

(6) Closing or restructuring of an industrial firm or loss of a major employer;

(7) Negative effects of changing trade patterns; or

(8) Other circumstances set forth in an FFO.

*State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

*Stevenson-Wydler*, for purposes of EDA, means the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3701 *et seq.*).

*Subrecipient* means an Eligible Recipient that receives a redistribution of Investment Assistance in the form of a subgrant, under part 309 of this chapter, from another Eligible Recipient to carry out part of a Federal program.

*Trade Act*, for purposes of EDA, means title II, chapters 3, 4 and 5, of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*).

*United States* means all of the States.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62865, Oct. 22, 2008; 79 FR 76123, Dec. 19, 2014; 82 FR 57052, Dec. 1, 2017; 86 FR 52959, Sept. 24, 2021]

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

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**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.

**SOURCE:** 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

### Subpart A—General

#### § 301.1 Overview of eligibility requirements.

In order to receive EDA Investment Assistance, the following requirements must be met:

(a) The applicant must be an Eligible Applicant as set forth in subpart B of this part;

(b) The Region in which the Project will be located must meet the economic distress criteria set forth in subpart C of this part;

(c) The sources of funding for the Project must fulfill the Investment Rate and Matching Share requirements set forth in subpart D of this part;

(d) The Eligible Applicant must satisfy the formal application requirements set forth in subpart E of this part;

(e) The Project must meet the general requirements set forth in part 302 (General Terms and Conditions for Investment Assistance) and the specific program requirements (as applicable) set forth in part 303 (Planning Investments and Comprehensive Economic Development Strategies), part 304 (Economic Development Districts), part 305 (Public Works and Economic Development Investments), part 306 (Training, Research and Technical Assistance Investments), or part 307 (Economic Adjustment Assistance Investments) of this chapter; and

(f) EDA must select the Eligible Applicant's proposed Project.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76124, Dec. 19, 2014]

**Subpart B—Applicant Eligibility****§ 301.2 Applicant eligibility.**

(a) An Eligible Applicant for EDA Investment Assistance is defined in § 300.3 of this chapter.

(b) An Eligible Applicant that is a non-profit organization must include in its application for Investment Assistance a resolution passed by (or a letter signed by) an authorized representative of a general purpose political subdivision of a State, acknowledging that it is acting in cooperation with officials of such political subdivision. EDA, at its sole discretion, may waive this cooperation requirement for certain Projects of a significant Regional or national scope under part 306 or 307 of this chapter. *See* §§ 306.3(b), 306.6(b), and 307.5(b) of this chapter.

[71 FR 56675, Sept. 27, 2006, as amended at 82 FR 57053, Dec. 1, 2017]

**Subpart C—Economic Distress Criteria****§ 301.3 Economic distress levels.**

(a) *Part 305 (Public Works and Economic Development Investments) and part 307 (Economic Adjustment Assistance Investments)*. (1) Except as otherwise provided by this paragraph (a), for a Project to be eligible for Investment Assistance under parts 305 or 307 of this chapter, the Project must be located in a Region that, on the date EDA receives an application for Investment Assistance, is subject to one or more of the following economic distress criteria:

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

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

(iii) A Special Need, as determined by EDA.

(2) A Project located within an Economic Development District, which is located in a Region that does not meet the economic distress criteria described in paragraph (a)(1) of this section, also is eligible for Investment As-

sistance under parts 305 or 307 of this chapter if EDA determines that the Project will be of “substantial direct benefit” to a geographic area within the District that meets the criteria of paragraph (a)(1) of this section. For this purpose, a Project provides a “substantial direct benefit” if it provides significant employment opportunities for unemployed, underemployed or low-income residents of the geographic area within the District.

(3) A Project located in a geographic area of poverty or high unemployment that meets the requirements of paragraph (a)(1) of this section, but which is located in a Region that overall does not meet the requirements of paragraph (a)(1) of this section, is eligible for Investment Assistance under parts 305 or 307 of this chapter without regard to political or other subdivisions or boundaries.

