

unions, and therefore, no regulatory flexibility analysis is required.

*Paperwork Reduction Act*

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

*The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

*Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. NCUA does not believe this interim final rule is a “major rule” within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

**List of Subjects**

*12 CFR Part 740*

Advertisements, Credit unions, Signs and symbols.

*12 CFR Part 745*

Credit unions, Share insurance.

By the National Credit Union Administration Board, this 15th day of October 2008.

**Mary F. Rupp,**  
*Secretary of the Board.*

■ For the reasons discussed above, NCUA amends 12 CFR parts 740 and 745 as follows:

**PART 740—ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS**

■ 1. The authority citation for part 740 continues to read as follows:

**Authority:** 12 U.S.C. 1766, 1781, 1789.

■ 2. Section 740.4(b)(1) is amended by adding a new sentence to the end to read as follows:

**§ 740.4 Requirements for the official sign.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \* To address the temporary increase through December 31, 2009 in the standard maximum share insurance amount as defined in § 745.1(e) of this chapter, insured credit unions may continue to display the official sign depicted in paragraph (b) of this section but should inform members of the increased coverage through additional signage indicating the temporary increase in coverage, display other versions of the official sign distributed or approved by NCUA and appearing on NCUA’s official Web site, or alter by hand or otherwise the official sign depicted in paragraph (b) of this section for that purpose provided the altered sign is legible and otherwise complies with this part.

\* \* \* \* \*

**PART 745—SHARE INSURANCE AND APPENDIX**

■ 3. The authority citation for part 745 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789.

■ 4. Section 745.1(e) is revised to read as follows:

**§ 745.1 Definitions.**

\* \* \* \* \*

(e) The term “standard maximum share insurance amount,” referred to as the “SMSIA” hereafter, means \$250,000 from October 3, 2008, until December 31, 2009. Effective January 1, 2010, the SMSIA means \$100,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(F)). All examples in this part use \$100,000 as the SMSIA.

■ 5. Section 745.3(a)(3) is revised to read as follows:

**§ 745.3 Single ownership accounts.**

(a) \* \* \*

(3) *Mortgage servicing accounts.*

Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be insured for the cumulative amount paid into the account by the mortgagors, up to a limit of the SMSIA per mortgagor. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a)(2) of this section for the ownership interest of each mortgagor in such accounts. This provision is effective as

of October 22, 2008 for all existing and future mortgage servicing accounts.

\* \* \* \* \*

[FR Doc. E8-25124 Filed 10-21-08; 8:45 am]

BILLING CODE 7535-01-P

**DEPARTMENT OF COMMERCE**

**Economic Development Administration**

**13 CFR Parts 300, 301, 302, 303, 305, 307, 308, 310, 314 and 315**

[Docket No.: 080213181-8811-01]

RIN 0610-AA64

**Revisions to the EDA Regulations**

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

**ACTION:** Interim final rule.

**SUMMARY:** The Economic Development Administration (“EDA”) published final regulations in the **Federal Register** on September 27, 2006. In March 2007, the Office of the Inspector General (“OIG”) published a report titled *Aggressive EDA Leadership and Oversight Needed to Correct Persistent Problems in the RLF Program*. In the time since the publication of this report, EDA has made significant improvements in the management and oversight of its revolving loan fund (“RLF”) program, including the issuance of written guidance that provides EDA staff with reasonable steps to help better ensure grantee compliance with RLF requirements. EDA is publishing this interim final rule (this “IFR”) to synchronize the RLF regulations with that guidance. Additionally, EDA is publishing this IFR to make changes to certain definitions in the Trade Adjustment Assistance for Firms Program regulations set out in 13 CFR part 315. This IFR also provides notice of other substantive and non-substantive revisions made to the EDA regulations.

**DATES:** The effective date of this IFR is October 22, 2008. Comments on this IFR must be received by EDA’s Office of Chief Counsel no later than 5 p.m. E.S.T. on December 22, 2008. Although these regulations are effective as of date of publication in the **Federal Register**, EDA solicits and welcomes any comments on the regulations discussed herein.

**ADDRESSES:** You may submit comments, identified by Docket No. 080213181-8811-01, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Agency Web Site:* <http://www.eda.gov/Home/EDAHomePage.xml>. Follow the instructions for submitting comments at <http://www.eda.gov/InvestmentsGrants/Lawsreg.xml>.

• *E-mail:* [edaregs@eda.doc.gov](mailto:edaregs@eda.doc.gov). Please state “Comments on the IFR” and include Docket No. 080213181–8811–01 in the subject line of the message.

• *Fax:* (202) 482–5671, *Attention:* Office of Chief Counsel. Please indicate “Comments on the IFR” on the cover page.

• *Mail:* Economic Development Administration, Office of Chief Counsel, Room 7005, Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

• *Hand Delivery/Courier:* Economic Development Administration, Office of Chief Counsel, Room 7005, Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.eda.gov/InvestmentsGrants/Lawsreg.xml>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.eda.gov/Home/EDAHomePage.xml>.

#### FOR FURTHER INFORMATION CONTACT:

Hina Shaikh, Esq., Deputy Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4687.

#### SUPPLEMENTARY INFORMATION:

##### Background

On September 27, 2006, EDA published final regulations in the **Federal Register** (71 FR 56658) to implement amendments made to EDA’s authorizing statute, the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*) (“PWEDA”), by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108–373, 118 Stat. 1756). In addition to tracking the statutory amendments to PWEDA, the September 27, 2006 final rule reflected EDA’s current practices and policies in administering its economic development programs that have evolved since the promulgation of EDA’s former regulations.

As set out in detail below, EDA is publishing this IFR to make necessary

revisions to its RLF regulations in order to ensure that they correspond with new policy determinations that EDA has made in response to the OIG’s audit report titled *Aggressive EDA Leadership and Oversight Needed to Correct Persistent Problems in the RLF Program* (March 2007). The OIG found that EDA did not have an adequate tracking and oversight system, and was unable to ensure grantees’ compliance with critical financial reporting requirements. EDA has addressed this issue by creating a web-based reporting system that eliminates all duplicative and calculable fields. This system is designed to allow grantees, if they so choose, to upload data directly from their accounting software into the web-based system, thus eliminating time-consuming data entry. Alternatively, grantees have the option of manually entering data into the web-based system. All grantees will be required to report on a semi-annual basis.

EDA also is publishing this IFR to make certain substantive changes to its regulations that implement the Trade Adjustment Assistance for Firms program (the “TAA Program”), and to provide notice of necessary substantive and non-substantive revisions made to its regulations.

Capitalized terms used but not otherwise defined in this IFR have the meanings ascribed to them in 13 CFR 300.3, 302.20, 303.2, 307.8 and 314.1, and all section citations used herein refer to sections EDA’s regulations set out in 13 CFR chapter III.

#### Discussion of Changes to EDA’s Regulations

Set out below, the revisions to various parts that comprise 13 CFR chapter III are explained in sequential order. Where substantive and non-substantive changes are made in one part, they are discussed together. The non-substantive edits include typos, grammatical errors and title changes, and are intended to make the regulations easier to understand. Additional non-substantive changes also update the regulations in light of developments since their publication on September 27, 2006.

##### Section 300.3—Definitions

For increased clarity in the definition of “*Eligible Recipient*,” this IFR replaces the word “under” with the phrase “pursuant to § 306.1(d)(3) of”. This more adequately explains EDA’s statutory authority to enter into contracts as opposed to grants with private individuals, partnerships, businesses, corporations, or appropriate institutions under the local and national technical assistance programs.

In the context of restrictions relating to conflicts of interest, EDA amends its regulations to recognize a domestic partner or significant other as a “spouse” in the definition of “*Immediate Family*,” to take into account that a couple may consist of persons living together who are not married.

##### Section 301.3—Economic Distress Levels

In Section 301.3(a)(1)(i), the word “percent” is changed to “percentage point.” This revision does not change current practice and is made for increased clarity.

##### Section 301.4—Investment Rates

Corresponding to the change described above in Section 301.3(a)(1)(i), Table 1 in Section 301.4(b)(1)(ii) is revised to state that a Project located in a Region demonstrating a 24-month unemployment rate at least one (1) “*percentage point*” greater than the national average is eligible to receive a maximum allowable Investment Rate of fifty (50) percent. Accordingly, the “1%” in row (G) in Table 1 is replaced with the phrase “1 percentage point.” This change does not substantively alter this regulation and is made for clarity only.

In Section 301.4(b)(2), in the second sentence, “allowable” is inserted between the words “maximum” and “Investment” to make clear that a Project subject to a Special Need may be eligible for an Investment Rate up to the maximum allowable Investment Rate of eighty (80) percent, unless the Project is eligible for a higher Investment Rate under Section 301.4(b)(5).

