

3. *Annual Reports:* For grant recipients graduated to an annual reporting schedule, the report covers the twelve month period ending September 30, and is due October 31. The annual reporting requirement continues through the life of an RLF unless EDA determines that more frequent or detailed reports are needed for closer monitoring of grant violations or other problems. Note that the annual report requires documentation of capital utilization at semiannual intervals pursuant to the requirements of Section X.

4. *Special Reports:* Special reports to enable EDA monitoring of compliance issues arising from audits, site visits, or other reviews may be requested from the grant recipient in writing on a case by case basis.

First time grant recipients may be required to submit periodic reports on their progress in initiating RLF activity, prior to the due date of the first semiannual report.

B. Audits

Grant recipients are subject to the following audit requirements for the duration of the RLF.

1. In accordance with the terms and conditions of the grant award, the grant recipient shall arrange for a Single Audit as referenced in the RLF Audit Guidelines and OMB Circular A-133. Such audits should be conducted by an independent auditor who meets the general standards specified in generally accepted government auditing standards. With the exception of newly awarded grants and limited circumstances described in the RLF Audit Guidelines, the majority of RLF grant recipients will require an annual audit.

Pursuant to the Single Audit Act Amendments of 1996 (P.L. 104-156), and OMB Circular A-133, as codified in DOC Regulations found at 15 CFR Part 29, audits are required of all State, local government and non-profit corporation RLF grant recipients that expended total Federal awards of at least \$300,000 in a given fiscal year. For all RLF grants, the calculation of RLF expenditures will include the beginning balance of all outstanding loans plus the current year's loan and loan-related expenditures. The cost principles to be followed are contained in OMB Circulars A-21, A-87 or A-122, as applicable.

Audit requirements for RLF's are summarized in the EDA RLF Audit Guidelines which should be made available to the auditor prior to the audit engagement. Failure to comply with these requirements could result in an unacceptable audit.

2. The U.S. Department of Commerce Office of Inspector General (OIG) may audit, inspect, or investigate an RLF grant at any time.

C. Site Visits

EDA will periodically schedule site visits to review the grant recipient's operating procedures, monitor progress and evaluate the effectiveness of the RLF in supporting the area's economic adjustment process and strategic objectives.

XII. Noncompliance With the Grant Terms

A. Suspension

EDA may suspend RLF lending activity when EDA determines that a grant recipient

has failed to comply with the grant terms. Before suspending a grant, EDA may give the grant recipient a reasonable period of time in which to take the necessary corrective action to comply with the grant terms. However, should it appear that the grant recipient had not taken or will not take the necessary action, and/or that continued operation of the RLF would place the assets at risk, EDA may suspend the grant immediately. Upon suspension, the grant recipient will be prohibited from any new lending activity, although normal loan servicing and collection efforts will continue. In addition, the grant recipient may be subject to restrictions on the use of RLF Income and specific actions to protect the RLF assets may be required.

In the event that the compliance problems are not resolved during the suspension period, EDA will attempt to resolve the issues through means including working with the Recipient to identify a successor to assume responsibility for administering the RLF in accordance with the terms of the original grant agreement. If issues cannot be resolved, EDA will initiate proceedings to terminate the grant for cause.

B. Termination for Cause

EDA may terminate an RLF grant for cause with or without prior suspension of lending activity.

C. Partial Termination

When EDA determines, after a reasonable period of time, that a grant recipient is unable or unwilling to use the full amount of the grant funds or of the RLF capital and RLF Income thereby generated, EDA may partially terminate the grant if EDA determines that the remaining capital is sufficient to support continuation of an effective RLF operation.

When a grant recipient fails to complete the initial round of lending in the time schedule provided in the grant agreement, the unused grant funds may be deobligated and the grant award amended to reflect the reduced grant amount. The nonfederal matching share will be expected to remain in the RLF unless otherwise specified in the grant agreement or agreed to in writing by EDA.

Grant recipients in the revolving phase who persistently fail to make maximum use of the available RLF capital, as defined by the applicable capital utilization standard in Section X, will be required to return excess funds, in an amount determined by EDA, to the U.S. Treasury. This amount will not be greater than EDA's proportionate share of the excess funds sequestered at the time. The grant award will be amended to reflect the reduced amount of EDA's participation.

XIII. Termination for Convenience

A grant recipient has the right to request termination for convenience of the grant, in whole, or in part, at any time. Termination is undertaken without prejudice to the grant recipient upon agreement of both parties that the purpose of the grant would not be served by further expenditure of funds, and in the case of a partial termination, EDA determines that sufficient funds remain to permit an effective RLF operation. The Federal share of

the funds must be returned to the U.S. Treasury as described below in Section XIV.

XIV. Recovery of EDA Interest in the RLF Assets

In case of termination, for cause or convenience, EDA has the responsibility, on behalf of the Federal Government, to recover its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EDA's fair share is the amount computed by applying the percentage of EDA participation in the total capitalization of the RLF to the current fair market value of the assets thereof; provided that with EDA's approval the Recipient may use for other economic development purposes that portion of such RLF property which EDA determines is attributable to the payment of interest on RLF loans and not used by the Recipient for administrative or other allowable expenses. In addition, EDA has the right to compensation, over and above its share of the current fair market value of the assets, when it is determined that the value of such assets has been reduced by the improper/illegal use of grant funds.

XV. Sale or Securitization of Loans

Grant recipients may, with EDA's prior written consent, further the objectives of the RLF through the sale of loans or securitization of the loan portfolio to generate money to be used for additional loans as part of the RLF. A grant recipient contemplating such an action is advised to consult with EDA prior to development of a formal proposal.

In the event of the sale, collection, or liquidation of loans, any proceeds, net of repaid principal and reasonable administrative costs incurred, up to the amount of the outstanding loan principal, must be returned to the RLF for relending. Any net proceeds from loan sales above the outstanding loan principal is considered RLF Income and must either be added to the RLF capital base for lending or used to cover eligible costs for administering the RLF in accordance with the rules for use of RLF Income.

XVI. Appendix

The following reference materials and required or sample reporting formats are available from EDA:

OMB Circulars and CFR'S (List of Reprints)

15 CFR Part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

OMB Circular A-87, Cost Principles for State and Local Governments

15 CFR Part 29a, Audit Requirements for State and Local Governments

15 CFR Part 29b, Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations

OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations

| | | |
|---|---|---|
| OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations Uniform Administrative Requirements | 15 CFR Part 26, Governmentwide Debarment and Suspension and Governmentwide Requirements for Drug Free Workplace <i>EDA Reference Materials and Reporting Formats</i> | EXHIBIT C: Federal Cash Transaction Report (SF-272) EXHIBIT D: Semiannual Report for RLF Grants with Instructions EXHIBIT E: Annual Report for RLF Grants with Instructions |
| OMB Circular A-122, Cost Principles for Nonprofit Organizations | EXHIBIT A: RLF Income and Expense Statement with Instructions | |
| OMB Circular A-21, Cost Principles for Educational Institutions | EXHIBIT B: Request for Advance or Reimbursement (SF-270) with EDA Special Instructions | BILLING CODE 3510-24-P |
| 48 CFR Part 31, Contract Cost Principles and Procedures | | |

EXHIBIT A

RLF INCOME AND EXPENSE STATEMENTFor The (Most Recent) 12 Month
Period Ended: _____

| | Most Recent Period | Prior Period |
|---|--------------------|--------------|
| 1. RLF INCOME | \$ | \$ |
| 2. EXPENSES CHARGED TO RLF INCOME | | |
| a. Employee Salaries | \$ | \$ |
| b. Employee Fringe Benefits | \$ | \$ |
| c. RLF-related Travel | \$ | \$ |
| d. Loan Processing/Closing Costs | \$ | \$ |
| e. Professional Services | \$ | \$ |
| f. Marketing | \$ | \$ |
| g. RLF Staff Training | \$ | \$ |
| h. Equipment - Rental | \$ | \$ |
| - Acquisition | \$ | \$ |
| i. Space (rent) | \$ | \$ |
| j. Audit | \$ | \$ |
| k. Indirect Costs | \$ | \$ |
| l. Other (Specify) | \$ | \$ |
| 3. TOTAL EXPENSES (sum 2.a thru 2.l) | \$ | \$ |
| 4. NET RLF INCOME (1 minus 3) | \$ | \$ |
| 5. Cumulative NET RLF INCOME | \$ | \$ |
| 6. EXPENSES as % of RLF INCOME (3/1) | % | % |
| 7. For the current 12 month period, provide an estimate of projected RLF Income and the percentage expected to be used for RLF administrative expenses. Projected RLF Income: \$ _____ % for Administration: _____ % | | |
| 8. On a separate page, list all personnel positions which were funded partially or in full with RLF Income for the most recent period only; list the aggregate dollar amount for salaries and fringe benefits for each listed position, and the amount and percent which were funded by RLF Income. | | |

CERTIFICATION OF AUTHORIZED REPRESENTATIVE (designated RLF Administrator or Chief Financial Officer): I certify that the above information and any attachments thereto are complete and accurate to the best of my knowledge.

By: _____ Date: _____

Name and Position: _____

Exhibit A (back)—Instructions for RLF Income and Expense Statement

The RLF INCOME AND EXPENSE STATEMENT is to be used by recipients of revolving loan fund (RLF) grants provided by the Economic Development Administration (EDA), U.S. Department of Commerce. The Statement is to be completed for each year in which a grantee uses income generated from RLF activities to pay for RLF administrative expenses. It should be completed within 90 days of a grant recipient's fiscal year end or September 30. The period will be selected by the grant recipient; once selected, it may not be changed without the prior approval of EDA. Instructions for submitting the Statement are included in the EDA Administrative Manual, Section VII. Expenses charged to RLF income sources must be eligible under the terms of the grant and must comply with applicable OMB cost principles and the EDA RLF Audit Guide. For grantees completing the Statement for the first time, or which did not charge any expenses against RLF income sources in a prior period, complete only the second

column marked "Most Recent Period" and answer questions 7. And 8.

