the person for expediting the applications; and

(2) Upon EDA's request, execute an agreement binding the Eligible Applicant, for the two-year (2) period beginning on the date on which the Investment Assistance is awarded to the Eligible Applicant, to refrain from employing, offering any office or employment to or retaining for professional services any person who, on the date on which the Investment Assistance is awarded or within the one-year (1) period ending on that date:

(i) Served as an officer, attorney, agent or employee of the Department; and

(ii) Occupied a position or engaged in activities that the Assistant Secretary determines involved discretion with respect to the award of Investment Assistance under PWEDA.

§ 302.11 Economic development information clearinghouse.

Pursuant to Section 502 of PWEDA, EDA maintains an economic development information clearinghouse on its Internet Web site at *www.eda.gov*.

§ 302.12 Project administration, operation and maintenance.

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

§ 302.13 Maintenance of standards.

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

1950; (64 Stat. 1267)) and Section 3145 of title 40, United States Code.

§ 302.14 Records and audits.

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

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

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

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

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

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

§ 302.15 Acceptance of certifications by Eligible Applicants.

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

§ 302.16 Reports by Recipients.

(a) In general, each Recipient must submit reports to EDA at intervals and in the manner that EDA shall require, except that EDA shall not require any report to be submitted more than ten (10) years after the date of closeout of the Investment Assistance.

(b) Each report must contain a data-specific evaluation of the effectiveness of the Investment Assistance provided in fulfilling the Project's purpose (including alleviation of economic distress) and in meeting the objectives of PWEDA. Data used by a Recipient in preparing reports shall be accurate and verifiable as determined by EDA, and from independent sources (whenever possible). EDA will use this data and

report to fulfill its performance measurement reporting requirements under the Government Performance and Results Act of 1993 and to monitor internal, Investment and Project performance through an internal performance measurement system, such as the EDA Balanced Scorecard or other system.

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

§ 302.17 Conflicts of interest.

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

(b) *Prohibition on direct or indirect financial or personal benefits.* (1) An Interested Party shall not receive any direct or indirect, financial or personal benefits in connection with the award of Investment Assistance or its use for payment or reimbursement of costs by or to the Recipient. Recipients shall establish safeguards to prohibit an Interested Party from using its position for

a purpose that constitutes or presents the appearance of personal or organizational conflicts of interest or of personal gain. *See also* 15 CFR 14.42 and 24.36(b)(3); Forms SF-424B and SF-424D.

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

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

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

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

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

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

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

§ 302.18 Post-approval requirements.

(a) *General.* A Recipient must comply with all financial, performance, progress report and other requirements set forth in the terms and conditions of the Investment Assistance, including any special terms and applicable federal cost principles (collectively, "Post-Approval Requirements"). A Recipient's failure to comply with Post-Approval Requirements may result in the disallowance of costs, termination of the Investment Assistance award, or other adverse consequences to the Recipient.

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

§302.19 Indemnification.

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

§302.20 Civil rights.

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

(1) Section 601 of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d *et seq.*) (proscribing discrimination on the basis of race, color, or national origin), and the Department’s implementing regulations found at 15 CFR part 8;

(2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex in Investment Assistance provided under PWEDA) and 42 U.S.C. 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program), and the Department’s implementing regulations found at 15 CFR 8.7 through 8.15;

(3) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) (proscribing discrimination on the basis of disabilities), and the Department’s implementing regulations found at 15 CFR part 8b;

(4) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*) (proscribing discrimination on the basis of age), and the Department’s implementing regulations found at 15 CFR part 20; and

(5) Other federal statutes, regulations and Executive Orders, as applicable.

(b) *Definitions.* (1) For purposes of this section, an “*Other Party*” means an “other party subject to this part,” as defined in 15 CFR 8.3(l), and includes

an entity which (or which is intended to) creates and/or saves fifteen (15) or more permanent jobs as a result of Investment Assistance; provided that such entity is also either specifically named in the application as benefiting from the Project, or is or will be located in an EDA building, port, facility, or industrial, commercial or business park constructed or improved in whole or in part with Investment Assistance prior to EDA’s final disbursement of Investment Assistance funds.

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

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

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

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

PART 303—PLANNING INVESTMENTS AND COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES

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