For more precise wording in Section 301.4(b)(4), the first sentence is introduced with a lead-in phrase beginning with “Except as otherwise provided in paragraph (b)(5) of this section,” similar to paragraphs (b)(2) and (b)(3) of Section 301.4. The second sentence is revised to be more parallel in structure and content as section 207 of PWEDA (42 U.S.C. 3147).

##### Section 301.10—Formal Application Requirements

To ensure that prospective applicants are aware that PWEDA does not require nor does EDA provide an appeals process in the event that an application is denied, this IFR inserts the following sentence at the end of Section 301.10(a): “PWEDA does not require nor does EDA provide an appeals process for an applicant whose application for Investment Assistance is denied.”

*Section 302.14—Records and Audits*

The changes made to Section 302.14 are non-substantive. To better identify the subject matter of this section, the heading is changed from “Records and audits” to “Records.” In addition, subparagraphs (a)(1)–(4) are rearranged and reworded as follows:

- (1) The total cost of the Project;
- (2) The amount and disposition by the Recipient of the Investment Assistance;
- (3) The amount and nature of the portion of Project costs provided by other sources; and
- (4) Such other information as EDA determines will facilitate an effective audit.”

To track section 608(b) of PWEDA (42 U.S.C. 3218) and for increased clarity, the heading of Section 302.14(b) is changed from “Audits” to “Access to records.” Additionally, “and/or” is changed to “or” for clarity.

*Section 302.16—Reports by Recipients*

In the third sentence in Section 302.16(b), “this data and report” is changed to “the data and reports” to ensure clarity. In Section 302.16(c), “Projects” is replaced with “a Project,” “provide” is changed to “provides,” and “that Recipients” is changed to “the Recipient to.”

*Section 302.17—Conflicts of Interest*

In the first sentence of Section 302.17(b)(1), the extraneous comma after the word “indirect” is removed.

*Section 303.4—Award Requirements*

In Section 303.4(c), for consistency with Department of Commerce guidance, the word “award” is replaced with “project.”

*Section 305.6—Allowable Methods of Procurement for Construction Services*

In the second sentence of Section 305.6(a), the phrase “design/bid/build” is changed to “design/build” so that the sentence makes sense in relation to the first sentence of the provision. This was an inadvertent mistake overlooked in publishing the September 27, 2006 final rule. “Design/bid/build” and “design/build” are two distinct construction delivery methods.

**Part 307—Economic Adjustment Assistance Investments**

As the agency responsible for administering the RLF program under PWEDA, EDA must provide adequate oversight and demand accountability from its staff and RLF Recipients to help protect these program dollars from waste, fraud and abuse. EDA makes most of the changes discussed below to help better ensure that all RLF

Recipients involved in the RLF program adhere to EDA’s statutory and regulatory requirements.

*Section 307.8—Definitions*

First, in the definition of “Closed Loan,” the comma after the word “been” is removed.

Second, as of the effective date of this IFR, EDA will not allow RLF Recipients to use RLF Capital to guarantee loans. While this authority has been used extremely infrequently throughout the four-decade history of the RLF program, EDA has determined that loan guaranties are too risky and of limited utility, since, unlike federal guaranties that are backed by the full faith and credit of the United States, RLF loan guaranties are backed only by the assets in the RLF. Therefore, the definition of “Guaranteed Loan” in Section 307.8 is removed in its entirety.

Last, to ensure understanding of the two reporting periods relevant to the new semi-annual report that will be required of all current and prospective RLF Recipients, as discussed under Section 307.14 below, this IFR includes in this section a definition of “Reporting Period,” which means the period from April 1st to September 30th and the period from October 1st to March 31st. These are the reporting periods for completing the new semi-annual report (Form ED–209 or any successor form) and the current *RLF Income and Expense Statement* (Form ED–209I or any successor form), if applicable.

*Section 307.9—Revolving Loan Fund Plan*

Consistent with requiring all RLF Recipients to submit semi-annual reports to EDA in electronic format, as more fully described below under Section 307.14, this IFR also revises Section 307.9 to require Recipients to submit RLF Plans electronically to EDA for approval. Accordingly, the second sentence in Section 307.9 beginning with “The Plan shall \* \* \*,” is replaced with the following sentence: “The Plan shall be submitted in electronic format to EDA for approval, unless EDA approves a paper submission.”

In the course of discussions with RLF program staff, EDA has learned that many RLF Recipients are operating with outdated Plans. Some of the Plans were written and submitted to EDA before the Region had a Comprehensive Economic Development Strategy (CEDS), and a few Regions in fact do not have a CEDS, as that term is described in Section 303.7. In order to ensure that Section 307.9 reflects this reality, the word “CEDS” in paragraph (a)(1) is replaced with the

phrase “Region’s CEDS or EDA-approved economic development plan, if applicable,” and the word “strategy” in paragraph (b)(1) is replaced with “economic development plan, if applicable.”

Additionally, in order to give EDA discretion to require new and updated Plans that properly analyze the current local capital market in various Regions, this IFR revises paragraph (c) to require the RLF Recipient to update its Plan as necessary in accordance with changing economic conditions in the Region; however, at a minimum, the RLF Recipient must submit an updated Plan to EDA every five (5) years. Additionally, EDA changes its regulations to require notification of any change(s) to the RLF Recipient’s Plan. Any material modification, such as a merger or change in the EDA-approved lending area under Section 307.18, a change in critical management staff, or a change to the strategic purpose of the RLF, must be submitted to EDA for approval prior to any revision of the Plan.

*Section 307.12—Revolving Loan Fund Income*

To be consistent with the new Form ED–209 that will be required of all RLF Recipients on a semi-annual basis (discussed in Section 307.14), the references in paragraphs (a)(1) and (2) to “twelve-month” reporting periods are changed to “six-month”. The words “reporting period” in paragraphs (a)(1), (2) and (3) are initially capitalized per the introduction of “Reporting Period” as a defined term in Section 307.8.

In 2005, the Office of Management and Budget (“OMB”) made Title 2 in the *Code of Federal Regulations* a single location where the public can find both OMB guidance for grants and cooperative agreements (Subtitle A) and the associated Federal Agency’s regulations implementing this OMB guidance (Subtitle B), thereby codifying three (3) OMB Circulars on federal cost principles. For consistency and accuracy, Section 307.12(b)(1) is rewritten to include applicable references to title 2 of the *Code of Federal Regulations* for the following circulars: OMB Circular A–87 for State, local, and Indian tribal governments (2 CFR part 225); OMB Circular A–122 for non-profit organizations other than institutions of higher education, hospitals or organizations named in OMB Circular A–122 as not subject to such Circular (2 CFR part 230); and OMB Circular A–21 for educational institutions (2 CFR part 220).

Additionally, the heading of Section 307.12(b) is changed from “Compliance

guidelines” to “Compliance guidance,” to indicate that OMB issues guidance to Federal Agencies on government-wide policies and procedures for the award and administration of grants and cooperative agreements. In the first sentence, “OMB” is replaced with “federal” for consistency with the rest of the regulations and “guidelines” is replaced with “requirements” to make clear that OMB Circular A–133 sets out single audit or program-specific audit requirements, as appropriate, which RLF Recipients must satisfy. Additionally, “RLF” immediately in front of the word “audit” is deleted, as OMB Circular A–133 sets out single and program-specific audit requirements—not RLF audit requirements—for a variety of entities receiving federal financial assistance: States, local governments, and colleges, universities, hospitals and other non-profit organizations.

#### Section 307.13—Records and Retention

In its audit report titled *Aggressive EDA Leadership and Oversight Needed to Correct Persistent Problems in the RLF Program*, the OIG recommended that EDA “[d]evelop a strategy and plan of action that addresses the RLF program’s problems and challenges, and identifies opportunities for improvement.” EDA adopted this recommendation as part of a complete action plan, and committed to reviewing EDA’s current policy of using two separate reporting forms: The semi-annual (Form ED–209S) and the annual (Form ED–209A). The agency determined that the use of two separate reporting forms had hindered data collection efforts, as the data fields on these forms are not always equivalent. The current semi-annual reporting form contains more useful information than the current annual reporting form (Form ED–209A), but EDA determined that the semi-annual form required additional data fields to allow EDA to exercise more vigorous oversight of grantee operations. Accordingly, in June 2008, the agency finalized a revised RLF semi-annual reporting form, Form ED–209, to replace the current semi-annual and annual reporting forms (Forms ED–209S and ED–209A), and submitted this streamlined, web-based form to OMB for approval under the Paperwork Reduction Act. EDA will require all RLF Recipients to semi-annually complete and submit the new Form ED–209.