Except for the items explained below, all items on the Statement are self-explanatory or are adequately addressed in the RLF Audit Guide and applicable OMB Cost Principles.

Item and Entry

- 1 "RLF INCOME" includes all interest earned on outstanding loan principal, interest earned on accounts holding idle RLF funds, and loan fees and other loan-related earnings.
- 2d Enter the amount of grantee out-of-pocket costs which were necessary to process and close RLF loans. These costs may include such costs for credit reports, title insurance, Uniform Commercial Code searches, filing fees, appraisals, etc., which are recorded in the grantee's accounting records. Any costs not recorded in the grantee's accounting records, e.g., those paid directly by a borrower to a third party, or those that were netted against loan fees (thereby reducing reported income), need not be reported here.

2g Enter the costs charged to RLF Income for RLF-related training for employees involved in RLF operations. These costs may include training materials, textbooks, tuition and registration fees. Any training-related travel costs should be reported in Item 2c.

5 "Cumulative NET RLF INCOME" includes all RLF Income earned during the life of the RLF that was not used for RLF administrative expenses. The amount reported should be inclusive of the NET RLF INCOME reported in Item 4. (The Cumulative NET RLF INCOME for the most recent period should equal the sum of the amounts in Item 5 for the prior period and in Item 4 for the most recent period.)

BILLING CODE 3510-24-P

EXHIBIT B

| | | | | | | |
|--|---|--|-----|--|--------------|-------|
| <p>REQUEST FOR ADVANCE OR REIMBURSEMENT</p> <p>(See Instructions on back)</p> | | OMB Approval NO. 0348-0004 | | Page | of | Pages |
| | | <p>1. TYPE OF PAYMENT REQUESTED</p> <p>A. "X" ONE OR BOTH BOXES <input type="checkbox"/> Advance <input type="checkbox"/> Reimbursement</p> <p>b. "X" the applicable box <input type="checkbox"/> Final <input type="checkbox"/> Partial</p> | | <p>2. BASIS OF REQUEST</p> <p><input type="checkbox"/> CASH.</p> <p><input type="checkbox"/> ACCRUAL</p> | | |
| 3. FEDERAL SPONSORING AGENCY AND ORGANIZATION ELEMENT TO WHICH THIS REPORT IS SUBMITTED | | 4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY | | 5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST | | |
| 6. EMPLOYER IDENTIFICATION NUMBER | 7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER | 8. PERIOD COVERED BY THIS REQUEST | | | | |
| | | FROM (month, day, year) | | TO (month, day, year) | | |
| 9. RECIPIENT ORGANIZATION NAME NUMBER AND STREET CITY, STATE and ZIP CODE | | 10. PAYEE (where check is sent is different than item 9) NAME NUMBER AND STREET CITY, STATE and ZIP CODE | | | | |
| 11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED | | | | | | |
| PROGRAMS/FUNCTIONS/ACTIVITIES | | (a) | (b) | (c) | TOTAL | |
| a. Total Program - Outlays to Date (as of date) | | \$ | \$ | \$ | \$ | |
| b. Less: Cumulative program income | | | | | | |
| c. Net program outlays (Line a minus line b) | | | | | | |
| d. Estimated net cash outlays for advance period | | | | | | |
| e. Total (Sums of lines c & d) | | | | | | |
| f. Non-Federal share of amount on line e. | | | | | | |
| g. Federal share of amount on line e. | | | | | | |
| h. Federal payments previously requested | | | | | | |
| i. Federal share now requested (Line g minus line h) | | | | | | |
| j. Advances required by month, when requested by Federal grantor. Agency for use in Making prescheduled advances | 1st month | | | | | |
| | 2nd month | | | | | |
| | 3rd month | | | | | |
| 12. ALTERNATE COMPUTATION FOR ADVANCES ONLY | | | | | | |
| a. Estimated Federal cash outlays that will be made during period covered by the advance | | | | | \$ | |
| b. Less: Estimated balance of Federal cash on hand as of beginning of advance period | | | | | | |
| c. Amount requested (Line a minus line b) | | | | | \$ | |

AUTHORIZED FOR LOCAL REPRODUCTION

(Continued on Reverse)

STANDARD FORM 270 (REV. 2-92)
 PRESCRIBED BY OFFICE OF MANAGEMENT AND BUDGET
 Cir. NO. A-102 AND a-110

EXHIBIT B

CERTIFICATION

I certify that to the best of my knowledge and belief the data on the reverse are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.

Signature of Authorized Certifying Official

Date Request Submitted

Typed or Printed Name and Title

Telephone (Area Code, Number, Extension)

This Space for Agency Use

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the OFFICE of Management and Budget, Paperwork Reduction Project (0348-0004), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11c, 11e, 11f, 11g, 11i, 12 and 13 are self explanatory; specific instructions for other items are as follows:

| Item | Entry | | |
|-------|--|-----|---|
| 2. | Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis. | | |
| 4 | Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement. | | |
| 6 | Enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal agency. | | |
| 7 | This space is reserved for an account number or other identifying number that may be assigned by the recipient. | | |
| 8 | Enter the month, day and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested. | | |
| Note: | The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports. | | |
| 11 | The purpose of the vertical columns (a), (b), and (c), is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function or activity. If | | |
| | | 11a | Enter in "as of date", the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees. |
| | | 11b | Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement. |
| | | 11d | Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance. |
| | | 13 | Complete the certification before submitting this request. |

STANDARD FORM 270 BACK (Rev. 2-92)

Item Entry
 additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.

Exhibit B (Revised 12/98)—Special Instructions for Completion of Standard Form 270 for EDA Revolving Loan Fund Grants

These instructions apply to revolving loan fund (RLF) grants funded by the Economic Development Administration (EDA), U.S. Department of Commerce, under Section 209 of the Public Works and Economic Development Act of 1965, as amended. RLF grant recipients are required to use Standard Form 270 to draw grant funds when needed to disburse to RLF borrowers. Funds may be drawn only for immediate use (i.e., when the intent is to disburse the funds within 14 days of receipt), and only to the extent that the recipient does not have funds on hand from loan repayments and certain RLF income sources to cover the proposed disbursement request. (See below and EDA's RLF Administrative Manual, Section IX, for further details.) Grant funds not disbursed within 30 days of receipt must be returned to EDA. Items 1b, 3, 9, 11c, 11e, and 11i are self-explanatory; specific instructions for other items follow:

Item and Entry

- 1a Indicate whether the request is for a reimbursement or an advance. (Note the RLF disbursements are normally considered reimbursement as a reimbursable obligation is created at the time of loan approval. A request for an advance may be requested under special circumstances.
- 2 Disregard.
- 4 Enter the Federal grant number or other identifying number assigned by EDA. If the reimbursement or advance is for more than one grant or other agreement, insert N/A; then show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.
- 5 Enter in numerical order the number of this disbursement request. Begin with the number "1" for each new grant.
- 6 Enter the employer identification number assigned by the US Internal Revenue Service, or the FICE (institution) code if requested by EDA.
- 7 This space is reserved for an account number or other identifying number that may be assigned by the grant recipient.
- 8 Disregard.
- 10 Enter "ACH/EFT" for funds disbursement by the Automated Clearing House Electronic Funds Transfer System. For further details, refer to Section E.02 of the RLF Standard Terms and Conditions.

- 11 The purpose of the vertical columns (a), (b), and (c) is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed, use as many additional forms as needed and indicate the page number in the space provided in upper right; if more than one column is used, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.

- 11a Enter in "as of date", the month, day and year of the ending of the accounting period to which this amount applies. Enter the amount of cumulative outlays for RLF loans from the following sources: EDA RLF grant funds, matching funds, and program income (defined in Section VII.A of the RLF Administrative Manual).

Include actual, pending (previous outlays requests that have not yet been disbursed) and proposed (those proposed under this request) outlays. For recapitalized RLF's—those where a subsequent EDA RLF grant was made to the same recipient—treat cumulative outlays as beginning with the inception of the RLF.

- 11b Cumulative Program Income, as defined below, must be used before or concurrent with the disbursement of new grant funds (pursuant to Section IX of the RLF Administrative Manual). Cumulative Program Income is a net figure computed, as follows:
 +Cumulative Principal Repaid*
 +Cumulative RLF Income Received**
 - Cumulative Administrative Cost Expensed to RLF Income***

Footnotes:

*This is the cumulative RLF loan principal that has been repaid from inception of the RLF.

**This includes all RLF Income earned and received from inception of the RLF. Current period RLF Income on hand may be excluded from this amount if any portion of it is anticipated to be used during the remainder of the current period. Note that failure to exclude these funds here will increase Cumulative Program Income (line 11b) which will lower the amount of grant funds to be requested for disbursement (line 11i). Any RLF Income available at the end of a period is required to be added to the RLF capital base for lending.

***Enter all administrative costs Expensed to RLF Income from Inception of the RLF.

Definitions

Program Income—is the sum of all RLF principal repayments plus RLF Income (defined below).

RLF Income—includes all RLF-generated income from loan fees, interest earned on loans and on accounts holding idle RLF funds, and other loan-related earnings.

Period—refers to the 12-month reporting period by each grant recipient; it may end on either September 30 or the grantee's fiscal year-end date. (Refer to Section VII.C.2. of RLF Administrative Manual.

- 11d Enter "0" unless an advance of grant funds is being requested—see Item 1a above.

- 11f Enter the total amount of the matching funds previously expended plus matching funds to be disbursed as part of this request (and any previous pending request, if applicable). When calculating this amount, note that the matching funds amount in 11f as a percent of the amount on line 11c may not be less than the percentage relationship between the aggregate of matching funds and of total project costs indicated in the grant award(s). Matching funds must be expended either before or at least proportionately with EDA grant funds.

- 11g Enter the EDA share of the amount on line 11e. This should be the difference between the amounts on lines 11e and 11f.