(4) *Data requirements to demonstrate economic distress levels.* EDA will determine the economic distress levels pursuant to this subsection at the time EDA receives an application for Investment Assistance as follows:

(i) For economic distress levels based upon per capita income requirements, EDA will base its determination upon the most recent American Community Survey (“ACS”) published by the U.S. Census Bureau. For economic distress levels based upon the unemployment rate, EDA will base its determination upon the most recent data published by the Bureau of Labor Statistics (“BLS”), within the U.S. Department of Labor. For eligibility based upon either per capita income requirements or the unemployment rate, when the ACS or BLS data, as applicable, are not the most recent Federal data available, EDA will base its decision upon the most recent Federal data from other sources (including data available from the Census Bureau and the Bureaus of Economic Analysis, Labor Statistics, Indian Affairs, or any other Federal source determined by EDA to be appropriate). If no Federal data are available, an Eligible Applicant must submit to EDA the most recent data available from the State. The required data must be for the Region where the Project will be located (paragraph (a)(1) of this section), the geographic

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area where substantial direct Project benefits will occur (paragraph (a)(2) of this section), or the geographic area of poverty or high unemployment (paragraph (a)(3) of this section), as applicable.

(ii) For economic distress based upon a Special Need, EDA will conduct the independent analysis it deems necessary under the facts and circumstances of a given case. Eligible Applicants are encouraged to submit reliable data substantiating their claim of a Special Need.

(b) *Part 303 (Planning Investments) and part 306 (Training, Research and Technical Assistance Investments)*. There are no minimum economic distress level requirements for Investment Assistance awarded to Projects under parts 303 or 306 of this chapter.

(c) *Part 304 (Economic Development Districts)*. For EDA to designate a Region as an Economic Development District under part 304 of this chapter, such Region must:

(1) Contain at least one geographic area that fulfills the economic distress criteria set forth in paragraph (a)(1) of this section and is identified in an approved CEDS; and

(2) Meet the Regional eligibility requirements set forth in §304.1 of this chapter.

(d) EDA reserves the right to reject any documentation of Project eligibility that it determines is inaccurate or otherwise unreliable.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62865, Oct. 22, 2008; 79 FR 76124, Dec. 19, 2014]

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

#### § 301.4 Investment rates.

(a) *Minimum Investment Rate*. There is no minimum Investment Rate for a Project.

(b) *Maximum Investment Rate*—(1) *General rule*. Except as otherwise provided by this paragraph (b) or paragraph (c) of this section, the maximum EDA Investment Rate for all Projects shall be determined in accordance with Table 1 in paragraph (b)(1)(ii) of this section. The maximum EDA Investment Rate shall not exceed the sum of 50 percent,

plus up to an additional 30 percent based on the relative needs of the Region in which the Project is located, as determined by EDA.

(i)(A) *Relative needs*. In determining the relative needs of the Region in which the Project is located, EDA will prioritize allocations of its Investment Assistance to ensure that the level of economic distress of a Region, rather than a preference for a specific geographic area or a specific type of economic distress, is the primary factor in allocating its Investment Assistance. In making this determination, EDA will take into consideration the following measures of economic distress:

(1) The severity of the unemployment rate and the duration of the unemployment in the Region;

(2) The per capita income levels and the extent of underemployment in the Region;

(3) The outmigration of population and the extent to which such outmigration is causing economic injury in the Region; and

(4) Such other factors as EDA deems relevant in determining the relative needs of the Region in which the Project is located.

(B) A Project is eligible for the maximum allowable Investment Rate as determined by EDA between the time EDA receives the application for Investment Assistance and the time that EDA awards Investment Assistance to the Project; however, the burden is on the Eligible Applicant to establish the relative needs of the Region in which the Project is located.

(ii) *Table 1*. Table 1 of this paragraph sets forth the maximum allowable Investment Rate for Projects located in Regions subject to certain levels of economic distress. In cases where Table 1 produces divergent results (*i.e.*, where Table 1 produces more than one maximum allowable Investment Rate based on the Region's levels of economic distress), the higher Investment Rate produced by Table 1 shall be the maximum allowable Investment Rate for the Project.