Although requiring all RLF Recipients to submit the Form ED–209 on a semi-annual basis, rather than approving the substitution of an annual report for some RLF Recipients, will increase the frequency of reporting for some

grantees, EDA estimates that the new Form ED–209 actually will reduce the average paperwork burden per RLF report on the RLF Recipient from 12 hours to 2.9 hours. This significant decrease results from the elimination of calculated and duplicative fields from the grantee’s data entry screens and the creation of a web-based reporting system. This IFR, therefore, removes the reference to the annual report from Section 307.13 and other sections in part 307. In paragraph (b)(2), the words “or annual” are removed and “period” is changed to “Reporting Period”. For clarity, the phrase “or for five (5) years from the date the costs were claimed, whichever is less” is removed and replaced with a clear statement that all records relating to the RLF’s operations must be retained for three years from the submission date of the last semi-annual report (on the new Form ED–209 or any successor form).

#### Section 307.14—Revolving Loan Fund Semi-Annual and Annual Reports

In line with the determination that all RLF recipients will report on a semi-annual basis, the heading of Section 307.14 is changed from “*Revolving Loan Fund semi-annual and annual reports*” to “*Revolving Loan Fund semi-annual report and Income and Expense Statement*,” to accurately reflect the current Form ED–209I, the *RLF Income and Expense Statement*, discussed in paragraph (c). Section 307.14(a) is rewritten in its entirety to incorporate the requirement for all RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, to submit to EDA a semi-annual report (Form ED–209 or any successor form) in electronic format, unless EDA approves a paper submission. In paragraph (b), the words “or annual” are removed. Paragraph (c)(1) is re-designated as paragraph (c). The first sentence of re-designated paragraph (c)(1) is rewritten to require the RLF Recipient that uses either fifty (50) percent or more (or more than \$100,000) of RLF Income for administrative costs in a six-month (6) Reporting Period to submit to EDA a completed Income and Expense Statement (Form ED–209I or any successor form) for that Reporting Period in electronic format, unless EDA approves a paper submission. The second sentence is removed in its entirety because the agency determined, as part of its action plan to respond to OIG’s recommendations regarding the RLF program, that the revised three-year period in Section 307.13(b) adequately covers the necessary retention of records for administrative expenses.

Paragraph (c)(2) titled “*Performance Measures*” is deleted in its entirety because the agency has determined that the “Core Performance Measures” discussed in paragraph (c)(2) actually refer to performance reporting requirements under the Government Performance and Results Act of 1993 (“GPRR”), which RLF Recipients report every three years. These measures are covered under Section 302.16 of the regulations and, therefore, were incorrectly referenced in Section 307.14.

#### Section 307.15—Prudent Management of Revolving Loan Funds

EDA has and continues to require the RLF Recipient to submit a record of decision for an RLF loan, which generally is the RLF board of directors’ meeting minutes that state the board’s approval of the RLF loan. In reviewing this section, EDA discovered that the loan documentation listed in paragraph (b)(2) does not include the meeting minutes. Therefore, this IFR amends the loan documentation list to include submission of the board of directors’ meeting minutes approving the RLF loan. The list is sequentially renumbered to account for this new insertion.

As stated above under Section 307.8, as of the effective date of this IFR, EDA will not allow RLF Recipients to use RLF Capital to guarantee loans. Therefore, in Section 307.15, current paragraph (b)(2)(vii), which references a guaranty agreement, is replaced with the concept set out in paragraph (c) of Section 307.17 (the RLF Recipient’s obligation to demonstrate that credit is not otherwise available). This provision requires the RLF Recipient to submit to EDA a signed bank turn-down demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. This provision belongs in the loan documentation listed in Section 307.15(b)(2) rather than in Section 307.17 because it is evidence EDA would look for when reviewing an RLF Recipient’s certification that proper documentation is in place for lending.

In light of current lower borrowing costs to companies and households, EDA analyzed the current minimum interest rate which an RLF Recipient may charge an eligible borrower with the goal of giving the RLF Recipient more flexibility to make loans while still maintaining its viability as a lender. To this end, this IFR introduces a dual interest rate floor in paragraph (c) of Section 307.15, whereby the interest rate an RLF Recipient may charge cannot be less than the lower of four (4)

percent or 75 percent of the prime interest rate listed in the *Wall Street Journal*.

To make improvements in the administration and oversight of the RLF program, EDA may institute a new requirement, whereby all RLF Recipients will have to undergo a mandatory certification program to enhance their ability to administer RLF Grants in a prudent manner. Accordingly, after paragraph (d), this IFR adds another paragraph to Section 307.15 to incorporate this requirement into the regulations. If so required by EDA, the RLF Recipient must satisfactorily complete the certification program, and may consider the cost of attending the certification courses as an administrative cost, provided the requirements regarding RLF Income set out in Section 307.12 are satisfied.

*Section 307.16—Effective Utilization of Revolving Loan Funds*

For consistency with other changes made to part 307, the words “reporting intervals” are replaced with “Reporting Periods” in the first sentence of paragraph (c)(2)(i). The phrase “separate from the EDA funds account” in that sentence was placed at OIG’s specific request. During recent training conferences held by EDA in conjunction with the OIG, the OIG became aware, through discussions with RLF Recipients, of the unnecessarily burdensome red tape involved in placing excess funds in an account separate from the EDA funds account, and has approved EDA to eliminate this requirement. Accordingly, the phrase “separate from the EDA funds account” is removed. For increased clarity, in the second sentence of paragraph (c)(2)(i), the words “the Federal Share (as defined in § 314.5 of this chapter) of” are placed in front of the words “the RLF Grant”.

As part of the agency’s action plan to address OIG’s recommendations regarding the RLF program, EDA has identified the need to address and monitor high loan default rates among its RLF Recipients. In that regard, this IFR adds a new paragraph after paragraph (c) in Section 307.16, to state that EDA will take steps necessary to document and assess an RLF Recipient’s high loan default rate. Pursuant to this new regulation, EDA will monitor the RLF Recipient’s loan default rate to ensure proper protection of the Federal Share of the RLF property, and may request information from the RLF Recipient as necessary to determine whether it is collecting loan repayments and complying with the financial obligations under the RLF Grant. If the

RLF Recipient fails to provide the information requested and to take steps to protect the Federal Share, the RLF Recipient may be subject to enforcement action under Section 307.21 and the terms and conditions of the Grant.

*Section 307.17—Uses of Capital*

For correct formatting, the semi-colon in paragraph (b)(6)(ii) is replaced with a period. Paragraph (c) of this section sets out the RLF Recipient’s obligation to demonstrate to EDA in the RLF loan documentation that credit is not otherwise available. Upon closer examination, the agency has determined that current paragraph (c) belongs under Section 307.15(b)(2), which lists the required minimum standard loan documentation.

To facilitate better monitoring of RLF Capital and to ensure that RLF Capital is used for making RLF loans that are consistent with the RLF Plan or such other purposes approved by EDA, this IFR adds a new paragraph (c) that requires an independent third party to conduct a compliance and loan quality review for the RLF Grant every (3) three years. The RLF Recipient may undertake this review as an administrative cost associated with the RLF’s operations, provided the requirements set out in Section 307.12 are satisfied.

In paragraph (d), the word “provisions” is changed to “conditions” for accuracy. In accordance with EDA’s determination to disallow loan guaranties, paragraph (e) of Section 307.17 is removed in its entirety.

*Section 307.18—Addition of Lending Areas; Merger of RLFs*

For consistency throughout part 307 with respect to semi-annual reporting required uniformly of all RLF Recipients, Section 307.18(b)(1)(i) is rewritten to expressly incorporate references to the semi-annual report. Similarly, paragraph (b)(2)(i) is rewritten to reference the requirement that surviving RLF Recipients must be up-to-date with all semi-annual reports in accordance with Section 307.14.

*Section 307.20—Partial Liquidation and Liquidation Upon Termination*

The title to this section is rewritten as “Partial liquidation; liquidation upon termination” to make clear that a partial liquidation is separate from a liquidation upon EDA approving a termination of the RLF Grant. Current paragraph (a) provides that EDA may require an RLF Recipient to transfer any RLF loans that are more than 120 days delinquent to an RLF Third Party for liquidation. In reviewing EDA’s current RLF portfolio, the agency examined

various scenarios in which it has had to take action to partially liquidate or “disallow” a portion of an RLF Grant, and therefore, recover the pro-rata Federal Share. Additionally, the OIG in its March 2007 audit report on the RLF program recommended that EDA develop policies and procedures that promote a uniform approach to sequestering excess cash. This IFR revises paragraph (a) to extend the “partial liquidation” action to problematic instances beyond the RLF Recipient having RLF loans that are more than one hundred and twenty (120) days delinquent, such as making an ineligible loan; failing to disburse the EDA funds in accordance with the time schedule prescribed in the RLF Grant; or requesting that a portion of the RLF Grant be disallowed, and EDA agrees to allow the disallowance.