- 11h Enter the amount of EDA funds previously requested. This should be equal to the amount reported in Item 11g of the previous SF 270 submitted by the recipient.

- 12 Disregard.

- 13 In the space indicated for "agency use" or on a separate page, provide the following disbursement information:

- a. Indicate whether the RLF identified in Section 4 is an "initial" or "recapitalization" RLF grant. If an initial grant, show the EDA grant funds expended as a percent of total expenditures by dividing the amount reported in Item 11g by the amount reported in Item 11e. If a recapitalization grant, show both the EDA and the matching fund dollar outlays (including actual and proposed outlays) for the grant disbursement; also show the percentage of EDA dollar outlays to total dollar outlays for the grant under disbursement.
- b. If any previously requested grant funds have been received but not disbursed, list the date of receipt and the amount remaining to be disbursed. If not applicable, type "NA".
- c. List the RLF borrowers and the respective RLF dollar amounts anticipated to be disbursed under this request.

EXHIBIT C

| | | | |
|---|--|--|---|
| FEDERAL CASH TRANSACTIONS REPORT | | OMB APPROVAL NO. 0348-0003 | |
| (See instructions on the back. If report is for more than one grant or assistance agreement, attach completed Standard Form 272-A.) | | 1. Federal sponsoring agency and organizational element to which this report is submitted. | |
| | | 4. Federal grant or other identification number. | 5. Recipient's account number or identifying number. |
| 2. RECIPIENT ORGANIZATION Name: Number and Street: City, State and Zip Code: | | 6. Letter of credit number | 7. Last payment voucher number |
| | | <i>Give total number for this period.</i> | |
| | | 8. Payment Vouchers credited to your account. | 9. Treasury checks received (whether or not deposited). |
| | | 10. PERIOD COVERED BY THIS REPORT | |
| 3. FEDERAL EMPLOYER IDENTIFICATION NO. | | From (month, day, year) | TO: (month, day, year) |
| 11. STATUS OF FEDERAL CASH (See Specific Instructions On Back) | a. Cash on hand beginning of reporting period | | \$ |
| | b. Letter of credit withdrawals | | |
| | c. Treasury check payments | | |
| | d. Total receipts (Sum of lines b and c) | | |
| | e. Total cash available (Sum of lines a and d) | | |
| | f. Gross disbursements | | |
| | g. Federal share of program income | | |
| | h. Net disbursements (Line f minus line g) | | |
| | i. Adjustments of prior periods | | |
| | j. Cash on hand end of period | | \$ |
| 12. The AMOUNT SHOWN ON LINE 11j. ABOVE. REPRESENTS CASH REQUIREMENTS FOR THE ENSUING DAYS | 13. OTHER INFORMATION | | |
| | a. Interest income | | \$ |
| | b. Advances to subgrantees or subcontractors | | \$ |
| 14. REMARKS (Attach additional sheets of plain paper, if more space is required.) | | | |
| 15. CERTIFICATION | | | |
| I certify to the best of my knowledge and belief that this report is true in all aspects and that all disbursements have been made for the purpose and conditions of the grant or agreement | AUTHORIZED CERTIFYING OFFICIAL | SIGNATURE | DATE REPORT SUBMITTED |
| | | TYPED OR PRINTED NAME AND TITLE | TELEPHONE ((Area Code, Number, Extension) |
| THIS SPACE FOR AGENCY USE | | | |

NSN 7540-01-016-5435

STANDARD FORM 272 (REV. 2-92)
 PRESCRIBED BY OFFICE OF MANAGEMENT AND BUDGET

Instructions

Public reporting burden for this collection of information is estimated to average 120 minutes per response, including timer for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0003), Washington, DC 20503.

Please *do not* return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

Please type of print legibly, Items 1, 2, 8, 9, 10, 11d, 11e, 11h, and 15 are self explanatory, specific instructions for other items are as follows:

Item and Entry

- 3 Enter employer identification number assigned by the U.S. Internal Revenue Service or the FIC (institution) code. If this report covers more than one grant or other agreement, leave items 4 and 5 blank and provide the information on Standard Form 272-A, Report of federal Cash Transactions—Continued; otherwise;
- 4 Enter Federal grant number, agreement number, or other identifying numbers if requested by sponsoring agency.
- 5 This space reserved for an account number or other identifying number that may be assigned by the recipient.
- 6 Enter the letter of credit number that applies to this report. If all advances were made by Treasury check, enter "NA" for not applicable and leave items 7 and 8 blank.
- 7 Enter the voucher number of the last letter-of-credit payment voucher (Form TUS 5401) that was credited to your account.
- 11a Enter the total amount of Federal cash on hand at the beginning of the reporting period including all of the Federal funds on deposit, imprest funds, and undeposited Treasury checks.
- 11b Enter total amount of Federal funds received through payment vouchers (Form TUS 5401) that were credited to your account during the reporting period.
- 11c Enter the total amount of all Federal funds received during the reporting period through Treasury checks, whether or not deposited.
- 11f Enter the total Federal cash disbursements, made during the reporting period, including cash received as program income. Disbursements as used here also include the amount of advances and payments less refunds to subgrantees or contractors, the gross amount of direct salaries and wages, including the employee's Share of benefits if treated as a direct cost, interdepartmental charges for supplies and services, and the amount to which the recipient is entitled for indirect costs.
- 11g Enter the Federal share of program income that was required to be used on the project or program by the terms of the grant or agreement.
- 11i Enter the amount of all adjustments pertaining to prior periods affecting the ending balance that have not been included in any lines above. Identify each grant or agreement for which adjustment was made, and enter an explanation for each adjustment under "Remarks". Use plain sheets of paper if additional space is required.
- 11j Enter the total amount of Federal cash on hand at the end of the reporting period. This amount should include all funds on deposit, imprest funds, and undeposited funds (line 3, less line h, plus or minus line I).
- 12 Enter the estimated number of days until the cash on hand, shown on line 11j, will be expended. If more than three days cash requirements are on hand, provide an explanation under "Remarks" as to why the drawdown was made prematurely, or other reasons for the excess cash. The requirement for the explanation does not apply to prescheduled or automatic advances.
- 13a Enter the amount of interest earned on advances of Federal funds but not remitted to the Federal agency. If this includes any amount earned and not remitted to the Federal sponsoring agency for over 60 days, explain under "Remarks". Do not report interest earned on advances to States.
- 13b Enter amount of advance to secondary recipients included in item 11h.
- 14 In addition to providing explanations as required above, give additional explanation deemed necessary by the recipient and for information required by the Federal sponsoring agency in compliance with governing legislation. Use plain sheets of paper if additional space is required.

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EXHIBIT D (Rev. 12/98)

Page 1 of 7

SEMIANNUAL REPORT FOR EDA-FUNDED RLF GRANTS

| Grantee Name: | | Period Ending: | | |
|--|-----|-----------------|---------------------------|------------------|
| Project No.: | | Contact Person: | | |
| | | Phone: | | |
| PART I: PORTFOLIO STATUS (000'S) | | | | |
| A. Status of Direct Loans | | | | |
| | (1) | (2) | (3) | |
| | # | RLF \$ Loaned | RLF Principal Outstanding | |
| 1. Total Loans Made | | \$ | \$ | |
| 2. Fully Repaid | | \$ | \$ | |
| 3. Current | | \$ | \$ | |
| 4. Delinquent (<60 Days) | | \$ | \$ | |
| 5. In Default (>60 Days) | | \$ | \$ | |
| 6. Total Active Loans (Add lines 3, 4 & 5) | | \$ | \$ | |
| 7. Total Written Off | | \$ | \$ | |
| | | | (Amount Lost) | |
| B. Status of Loan Guarantees: | | | | |
| | # | RLF\$ Reserved | Total Amount Guaranteed | Current Exposure |
| 1. Total Loans Guaranteed | | \$ | \$ | |
| 2. Fully Repaid | | \$ | \$ | |
| 3. Current | | \$ | \$ | \$ |
| 4. Delinquent (<60 Days) | | \$ | \$ | \$ |
| 5. In Default (>60 Days) | | \$ | \$ | \$ |
| 6. Total Active Guarantees (Add lines 3, 4 & 5) | | \$ | \$ | \$ |
| 7. Total Written Off | | | \$ | \$ |
| | | | | (Amount Lost) |

EXHIBIT D (Rev. 12/98)

Page 2 of 7

PART II: PORTFOLIO SUMMARY

A. Summary of Loan Activities: Provide information below on **Total Loans** and **Active Loans** closed to date. This section provides an overview of the RLF's Progress in Meeting program and grant objectives as well as identifying results of **Core Performance Measures** outlined in Section F.01. of the RLF Standard Terms and Conditions. It also shows trends by comparing the total and active loan portfolios.

| | Total Loans | Active Loans |
|--|-------------|--------------|
| 1. # RLF Loans: | | |
| 2. RLF \$\$ Loaned: | \$ | \$ |
| 3. Non-RLF \$\$ Leveraged by RLF: | | |
| a. Private | \$ | \$ |
| b. Other | \$ | \$ |
| c. Total Leveraged \$\$ (a + b) | \$ | \$ |
| 4. Total Project Financing (2 + 3c) | \$ | \$ |
| 5. Private Sector Jobs: | | |
| a. Created (Actual) | | |
| b. Saved | | |
| c. Actual + Saved (a + b) | | |
| 6. RLF \$\$ Loaned for Fixed Assets: | \$ | \$ |
| 7. RLF \$\$ Loaned for Working Capital: | \$ | \$ |
| 8. RLF \$\$ Loaned for: | | |
| a. Start-up | \$ | \$ |
| b. Expansion | \$ | \$ |
| c. Retention | \$ | \$ |
| 9. RLF \$\$ Loaned for: | | |
| a. Industrial | \$ | \$ |
| b. Commercial | \$ | \$ |
| c. Service | \$ | \$ |
| 10. RLF \$\$ Loaned to Minority Businesses: | \$ | \$ |
| 11. RLF \$\$ Loaned to Women-Owned Businesses: | \$ | \$ |
| 12. Other Targets (Specify): | \$ | \$ |

