

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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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.

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

EDA will provide Project servicing to borrowers who received EDA loans or EDA-guaranteed loans and to lenders who received EDA loan guaranties under an EDA-administered program. Project servicing includes loans made under PWEDA prior to the effective date of the Economic Development Administration Reform Act of 1998, the Trade Act, and the Community Emergency Drought Relief Act of 1977 (Pub. L. 95-31; 42 U.S.C. 5184 note).

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

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

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

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

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

(3) Take any and all other actions determined to be necessary or desirable in purchasing, servicing, compro-

mising, modifying, liquidating, or otherwise administratively processing or disposing of loans or loan guaranties made or evidence of purchased debt in connection with any EDA loans, EDA-guaranteed loans or Investment Assistance awarded under PWEDA.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76128, Dec. 19, 2014]

**§ 302.6 Additional requirements; Federal policies and procedures.**

Recipients are subject to all Federal laws and to Federal, Department, and EDA policies, regulations, and procedures applicable to Federal financial assistance awards, including 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

[82 FR 57053, Dec. 1, 2017]

**§ 302.7 Amendments and changes.**

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

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

**§ 302.8 Pre-approval Investment Assistance costs.**

Project activities carried out before approval of Investment Assistance shall be carried out at the sole risk of the Eligible Applicant. Such activity is subject to the rejection of the application, the disallowance of costs, or other adverse consequences as a result of non-compliance with EDA or Federal requirements, including procurement requirements, civil rights requirements, Federal labor standards, or Federal environmental, historic preservation, and related requirements.

[79 FR 76128, Dec. 19, 2014]

**§ 302.9 Inter-governmental review of projects.**

(a) When an Eligible Applicant is not a State, Indian Tribe, or other general purpose governmental authority, the

## § 302.10

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Eligible Applicant must afford the appropriate general purpose local governmental authority (the “*Authority*”) in the Region a minimum of 15 days to review and comment on a proposed Project under EDA’s Public Works and Economic Development program or a proposed construction Project or RLF Grant under EDA’s Economic Adjustment Assistance program. Under these programs, the Eligible Applicant shall furnish the following with its application:

(1) If no comments are received from the Authority, a statement of efforts made to obtain such comments; or

(2) If comments are received from the Authority, a copy of the comments and a statement of any actions taken to address such comments.

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

[79 FR 76128, Dec. 19, 2014]

### **§ 302.10 Attorneys’ and consultants’ fees, employment of expeditors, and post-employment restriction.**

(a) *Employment of expeditors.* Investment Assistance awarded under PWEDA shall not directly or indirectly reimburse any attorneys’ or consultants’ fees incurred in connection with obtaining Investment Assistance and contracts under PWEDA. Such Investment Assistance shall not be awarded to any Eligible Applicant, unless the owners, partners, or officers of the Eligible Applicant certify to EDA the names of any attorneys, agents, and other persons engaged by or on behalf of the Eligible Applicant for the purpose of expediting an application made to EDA in connection with obtaining Investment Assistance under PWEDA

and the fees paid or to be paid to the person(s) for expediting the application.

(b) *Post-employment restriction.* (1) In general, any Eligible Applicant that is a non-profit organization, District Organization, or for-profit entity, for the two-year period beginning on the date on which the Investment Assistance under PWEDA is awarded to the Eligible Applicant, must refrain from employing, offering any office or employment to, or retaining for professional services any person who, on the date on which the Investment Assistance is awarded or within the one-year period ending on that date:

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

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

(2) In addition to the types of Eligible Applicants noted in this paragraph (b), EDA may require another Eligible Applicant to execute an agreement to abide by the above-described post-employment restriction on a case-by-case basis; for example, when an institution of higher education implements activities under or related to the Investment Assistance through a separate non-profit organization or association.

[79 FR 76128, Dec. 19, 2014]

### **§ 302.12 Project administration, operation and maintenance.**

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

### **§ 302.13 Maintenance of standards.**

All laborers and mechanics employed by contractors or subcontractors on Projects receiving Investment Assistance under PWEDA shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. EDA shall not extend any

Investment Assistance under this chapter for a Project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The U.S. Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan No. 14 of 1950 (15 FR 3176 (May 25, 1950); 64 Stat. 1267) and section 3145 of title 40, United States Code.