To eliminate redundancy, the parenthetical “(as defined in § 314.5 of this chapter)” is deleted from Section 307.20(d)(2), since that reference now appears in the revised Section 307.20(a).

*Section 307.21—Termination of Revolving Loan Funds*

In an effort to ensure strong recipient compliance with RLF reporting, efficient capital utilization, and OMB Circular A–133 single audit requirements, this IFR revises Section 307.21(a) to include additional grounds for which EDA may suspend or terminate and RLF Grant for cause. These additional grounds are failure to: (i) Submit an updated Plan to EDA in accordance with Section 307.9(c); (ii) submit timely progress, financial and audit reports in the format required; (iii) manage the RLF Grant in accordance with Prudent Lending Practices, as defined in Section 307.8; (iv) sequester excess funds or remit the interest on EDA’s portion of the sequestered funds to the U.S. Treasury; (v) submit the documentation requested by EDA regarding a high loan default rate and collection efforts; (vi) comply with audit requirements; and (vii) comply with an EDA-approved corrective action plan to remedy RLF-related audit findings. EDA also includes in paragraph (a) a provision to ensure that EDA maintains effective control over and accountability for all Grant funds and assets when effecting a suspension or termination.

*Section 308.3—Planning Performance Awards*

EDA discovered that the first paragraph under Section 308.3 does not read consistently with the corresponding provision in section 216(b) (42 U.S.C. 3154b) of PWEDA, which provides that the Assistant

Secretary may make a planning performance award to an Eligible Recipient under section 216(a) (42 U.S.C. 3154b) of PWEDA in connection with a Grant for a Project if the Assistant Secretary “determines before closeout of the [P]roject that” specific accomplishments were attained by the Recipient. In contrast, Section 308.3(a) currently states that EDA must determine “no later than three (3) years following closeout of the Project that \* \* \*” the Recipient has attained the specific list of accomplishments. To ensure consistency between the statute and the regulation, Section 308.3(a) is revised to replace the phrase “no later than three (3) years following” with the word “before”.

#### *Section 310.1—Special Impact Area*

In Section 310.1(a), a semi-colon is placed immediately after the word “need” for grammatical consistency.

#### **Part 314—Property**

##### *Section 314.5—Federal Share*

The first sentence of Section 314.5 is revised to give the agency a more definitive standard by which to calculate the Federal Share. The new sentence makes clear that the Federal Share will be the current fair market value of the Property after deducting: (i) Reasonable repair expenses, if any, incurred to put the Property into marketable condition; and (ii) sales, commission and marketing costs. The format also is adjusted for greater clarity.

##### *Section 314.6—Encumbrances*

For increased clarity and correct word usage, the phrase “collateralized or” in the first sentence in Section 314.6(a) is deleted.

In paragraph (b)(3)(iv), EDA adds language to clarify the scope of EDA’s inquiry in determining whether the Recipient is capable of carrying out its obligations under the award. EDA will take into account whether a Recipient that is a non-profit organization is joined in the Project with a co-Recipient that is a public body, whether the non-profit organization has demonstrated stability over time, and such other factors as EDA deems appropriate.

##### *Section 314.7—Title*

Paragraph (c) of Section 314.7 lists various exceptions to the general rule, stated in paragraph (a), that the Recipient must at all times hold unencumbered title to the Real Property required for a Project. EDA requires the Recipient to maintain some interest in the Property for the entire Estimated Useful Life to help ensure that the

Recipient carries out the Project as contemplated at the date of award. This IFR revises the exception to the general rule stated in paragraph (c)(2)(ii) to include that EDA must be able to determine that the terms and conditions of the lease adequately demonstrate the economic development and public benefits of the leasehold transaction. EDA in this revision clarifies the scope of its review in determining the acceptability of the leasehold transaction as a substitute for title, and therefore, makes clear that the agency will evaluate the transaction from the standpoint of its impact on the economic development potential of the project and its potential public benefit, as opposed to “private benefit.”

In applying the exception set out in paragraph (c)(4), EDA discovered it to be difficult and time consuming to require the State or local government to provide the currently stated assurances, given that EDA lacks privity with any non-Recipient parties that may be involved with or have title to Project-related Property. Absent privity, EDA cannot assert a claim against the public highway owner for breach of the terms of the Grant or other relief pursuant to the Grant. When a Project includes construction on a public highway the owner of which is not the Recipient, the Recipient, rather than the State or county owner of the highway, should provide the necessary assurances and authorizations to EDA. Accordingly, this IFR revises paragraph (c)(4) in its entirety to require the Recipient to confirm in writing to EDA that it is committed during the Estimated Useful Life of the Project to operate, maintain and repair all improvements for the Project consistent with the Investment Assistance; and if at any time during the Estimated Useful Life of the Project any or all of the improvements in the Project within the public highway are relocated for any reason pursuant to requirements of the owner of the public highway, the Recipient will be responsible for accomplishing such relocation, so that the Project continues as authorized by the Investment Assistance. The revised paragraph requires the Recipient to obtain all written authorizations (i.e., State or county permit(s)) necessary for the Project to be constructed within the public highway.

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

EDA administers the TAA Program under the Trade Act of 1974, as amended (19 U.S.C. 2341–2391) (the “Trade Act”). Under the TAA Program, EDA funds a national network of eleven (11) non-profit or university-affiliated

organizations, each known as a Trade Adjustment Assistance Center (“TAAC”). Each TAAC is assigned a different geographic service region, and provides technical or adjustment assistance to firms or industries in that region which have been or are adversely affected by increased import competition. Before the TAAC may provide assistance, the firm must apply for certification regarding eligibility under the TAA Program by completing a petition for certification. As explained below, EDA makes substantive changes to TAA Program-related definitions in 13 CFR 315.2.

##### *Section 315.2—Definitions*

During the course of evaluating and processing petitions for certification, a few petitions have raised eligibility issues and questions as to whether two defined terms in Section 315.2, “Decreased Absolutely” and “Significant Number or Proportion of Workers,” may be unduly restrictive. In some cases, the requisite five (5) percent decline in sales or production and the five (5) percent decline in a Firm’s workforce may be unduly restrictive for a petition that straddles a narrow border between significant and insignificant sales or employment loss. For example, a Firm may demonstrate a qualitative “significant” decline in sales because of import competition that has affected a major product line. Because of that decline, the employees associated with this product line also may suffer a “significant” employment loss. Nonetheless, under the current quantitative definitions, the Firm’s employment on a “firm-wide” basis may not meet the required threshold of employment loss under Section 251(c) of the Trade Act (19 U.S.C. 2341) because the regulations impose a quantitative limitation on a standard that in statute is qualitative. This problem is in part a result of the statutory requirement that EDA measure unemployment on a “firm-wide” basis (for example, a Firm may have increased employment in different divisions or unrelated product lines that offsets a downsizing, or loss of employment, in the import-impacted product line(s)). EDA believes the definitions in the regulations should be broad enough to give the agency authority to certify petitions in appropriate cases when a Firm may have an absolute job loss but less than the five (5) percent currently required. Accordingly, EDA revises the definitions of the terms Decreased Absolutely and Significant Number or Proportion of Workers to allow EDA to certify in instances where EDA determines that the five (5) percent

threshold would not be consistent with the purposes of the Trade Act.

EDA believes the definition of Firm may be clarified by including language that provides the conditions set out in the definition of the term in the Trade Act. Accordingly, the agency clarifies that in accordance with section 261 of chapter 3 of title II of the Trade Act (19 U.S.C. 2351), a Firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same person, may be considered a single Firm where necessary to prevent unjustifiable benefits.

The word “including” is replaced with “includes” in the first sentence of the definition of Firm. In the second sentence, the third comma is deleted. The sentence beginning with “Such other Firms include:” is replaced with “Accordingly, such other Firms may include a(n):”.

#### *Section 315.4—Eligible Petitioners*

For clarity and understanding about the types of organizations that may apply for assistance under the TAA Program, as opposed to eligible petitioners (Firms) under the TAA Program, which are discussed in Section 315.6, the title of Section 315.4 is changed from “Eligible petitioners” to “Eligible applicants” and the introductory text in Section 315.4 is deleted. Paragraph (a) is rewritten to make clear the entities that may apply to EDA for assistance to operate a TAAC, which are universities or affiliated organizations; States or local governments; or non-profit organizations.

