

cash or in-kind contribution(s) whose value can be readily determined, verified, and justified. Applicants must show at the time of application 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.

#### § 312.10 Application components.

In addition to the criteria set forth in the FFO, to be considered for a RIS Program grant, eligible applicants must provide the following information:

(a) A description of the regional innovation cluster supported by the proposed activity;

(b) The extent to which the regional innovation cluster is supported by the private sector, State and local units of government, and other relevant stakeholders;

(c) The methods that participants in the regional innovation cluster will use to encourage and solicit participation by all types of entities that might benefit from participation, including newly formed entities and rival existing participants;

(d) The extent to which the regional innovation cluster is likely to stimulate innovation and have a positive effect on regional economic growth and development;

(e) The capacity of participants in the regional innovation cluster to access, or contribute to, a well-trained workforce;

(f) The ability of participants in the regional innovation cluster to attract additional funds to support the cluster with non-Federal funds; and

(g) The likelihood that participants in the regional innovation cluster will be able to sustain activities after the grant expires.

#### § 312.11 Application evaluation and selection criteria.

(a) EDA will evaluate and select complete applications in accordance with the evaluation criteria, funding pri-

ority considerations, availability of funding, competitiveness of the application, and requirements set forth in section 27(b) of Stevenson-Wydler, the FFO, and other applicable Federal statutes and regulations. All awards are subject to the availability of funds.

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

(c) Stevenson-Wydler does not require nor does EDA provide an appeal process for denial of applications for EDA investment assistance.

#### § 312.12 General terms and conditions for investment assistance.

RIS Program grants are subject to all requirements contained in part 302 of this chapter, except §§ 302.2, 302.3, 302.9, 302.10, and 302.17.

### Subpart C—Regional Innovation Research and Information Program [Reserved]

#### §§ 312.13–312.17 [Reserved]

### PART 313 [RESERVED]

### PART 314—PROPERTY

#### Sec.

314.1 Definitions.

314.2 Federal Interest.

314.3 Authorized use of Project Property.

314.4 Unauthorized Use of Project Property.

314.5 Federal Share.

314.6 Encumbrances.

314.7 Title.

314.8 Recorded statement for Project Real Property.

314.9 Recorded statement for Project Personal Property.

314.10 Procedures for release of the Federal Interest.

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

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

#### § 314.1 Definitions.

In addition to the defined terms set forth in § 300.3 of this chapter, the following terms shall have the following meanings:

*Adequate Consideration* means the fair market value at the time of sale or lease of any Property, as adjusted, in

## § 314.2

## 13 CFR Ch. III (1–1–23 Edition)

EDA's sole discretion, by any services, property exchanges, contractual commitments, acts of forbearance or other considerations that are in furtherance of the authorized purposes of the Investment Assistance, which are received by the Recipient or Owner in exchange for such Property.

*Disposition* or *Dispose* means the sale, lease, abandonment or other disposition of any Property and also includes the Unauthorized Use of such Property.

*Estimated Useful Life*, as used in this part, means the period of years that constitutes the expected useful lifespan of a Project, as determined by EDA, during which EDA anticipates obtaining the economic development benefits of its Investment.

*Federal Interest* has the definition ascribed to it in § 314.2(a).

*Federal Share* has the definition ascribed to it in § 314.5.

*Owner* means a fee owner, transferee, lessee or optionee of any Property. The term Owner also includes the holder of other interests in a Property where the interests are such that the holder effectively controls the use of such Property.

*Personal Property* means all tangible and intangible property other than Real Property, including the RLF Capital Base as defined at § 307.8.

*Project Property* means all Property that is acquired or improved, in whole or in part, with Investment Assistance and is required, as determined by EDA, for the successful completion and operation of a Project and/or serves as the economic justification of a Project. As appropriate to specify the type of Property referenced, this part refers to Project Property as "Project Real Property" or "Project Personal Property".

*Property* means Real Property, Personal Property and mixed property.

*Real Property* means any land, whether raw or improved, and includes structures, fixtures, appurtenances and other permanent improvements, excluding moveable machinery and equipment. Real Property includes land that is served by the construction of Project infrastructure (such as roads, sewers and water lines) where the infrastructure contributes to the

value of such land as a specific purpose of the Project.

*Successor Recipient* means an EDA-approved transferee of Property pursuant to § 314.3(d). A Successor Recipient must be an Eligible Recipient of Investment Assistance.