TABLE 1

Projects located in regions in which:	Maximum allowable investment rates (percentage)
(A) The 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 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 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 24-month unemployment rate is at least one 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 80 percent.

(3) *Projects under part 303.*

(i) The minimum Investment Rate for Projects under part 303 of this chapter shall be 50 percent.

(ii) Except as otherwise provided in paragraph (b)(3)(iii) of this section or in paragraph (b)(5) of this section, the maximum allowable Investment Rate for Projects under part 303 of this chapter shall be the maximum allowable Investment Rate set forth in Table 1 for the most economically distressed county or other equivalent political unit (e.g., parish) within the Region. The maximum allowable Investment Rate shall not exceed 80 percent.

(iii) In compelling circumstances, the Assistant Secretary may waive the application of the first sentence in paragraph (b)(3)(ii) of this section.

(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 204(c)(3) of PWEDA, the Assistant Secretary has the discretion to establish a maximum Investment Rate of up to 100 percent where the Project:

- (i) Merits, and is not otherwise feasible without, an increase to the Investment Rate; or
- (ii) Will be of no or only incidental benefit to the Eligible Recipient.

(5) *Special Projects.* Table 2 of this paragraph sets forth the maximum allowable Investment Rate for certain special Projects as follows:

TABLE 2

Projects	Maximum allowable investment rates (percentage)
Projects that involve broad Regional planning and coordination with other entities outside the Eligible Applicant's political jurisdiction or area of authority, under special circumstances determined by EDA, and Projects that effectively leverage other Federal Agency resources .....	80
Projects of Indian Tribes .....	100
Projects for which EDA receives appropriations under section 703 of PWEDA (42 U.S.C. 3233) and Projects to address and implement post-disaster economic recovery efforts in Presidentially Declared Disaster areas in a timely manner .....	100
Projects of States or political subdivisions of States that the Assistant Secretary determines have exhausted their effective taxing and borrowing capacity, or Projects of non-profit organizations that the Assistant Secretary determines have exhausted their effective borrowing capacity .....	100
Projects under parts 305 or 307 that receive performance awards pursuant to §308.2 of this chapter .....	100
Projects located in a District that receive planning performance awards pursuant to §308.3 of this chapter .....	100

(c) Federal Funding Opportunity announcements may provide additional Investment Rate criteria and standards to ensure that the level of economic distress of a Region, rather than a preference for a geographic area or a specific type of economic distress, is the primary factor in allocating Investment Assistance.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62865, Oct. 22, 2008; 75 FR 4262, Jan. 27, 2010; 79 FR 76125, Dec. 19, 2014]

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### § 301.5 Matching share requirements.

The required Matching Share of a Project's eligible costs may consist of cash or In-Kind Contributions. In addition, the Eligible Applicant must provide documentation to EDA demonstrating that the Matching Share is committed to the Project, will be available as needed and is not or will not be conditioned or encumbered in any way that would preclude its use consistent with the requirements of the Investment Assistance. EDA shall determine at its sole discretion whether the Matching Share documentation adequately addresses the requirements of this section.

[82 FR 57053, Dec. 1, 2017]

### § 301.6 Supplementary Investment Assistance.

(a) Pursuant to a request made by an Eligible Applicant, EDA Investment Assistance may supplement a grant awarded in another "designated Federal grant program," if the Eligible Applicant qualifies for financial assistance under such program, but is unable to provide the required non-Federal share because of the Eligible Applicant's economic situation. For purposes of this section, a "designated Federal grant program" means a Federal grant program that:

(1) Provides assistance in the construction or equipping of public works, public service or development facilities;

(2) Is designated by EDA as eligible for supplementary Investment Assistance under this section; and

(3) Assists Projects that are otherwise eligible for Investment Assistance and consistent with the Eligible Applicant's CEDS.