**§ 302.15 Acceptance of certifications made by Eligible Applicants.**

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

**§ 302.16 Accountability.**

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

(b) *Data on Project effectiveness.* 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 meeting Project goals) and in meeting the objectives of PWEDA. Data used by a Recipient in preparing reports shall be accurate and verifiable as determined by EDA, and from independent sources (whenever possible). EDA will use this data and report to fulfill its performance measurement reporting requirements under the Government Performance and Results Act of 1993, as amended (Pub. L. 103-62) and to monitor internal, Investment, and Project performance through an internal performance measurement system.

(c) *Reporting Project service benefits.* 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.

(d) *Consequences for failure to undertake good faith efforts.* (1) The Recipient must undertake good faith efforts to fulfill the purpose of the Project as set out in the terms of the Investment Assistance and must report regularly on Project goals. In the event that EDA determines that the Recipient is failing to make good faith efforts to meet these goals, or otherwise is failing to meet its obligations under the Investment Assistance, EDA shall take necessary actions to protect EDA's interest in the Project, including the following:

(i) Discontinue disbursement of funds pending correction;

(ii) Suspend the Investment Assistance;

(iii) Terminate the Investment Assistance;

(iv) Require reimbursement of the EDA share of the Project; or

(v) Institute formal Government-wide debarment and suspension proceedings against the Recipient.

(2) Before making a determination under this subsection, EDA shall provide the Recipient with reasonable notice and opportunity to respond. A determination under this subsection is final and cannot be appealed.

[79 FR 76129, Dec. 19, 2014]

**§ 302.17 Conflicts of interest.**

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

advice to the Recipient, a participant in the Project or to the Federal government. Additionally, a conflict of interest may result from non-financial gain to an Interested Party, such as benefit to reputation or prestige in a professional field.

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

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

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

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

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

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

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

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

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62866, Oct. 22, 2008; 79 FR 76129, Dec. 19, 2014]

**§ 302.18 Post-approval requirements.**

A Recipient must comply with all financial, performance, progress report, and other requirements set forth in the terms and conditions of the Investment

Assistance, including any special award conditions and applicable Federal cost principles (collectively, “*Post-Approval Requirements*”). A Recipient’s failure to comply with Post-Approval Requirements may result in the disallowance of costs, termination of the Investment Assistance award, or other adverse consequences to the Recipient.

[79 FR 76129, Dec. 19, 2014]

**§ 302.19 Indemnification.**

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

**§ 302.20 Civil rights.**

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

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

(2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex in Investment Assistance provided under PWEDA), 42 U.S.C. 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program), Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 *et seq.*) (proscribing discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution), and the Department’s implementing regulations found at 15 CFR part 8a;

(3) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) (proscribing discrimination on the

basis of disabilities), and the Department's implementing regulations found at 15 CFR part 8b;

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

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

(b) *Definitions.* (1) For purposes of this section, an “*Other Party*” means an “other party subject to this part,” as defined in 15 CFR 8.3(l), and includes an entity which (or which is intended to) creates and/or saves 15 or more permanent jobs as a result of Investment Assistance; provided that such entity also is either specifically named in the application as benefiting from the Project, or is or will be located in an EDA building, port, facility, or industrial, commercial or business park constructed or improved in whole or in part with Investment Assistance prior to EDA's final disbursement of award funds.

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

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

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

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

[71 FR 56675, Sept. 27, 2006, as amended at 75 FR 4263, Jan. 27, 2010; 79 FR 76129, Dec. 19, 2014; 82 FR 57053, Dec. 1, 2017]

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

### Subpart A—General

#### Sec.

- 303.1 Overview of EDA's Planning Program.
- 303.2 Definitions.
- 303.3 Application requirements and evaluation criteria.
- 303.4 Award requirements.
- 303.5 Eligible administrative expenses.

### Subpart B—Partnership Planning Assistance

- 303.6 Partnership Planning and the EDA-funded CEDS process.
- 303.7 Requirements for Comprehensive Economic Development Strategies.

### Subpart C—State and Short-Term Planning Assistance

- 303.8 Requirements for State plans.
- 303.9 Requirements for short-term Planning Investments.

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

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

### Subpart A—General

#### § 303.1 Overview of EDA's Planning Program.

The purpose of EDA Planning Investments is to provide support to Planning Organizations for the development, implementation, revision, or replacement of Comprehensive Economic Development Strategies, and for related State plans and short-term Planning Investments designed to create and retain new and better jobs, particularly for the unemployed and underemployed in the nation's most economically distressed Regions. EDA's Planning Investments support partnerships with District Organizations, Indian Tribes, community development corporations, non-profit Regional planning organizations, and other Eligible Recipients. Planning activities supported by these Investments must be part of a continuous process involving the active participation of the private