EXHIBIT D (Rev. 12/98)

Page 3 of 7

B. Comparison of RLF Portfolio to RLF Plan: In column one below, fill in the spaces by providing information from the "Targeting", "Standards" and "Financing" sections of the RLF Plan. If an item is not included in the RLF Plan, and therefore not applicable, indicate this by placing N/A in column one. In columns two and three, use the figures obtained in Part II.A. above to compute the ratios and percentages for Total and Active Loans, respectively. Formulas for the computations are indicated in the brackets next to each item. Discuss any significant deviations between columns one and two.

| | RLF Plan | | Total Loans | | Active Loans | |
|------------------------------------|----------|---|-------------|---|--------------|---|
| 1. Cost per Job (A2/A5c) | \$ | | \$ | | \$ | |
| 2. Non-RLF Leverage Ratios: | | | | | | |
| a. Private (A3a/A2) | : | | : | | : | |
| b. Private & Other (A3c/A2) | : | | : | | : | |
| 3. % Working Capital Loans (A7/A2) | | % | | % | | % |
| 4. % Loans in Eligible Target Area | 100 | % | | % | | % |
| 5. RLF Portfolio Targeting | | | | | | |
| a. % Start-ups (A8a/A2) | | % | | % | | % |
| b. % Industrial (A9a/A2) | | % | | % | | % |
| c. % Minority Owned (A10/A2) | | % | | % | | % |
| d. % Women-Owned (A11/A2) | | % | | % | | % |
| e. % Other (A12/A2) | | % | | % | | % |

PART III: PORTFOLIO FINANCIAL STATUS**A. RLF Funding Sources**

| | | |
|-----------------------------------|----|--|
| 1. EDA | \$ | |
| 2. Grantec | \$ | |
| 3. Other - Specify: | \$ | |
| 4. Total RLF Funding (sum of 1-3) | \$ | |

B. Program Income Earned to Date:

| | | |
|---|----|--|
| 5. Interest Earned on Loans: | \$ | |
| 6. Earnings from Accounts: | \$ | |
| 7. Fees Charged: | \$ | |
| 8. Total Program Income (sum of 5-7) | \$ | |
| 9. How much of Total Program Income (line 8) has been used to cover administration costs to date? | \$ | |
| 10. How much of Total Program Income has been added to the RLF for lending (line 8 minus line 9)? | \$ | |

EXHIBIT D (Rev. 12/98)

Page 4 of 7

| C. Status of RLF Capital: | | |
|---|----|---|
| 11. Total RLF Funding (line 4): | \$ | |
| 12. Program Income Added to RLF for lending (line 10): | \$ | |
| 13. Losses on Loans & Guarantees (amount lost from Part I.A.7 & b.7): | \$ | |
| 14. Current level or RLF Base Capital (sum of lines 11 & 12, less line 13): | \$ | |
| D. Current Balance Available for New Loans: | | |
| 15. RLF Principal Outstanding on Loans (from Part I.A.6): | \$ | |
| 16. RLF \$\$ Reserved for Loan Guarantees (from Part I.B.6): | \$ | |
| 17. Current Balance Available (deduct amounts shown on lines 15 & 16 from Current level of Base Capital (line 14): | \$ | |
| 18. RLF \$\$ committed but not disbursed: | \$ | |
| 19. Current Balance Available (deduct amount on line 18 from line 17): | \$ | |
| 20. Current Balance Available (line 19) as a Percent of RLF Base Capital (line 14) - applies only to fully disbursed RLFs. otherwise enter N/A: | | % |
| 21. Same calculation as in line 20 above, but for preceding six month period (see prior Semiannual Report): | | % |
| <i>Note: If lines 20 and 21 both exceed 25%, see instructions.</i> | | |

EXHIBIT D (Rev. 12/98)

Page 5 of 7

| PART IV: PORTFOLIO LOAN LIST | | |
|--|--|--|
| Provide the following information for each RLF loan closed: | | |
| Loan Recipient | Loan Type & Description | Financing By Source (Specify) |
| 1. Borrower Name 2. Location (include city, county & state) 3. SIC Code - 4 Digit 4. Minority Owned 5. Woman Owned | 1. Direct/Guaranty 2. Fixed Asset/Working Capital 3. Start-up, Expansion or Retention | 1. RLF \$ 2. Other Public \$ 3. Private \$ 4. New Equity \$ 5. Total \$ 6. Amount Guaranteed \$ |
| Closing Date & Loan Terms | Loan Status | Repayment Status |
| 1. Date Close 2. Term: Years 3. Interest Rate 4. Total Fees | 1. Fully Repaid: Date 2. Current as of: Date 3. Delinquent: Days 4. Default: Days 5. Write-Off: Date | 1. Principal Repaid 2. Interest Paid 3. Amount Delinquent 4. Amount Default 5. Amount Written-Off |
| Job Impact | | |
| 1. Pre-Loan jobs 2. Jobs Created 3. Jobs Saved 4. Minority jobs (Created/saved) 5. Women jobs (Created/Saved) | | |
| PART V: MISCELLANEOUS INFORMATION & CERTIFICATION | | |
| A. Recent Loan Activity (Last 12 Months Only) | | |
| 1. # Applications Received: | | |
| 2. # Applications Received from minority-owned firms: | | |
| and Women-owned firms: | | |
| 3. # Loans closed: | | |
| 4. # Loans closed from Minority-owned firms: | | |
| and Women-owned firms: | | |

EXHIBIT D (Rev. 12/98)

Page 6 of 7

| B. Capital Utilization (Section X. of RLF Administrative Manual) | | | |
|--|-------------------------|-----|-----|
| | Complete as appropriate | | |
| 5. On page 4 of this Semiannual Report, if the percentages calculated in both D.20 and D.21 are greater than 25%. is an explanation attached discussing proposed actions (including target dates and goals) to reduce the amount of excess funds on hand? (Check one) | | YES | NO |
| 6. If both D.20 and D.21 on page 4 of this Semiannual Report are greater than 25%. list the amount of excess funds subject to sequestration. | \$ | | |
| 7. List any amount in #6 that has been sequestered in a separate account. | \$ | | |
| C. RLF Income and Expenses (Section VII of RLF Administrative Plan) | | | |
| | Complete as appropriate | | |
| 8. Enter the month and day of the accounting period which has been selected for reporting of RLF Income and Expenses in accordance with Section VII.C. of the RLF Administrative Manual. | | | |
| 9. Enter the amount of RLF Income earned during the most recent 12 month period, which was designated in #8. | \$ | | |
| 10. Enter the amount of RLF Income that was used for administrative costs during the most recent 12-month period, which was designated in #8. | \$ | | |
| 11. Divide the administrative costs reported in #10 by the RLF Income reported in #9 and enter the percentage figure. | | % | |
| 12. If the percentage in #11 is larger than 50%, or the amount in #10 is greater than \$100,000, was an Income and Expense Statement submitted to EDA as required in Section VII.C.2. of the RLF Administrative Manual. (Check One) (If applicable and not sent, submit an Income and Expense Statement with this report.) | YES | NO | N/A |
| D. Administration | | | |
| | Complete as appropriate | | |
| 13. Any key Staff Turnover in the last 12 months? (Check One) List position(s): | | YES | NO |
| 14. Attach a list of the current RLF Loan Board membership by name, occupation, race and gender. | | | |
| 15. Enter the ending date of the most recent independent Audit covering the recipient and indicate type of Audit, i.e., "Single" or "Program Specific". | | | |

EXHIBIT D (Rev. 12/98)

Page 7 of 7

| | | |
|--|-----|----|
| 16. Attach the Audit referenced in #15 if it was not previously submitted to EDA. | | |
| 17. If the Audit referenced in #15 did not cover either the most recent or prior fiscal year end period, is an explanation attached? <i>(Check One)</i> | YES | NO |
| E. ANNUAL RLF PLAN CERTIFICATION (Section VIII of the RLF Administrative Manual and Section D.03 of the Standard Terms and Conditions) | | |
| 18. Is the required ANNUAL RLF Plan Certification attached? <i>(Check One)</i> If "no." indicate the date it will be submitted: | YES | NO |
| F. COMPLIANCE WITH IMPLEMENTATION SCHEDULE (To be completed only if grant is not fully disbursed) | | |
| 19. Is the actual grant implementation/disbursement progress in accordance with the schedule set forth by the Implementation Special Condition (or an EDA approved amendment thereto) required as a part of this grant award? <i>(Check One)</i> if "no." attach explanation. | YES | NO |

CERTIFICATION: I hereby certify on this ____ day of _____, 19 ____, that the information provided in this Semiannual Report is true and correct to the best of my knowledge.

NAME AND TITLE OF AUTHORIZED OFFICIAL

SIGNATURE (Authorized Official)

Check Attachments Submitted:

- _____ Capital Utilization (#5 above)
- _____ Current Loan Board Membership (#14)
- _____ Copy of Audit (#16)
- _____ Audit Explanation (#17)
- _____ Annual RLF Plan Certification (#18)

Instructions for Completion of EDA's Semiannual Reports for Revolving Loan Fund Grants

The instructions below are in outline form and correspond to identical items in the Semiannual Report. Complete the Semiannual Report by filling in the spaces and responding to the questions. On page one of the Report, indicate the reporting period in the upper right hand corner. The reporting periods end on September 30 and March 31, and all data entries are to be effective with these ending dates. Submit completed Reports to the EDA regional office by November 1 and May 1, respectively. DO NOT INCLUDE IN PARTS 1-3 OF THE REPORT ANY DATA ON INITIAL LOANS UNDER A SECTION 209 SSED GRANT/ LOAN; LIST THESE ITEMS SEPARATELY IN PART 4 ONLY.

Part I: Portfolio Status

A. *Status of Direct Loans:* Show the current status of all direct RLF loans that have been closed. DO NOT include approved loans that have not been closed. In column two, "RLF \$ Loaned," include only the funds loaned by the RLF, including EDA and grantee matching funds, NOT the financing provided by other lenders.