(b) For a Project that meets the economic distress criteria provided in § 301.3(a), the Investment Assistance, combined with funds from a designated Federal grant program, may be at the maximum allowable Investment Rate, even if the designated Federal grant program has a lower grant rate. If the designated Federal grant program has a grant rate higher than the maximum EDA Investment Rate, the EDA Investment and other Federal funds together may exceed the EDA Investment Rate,

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provided that the EDA share of total funding does not exceed the maximum allowable Investment Rate.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76126, Dec. 19, 2014]

## Subpart E—Application Requirements; Evaluation Criteria

### § 301.7 Investment Assistance application.

(a) For all EDA Investment Assistance programs, including the Public Works, Economic Adjustment Assistance, Planning, Local Technical Assistance, Research and National Technical Assistance, and University Center programs, EDA will publish an FFO that specifies application submission requirements and evaluation procedures and criteria. Each FFO will be published on the EDA Web site and at <http://www.grants.gov>. All forms required for EDA Investment Assistance may be obtained electronically from <http://www.grants.gov> or from the appropriate regional office.

(b) PWEDA does not require nor does EDA provide an appeals process for denial of applications or EDA Investment Assistance.

[75 FR 4262, Jan. 27, 2010, as amended at 79 FR 76126, Dec. 19, 2014; 82 FR 57053, Dec. 1, 2017]

### § 301.8 Application evaluation criteria.

EDA will screen all applications for the feasibility of the budget presented and conformance with EDA's statutory and regulatory requirements. EDA will assess the economic development needs of the affected Region in which the proposed Project will be located (or will service), as well as the capability of the Eligible Applicant to implement the proposed Project. EDA will also review applications for conformance with program-specific evaluation criteria set out in the applicable FFO.

[82 FR 57053, Dec. 1, 2017]

### § 301.9 Application selection criteria.

(a) EDA will review completed application materials for compliance with the requirements set forth in PWEDA, this chapter, the applicable FFO, and other applicable Federal statutes and regulations. From those applications

that meet EDA's technical and legal requirements, EDA will select applications based on the:

- (1) Availability of funds;
- (2) Competitiveness of the applications in accord with the criteria set forth in § 301.8; and
- (3) Funding priority considerations identified in the applicable FFO.

(b) EDA will endeavor to notify applicants as soon as practicable regarding whether their applications are selected for funding.

[79 FR 76127, Dec. 19, 2014]

#### § 301.10 Formal application requirements.

Each formal application for EDA Investment Assistance must:

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

(b) Identify the sources of funds, both eligible Federal and non-EDA, and In-Kind Contributions that will constitute the required Matching Share for the Project (*see* the Matching Share requirements under § 301.5); and

(c) For Projects under parts 305 or 307 of this chapter, include a CEDS acceptable to EDA pursuant to part 303 of this chapter or otherwise incorporate by reference a current CEDS that EDA approves for the Project. The requirements stated in the preceding sentence shall not apply to:

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

(2) A Project located in a Region designated as a Special Impact Area pursuant to part 310 of this chapter.

(d) Projects that propose the construction of a business, technology, or other type of incubator or accelerator, must include a feasibility study demonstrating the need for the Project and an operational plan based on industry best practices demonstrating the Eligible Applicant's plan for ongoing successful operations. EDA will provide further guidance in the applicable FFO. EDA may require the Recipient to demonstrate that the feasibility study has been conducted by an impartial third party, as determined by EDA.

[75 FR 4263, Jan. 27, 2010, as amended at 79 FR 76127, Dec. 19, 2014]

#### § 301.11 Infrastructure.

(a) EDA will fund both construction and non-construction infrastructure necessary to meet a Region's strategic economic development goals and needs, which in turn results in job creation. This includes infrastructure used to develop basic economic development assets as described in §§ 305.1 and 305.2 of this chapter (*e.g.*, roads, sewers, and water lines), as well as infrastructure that supports innovation and entrepreneurship. The following are examples of innovation and entrepreneurship-related infrastructure that support job creation:

(1) *Business Incubation.* Business incubation includes both physical facilities and business support services to advance the successful development of start-up companies by providing entrepreneurs with an array of targeted resources and services.