*Unauthorized Use* means any use of Property acquired or improved in whole or in part for purposes not authorized by EDA Investment Assistance, PWEDA or this chapter, as set forth in § 314.4.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76136, Dec. 19, 2014; 82 FR 57059, Dec. 1, 2017]

### § 314.2 Federal Interest.

(a) Subject to the obligations and conditions set forth in this part and in relevant provisions of 2 CFR part 200, Project Property vests upon acquisition in the Recipient (or, if approved by EDA, in a Co-recipient or Sub-recipient). Project Property shall be held in trust by the Recipient for the benefit of the Project for the Estimated Useful Life of the Project, during which period EDA retains an undivided equitable reversionary interest in the Property (the "Federal Interest"). The Federal Interest ensures compliance with EDA Project requirements, including those related to the purpose, scope, and use of a Project. The Recipient typically must secure the Federal Interest through a recorded lien, statement, or other recordable instrument setting forth EDA's Property interest in a Project (*e.g.*, a mortgage, covenant, or other statement of EDA's Real Property interest in the case of a Project involving the acquisition, construction, or improvement of a building. See § 314.8.).

(b) When the Federal Government is fully compensated for the Federal Share of Project Property, the Federal Interest is extinguished and the Federal Government has no further interest in the Property, except as provided in § 314.10(e)(3) regarding non-discrimination requirements.

[82 FR 57059, Dec. 1, 2017]

**§ 314.3 Authorized use of Project Property.**

(a) *General.* During the Estimated Useful Life of the Project, the Recipient or Owner must use any Project Property only for authorized Project purposes as set out in the terms of the Investment Assistance. Such Property must not be Disposed of or encumbered without EDA's prior written authorization.

(b) *Project Property that is no longer needed for Project purposes.* Where EDA and the Recipient determine during the Estimated Useful Life of the Project that Project Property is longer needed for the original purpose of the Investment Assistance, EDA, in its sole discretion, may approve the use of such Property in other Federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and by this chapter.

(c) *Real Property for sale or lease.* Where EDA determines that the authorized purpose of the Investment Assistance is to develop Real Property to be leased or sold, such sale or lease is permitted provided it is for Adequate Consideration and the sale is consistent with the authorized purpose of the Investment Assistance and with all applicable Investment Assistance requirements, including nondiscrimination and environmental compliance.

(d) *Property transfers and Successor Recipients.* EDA, in its sole discretion, may approve the transfer of any Project Property from a Recipient to a Successor Recipient (or from one Successor Recipient to another Successor Recipient). The Recipient will remain responsible for complying with the rules of this part and the terms and conditions of the Investment Assistance for the period in which it is the Recipient. Thereafter, the Successor Recipient must comply with the rules of this part and with the same terms and conditions as were applicable to the Recipient (unless such terms and conditions are otherwise amended by EDA). The same rules apply to EDA-approved transfers of Property between Successor Recipients.

(e) *Replacement Personal Property.* When acquiring replacement Personal Property of equal or greater value than Personal Property originally acquired

with Investment Assistance, the Recipient may, with EDA's approval, trade in such Personal Property originally acquired or sell the original Personal Property and use the proceeds for the acquisition of the replacement Personal Property, provided that the replacement Personal Property is for use in the Project. The replacement Personal Property is subject to the same requirements as the original Personal Property.

(f) *Replacement Real Property.* In extraordinary and compelling circumstances, the Assistant Secretary may approve the replacement of Real Property used in a Project.

(g) *Incidental use of Project Property.* With EDA's prior written approval, a Recipient may undertake an incidental use of Project Property that does not interfere with the scope of the Project or the economic purpose for which the Investment was made, provided that the Recipient is in compliance with applicable law and the terms and conditions of the Investment Assistance, and the incidental use of the Property will not violate the terms and conditions of the Investment Assistance or otherwise undermine the economic purpose for which the Investment was made or adversely affect the economic useful life of the Property. Eligible Applicants and Recipients should contact the appropriate regional office (whose contact information is available via the Internet at <http://www.eda.gov>) for guidelines on obtaining approval for incidental use of Property under this section.