1. *Total Loans Made:* Enter the total number and dollar amount of all RLF loans closed to date. Under column two, "RLF \$ Loaned," the amount should always represent the original loan amount.

2. *Fully Repaid:* Enter the number and original dollar amount of RLF loans that have been fully repaid.

3. *Current Loans:* Enter the number and original dollar amount of RLF loans that are current on RLF loan payments. In column three, "RLF Principal Outstanding," enter the principal balance outstanding for current RLF loans.

4. *Delinquent:* Enter the number and original dollar amount of RLF loans that are delinquent. For this report, a "delinquent" loan is defined as one that is up to 60 days past due. Enter also the principal balance outstanding on the delinquent loans. (If a previously delinquent borrower is now current, or making payments in accordance with an amended note and payment schedule, show this loan as current).

5. *In Default:* Enter the number and original dollar amount of RLF loans that are in default. For this report, a "default" is defined as any loan that is over 60 days past due but not written off. (An RLF grantee may, at its option, classify a loan as defaulted if it is under 60 days past due. If a previously defaulted loan has been rewritten and/or the borrower is now current, the loan should be shown as current). Enter the principal balance outstanding on defaulted loans.

6. *Total Active Loans:* On line 6, enter the sum of lines 3, 4, and 5 to obtain the number, amount and principal outstanding for Total Active Loans. (Total Active Loans are defined as loans that are either current, delinquent or in default—exclusive of loans that have been fully repaid or written off).

7. *Total Written Off:* Enter the aggregate number and original amounts of defaulted loans that have been written off. Enter also the principal balance outstanding on loans

written off or the actual amount lost, whichever is smaller.

B. *Status of Loan Guarantees:* The same criteria as above apply to the Status of Loan Guarantees. In column two, note that the "RLF \$ Reserved" are the RLF dollars that are actually set aside and held in reserve to cover any losses on guaranteed loans. In column three, "Total Amount Guaranteed" is the amount of the original loan that is/was guaranteed by the RLF. In column four, "Current Exposure" is the dollar amount of the RLF's contingent liability as of the date of the current report; this amount is usually computed by multiplying the percent of the original guarantee by the outstanding loan balance.

Part II: Portfolio Summary

A. *Summary of Loan Activities:* For each listed item, provide information on both Total and Active RLF loans closed to date. Total Loans include loans that are current, delinquent and in default, as well as those that have been fully repaid and written off. Active Loans include only current delinquent and defaulted loans, specifically those included in A.3-5. and B.3-5., Part I, page one, of the Semiannual Report.

1. *# RLF Loans:* Enter the number of RLF loans closed for both Total Loan (I.A.6. and I.B.6., page one) categories. Be sure to include the number of both direct and guaranteed loans closed.

2. *RLF \$\$ Loaned:* Enter the amount of RLF dollars loaned for both Total Loan (I.A.1. and I.B.1., page one) and Active Loan (I.A.6. and I.B.6., page one) categories. For loan guarantees, use column three, "Total Amount Guaranteed," for the RLF dollar amount loaned.

3. *Non-RLF \$\$ Leveraged by RLF:*

a. *Private:* Enter the Private Dollars Leveraged for both Total and Active Loan categories. Unless stipulated otherwise in the grant agreement, RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. Private dollars leveraged include private financing and private investments provided to the "project" in which the RLF is an integral component. A "project" is defined as an activity consisting of interrelated components which share a common goal. Private investments include both cash provided to the project and donated assets which come from outside the borrowing enterprise. For donated assets, only the equity in the assets (defined as the assets' market value less any security interest) may be counted in the leverage ratio. For purposes of calculating private dollars invested, 90 percent of the guaranteed portions of SBA 7(a) and SBA 504 debenture loans may be included. As a reminder, the RLF must fill a legitimate financing gap in the project for the private funds to be considered "leveraged dollars".

b. *Other:* Enter any Other investments Leveraged for both Total and Active Loan categories by the RLF loan in the "project", including other public financing (e.g., HUD-CDBG, USDA-IRP loans, etc.).

4. *Total Project Financing:* Enter the sum of RLF dollars loaned and non-RLF dollars leveraged by the RLF, items II.A.2. plus II.A.3.c.

5. *Private Sector Jobs:* Enter the number of jobs created and the number of saved jobs for both Total and Active loan categories. In tallying jobs, only permanent and direct jobs may be counted; part-time jobs should be converted to full-time equivalents (by summing the total hours worked per week for all part-time employees and dividing by the standard hourly work week for full-time employees, normally 35-40 hours). Job information data should be collected at least annually. For seasonal businesses, more frequent collection of job data is usually necessary to obtain realistic employment figures for an annualized average.

Grantees should use the following definitions in completing the job information section of this report:

a. *Actual Created Jobs:* A job is counted as "created (actual)" if it was created as a result of and attributable to the RLF loan project, and has been verified by the borrower (or grantee) as actually created. Jobs are usually verified by requesting the borrower to complete a questionnaire at least on an annual basis indicating the number of jobs actually created and attributable to the RLF project, or by the grantee performing an on-site job count. Other job data should also be requested from the borrowers in order to complete Part IV of the Report. The documentation for job counts should be placed in the project files.

Created jobs may be credited if the jobs were created within five years of loan disbursement or, if construction is involved, within five years after construction completion. All jobs credited must be attributable to the RLF project. A created job must be removed from the credited created jobs if the job fails to last at least 18 months. Any job which meets the creditable job created criteria is counted as part of the total actual jobs created permanently, regardless of the status of the loan.

For loans that have been paid in full, grantees may use the job information data that is on file provided there is adequate confidence in the reliability of the data. If there is a question on the reliability, the data should be verified by the next semiannual reporting period.

b. *Saved Jobs* are existing jobs where it can be documented that without the RLF assistance the jobs would have been lost.

Exception—*Created/Saved Jobs Subsequently Lost:* If an RLF borrower subsequently ceases business (or closes a segment of its business) thereby eliminating previously created or saved jobs, these jobs may continue to be counted in the Semiannual Report only if they were maintained for a minimum of 18 months prior to the loss.

6. *RLF \$\$ Loaned for Fixed Assets:* Enter for both Total and Active loan categories, the amount of closed RLF loans that were used for the purchase, installation or construction of fixed assets. If a single RLF loan was used jointly for fixed asset and working capital purposes, only the fixed asset amount should be reported on this line. For a guaranteed loan that was used jointly for fixed assets and working capital, multiply the percent of the original loan that is/was guaranteed by the amount of the loan that was used for fixed assets.

7. *RLF \$\$ Loaned for Working Capital:* Enter for both Total and Active loan categories, the amount of closed RLF loans that were used for working capital purposes as defined by generally accepted accounting principles. Consistent with item II.A.6. above, include on this line only the amount or portion of a RLF loan that was actually used for working capital purposes. (The amounts on this line plus the amounts in II.A.6. should equal the total RLF dollars loaned in item II.A.2. for both Total and Active loans, respectively).

8. *RLF \$\$ Loaned for Start-up, Expansion & Retention:* Enter for both Total and Active loan categories, the amount of RLF loans that were used for Start-up loans, Expansion loans and Retention loans. Each loan in the RLF portfolio is to be categorized as either a Start-up, an Expansion or a Retention loan. A Start-up loan is one to a new business that has limited or no prior operating history. An Expansion loan involves an existing operating company that will expand operations and create jobs. A Retention loan is where the existing jobs of the company are "saved" as a direct result of the RLF assistance. [The sums of these loan categories (8.a. + 8.b. + 8.c.) should equal the total RLF dollars loaned in item II.A.2. for both Total and Active loans, respectively].

9. *RLF \$\$ Loaned for Industrial, Commercial & Service:* Enter for both Total and Active loan categories, the dollar amount of closed RLF loans that went to Industrial, Commercial and Service projects. All RLF loans should be placed in one of these three categories, which are defined below and which utilized the Standard Industrial Classification (SIC) Manual as a guide:

Industrial projects include manufacturing, agriculture, forestry, fishing, mining, and construction businesses—essentially businesses engaged in the production of a product.

Commercial projects include retail and wholesale trade businesses.

Service projects include businesses which provide a service to individuals or businesses, i.e., those not engaged in the production of a product or the sale of merchandise.

10. *RLF \$\$ Loaned for Minority Businesses:* Enter for both Total and Active loan categories, the amount of closed RLF loans that went to minority-owned businesses. To be considered minority-owned, a company must be at least 51 percent owned by African-Americans, Hispanics, Asians and/or Indians.

11. *RLF \$\$ Loaned for Women-owned Businesses:* Enter for both Total and Active loan categories, the amount of closed RLF loans that went to women-owned businesses. Include only firms with at least 51 percent ownership by women.

12. *Other:* Enter for both Total and Active loan categories, the amount of closed RLF loans that went to a targeted use identified in the RLF Plan but not included above.

B. Comparison of RLF Portfolio to RLF Plan: As indicated in the narrative in the Semiannual Report, use the RLF Plan to obtain the applicable ratios and percentages for completing the first column. For column two (Total Loans) and column three (Active

Loans), use the appropriate figures from Part II.A. to compute the ratios and percentages requested. The formula for each item is listed in the brackets next to that item. [As an example, item #1—Cost per Job, is computed by dividing the figures on line A.2. by those on line A.5.d. (from Part II) for both Total and Active loans, respectively].

Part III: Portfolio Financial Status

A. RLF Funding Sources:

1.–3. Enter on lines one through three the total funds committed to the RLF by funding source, regardless of whether the funds have been drawn into the RLF. Outside of the EDA funds, the funding categories will include either funds provided solely by the grantee or from "other" sources, e.g., CDBG, state, or private donations for the specific use of the RLF. Specify the funding source if "other".

4. Enter the sum of all funding sources, items III.A.1. through III.A.3. inclusive.

B. Program Income Earned to Date:

5. Enter the total interest earned directly from RLF loans. This amount should equal the aggregate interest earned from individual loans which are listed in Part IV.