(2) *Business Acceleration.* Business acceleration includes both physical facilities and an array of business support services to help new and existing businesses develop new processes or products, get products and services to market more efficiently, expand market opportunities, or increase sales and exports.

(3) *Venture Development Organization.* A venture development organization ("VDO") works to ensure that Regional economies operate as smoothly and efficiently as possible in support of innovation-based entrepreneurship. A VDO may make strategic investments of time, talent, and other resources toward innovation, entrepreneurship, and technology to help nurture and grow promising companies and ideas, thereby promoting and taking advantage of the innovation assets of a Region and addressing the needs of the high-growth, innovation-oriented start-up companies in the Region.

(4) *Proof of Concept Center.* A proof of concept center serves as a hub of collaborative and entrepreneurial activity designed to accelerate the commercialization of innovations into the marketplace. Such centers support innovation-based, high growth entrepreneurship through a range of services, including technology and market evaluation, business planning and

mentorship, network development, and early stage access to capital.

(5) *Technology Transfer*. Technology transfer is the process of transferring scientific findings from one organization to another for the purpose of further development and commercialization. The process typically includes: Identifying new technologies; protecting technologies through patents and copyrights; and forming development and commercialization strategies, such as marketing and licensing, for existing private sector companies or creating start-up companies based on the technology.

(b) In general, successful Projects, including innovation and entrepreneurship-related infrastructure, require the engagement of a broad range of Regional stakeholders and resources. Therefore through appropriate FFOs and program requirements, EDA will seek to advance interagency coordination by funding Projects that demonstrate effective leveraging of other Federal Agency resources based on a Region's strategic economic development goals and needs. For all types of Projects, EDA assistance may not be used to provide direct venture capital to a for-profit entity because of the restrictions set out in section 217 of PWEDA (42 U.S.C. 3154c) and part 309 of this chapter. Nonetheless, EDA may consider an application more competitive if it includes measures to address the need to provide entrepreneurs with access to early stage capital outside of the proposed EDA Project budget. *See* §301.8(b).

[79 FR 76127, Dec. 19, 2014, as amended at 82 FR 57053, Dec. 1, 2017]

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

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- 302.1 Environment.
- 302.2 Procedures in disaster areas.
- 302.3 Project servicing for loans, loan guarantees and Investment Assistance.
- 302.6 Additional requirements; Federal policies and procedures.
- 302.7 Amendments and changes.
- 302.8 Pre-approval Investment Assistance costs.
- 302.9 Inter-governmental review of projects.

- 302.10 Attorneys' and consultants' fees, employment of expeditors, and post-employment restriction.
- 302.12 Project administration, operation and maintenance.
- 302.13 Maintenance of standards.
- 302.15 Acceptance of certifications made by Eligible Applicants.
- 302.16 Accountability.
- 302.17 Conflicts of interest.
- 302.18 Post-approval requirements.
- 302.19 Indemnification.
- 302.20 Civil rights.

AUTHORITY: 19 U.S.C. 2341 *et seq.*; 42 U.S.C. 3150; 42 U.S.C. 3152; 42 U.S.C. 3153; 42 U.S.C. 3192; 42 U.S.C. 3193; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3212; 42 U.S.C. 3216; 42 U.S.C. 3218; 42 U.S.C. 3220; 42 U.S.C. 5141; 15 U.S.C. 3701; Department of Commerce Delegation Order 10–4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

### §302.1 Environment.

EDA will undertake environmental reviews of Projects in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190; 42 U.S.C. 4321 *et seq.*, as implemented under 40 CFR chapter V) (“NEPA”), and all applicable Federal environmental statutes, regulations, and Executive Orders. These authorities include the implementing regulations of NEPA requiring EDA to provide public notice of the availability of Project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, to the affected or interested public, as specified in 40 CFR 1506.6(b). Depending on the Project's location, environmental information concerning specific Projects may be obtained from the individual serving as the Environmental Officer in the appropriate EDA regional office listed in the applicable FFO.

[79 FR 76128, Dec. 19, 2014]

### §302.2 Procedures in disaster areas.

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