[82 FR 57059, Dec. 1, 2017]

**§ 314.4 Unauthorized Use of Project Property.**

(a) *Compensation of Federal Share upon an Unauthorized Use of Project Property.* Except as provided in §§ 314.3 (regarding the authorized use of Property) or 314.10 (regarding the release of the Federal Interest in certain Property), or as otherwise authorized by EDA, the Federal Government must be compensated by the Recipient for the Federal Share whenever, during the Estimated Useful Life of the Project, any Project Property is Disposed of, encumbered, or no longer used for the purpose of the Project; provided that

## § 314.5

for equipment and supplies, the requirements of 2 CFR part 200, including any supplements, shall apply.

(b) *Additional Unauthorized Uses of Project Property.* Additionally, prior to the release of the Federal Interest, Project Real Property or tangible Project Personal Property may not be used:

(1) In violation of the nondiscrimination requirements of § 302.20 of this chapter or in violation of the terms and conditions of the Investment Assistance; or

(2) For any purpose prohibited by applicable law.

(c) *Recovery of the Federal Share.* Where the Disposition, encumbrance, or use of any Project Property violates paragraph (a) or (b) of this section, EDA may assert the Federal Interest in the Project Property to recover the Federal Share for the Federal Government and may take such actions as authorized by PWEDA and this chapter, including the actions provided in §§ 302.3, 302.16, and 307.21 of this chapter. EDA may pursue its rights under paragraph (a) of this section and this paragraph (c) to recover the Federal Share, plus costs and interest. When the Federal Government is fully compensated for the Federal Share, the Federal Interest is extinguished as provided in § 314.2(b), and EDA will have no further interest in the ownership, use, or Disposition of the Property, except for the nondiscrimination requirements set forth in § 314.10(d)(3).

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76137, Dec. 19, 2014; 82 FR 57059, Dec. 1, 2017]

### § 314.5 Federal Share.

(a) For purposes of this part, “Federal Share” means that portion of the current fair market value of any Project Property attributable to EDA’s participation in the Project. EDA may rely on a current certified appraisal of the Project Property prepared by an appraiser licensed in the State where the Project Property is located to determine the fair market value. In extraordinary circumstances and at EDA’s sole discretion, where EDA is unable to determine the current fair market value, EDA may use other methods of determining the value of

## 13 CFR Ch. III (1–1–23 Edition)

Project Property, including the amount of the award of Investment Assistance or the amount paid by a transferee. The Federal Share shall be the current fair market value or other valuation as determined by EDA 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 50 percent. If the Property is disposed of when its current fair market is \$250, the Federal Share is \$125 (*i.e.*, 50 percent of \$250). If \$10 is spent to put the Property into salable condition, the Federal Share is \$120 (*i.e.*, 50 percent of (\$250–\$10)).

[73 FR 62870, Oct. 22, 2008, as amended at 79 FR 76137, Dec. 19, 2014; 82 FR 57060, Dec. 1, 2017]

### § 314.6 Encumbrances.

(a) *General.* Except as provided in paragraph (b) of this section or as otherwise authorized by EDA, Project Property 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, so long as the Recipient discloses such an encumbrance in writing as part of its application for Investment Assistance or as soon as practicable after learning of the encumbrance.

(b) *Exceptions.* Subject to EDA’s approval, which will not be unreasonably withheld or unduly delayed, paragraph (a) of this section does not apply in the following circumstances:

(1) *Shared first lien position.* EDA, at its discretion, may approve an encumbrance on Project Property where a lien holder and EDA enter into an inter-creditor agreement pursuant to

which EDA and the other lien holder share a first lien position on terms satisfactory to EDA.

(2) *Utility encumbrances.* Encumbrances arising solely from the requirements of a pre-existing water or sewer facility or other utility encumbrances, which by their terms extend to additional Property connected to such facilities.

(3) *Pre-existing encumbrances.* Encumbrances already in place and disclosed to EDA at the time EDA approves the Project where EDA, in its sole discretion, determines that:

(i) The requirements of § 314.7(b) are met;

(ii) Consistent with paragraphs (b)(4)(iv) and (b)(5)(iv) of this section, the terms and conditions of the encumbrance are satisfactory; and

(iii) Consistent with paragraphs (b)(4)(v) and (b)(5)(v) of this section, there is a reasonable expectation that the Recipient will not default on its obligations.