6. Enter interest earned from deposits and investments of:

a. RLF loan payments, including principal and interest;

b. RLF loan fees, including origination, servicing and processing fees, late fees and penalties; and

c. Advances of local matching funds and EDA funds. EDA funds must be timed to meet the actual, immediate disbursement needs of the RLF borrowers. Otherwise, grant funds plus any interest earned thereon must be returned to EDA. (Note that grantees may deduct and retain a portion of such earned interest for administrative expenses up to the maximum amounts allowed under either 15 CFR Part 24 or OMB Circular A-110 or its implementing Department regulation, as applicable).

7. Enter the aggregate of all fees earned from RLF loans from processing, servicing, closing, late fees and any other loan-related earnings.

8. Enter the sum of III.B.5. through III.B.7., inclusive.

9. Enter the amount from III.B.8. that has been used to cover eligible RLF administrative expenses to date. (Time cards are to be maintained for all direct labor costs charged against RLF Program Income. If indirect costs are charged against the RLF, the grantee must have an indirect cost allocation plan). Inasmuch as RLF administrative costs can only be reimbursed from RLF income earned in the same accounting period, available RLF income earned in a current period may be set aside for administrative costs which will be incurred over the remainder of the period (Refer to Section VII. of the Administrative Manual for additional information).

10. Subtract the amount on line III.B.9. from III.B.8. and enter the difference here. Do not deduct amounts set aside for future administrative expenses. Lines III.B.8 less line III.B.9. should equal the amount of line III.B.10; if not, explain on separate page. Note that if the grant recipient anticipates using any of the available RLF income earned in

the current period during the remainder of the period, it may deduct this from the amount otherwise reported in the space. Conversely, if the recipient is certain that it will not need any of the available RLF income during the remainder of the period, it should include this amount in the figure reported as RLF Income added to the RLF for Lending. Any RLF income on hand at the end of a period must be added to the RLF Capital Base for lending purposes.

(Note: References to Program Income in B.8. through B.10. should be interpreted to mean RLF Income as used in the RLF Administrative Manual).

C. Status of RLF Capital:

11. Self-explanatory (enter the amount from III.A.4.).

12. Self-explanatory (enter the amount from III.B.10.).

13. Self-explanatory (enter the sum of the amounts lost from direct loans and guaranteed loans, from I.A.7. and I.B.7., page 1 respectively).

14. Self-explanatory (enter the sum of III.C.11. and III.C.12., less III.C.13.).

D. Current Balance Available for New Loans:

15. Self-explanatory (enter the RLF principal outstanding from I.A.6., page 1).

16. Self-explanatory (enter the total RLF dollars reserved for loan guarantees, which are not available for lending, from I.B.6., page 1).

17. Self-explanatory (deduct amounts shown in III.D.15. and III.D.16. from III.C.14.).

18. Enter the aggregate amount of RLF funds that have been approved and committed but not closed nor disbursed.

19. Self-explanatory (enter the amount in III.D.17. less III.D.18.).

20. Current Balance Available Percentage—applies only to RLF's that have been fully disbursed. Enter the percent that is obtained by dividing the amount in III.D.19. by the amount in III.C.14.

21. Insert the Current Balance Available Percentage (same calculation as in #20 above), but for the preceding six month period obtained from the previous Semiannual Report.

(Note: The percentages obtained in III.D.20. and III.D.21. are used to evaluate compliance with EDA's Excess Retention Policy established in 1988. If the percentages in III.D.22. and in III.D.23. both exceed 25 percent, the grantee is in violation of the policy and is required to submit an addendum to the report explaining the reasons for the violation and the steps it proposes to take to reduce the percentage below 25 percent. Subsequently, the grantee may be required to submit the EDA share of any amount over 25 percent, which normally will be made available to the grantee for a time period established by EDA. Funds not used during this time period may become permanently unavailable to the grantee).

Part IV: Portfolio Loan List

Self-explanatory.

Part V: Miscellaneous Information & Certification

A. *Recent Loan Activity:*

1.-4. Self-explanatory.

B. *Capital Utilization*: (Section X. of RLF Administrative Manual)

5.-7. Self-explanatory.

C. *RLF Income & Expenses*: (Section VII. of RLF Administrative Plan)

8.-12. Self-explanatory.

D. *Administration*:

13.-17. Self-explanatory.

E. *Annual RLF Plan Certification*: (Section VIII. of the RLF Administrative Manual and

Section D.03. of the Standard Terms and Conditions)

18. Self-explanatory (Required only once a year).

BILLING CODE 3510-24-P

EXHIBIT E (Rev. 12/98)

Page 1 of 3

ANNUAL REPORT FOR EDA-FUNDED RLF GRANTS

Grantee Name: _____

Period Ending _____

Project No. _____

Contact Person: _____

Phone: _____

| A. PORTFOLIO FINANCIAL STATUS | | |
|---|----|---|
| 1. Total RLF Funding (EDA + Matching funds) | \$ | |
| 2. Total RLF Income Earned | \$ | |
| 3. Total RLF Income Expended for Administrative Costs | \$ | |
| 4. RLF Income in #2 that is set aside for Current Period Expenses | \$ | |
| 5. Total Losses on Direct and Guaranteed Loans | \$ | |
| 6. RLF Capital Base [(1+2) less (3+4+5)] | \$ | |
| 7. RLF Loan Principal Outstanding | \$ | |
| 8. RLF \$\$ Reserved for Guarantees | \$ | |
| 9. RLF Loan Commitments Not Disbursed | \$ | |
| 10. RLF Capital Utilized [7+8+9] | \$ | |
| 11. RLF Capital Utilization Rate [10 / 6] | | % |
| 12. Same as #11 but for Preceding 6-Month Period | | % |

| B. RECENT LOAN ACTIVITY (Last 12 Months Only) | |
|--|--|
| 13. # Applications Received | |
| 14. a. # Applications Received from Minority-owned firms | |
| b. # Applications Received from Women-owned firms | |
| 15. # Loans Closed | |
| 16. a. # Loans Closed from Minority-owned Firms | |
| b. # Loans Closed from Women-owned Firms | |

| C. Portfolio Status | |
|---|----|
| <i>DIRECT LOANS:</i> | |
| 17. a. Total RLF \$\$ Loaned | \$ |
| b. Total # Loans made by the RLF | |
| 18. Total Active Loans | \$ |
| 19. Principal Outstanding | |
| a. Current Loans | \$ |
| b. Delinquent Loans (< 60 days) | \$ |
| c. Delinquent Loans (> 60 days) | \$ |
| 20. Total Written-Off | \$ |
| 21. Total Non-RLF \$\$ Leveraged by RLF & Leverage Ratios | |
| a. Private | \$ |
| b. Other | \$ |
| c. Total Leveraged (Private + Other) | \$ |
| <i>GUARANTEED LOANS:</i> | |
| 22. Current RLF \$\$ Exposed (<i>active loans only</i>) | \$ |
| 23. RLF \$\$ Reserved (<i>active loans only</i>) | \$ |
| | |
| 24. Total # of Actual Jobs Created and Saved | |

| D. ADMINISTRATION | circle or |
|---|--------------------------|
| complete | as |
| appropriate | |
| 25. Any key Staff Turnover last 12 Months? List position(s): | Yes No |
| 26. Attach a list of the current RLF Loan Board membership by name, occupation, race and gender. | |
| 27. Indicate the ending period of the most recent independent Audit covering the recipient and whether Single or Program Specific Audit. | |
| 28. Attach the Audit in #27 if it was not previously submitted to EDA | |
| 29. If the Audit in #27 did not cover either the most recent or the prior fiscal-year period, is an explanation attached? (<i>Circle One</i>) | Yes No Not Applicable |

| | |
|---|---------------------|
| D. ADMINISTRATION complete appropriate | circle or as |
| 30. Enter the ending date of the accounting period which has been selected to determine the amount reported in #4 above in accordance with Section VII.C. of the RLF Administrative Manual. | |

| | |
|---|-----------------------------|
| E. CAPITAL UTILIZATION (Section X of RLF Administrative Manual) appropriate | circle or complete as |
| 31. If the percentages in both #11 and #12 above are less than 75%, is an explanation attached discussing proposed actions (including target dates and goals) to reduce the amount of excess funds on hand? | Yes No |
| 32. If both #11 and #12 are less than 75%, list the amount of excess funds subject to sequestration. | \$ |
| 33. List any amount in #31 that has been sequestered in a separate account. | \$ |

| | |
|---|-----------------------------|
| F. ANNUAL RLF PLAN CERTIFICATION (Section VIII of RLF Administrative Manual and Section D.03 of Standard Terms and Conditions) appropriate | circle or complete as |
| 34. Is the required ANNUAL RLF Plan Certification attached? If "no," indicate the date it will be submitted: _____ | Yes No |

CERTIFICATION: I hereby certify on this ____ day of _____, 19____, that the information provided in this Annual Report is true and correct to the best of my knowledge.

 NAME AND TITLE OF AUTHORIZED OFFICIAL

 SIGNATURE (Authorized Official)

Check Attachments Submitted:

- | | |
|---|---|
| _____ Capital Utilization (#31 above) | _____ Audit Explanation (#29) |
| _____ Current Loan Board Membership (#26) | _____ Annual RLF Plan Certification (#34) |
| _____ Copy of Audit (#28) | |

Instructions For Completion of EDA's Annual Reports For Revolving Loan Fund Grants

These instructions are for completion of the Annual Report form for EDA revolving loan fund (RLF) grants. The Annual Report is an abbreviated version of the Semiannual Report. RLF grantees that are reporting on a semiannual basis are eligible to apply for graduation to this streamlined report one year after full disbursement of the initial round of RLF capital.

A. Portfolio Financial Status and Capital Utilization

1. Enter the total funds committed to the RLF. Outside of EDA funds, matching funds may include funds provided solely by the grantee or from other sources, e.g., CDBG, state or private donations for the specific use of the RLF. Exclude any funding commitments that may have been removed from the RLF, as approved by EDA.