Paragraph (b) relating to the eligibility of Firms is misplaced in this section, as Firms are program beneficiaries and not applicants for grant assistance under the TAA Program. Accordingly, paragraph (b) is deleted and paragraph (c) of Section 315.4 is re-designated as paragraph (b). EDA includes conditional language in the newly re-designated paragraph (b) that restricts the regulation for purposes of Section 315.17 only, and to the extent funds are appropriated to implement section 265 of the Trade Act. EDA has not received appropriations for twenty years to carry out section 265 of the Trade Act.

#### *Section 315.5—TAAC Scope, Selection, Evaluation and Awards*

For conciseness and clarity, Section 315.5(a)(3) is rewritten as follows:

“A TAAC generally provides Adjustment Assistance by providing assistance to a:

(i) Firm in preparing its petition for eligibility certification; and

(ii) Certified Firm in diagnosing its strengths and weaknesses, and developing and implementing an Adjustment Proposal.”

Additionally, in each of the last sentences in Section 315.5(b)(1) and (2), “assure” is replaced with “ensure.”

#### *Section 315.6—Firm Eligibility for Adjustment Assistance*

For increased clarity, the word “Certified” is inserted before “Firms” in Section 315.6(c)(1). In Section 315.6(c)(2), “Matching Share requirements are as follows:” is replaced with “The matching share requirements are as follows:” to distinguish the matching share specification for Adjustment Assistance provided to Firms from the Matching Share requisite under PWEDA. In the first sentence of Section 315.6(c)(2)(i), “the preparation of” is replaced with “preparing” for conciseness. Finally, in each of the three sentences in Section 315.6(c)(2)(i), the word “Certified” is inserted before “Firm.”

#### *Section 315.8—Processing Petitions for Certification*

In Section 315.8(d), the reference to the “**Federal Register**” is italicized to clarify that it is a publication.

The reference to Section 315.10(d) in the third sentence in Section 315.8(g)(2) was erroneous in the 2005 interim final rule and was inadvertently not corrected in the subsequent September 27, 2006 final rule. This sentence is revised to remove the reference to Section 315.10(d) and is rewritten more clearly as: “Any written notice to the petitioner of a denial of a petition shall specify the reason(s) for the denial.” This change is technical only and does not substantively change the regulation.

#### *Section 315.9—Hearings*

In the first sentence in Section 315.9, the reference to “any person, organization, or group” is replaced with “or any interested Person” because Section 315.2 contains a definition for “Person” that includes individuals, organizations and groups. Additionally, the comma after “proceedings” is removed, “Notice of Acceptance” is changed to “notice of acceptance,” and the reference to “**Federal Register**” is italicized. In paragraph (a) of Section 315.9, the phrase “and other interested Persons” is replaced with “or any interested Person(s).” In Section 315.9(d), the reference to “**Federal Register**” is italicized.

#### *Section 315.10—Loss of Certification Benefits*

The first sentence is more accurately re-worded by replacing “A Firm may fail to obtain benefits of certification, regardless of whether its certification is terminated,” with the phrase “EDA may terminate a Firm’s certification or refuse to extend Adjustment Assistance to a Firm”.

#### *Section 315.11—Appeals, Final Determinations and Termination of Certification*

In the first sentence in Section 315.11(c), the reference to “**Federal Register**” is italicized.

#### *Section 315.12—Recordkeeping*

For consistency throughout 13 CFR part 315, the words “for Firms” is inserted immediately after “Assistance” in Section 315.12.

#### **Classification**

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

#### **Executive Order No. 12866**

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

#### **Congressional Review Act**

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

#### **Executive Order No. 13132**

Executive Order 13132 requires agencies to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in Executive Order 13132 to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” It has been determined that this IFR does not contain policies that have federalism implications.

**Paperwork Reduction Act**

This IFR contains collections-of-information subject to review and approval by OMB under the Paperwork Reduction Act ("PRA"). The OMB is required to clear all federally-sponsored data collections pursuant to the PRA. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

On or about June 9, 2008, EDA submitted to OMB an application (under OMB control number 0610-0095) for PRA clearance of the new Form ED-209 (semi-annual report). EDA anticipates receiving OMB's clearance for this new form on or about September 9, 2008. The *RLF Income and Expense Statement* (Form ED-209I) also is currently valid under OMB control number 0610-0095 (with an expiration date of April 30, 2009). The public reporting burden related to the new semi-annual report on Form ED-209 (which replaces current Forms ED-209A and ED-209S) and the *RLF Income and Expense Statement* is estimated to average 3.15 hours per individual response, or 6.3 hours annually, which includes the time necessary for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections-of-information. Please send comments on these or any other aspects of the collections-of-information by any means listed under **ADDRESSES** above. Alternatively, you may e-mail comments to *David\_Rostker@omb.eop.gov*, or fax comments to (202) 395-7285.

**List of Subjects**

13 CFR Part 300

Financial assistance, Distressed region, Headquarters, Regional offices.

13 CFR Part 301

Grant administration, grant programs, eligibility requirements, applicant and application requirements, economic distress levels, investment rates.

13 CFR Part 302

Environmental review, federal policy and procedures, inter-governmental review, fees, pre-approval requirements, project administration, reporting and audit requirements, conflicts of interest, post-approval requirements, civil rights.

13 CFR Part 303

Planning, award and application requirements, comprehensive economic development strategy, state plans, short-term planning investments.

13 CFR Part 305

Public works, economic development, award and application requirements, requirements for approved projects.

13 CFR Part 307

Economic adjustment assistance, award and application requirements, revolving loan fund, pre-loan requirements, merger, income, record and reporting requirements, sales and securitizations, liquidation, termination.

13 CFR Part 308

Performance awards, planning performance awards.

13 CFR Part 310

Special impact area, excessive unemployment, special need.

13 CFR Part 314

Federal interest, authorized use, property, federal share, title, release, property interest.

13 CFR Part 315

Administrative practice and procedure, trade adjustment assistance, eligible petitioner, firm selection, certification requirements, recordkeeping and audit requirements, adjustment proposals.

**Regulatory Text**

■ For reasons stated in the preamble, this IFR amends 13 CFR chapter III as follows:

**PART 300—GENERAL INFORMATION**

■ 1. The authority citation for part 300 continues to read as follows:

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

■ 2. Amend § 300.3 to revise paragraph (7) of the definition of *Eligible Recipient*

and the definition of *Immediate Family* to read as follows:

**§ 300.3 Definitions.**

\* \* \* \* \*

*Eligible Recipient* \* \* \*

\* \* \* \* \*

(7) Private individual or for-profit organization, but only for Training, Research and Technical Assistance Investments pursuant to § 306.1(d)(3) of part 306 of this chapter.

\* \* \* \* \*

*Immediate Family* means a person's spouse (or domestic partner or significant other), parents, grandparents, siblings, children and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person.

\* \* \* \* \*

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

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 42 U.S.C. 3121; 42 U.S.C. 3141-3147; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3175; 42 U.S.C. 3192; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3233; Department of Commerce Delegation Order 10-4.

■ 2. Amend § 301.3 to revise paragraph (a)(1)(i) to read as follows:

**§ 301.3 Economic distress levels.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) An unemployment rate that is, for the most recent twenty-four (24) month period for which data are available, at least one (1) percentage point greater than the national average unemployment rate;

\* \* \* \* \*

■ 3. In § 301.4, revise Table 1 in paragraph (b)(1)(ii), and revise paragraphs (b)(2) and (b)(4) to read as follows:

**§ 301.4 Investment rates.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

TABLE 1

Projects located in regions in which:	Maximum allowable investment rates (percentage)
(A) The twenty-four (24) month unemployment rate is at least 225% of the national average; or .....	80
(B) The per capita income is not more than 50% of the national average .....	80
(C) The twenty-four (24) month unemployment rate is at least 200% of the national average; or .....	70
(D) The per capita income is not more than 60% of the national average .....	70
(E) The twenty-four (24) month unemployment rate is at least 175% of the national average; or .....	60
(F) The per capita income is not more than 65% of the national average .....	60
(G) The twenty-four (24) month unemployment rate is at least 1 percentage point greater than the national average; or .....	50
(H) The per capita income is not more than 80% of the national average .....	50

(2) *Projects subject to a Special Need.* EDA shall determine the maximum allowable Investment Rate for Projects subject to a Special Need (as determined by EDA pursuant to § 301.3(a)(1)(iii)) based on the actual or threatened overall economic situation of the Region in which the Project is located. However, unless the Project is eligible for a higher Investment Rate pursuant to paragraph (b)(5) of this section, the maximum allowable Investment Rate for any Project subject to a Special Need shall be eighty (80) percent.