(4) *Encumbrances proposed proximate to Project approval.* Encumbrances required to secure debt, including time and maturity-limited debt, that finances the Project Property at the same proximate time that EDA approves the Project when all of the following are met:

(i) EDA, in its sole discretion, determines that there is good cause and legal authority to waive paragraph (a) of this section;

(ii) All proceeds secured by the encumbrance on the Property shall be available only to the Recipient and shall be used only for the Project for which the Investment Assistance applies, for related activities of which the Project is an essential part, or other activities that EDA determines are authorized under PWEDA;

(iii) A grantor or lender will not provide funds without the security of a lien on the Property;

(iv) The terms and conditions of the encumbrance are satisfactory to EDA; and

(v) 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 para-

graph, EDA shall take into account whether:

(A) A Recipient that is a non-profit organization is joined in the Project with a co-Recipient that is a public body and all co-Recipients are jointly and severally responsible;

(B) A Recipient that is a non-profit organization is financially strong and is an established organization with sufficient organizational life to demonstrate stability over time;

(C) The approximate value of the Project Property so that the total amount of all debt plus the Federal share of cost as reflected on the EDA Investment award, and any amendments as applicable, does not exceed the value of the Project Property as improved; and

(D) Such other factors as EDA deems appropriate.

(5) *Encumbrances proposed after Project approval.* Encumbrances proposed to be incurred after Project approval where all of the following are met:

(i) EDA, in its sole discretion, determines that there is good cause and legal authority to waive paragraph (a) of this section;

(ii) All proceeds secured by the encumbrance on the Property shall be available only to the Recipient and shall be used only for the Project for which the Investment Assistance applies, for related activities of which the Project is an essential part, or other activities that EDA determines are authorized under PWEDA;

(iii) A grantor or lender will not provide funds without the security of a lien on the Property;

(iv) The terms and conditions of the encumbrance are satisfactory to EDA; and

(v) 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) A Recipient that is a non-profit organization is joined in the Project with a co-Recipient that is a public body and all co-Recipients are jointly and severally responsible;

(B) A Recipient that is a non-profit organization is financially strong and

### § 314.7

### 13 CFR Ch. III (1–1–23 Edition)

is an established organization with sufficient organizational life to demonstrate stability over time;

(C) The Recipient's equity in the Project Property based on the appraised value of the Project Property at the time the encumbrance is requested so that the total amount of all debt plus the Federal share of cost as reflected on the EDA Investment award, and any amendments as applicable, does not exceed the value of the Project Property as improved; and

(D) Such other factors as EDA deems appropriate.

(c) *Unauthorized encumbrances.* Encumbering Project Property, other than as permitted in this section, is an Unauthorized Use of the Property under § 314.4.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62870, Oct. 22, 2008; 79 FR 76137, Dec. 19, 2014; 82 FR 57060, Dec. 1, 2017]

#### § 314.7 Title.

(a) *General title requirement.* Except in those limited circumstances identified in paragraph (c) of this section, at the time Investment Assistance is awarded, the Recipient must hold title to Project Real Property, which, as noted in § 314.1 in the definition of “Real Property” includes land that is served by the construction of Project infrastructure (such as roads, sewers, and water lines) and where the infrastructure contributes to the value of such land as a specific purpose of the Project. The Recipient must maintain title to Project Real Property at all times during the Estimated Useful Life of the Project, except in those limited circumstances as provided in paragraph (c) of this section. The Recipient also must furnish evidence, satisfactory in form and substance to EDA, that title to Project Real Property (other than property of the United States) is vested in the Recipient and that any easements, rights-of-way, State or local government permits, long-term leases, or other items required for the Project have been or will be obtained by the Recipient within an acceptable time, as determined by EDA.

(b) *Disclosure of encumbrances.* (1) The Recipient must disclose to EDA all encumbrances, including the following:

(i) Liens;

(ii) Mortgages;

(iii) Reservations;

(iv) Reversionary interests; and

(v) Other restrictions on title or on the Recipient's interest in the Property.

(2) No encumbrance will be acceptable if, as determined by EDA, the encumbrance interferes with the construction, use, operation or maintenance of the Project during its Estimated Useful Life.

(c) *Exceptions.* The following are exceptions to the requirements of paragraph (a) of this section that the Recipient hold title to Project Real Property at the time Investment Assistance is awarded and at all times during the Estimated Useful Life of the Project.

(1) *Project Real Property acquisition.* Where the acquisition of Project Real Property is contemplated as part of an Investment Assistance award, EDA may determine that an agreement for the Recipient to purchase the Project Real Property will be acceptable for purposes of paragraph (a) of this section if:

(i) The Recipient provides EDA with reasonable assurances that it will obtain fee title to the Real Property prior to or concurrent with the initial disbursement of the Investment Assistance; and

(ii) EDA, in its sole discretion, determines that the terms and conditions of the purchase agreement adequately safeguard the Federal Government's interest in the Project Real Property.