2. Enter the Total RLF Income earned by the RLF to date. RLF Income, as defined in Section VII. of the RLF Administrative Manual, includes:

- a. Total interest earned directly from RLF loans.
- b. Interest earned from deposits and investments of:
 - RLF loan payments, including principal and interest;
 - RLF loan fees, including origination, servicing and processing fees, late fees and penalties; and
 - Advances of local matching funds and EDA funds. EDA funds must be timed to meet the actual, immediate disbursement needs of the RLF borrowers. Otherwise, grant funds plus any interest earned therein must be returned to EDA. (Note that grantees may deduct and retain a portion of such earned interest for administrative expenses up to the maximum amounts allowed under either 15 CFR Part 24 or OMB Circular A-110 or its implementing Department regulation, as applicable.)

3. Enter the amount from A.2. that has been used to cover eligible RLF administrative expenses to date. (Time cards are to be maintained for all direct labor costs charged against RLF Program Income. If indirect costs are charged against the RLF, the grantee must have an indirect cost allocation plan). In as much as RLF administrative costs can only be reimbursed from RLF income earned in the same accounting period, available RLF income earned in a current period may be set aside for administrative costs which will be incurred over the remainder of the period (Refer to Section VII. of the Administrative Manual for additional information).

4. Enter the amount of any available RLF Income earned in a current period which may be set aside for future administrative costs incurred over the remainder of the period. If, however, the selected period ends on September 30, funds can not be set aside without EDA approval since any RLF Income that is not used for administrative costs during the period in which it is earned must be added to the RLF Capital Base at the end of the period.

5. Enter the cumulative Losses on Direct and Guaranteed Loans for those loans written-off.

6. Calculate the current level of the RLF's Capital Base by adding the amounts entered in #1 and #2, and subtracting from this sum the amounts in #3, #4 and #5. The RLF Capital Base represents the aggregate amount of capital potentially available for lending.

7. Enter the amount of Loan Principal Outstanding on Direct RLF Loans.

8. Enter the amount of RLF dollars that are required to be set aside or reserved for RLF guarantees of other loans. If not applicable, enter N/A.

9. Enter the aggregate amount of RLF funds that have been approved and committed but not closed nor disbursed.

10. Calculate the amount of RLF Capital Utilized, i.e., RLF capital outstanding and committed, by summing the amounts in #7, #8 and #9.

11. Calculate the RLF Utilization Rate by dividing #10 (RLF Capital Utilized) by #6 (RLF Capital Base). This indicates the percentage of RLF capital in use for comparison with the Capital Utilization Standard as discussed in Section X. of the Administrative Manual. Persistent noncompliance with the Standard could require sequestration of excess funds, remittance of interest earned on sequestered funds, and eventual loss of excess funds if not placed in use within a reasonable period of time.

12. The RLF Capital Utilization Rate is calculated every six months for the periods ending March 31 and September 30, in accordance with Section X.C. of the RLF Administrative Manual.

B. Recent Loan Activity

13-16. As appropriate, enter the number of applications received and loans closed for the last 12 month period. Also enter the number of applications received and the number of loans closed from Minority-owned and Women-owned firms. Ownership is defined as controlling interest of 51% or more. A loan is considered closed when all loan documents have been signed.

C. Portfolio Status

17. Enter the total number and original dollar amount of all RLF loans made to date.

18. Enter the amount of principal outstanding for Total Active Loans. (Total Active Loans are defined as direct loans that are either current, delinquent or in default—exclusive of loans that have been fully repaid or written off).

19. For active loans only, enter the principal outstanding on direct loans that are current and those that are delinquent. Segregate delinquent loans into two categories, those less than or equal to 60 days past due and those more than 60 days past due. For this report, a "delinquent" loan is defined as one that is up to 60 days past due. (If a previously delinquent borrower is now current, or making payments in accordance with an amended note and payment schedule, show this loan as current).

20. Enter the total principal balance outstanding on direct loans written-off or the actual amount lost, whichever is smaller.

21. Enter the total non-RLF dollars leveraged (Private & Other) and corresponding leverage ratios in conjunction

with the RLF direct loans. Unless stipulated otherwise in the grant agreement, RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. Private dollars leveraged include private financing and private investments provided to the "project" in which the RLF is an integral component. A project is defined as an activity consisting of interrelated components which share a common goal. Private investments include both cash provided to the project and donated assets which come from outside the borrowing enterprise. For donated assets, only the equity in the assets (defined as the assets' market value less any security interest) may be counted in the leverage ratio. For purposes of calculating private dollars invested, 90 percent of the guaranteed portions of SBA 7 (a) and SBA 504 debenture loans may be included. As a reminder, the RLF must fill a legitimate financing gap in the project for the private funds to be considered "leveraged dollars".

Other investments leveraged by the RLF in the project may include other non-RLF dollars such as HUD-CDBG, USDA-IRP loans, etc.

22. For active loans provided by other lenders and guaranteed by the RLF, enter the contingent liability of the RLF on outstanding loan principal, i.e., the current RLF exposure on all active RLF guarantees. This amount is usually computed by multiplying the percent of the original guarantee by the outstanding loan balance.

23. For active loans provided by other lenders and guaranteed by the RLF, enter any amounts of RLF funds that are actually set aside and held in reserve to cover any losses on guaranteed loans.

24. Enter the total number of jobs created and saved over the life of the RLF. In tallying jobs, only permanent and direct jobs may be counted; part-time jobs should be converted to full-time equivalents (by summing the total hours worked per week for all part-time employees and dividing by the standard hourly work week for full-time employees, normally 35-40 hours). Job information data should be collected at least annually. For seasonal businesses, more frequent collection of job data is usually necessary to obtain realistic employment figures for an annualized average.

Grantees should use the following definitions in completing the job information section of this report:

a. *Actual Created Jobs:* A job is counted as "created (actual)" if it was created as a result of and attributable to the RLF loan project, and has been verified by the borrower (or grantee) to complete a questionnaire at least on an annual basis indicating the number of jobs actually created and attributable to the RLF project, or by the grantee performing an on-site job count. The documentation for job counts should be placed in the project files.

Created jobs may be credited if the jobs were created within five years of loan disbursement or, if construction is involved, within five years after construction completion. All jobs credited must be attributable to the RLF project. A created job must be removed from the credited created jobs if the job fails to last at least 18 months.

Any job which meets the creditable job created criteria is counted as part of the total actual jobs created permanently, regardless of the status of the loan.

For loans that have been paid in full, grantees may use the job information data that is on file provided there is adequate confidence in the reliability of the data. If there is a question on the reliability, the data should be verified by the next annual reporting period.

b: *Saved Jobs* are existing jobs where it can be documented that without the RLF assistance the jobs would have been lost.

Exception—*Created/Saved Jobs Subsequently Lost*: If an RLF borrower subsequently ceases business (or closes a segment of its business) thereby eliminating previously created or saved jobs, these jobs may continue to be counted in the Annual Report only if they were maintained for a minimum of 18 months prior to the loss.

D. Administration

25–30. Self-explanatory.

E. Capital Utilization

31–33. Self-explanatory (Refer to Section X. of the RLF Administrative Manual).

F. RLF Plan Certification

34. Self-explanatory (See Section VIII. of the RLF Administrative Manual and Section D.03. of the RLF Standard Terms and Conditions for additional details).

Appendix D to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Audit Guidelines

OMB Approval No. 0610–0095 Approval expires 07/31/99

Burden Statement for Revolving Loan Fund Audit Manual

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 Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. The reason for collecting this information is to enable the Economic Development Administration to monitor revolving loan fund projects for compliance with Federal and other requirements. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 12 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including

suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Table of Contents

| |
|--|
| I. Purpose |
| II. Program Objectives |
| III. Program Procedures |
| IV. Program History |
| V. Frequency of Audits |
| VI. When an Audit is Required |
| VII. Types of Audits |
| A. Program Specific Audit |
| B. Single Audit |
| VIII. Special Considerations for Single Audits of RLFs |
| A. Schedule of Expenditures of Federal Awards |
| B. Criteria For Determining Major Programs |
| C. Calculating "Total Federal Expenditures" For RLF Grants |
| D. Footnote Disclosure |
| IX. Use of Another Entity For Program Administration |
| X. Reporting Entity |
| XI. Audit Report Due Dates |
| XII. Distribution of the Audit Report |
| XIII. Auditor Selection |
| XIV. Compliance Guidelines |
| A. Specific Compliance Requirements |
| B. General Compliance Requirements |
| 1. Background |
| 2. Common RLF Administrative Costs |
| XV. Securitization |
| XVI. Administrative Cost and Loan Records Retention |
| A. Administrative Cost Records |
| B. Loan Records |
| C. General |
| Attachment 1 |
| Attachment 2 |

Section 209 Economic Adjustment Program Revolving Loan Fund Grants Audit Guidelines

I. Purpose

This document describes the audit requirements for revolving loan fund (RLF) grants funded under the Section 209 Economic Adjustment Program of the Economic Development Administration (EDA). It provides an overview of relevant Office of Management and Budget (OMB) circulars and other Federal regulations as they relate to administrative and audit requirements for EDA RLF grants. It also discusses costs that may be eligible under an RLF grant program and requirements for records retention. It is intended to supplement applicable OMB circulars and Federal regulations. If there is a conflict between information contained in this document and the OMB circulars or Federal regulations, the latter shall prevail. In the absence of a conflict, EDA reserves the right to limit Federal standards.

This document is intended for grant recipients and for independent auditors as an aid in understanding the audit and compliance requirements for EDA RLF grants. Each recipient of an EDA RLF grant is responsible for reading this document and providing it to the independent auditor prior

to the start of an audit. Failure to make this information available to the independent auditor could result in an unacceptable audit report.