\* \* \* \* \*

(4) *Projects under part 306.* Except as otherwise provided in paragraph (b)(5) of this section, the maximum allowable Investment Rate for Projects under part 306 of this chapter shall generally be determined based on the relative needs (as determined under paragraph (b)(1) of this section) of the Region which the Project will serve. As specified in section 207 of PWEDA, the Assistant Secretary has the discretion to establish a maximum Investment Rate of up to one hundred (100) percent where the Project:

(i) Merits, and is not otherwise feasible without, an increase to the Investment Rate; or

(ii) Will be of no or only incidental benefit to the Eligible Recipient.

\* \* \* \* \*

■ 4. Amend § 301.10(a) to read as follows:

**§ 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. PWEDA does not require

nor does EDA provide an appeals process for an applicant whose application for Investment Assistance is denied.

\* \* \* \* \*

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

■ 1. The authority citation for part 302 continues to read as follows:

**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.

■ 2. Revise § 302.14 to read as follows:

**§ 302.14 Records.**

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

- (1) The total cost of the Project;
- (2) The amount and disposition by the Recipient of the Investment Assistance;
- (3) The amount and nature of the portion of Project costs provided by other sources; and
- (4) Such other information as EDA determines will facilitate an effective audit.

(b) *Access to records.* The Recipient shall permit the Assistant Secretary, the Inspector General of the Department, the Comptroller General of the United States 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.

■ 3. Amend § 302.16 to revise paragraphs (b) and (c) to read as follows:

**§ 302.16 Reports by Recipients.**

\* \* \* \* \*

(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 the data and reports 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 a Project that provides service benefits, EDA may require the Recipient to submit a Project service map and information from which to determine whether services are provided to all segments of the Region being assisted.

\* \* \* \* \*

■ 4. Amend § 302.17 to revise paragraph (b)(1) to read as follows:

**§ 302.17 Conflicts of interest.**

\* \* \* \* \*

(b) \* \* \*

(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.

\* \* \* \* \*

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

■ 1. The authority citation for part 303 continues to read as follows:

**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.

■ 2. Amend § 303.4 to revise paragraph (c) to read as follows:

**§ 303.4 Award requirements.**

\* \* \* \* \*  
 (c) EDA will provide a Planning Investment for the period of time required to develop, revise or replace, and implement a CEDS, generally in thirty-six (36) month renewable Investment project periods.

**PART 305—PUBLIC WORKS AND ECONOMIC DEVELOPMENT INVESTMENTS**

■ 1. The authority citation for part 305 continues to read as follows:

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

■ 2. Amend § 305.6 to revise paragraph (a) to read as follows:

**§ 305.6 Allowable methods of procurement for construction services.**

(a) Recipients may use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). These methods include but are not limited to design/build, construction management at risk and force account. If an alternate method is used, the Recipient shall submit to EDA for approval a construction services procurement plan and the Recipient must use a design professional to oversee the process. The Recipient shall submit the plan to EDA prior to advertisement for bids and shall include the following, as applicable:

- (1) Justification for the proposed method for procurement of construction services;
- (2) The scope of work with cost estimates and schedules;
- (3) A copy of the proposed construction contract;
- (4) The name and qualifications of the selected design professional; and
- (5) Procedures to be used to ensure full and open competition, including the selection criteria.

\* \* \* \* \*

**PART 307—ECONOMIC ADJUSTMENT ASSISTANCE INVESTMENTS**

■ 1. The authority citation for part 307 continues to read as follows:

**Authority:** 42 U.S.C. 3211; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3162; 42 U.S.C. 3233; Department of Commerce Organization Order 10-4.

■ 2. Amend § 307.8 to remove the definition of *Guaranteed Loan*, revise the definition of *Closed Loan*, and add a definition for *Reporting Period* in alphabetical order, as set out below:

\* \* \* \* \*

**§ 307.8 Definitions.**

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

\* \* \* \* \*

*Reporting Period*, for purposes of this subpart B only, means the period from April 1st to September 30th or the period from October 1st to March 31st.

\* \* \* \* \*

■ 3. Amend the introductory text of § 307.9 and § 307.9(a)(1), (b)(1) and (c) to read as follows:

\* \* \* \* \*

**§ 307.9 Revolving Loan Fund Plan.**

All RLF Recipients shall manage RLFs in accordance with an RLF plan (the “*RLF Plan*” or “*Plan*”) as described in this section. The Plan shall be submitted in electronic format to EDA for approval, unless EDA approves a paper submission.

(a) *Format and content.*

(1) Part I of the Plan titled “Revolving Loan Fund Strategy” shall summarize the Region’s CEDS or EDA-approved economic development plan, if applicable, and business development objectives, and shall describe the RLF’s financing strategy, policy and portfolio standards.

\* \* \* \* \*

(b) \* \* \*

(1) The Plan must be consistent with the CEDS or EDA-approved economic development plan, if applicable, for the Region.

\* \* \* \* \*

(c) *Revision and Modification of RLF Plans.*

(1) An RLF Recipient must update its Plan as necessary in accordance with changing economic conditions in the Region; however, at a minimum, an RLF Recipient must submit an updated Plan to EDA every five (5) years.

(2) An RLF Recipient must notify EDA of any change(s) to its Plan. Any material modification, such as a merger or change in the EDA-approved lending area under § 307.18, a change in critical management staff, or a change to the strategic purpose of the RLF, must be submitted to EDA for approval prior to any revision of the Plan. If EDA approves the modification, the RLF Recipient must submit an updated Plan to EDA in electronic format, unless EDA approves a paper submission.

■ 4. Revise paragraphs (a)(1), (2) and (3), (b) introductory text, and (b)(1) of § 307.12 to read as follows:

**§ 307.12 Revolving Loan Fund Income.**

(a) \* \* \*

(1) Such RLF Income and the administrative costs are incurred in the same six-month (6) Reporting Period;

(2) RLF Income that is not used for administrative costs during the six-month (6) Reporting Period is made available for lending activities;

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

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

(1) 2 CFR part 225 (OMB Circular A-87 for State, local, and Indian tribal governments), 2 CFR part 230 (OMB Circular A-122 for non-profit organizations other than institutions of higher education, hospitals or organizations named in OMB Circular A-122 as not subject to such Circular), and 2 CFR part 220 (OMB Circular A-21 for educational institutions); and

\* \* \* \* \*

■ 5. Amend § 307.13(b)(2) to read as follows:

**§ 307.13 Records and retention.**

\* \* \* \* \*

(b) \* \* \*

(2) Retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF for three (3) years from the actual submission date of the last semi-annual report that covers the Reporting Period in which such costs were claimed.

\* \* \* \* \*

■ 6. Revise § 307.14 to read as follows:

**§ 307.14 Revolving Loan Fund semi-annual report and Income and Expense Statement.**

(a) *Frequency of reports.* All RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, must complete and submit a semi-annual report (Form ED-209 or any successor form) in electronic format, unless EDA approves a paper submission.

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

(c) *RLF Income and Expense Statement.* An RLF Recipient using either fifty (50) percent or more (or more

than \$100,000) of RLF Income for administrative costs in a six-month (6) Reporting Period must submit to EDA a completed Income and Expense Statement (Form ED-2091 or any successor form) for that Reporting Period in electronic format, unless EDA approves a paper submission.

■ 7. Amend § 307.15(b)(2) and (c) to read as follows, and add a new paragraph (e) as follows:

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

\* \* \* \* \*

- (b) \* \* \*
- (1) \* \* \*

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

- (i) Loan application;
- (ii) Loan agreement;
- (iii) Board of directors' meeting minutes approving the RLF loan;
- (iv) Promissory note;
- (v) Security agreement(s);
- (vi) Deed of trust or mortgage (as applicable);
- (vii) Agreement of prior lien holder (as applicable); and
- (viii) Signed bank turn-down letter demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. EDA will accept alternate documentation only if such documentation is allowed in the RLF Recipient's EDA-approved RLF Plan.

(c) *Interest rates*—

(1) *General rule.* An RLF Recipient may make loans to eligible borrowers at interest rates and under conditions determined by the RLF Recipient to be appropriate in achieving the goals of the RLF. The minimum interest rate an RLF Recipient may charge is four (4) percentage points below the lesser of the current money center prime interest rate quoted in the *Wall Street Journal*, or the maximum interest rate allowed under State law. In no event shall the interest rate be less than the lower of four (4) percent or 75 percent of the prime interest rate listed in the *Wall Street Journal*.