(2) *Leasehold interests.* EDA may determine that a long-term leasehold interest for a period not less than the Estimated Useful Life of Project Real Property will be acceptable for purposes of paragraph (a) of this section if:

(i) Fee title to the Real Property is not otherwise obtainable; and

(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.

(3) *Railroad right-of-way construction.* When a Project includes construction within a railroad's right-of-way or over a railroad crossing, EDA may find it

acceptable for the work to be completed by the railroad and for the railroad to continue to own, operate, and maintain that portion of the Project, if required by the railroad; and provided that, the construction is a minor but essential component of the Project.

(4) *State or local government owned roadway or highway construction.* When the Project includes construction on a State or local government owned roadway or 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 roadway or 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 State or local government owned roadway or highway are relocated for any reason pursuant to requirements of the owner of the public roadway or highway, the Recipient shall be responsible for accomplishing such relocation, including expending the Recipient's own funds as necessary, 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 roadway or 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 roadway or highway for the Project during the Estimated Useful Life of the Project.

(5) *Construction of Recipient-owned facilities to serve Recipient or privately owned Real Property—(i) General.* At EDA's discretion, when an authorized purpose of the Project is to construct Recipient-owned facilities to serve Recipient or privately owned Project Real

Property, including industrial or commercial parks, so that the Recipient or Owner may sell or lease parcels of the Project Real Property to private parties, such ownership, sale, or lease, as applicable, is permitted so long as:

(A) In cases where an authorized purpose of the Project is to sell Project Real Property, the Recipient or Owner, as applicable, provides evidence sufficient to EDA that it holds title to the Project Real Property intended for sale or lease prior to the disbursement of any portion of the Investment Assistance and will retain title until the sale of the Property in accordance with paragraphs (c)(5)(i)(C) through (E) of this section;

(B) In cases where an authorized purpose of the Project is to lease Project Real Property, the Recipient or Owner, as applicable, provides evidence sufficient to EDA that it holds title to the Project Real Property intended for lease prior to the disbursement of any portion of the Investment Assistance and will retain title for the entire Estimated Useful Life of the Project;

(C) The Recipient provides adequate assurances that the Project and the development of land and improvements on the Recipient or privately owned Project Real Property to be served by or that provides the economic justification for the Project will be completed according to the terms of the Investment Assistance;

(D) The sale or lease of any portion of the Project or of Project Real Property served by the Project or that provides the economic justification for the Project during the Project's Estimated Useful Life must be for Adequate Consideration and the terms and conditions of the Investment Assistance and the purpose(s) of the Project must continue to be fulfilled after such sale or lease; and

(ii) *Additional conditions on sale or lease.* EDA also may condition the sale or lease on the satisfaction by the Recipient, Owner, purchaser, or lessee (as the case may be) of any additional requirements that EDA may impose, including EDA's pre-approval of the sale or lease.

(iii) *Agreement between Recipient and Owner.* In addition to paragraphs (c)(5)(i) and (ii) of this section, when an

### § 314.8

### 13 CFR Ch. III (1–1–23 Edition)

authorized purpose of the Project is to construct facilities to serve privately owned Real Property, the Recipient and the Owner must agree to use the Real Property improved or benefitted by the EDA Investment Assistance only for the authorized purposes of the Project and in a manner consistent with the terms and conditions of the EDA Investment Assistance for the Estimated Useful Life of the Project.

(iv) *Unauthorized Use and compensation of Federal Share.* EDA may deem that a violation of this paragraph (c)(5) by the Recipient, Owner, purchaser, or lessee (as the case may be) constitutes an Unauthorized Use of the Real Property and the Recipient must agree to compensate EDA for the Federal government's Federal Share of the Project in the case of such Unauthorized Use.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62870, Oct. 22, 2008; 79 FR 76137, Dec. 19, 2014; 82 FR 57061, Dec. 1, 2017]

#### § 314.8 Recorded statement for Project Real Property.

(a) For all Projects involving the acquisition, construction, or improvement of a building, as determined by EDA, the Recipient shall execute a lien, covenant, or other statement of the Federal Interest in such Project Real Property. The statement shall specify the Estimated Useful Life of the Project and shall include, but not be limited to, the Disposition, encumbrance and Federal Share requirements. The statement shall be satisfactory in form and substance to EDA.

(b) The statement of the Federal Interest must be perfected and placed of record in the Real Property records of the jurisdiction in which the Project Real Property is located, all in accordance with applicable law.

(c) Facilities in which the EDA Investment is only a small part of a large project, as determined by EDA, may be exempted from the requirements of this section.

(d) In extraordinary circumstances and at EDA's sole discretion, EDA may choose to accept another instrument to protect the Federal Interest in Project Real Property, such as an escrow agreement or letter of credit, provided that EDA determines such instrument is adequate and a recorded statement

in accord with paragraph (a) of this section is not reasonably available. The terms and provisions of the relevant instrument shall be satisfactory to EDA in EDA's sole judgment. The costs and fees for escrow services and letters of credit shall be paid by the Recipient.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76138, Dec. 19, 2014; 82 FR 57061, Dec. 1, 2017]

#### § 314.9 Recorded statement for Project Personal Property.

For all Projects which EDA determines involve the acquisition or improvement of significant items of Personal Property, including ships, machinery, equipment, removable fixtures, or structural components of buildings, the Recipient shall provide notice of the Federal Interest in all Project Personal Property by executing a Uniform Commercial Code Financing Statement (Form UCC-1, as provided by State law) or other statement of the Federal Interest in the Project Personal Property, acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with applicable law, with continuances re-filed as appropriate. Whether or not a statement is required by EDA to be recorded, the Recipient must hold title to all Project Personal Property, except as otherwise provided in this part.

[82 FR 57062, Dec. 1, 2017]

#### § 314.10 Procedures for release of the Federal Interest.

(a) *General.* As provided in § 314.2, the Federal Interest in Project Property extends for the duration of the Estimated Useful Life of the Project, which is determined by EDA at the time of Investment award. Upon request of the Recipient, EDA will release the Federal Interest in Project Property upon expiration of the Estimated Useful Life as established in the terms and conditions of the Investment Assistance and in accord with the requirements of this section and part. This section provides procedures to obtain a release of the Federal Interest in Project Property.

(b) *Release of the Federal Interest after the expiration of the Estimated Useful Life.* At the expiration of a Project's



Estimated Useful Life and upon the written request of a recipient, the Assistant Secretary may release the Federal Interest in Project Property if EDA determines that the Recipient has made a good faith effort to fulfill all terms and conditions of the Investment Assistance. The determination provided for in this paragraph (b) shall be established at the time of Recipient's written request and shall be based, at least in part, on the facts and circumstances provided in writing by the Recipient. For a Project in which a Recorded Statement as provided for in §§314.8 and 314.9 has been recorded, EDA will provide for the release by executing an instrument in recordable form. The release will terminate the Investment as of the date of its execution and satisfy the Recorded Statement. See paragraph (e) of this section for limitations and covenants of use that are applicable to any release of the Federal Interest.

(c) *Release prior to the expiration of the Estimated Useful Life.* If the Recipient will no longer use the Project Property in accord with the requirements of the terms and conditions of the Investment within the time period of the Estimated Useful Life, EDA will determine if such use by the Recipient constitutes an Unauthorized Use of Property and require compensation for the Federal Interest as provided in §314.4 and this section. EDA may release the Federal Interest in connection with such Property only upon receipt of full payment in compensation of the Federal Interest and thereafter will have no further interest in the ownership, use, or Disposition of the Property, except for the nondiscrimination requirements set forth in paragraph (e)(3) of this section.

(d) *Release of the Federal Interest before the expiration of the Estimated Useful Life, but 20 years after the award of Investment Assistance.* In accord with section 601(d)(2) of PWEDA, upon the request of a Recipient and before the expiration of the Estimated Useful Life of a Project, but where 20 years have elapsed since the award of Investment Assistance, EDA may release any Real Property or tangible Personal Property interest held by EDA, if EDA determines:

(1) The Recipient has made a good faith effort to fulfill all terms and conditions of the award of Investment Assistance; and

(2) The economic development benefits as set out in the award of Investment Assistance have been achieved.

(3) See paragraph (e) of this section for limitations and covenants of use that are applicable to any release of the Federal Interest.

(e) *Limitations and Covenant of Use.* (1) EDA's release of the Federal Interest pursuant to this section is not automatic; it requires EDA's approval, which will not be withheld except for good cause or as otherwise required by law, as determined in EDA's sole discretion. As deemed appropriate, EDA may require the Recipient to take some action as a condition of the release.