(2) *Exception.* Should the prime interest rate listed in the *Wall Street Journal* exceed fourteen (14) percent, the minimum RLF interest rate is not

required to be raised above ten (10) percent if doing so compromises the ability of the RLF Recipient to implement its financing strategy.

\* \* \* \* \*

(e) *RLF certification course.* EDA may establish a mandatory RLF certification program to enhance RLF Recipients' ability to administer RLF Grants in a prudent manner. If so required by EDA, the RLF Recipient must satisfactorily complete this program, and may consider the cost of attending the certification courses as an administrative cost, provided the requirements set forth in § 307.12 are satisfied.

■ 8. Amend § 307.16 to revise paragraph (c)(2)(i) and add a new paragraph (d), to read as follows:

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

\* \* \* \* \*

- (c) \* \* \*
- (2) \* \* \*

(i) *Sequestration of excess funds.* If the RLF Recipient fails to satisfy the applicable capital utilization percentage requirement for two (2) consecutive Reporting Periods, EDA may require the RLF Recipient to deposit excess funds in an interest-bearing account. The portion of interest earned on the account holding excess funds attributable to the Federal Share (as defined in § 314.5 of this chapter) of the RLF Grant shall be remitted to the U.S. Treasury. The RLF Recipient must obtain EDA's written authorization to withdraw any sequestered funds.

\* \* \* \* \*

(d) *Loan default rates.* (1) EDA shall monitor the RLF Recipient's loan default rate to ensure proper protection of the Federal Share (as defined in § 314.5 of this chapter) of the RLF property, and request information from the RLF Recipient as necessary to determine whether it is collecting loan repayments and complying with the financial obligations under the RLF Grant. Such information may include:

(i) A written analysis of the RLF Recipient's portfolio, which shall consider the Recipient's business plan, loan and collateral policies, loan servicing and collection policies and procedures, the rate of growth of the RLF Capital base, and detailed information on any loan in default; and

(ii) A corrective action plan subject to EDA's approval, which shall include specific actions the RLF Recipient must take to reduce the loan default rate; and

(iii) A quarterly status report indicating the RLF Recipient's progress on achieving the milestones outlined in the corrective action plan.

(2) Failure to provide the information requested and to take steps to protect the Federal Share may subject the RLF Recipient to enforcement action under § 307.21 and the terms and conditions of the Grant.

\* \* \* \* \*

■ 9. Revise § 307.17 to read as follows:

**§ 307.17 Uses of capital.**

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

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

- (1) Acquire an equity position in a private business;
- (2) Subsidize interest payments on an existing RLF loan;
- (3) Provide for borrowers' required equity contributions under other Federal Agencies' loan programs;
- (4) Enable borrowers to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF;
- (5) Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit or any investment unrelated to the RLF; or
- (6) Refinance existing debt, unless:

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

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

(18) months following the date of refinancing.

(c) *Compliance and Loan Quality Review.* To ensure that the RLF Recipient makes eligible RLF loans consistent with its RLF Plan or such other purposes approved by EDA, EDA shall require an independent third party to conduct a compliance and loan quality review for the RLF Grant every (3) three years. The RLF Recipient may undertake this review as an administrative cost associated with the RLF's operations, provided the requirements set forth in § 307.12 are satisfied.

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

\* \* \* \* \*

■ 10. Amend § 307.18 to revise paragraphs (b)(1)(i) and (b)(2)(i) to read as follows:

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

\* \* \* \* \*

- (b) \* \* \*
- (1) \* \* \*

(i) It is up-to-date with all semi-annual reports in accordance with § 307.14;

- (2) \* \* \*

(i) The surviving RLF Recipient is up-to-date with all semi-annual reports in accordance with § 307.14;

\* \* \* \* \*

■ 11. Amend the heading of § 307.20 and paragraphs (a) and (d)(2) to read as follows:

**§ 307.20 Partial liquidation; liquidation upon termination.**

(a) *Partial liquidation or disallowance of a portion of an RLF Grant.* If the RLF Recipient engages in certain problematic practices, EDA may disallow a corresponding proportion of the Grant or direct the RLF Recipient to transfer loans to an RLF Third Party for liquidation. Problematic practices for which EDA may disallow a portion of an RLF Grant and recover the pro-rata Federal Share (as defined in § 314.5 of this chapter) include but are not limited to the RLF Recipient:

- (1) Having RLF loans that are more than one hundred and twenty (120) days delinquent;
- (2) Having excess cash sequestered for twelve (12) months or longer and EDA has not approved an extension request;
- (3) Making an ineligible loan;

(4) Failing to disburse the EDA funds in accordance with the time schedule prescribed in the RLF Grant; or

(5) Determining that it does not wish to further invest in the RLF or cannot maintain operations at the degree originally contemplated upon receipt of the RLF Grant and requests that a portion of the RLF Grant be disallowed, and EDA agrees to allow the disallowance.

(d) \* \* \*

(2) *Second*, for the payment of EDA's Federal Share; and

\* \* \* \* \*

■ 12. Amend § 307.21(a) to read as follows:

**§ 307.21 Termination of Revolving Loan Funds.**

(a)(1) EDA may suspend or terminate an RLF Grant for cause, including but not limited to the RLF Recipient's failure to:

(i) Operate the RLF in accordance with the Plan, the RLF Grant or this part;

(ii) Obtain prior EDA approval for material changes to the Plan, including provisions for administering the RLF;

(iii) Submit an updated Plan to EDA in accordance with § 307.9(c);

(iv) Submit timely progress, financial and audit reports in the format required by the RLF Grant and § 307.14, including the semi-annual report and the Income and Expense Statement (if applicable);

(v) Manage the RLF Grant in accordance with Prudent Lending Practices, as defined in § 307.8;

(vi) Sequester excess funds or remit the interest on EDA's portion of the sequestered funds to the U.S. Treasury, as directed by EDA;

(vii) Submit the documentation requested by EDA regarding a high loan default rate and collection efforts, or correct a high loan default rate, as determined by EDA;

(viii) Comply with the audit requirements set forth in OMB Circular A-133 and the Compliance Supplement, including timely submission of audit reports to the Federal Audit Clearinghouse and the correct designation of the RLF as a major program (as defined in OMB Circular A-133), as applicable;

(ix) Comply with an EDA-approved corrective action plan to remedy RLF-related audit findings; and

(x) Comply with the conflicts of interest provisions set forth in § 302.17.

(2) To maintain effective control over and accountability of RLF Grant funds and assets, EDA shall determine the manner and timing of any suspension or termination action. EDA may require the

RLF Recipient to repay the Federal Share in a lump-sum payment or enter into a Sale, or EDA may agree to enter into a repayment agreement with the RLF Recipient for repayment of the Federal Share.

\* \* \* \* \*

**PART 308—PERFORMANCE INCENTIVES**

■ 1. The authority citation for part 308 continues to read as follows:

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

■ 2. Revise paragraph (a) of § 308.3 to read as follows:

**§ 308.3 Planning performance awards.**

(a) A Recipient of Investment Assistance awarded on or after the date of enactment of section 216 of PWEDA for a Project located in an EDA-funded Economic Development District may, at the discretion of the Assistant Secretary, receive a planning performance award in an amount not to exceed five (5) percent of the amount of the applicable Investment award if EDA determines before closeout of the Project that:

(1) The Recipient, through the Project, actively participated in the economic development activities of the District;

(2) The Project demonstrated exceptional fulfillment of one (1) or more components of, and is otherwise in accordance with, the applicable CEDS, including any job creation or job retention requirements; and

(3) The Recipient demonstrated exceptional collaboration with federal, State and local economic development entities throughout the development of the Project.

\* \* \* \* \*

**PART 310—SPECIAL IMPACT AREAS**

■ 1. The authority citation for part 310 continues to read as follows:

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

■ 2. Revise § 310.1 to read as follows:

**§ 310.1 Special Impact Area.**

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

- (a) Directly fulfill a pressing need; and
- (b) Be useful in alleviating or preventing conditions of excessive unemployment or underemployment, or

assist in providing useful employment opportunities for the unemployed or underemployed residents of the Region.

**PART 314—PROPERTY**

■ 1. The authority citation for part 308 continues to read as follows:

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

■ 2. Revise § 314.5 to read as follows:

\* \* \* \* \*

**§ 314.5 Federal Share.**

(a) For purposes of this part, “*Federal Share*” means that portion of the current fair market value of any Property attributable to EDA’s participation in the Project. The Federal Share shall be the current fair market value of the Property after deducting:

(1) Reasonable repair expenses, if any, incurred to put the Property into marketable condition; and

(2) Sales, commission and marketing costs.