(2) In determining whether to release the Federal Interest, EDA will review EDA's legal authority to release its interest, including the Recipient's performance under and conformance with the terms and conditions of the Investment Assistance; any use of Project Property in violation of §314.3 or §314.4; and other such factors as EDA deems appropriate. When requesting a release of the Federal Interest pursuant to this section, the Recipient will be required to disclose to EDA the intended future use of the Real Property or the tangible Personal Property for which the release is requested.

(i) A Recipient not intending to use the Real Property or tangible Personal Property for explicitly religious activities following EDA's release will be required to execute a covenant of use. A covenant of use with respect to Real Property shall be recorded in the jurisdiction where the Real Property is located in accordance with §314.8. A covenant of use with respect to items of tangible Personal Property shall be perfected and recorded in accordance with applicable law, with continuances re-filed as appropriate. See §314.9. A covenant of use shall (at a minimum) prohibit the use of the Real Property or the tangible Personal Property for explicitly religious activities in violation of applicable Federal law.

(ii) EDA may require a Recipient (or its successors in interest) that intends

or foresees the use of Real Property or tangible Personal Property for explicitly religious activities following the release of the Federal Interest to compensate EDA for the Federal Share of such Property. If such compensation is made, no covenant with respect to explicitly religious activities will be required as a condition of the release. EDA recommends that any Recipient who intends or foresees the use of Real Property or tangible Personal Property (including by successors of the Recipient) for explicitly religious activities to contact EDA well in advance of requesting a release pursuant to this section.

(3) Notwithstanding any release of the Federal Interest under this section, including a release upon a Recipient's compensation for the Federal Share, a Recipient must ensure that Project Property is not used in violation of nondiscrimination requirements set forth in §302.20 of this chapter. Accordingly, upon the release of the Federal Interest, the Recipient must execute a covenant of use that prohibits use of Real Property or tangible Personal Property for any purpose that would violate the nondiscrimination requirements set forth in §302.20 of this chapter.

(i) With respect to Real Property, the Recipient must record a covenant under this subsection in the jurisdiction where the Real Property is located in accordance with §314.8.

(ii) With respect to items of tangible Personal Property, the Recipient must perfect and record a covenant under this subsection in accordance with applicable law, with continuances re-filed as appropriate, in accordance with §314.9.

[79 FR 76139, Dec. 19, 2014, as amended at 82 FR 57062, Dec. 1, 2017]

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

### **Subpart A—General Provisions**

Sec.

315.1 Purpose and scope.

315.2 Definitions.

315.3 Confidential Business Information.

### **Subpart B—TAAC Provisions**

315.4 TAAC selection and operation.

315.5 The role and geographic coverage of the TAACs.

### **Subpart C—Certification of Firms**

315.6 Certification requirements.

315.7 Processing petitions for certification.

315.8 Hearings.

315.9 Loss of certification benefits.

315.10 Appeals, final determinations, and termination of certification.

### **Subpart D—Adjustment Proposals**

315.11 Adjustment Proposal process.

315.12 Adjustment Proposal requirements.

### **Subpart E—Protective Provisions**

315.13 Persons engaged by Firms to expedite petitions and Adjustment Proposals.

315.14 Conflicts of interest.

### **Subpart F—International Trade Commission Investigations**

315.15 Affirmative findings.

AUTHORITY: 19 U.S.C. 2341–2356; 42 U.S.C. 3211; Title IV of Pub. L. 114–27, 129 Stat. 373; Department of Commerce Delegation Order 10–4.

SOURCE: 74 FR 41598, Aug. 18, 2009, unless otherwise noted.

## **Subpart A—General Provisions**

### **§315.1 Purpose and scope.**

Chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341–2355) establishes the responsibilities of the Secretary of Commerce concerning the Trade Adjustment Assistance for Firms (TAAF) program. The regulations in this part lay out those responsibilities as delegated to EDA by the Secretary. EDA executes these responsibilities through cooperative agreements that support a network of Trade Adjustment Assistance Centers (TAACs). The TAACs assist Firms in petitioning EDA for certification of eligibility to receive Adjustment Assistance. EDA certifies the eligibility of Firms. The TAACs then provide Adjustment Assistance to Firms through the development and implementation of Adjustment Proposals.

[85 FR 8379, Feb. 14, 2020]