(b) The Federal Share excludes that portion of the current fair market value of the Property attributable to acquisition or improvements before or after EDA’s participation in the Project, which are not included in the total Project costs. For example, if the total Project costs are \$100, consisting of \$50 of Investment Assistance and \$50 of Matching Share, the Federal Share is fifty (50) percent. If the Property is disposed of when its current fair market is \$250, the Federal Share is \$125 (i.e., fifty (50) percent of \$250). If \$10 is spent to put the Property into salable condition, the Federal Share is \$120 (i.e., fifty (50) percent of (\$250 – \$10)).

■ 3. Amend paragraphs (a) and (b)(3)(iv) of § 314.6 to read as follows:

**§ 314.6 Encumbrances.**

(a) *General.* Except as provided in paragraph (b) of this section or as otherwise authorized by EDA, Recipient-owned Property acquired or improved in whole or in part with Investment Assistance must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered, except to secure a grant or loan made by a Federal Agency or State agency or other public body participating in the same Project.

(b) \* \* \*

(3) \* \* \*

(iv) There is a reasonable expectation, as determined by EDA, that the Recipient will not default on its obligations. In determining whether an expectation is reasonable for purposes of this paragraph, EDA shall take into account whether a Recipient that is a

non-profit organization is joined in the Project with a co-Recipient that is a public body, whether the non-profit organization has demonstrated stability over time, and such other factors as EDA deems appropriate.

\* \* \* \* \*

■ 4. Amend paragraphs (c)(2)(ii) and (c)(4) of § 314.7 to read as follows:

**§ 314.7 Title.**

(c) \* \* \*

(2) \* \* \*

(ii) EDA, in its sole discretion, determines that the terms and conditions of the lease adequately safeguard the Federal government’s interest in the Real Property and demonstrate the economic development and public benefits of the leasehold transaction.

\* \* \* \* \*

(4) When the Project includes construction on a public highway the owner of which is not the Recipient, EDA may allow the Project to be constructed in whole or in part in the right-of-way of such public highway, provided that:

(i) All EDA-funded construction is completed in accordance with EDA requirements;

(ii) The Recipient confirms in writing to EDA, satisfactory to EDA, that:

(A) The Recipient is committed during the Estimated Useful Life of the Project to operate, maintain and repair all improvements for the Project consistent with the Investment Assistance; and

(B) If at any time during the Estimated Useful Life of the Project any or all of the improvements in the Project within the public highway are relocated for any reason pursuant to requirements of the owner of the public highway, the Recipient shall be responsible for accomplishing such relocation, including as necessary expending the Recipient’s own funds, so that the Project continues as authorized by the Investment Assistance; and

(iii) The Recipient obtains all written authorizations (i.e., State or county permit(s)) necessary for the Project to be constructed within the public highway, copies of which shall be submitted to EDA. Such authorizations shall contain no time limits that EDA determines substantially restrict the use of the public highway for the Project during the Estimated Useful Life of the Project.

\* \* \* \* \*

**PART 315—TRADE ADJUSTMENT ASSISTANCE FOR FIRMS**

■ 1. The authority citation for part 315 continues to read as follows:

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

■ 2. Amend § 315.2 to revise the definitions of “*Decreased Absolutely*” and “*Significant Number or Proportion of Workers*,” and the introductory text in the definition of “*Firm*” to read as follows:

**§ 315.2 Definitions.**

\* \* \* \* \*

*Decreased Absolutely* means a Firm’s sales or production has declined by a minimum of five (5) percent relative to its sales or production during the applicable prior time period,

(1) Irrespective of industry or market fluctuations; and

(2) Relative only to the previous performance of the Firm, unless EDA determines that these limitations in a given case would not be consistent with the purposes of the Trade Act.

\* \* \* \* \*

*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 includes fishing, agricultural entities and those which explore, drill or otherwise produce oil or natural gas. Pursuant to section 261 of chapter 3 of title II of the Trade Act (19 U.S.C. 2351), a Firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same person, may be considered a single Firm where necessary to prevent unjustifiable benefits. For purposes of receiving benefits under this part, when a Firm owns or controls other Firms, the Firm and such other Firms may be considered a single Firm when they produce like or Directly Competitive articles or are exerting essential economic control over one or more production facilities. Accordingly, such other Firms may include a(n):

\* \* \* \* \*

*Significant Number or Proportion of Workers* means five (5) percent of a Firm’s work force or fifty (50) workers, whichever is less, unless EDA determines that these limitations in a given case would not be consistent with the purposes of the Trade Act. An individual farmer or fisherman is considered a Significant Number or Proportion of Workers.

\* \* \* \* \*

■ 3. Revise § 315.4 to read as follows:

**§ 315.4 Eligible applicants.**

(a) The following entities may apply for assistance to operate a TAAC:

- (1) Universities or affiliated organizations;
- (2) States or local governments; or
- (3) Non-profit organizations.

(b) For purposes of § 315.17, and to the extent funds are appropriated to implement section 265 of the Trade Act, organizations assisting or representing industries in which a substantial number of Firms or workers have been certified as eligible to apply for Adjustment Assistance under sections 223 or 251 of the Trade Act, including:

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

\* \* \* \* \*

■ 4. Amend § 315.5 to revise paragraphs (a)(3) and (b)(1) and (2) to read as follows:

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

(a) \* \* \*

(3) A TAAC generally provides Adjustment Assistance by providing assistance to a:

- (i) Firm in preparing its petition for eligibility certification; and
- (ii) Certified Firm in diagnosing its strengths and weaknesses, and developing and implementing an Adjustment Proposal.

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

(2) EDA may invite new TAAC proposals through an FFO. If such a proposal is acceptable, EDA will invite an application on a form approved by OMB. An application will require a narrative scope of work, proposed budget and such other information as requested by EDA. Acceptance of an

application does not ensure funding by EDA.

\* \* \* \* \*

■ 5. Amend § 315.6 to revise paragraphs (c)(1), (c) introductory text, and (c)(2)(i) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

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

(2) The matching share requirements are as follows:

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

\* \* \* \* \*

■ 6. Amend § 315.8 to revise paragraphs (d) and (g)(2) to read as follows:

**§ 315.8 Processing petitions for certification.**

\* \* \* \* \*

(d) EDA will publish a notice of acceptance of a petition in the **Federal Register**.

\* \* \* \* \*

(g) \* \* \*

(2) Either certify the petitioner as eligible to apply for Adjustment Assistance or deny the petition. In either event, EDA shall promptly give written notice of action to the petitioner. Any written notice to the petitioner of a denial of a petition shall specify the reason(s) for the denial. A petitioner shall not be entitled to resubmit a petition within one (1) year from the date of denial, provided, EDA may waive the one-year (1) limitation for good cause.

\* \* \* \* \*

■ 7. Amend § 315.9 to revise the introductory paragraph and paragraphs (a) and (d) to read as follows:

**§ 315.9 Hearings.**

EDA will hold a public hearing on an accepted petition if the petitioner or any interested Person found by EDA to have a Substantial Interest in the proceedings submits a request for a hearing no later than ten (10) days after the date of publication of the notice of acceptance

in the **Federal Register**, under the following procedures:

(a) The petitioner or any interested Person(s) shall have an opportunity to be present, to produce evidence and to be heard;

\* \* \* \* \*

(d) EDA shall publish a notice of a public hearing in the **Federal Register**, containing the subject matter, name of petitioner, and date, time and place of the hearing; and

\* \* \* \* \*

■ 8. Amend § 315.10 to revise the introductory text as follows:

**§ 315.10 Loss of certification benefits.**

EDA may terminate a Firm's certification or refuse to extend Adjustment Assistance to a Firm for any of the following reasons:

\* \* \* \* \*

■ 9. Amend § 315.11 to revise paragraph (c) to read as follows:

**§ 315.11 Appeals, final determinations and termination of certification.**

\* \* \* \* \*

(c) Whenever EDA determines that a Certified Firm no longer requires Adjustment Assistance or for other good cause, EDA will terminate the certification and promptly publish notice of such termination in the **Federal Register**. The termination will take effect on the date specified in the published notice.

\* \* \* \* \*

■ 10. Revise § 315.12 to read as follows:

**§ 315.12 Recordkeeping.**

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

Dated: October 15, 2008.

**Benjamin Erulkar,**

*Deputy Assistant Secretary of Commerce for Economic Development and Chief Operating Officer.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 36 and 91**

**Civil Supersonic Airplane Noise Type Certification Standards and Operating Rules**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Statement of policy.