II. Program Objectives

RLF grants are administered under EDA's Section 209 Program, which was created in 1974 by an amendment to the Public Works and Economic Development Act of 1965 (PWEDA), to provide grant assistance to help communities adjust to sudden and severe economic dislocations (SSED) and long-term economic deterioration (LTED). EDA Section 209 grants may be used for business development assistance, planning, research, technical assistance, training, infrastructure, and other development activities which meet the purpose of the program.

RLF grants provide capital for loan pools which finance business development activities consistent with local economic development strategies. Loan repayments, plus interest and other related income, create a revolving source of capital to finance other business enterprises. RLF loans are used to stimulate economic activity and to provide financing to businesses when private credit is unavailable to complete a project.

III. Program Procedures

Priority consideration for RLF funding is given to those proposals which have the greatest potential to benefit areas experiencing or threatened with substantial economic distress. Proposals are evaluated based on conformance with statutory and regulatory requirements, the economic adjustment needs of the area, the merits of the proposed project in addressing those needs, and the applicant's ability to manage the grant effectively. Each approved RLF grant is operated in accordance with an RLF Plan which is part of the grant agreement. The RLF Plan summarizes the RLF's strategic objectives and the operational procedures to carry out the purpose of the grant.

IV. Program History

EDA awarded its first RLF grant in 1975. To date, the Agency has awarded more than 700 grants aggregating in excess of \$500 million for the establishment or recapitalization of RLFs nationwide. In turn, RLF grantees have made more than 7,200 loans to private sector businesses, which loans have either leveraged or have the potential for leveraging in excess of \$1.9 billion private capital based on a private investment to total RLF monies loaned ratio of 3.83:1. There are generally two types of RLF grants, those established as RLFs from the initial disbursement of grant funds, and those established only after repayments are received from business loans originally funded from grants. Most RLF grants are of the first type.

RLF programs are operated by local governments, regional development corporations, States and other non-profit organizations. EDA RLF grants normally require a matching contribution from local sources. Historically, the local match contribution has averaged 25% of an RLF's capitalization, but waivers have been extended in special situations such as natural disasters. The average EDA RLF grant was

capitalized at just over \$1 million in total assets. While the size of individual loans extended by these grant recipients vary markedly, the typical RLF loan has averaged \$70,000 over time.

V. Frequency of Audits

Each RLF grant recipient shall have an audit performed annually for the duration of the RLF program except in the following limited circumstances which may permit biennial audits:

- A state or local government recipient that adopted a mandatory, constitutional or statutory requirement for less frequent audits prior to January 1, 1987, which requirement still remains in effect; or
- A non-profit recipient that had biennial audits for all biennial periods ending between July 1, 1992 and January 1, 1995.

VI. When an Audit Is Required

Pursuant to the Single Audit Act Amendments of 1996 (P.L. 104-156) and OMB Circular A-133, audits are required of all State, local government and non-profit corporation RLF grant recipients that expended total Federal awards of at least \$300,000 in a given fiscal year. For all RLF grants, the calculation of RLF expenditures will include the beginning balance of all outstanding loans plus the current year's loan and loan-related expenditures. With the exception of newly awarded grants and limited circumstances listed in Paragraph V. herein, the majority of RLF grant recipients will require an annual audit.

To calculate the total RLF expended, follow the information provided in the box below. Note that only the Federal share (exclude the matching fund share) of the amount calculated should be used for the determination of an audit. Audit procedures, however, must encompass both the Federal and any matching funds which comprise an RLF.

- The year's beginning balance of outstanding RLF loans; plus
- RLF loan expenditures during the fiscal year; plus
- The amount of RLF Income¹ earned and expended on eligible administrative expenses during the fiscal year.

VII. Types of Audits

Entities which spend \$300,000 or more in Federal awards will be required to have either (i) a program-specific audit or (ii) a single audit. An entity can elect a program-specific audit if all funds expended come from only one Federal program. An entity must have a single audit in a fiscal year in which it spends funds from more than one Federal program. These guidelines are not intended to be a complete manual of procedures, nor are they intended to supplant the auditor's judgment of the work required for either the program-specific audit or a single audit which includes coverage of an EDA RLF. The auditor should refer to

¹ RLF Income includes interest earned on loans, interest earned on accounts holding RLF funds not needed for immediate lending, loan fees received from borrowers, and other income generated from RLF activities.

OMB Circular A-133 for a detailed listing of requirements for these types of audits. These guidelines are designed to discuss special considerations for audits of RLFs.

A. Program Specific Audit

A program-specific audit is an audit of one program performed in accordance with Federal laws and regulations and any audit guides available for that program. There is not a program-specific audit guide written for the RLF program. Since a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the RLF program as they would have for an audit of a major program in a single audit. Section VIII of these guidelines describes some special considerations for auditing an EDA RLF. OMB Circular A-133, Section 235 provides instructions for completing a program-specific audit.

B. Single Audit

A single audit covers all Federal awards received and expended during an organization's fiscal year. Unlike the program specific audit, this type of audit requires a financial statement audit of the grant recipient. A single audit is performed by an independent auditor who meets the general standards specified in generally accepted government auditing standards.

Attachment I provides a current list of applicable audit-related documents with which the auditor should become familiar. Since accounting requirements and reference materials are subject to periodic revisions, grant recipients and auditors are responsible for utilizing the most current reference information available.

VIII. Special Considerations for Single Audits of RLFs

A. Schedule of Expenditures of Federal Awards

The auditee is required to report certain information in this schedule including: (1) the identity of all Federal award programs by program title and by catalogue number listed in the Catalog of Federal Domestic Assistance (CFDA) and (2) the total expenditures for each Federal award program by grantor agency. For EDA RLF grants, the program title is "Special Economic Development and Assistance Programs—[either Sudden and Severe Economic Dislocation (SSED) or Long-Term Economic Deterioration (LTED)] Revolving Loan Fund." The CFDA number is "11.307" for both SSED and LTED grants. To assist program officials, it is helpful to include the number of each EDA RLF grant in the schedule. The method for calculating the total Federal expenditure amount to be reported on the schedule is shown in Section VIII.C. below.

Note that in the third and fourth digits of each grant number, an SSED grant is denoted by the number "19", and an LTED grant by the number "39". Exceptions include numerical identification of defense or disaster-related RLFs which may have several variations as determined by fiscal year or specific disaster program appropriations.

B. Criteria for Determining Major Programs

Federal award programs must be identified as Major Programs through a risk-based approach described in OMB Circular A-133. Prior to the issuance of the revised OMB Circular A-133, a Major Program was defined solely in monetary terms. The new risk-based approach also requires that the auditor consider the current and prior audit results and the inherent risk of the program in making a determination of Major Programs subject to audit. Major Programs require more extensive audit procedures than Other Federal Programs.

C. Calculating "Total Federal Expenditures" For RLF Grants

For RLF grants, "Total Federal expenditures" normally includes only the Federal share of an RLF's expenditures. It is calculated as shown in the box below using only the Federal share of each component.

Determining Total Federal Expenditures²:

- The year's beginning balance of outstanding RLF loans; plus
- RLF loan expenditures during the fiscal year; plus
- The amount of RLF Income³ earned and expended on eligible administrative expenses during the fiscal year.

D. Footnote Disclosure (Schedule)

In addition to reporting the Federal expenditures for an RLF program on the schedule of expenditures of Federal awards, a footnote to the schedule should disclose the value of the loans outstanding at the end of the year.

IX. Use of Another Entity for Program Administration

A grant recipient may employ the services of another organization to perform certain duties and responsibilities under a grant. In delegating responsibilities, the grant recipient may be responsible for ensuring that the other entity is audited in accordance with OMB Circular A-133 and complies with the grant terms and conditions. The degree of responsibility delegated is the key factor in determining whether another entity is a subrecipient or vendor (and whether an audit is required). Subrecipients are normally required to have an audit performed while vendors would not usually be audited unless program compliance requirements apply to the vendor.

An organization is a subrecipient if it receives or is responsible for RLF funds, and some or all of the following characteristics exist. It is responsible for (i) applicable grant compliance requirements; (ii) programmatic decisions including, but not limited to, approving RLF lending policies, final lending decisions including eligibility determinations, major amendments to loans, and/or foreclosure actions; and/or (iii) its performance is measured against meeting objectives of the program.

² If the Federal share of an RLF's total expenditures cannot be readily determined, the total RLF expenditures (including both Federal and matching funds) may be used in lieu of "total Federal expenditures" provided the inclusion of matching funds is disclosed.

³ Defined in footnote 1, page 3.

An organization is a vendor if it provides services in support of an RLF grant and has the following distinguishing characteristics. It provides agreed services within its normal business operations and provides similar services to other purchasers, it operates in a competitive environment, and program compliance requirements usually do not directly pertain to the services provided. If grant compliance requirements apply to the vendor's activities, the grant recipient is responsible for ensuring compliance by the vendor. This may require monitoring the vendor's activities or requiring an audit of vendor activities as may be appropriate under the circumstances. A vendor is normally responsible only for compliance within the terms of its contract.

An example of a vendor would be a bank or collection company which provides services to the grant recipient merely for the collection of loan payments. This would be considered a vendor relationship because the entity under contract would not be involved with any major program decisions. However, if this entity had expanded responsibilities, such as the final approval authority for loans and foreclosure actions, it would be considered a subrecipient due to the nature and degree of its responsibilities. It would be required to be audited in accordance with OMB Circular A-133, and to comply with the terms and conditions of the grant.

X. Reporting Entity

The definition of a financial reporting entity is based upon the concept of accountability. A reporting entity may consist of a primary unit and component units. The decision to include a component unit in the reporting entity is based on whether (1) the primary unit is financially accountable for the component unit, and (2) the nature and significance of the relationship between the primary unit and the component unit is such that exclusion would cause the reporting entity's financial statements to be misleading or incomplete.

While it is management's responsibility to define the reporting entity, one of the initial tasks performed by the auditor is to independently determine whether management has properly defined the reporting entity, pursuant to the Government Accounting Standards Board's (GASB) Statement No. 14, The Financial Reporting Entity.

XI. Audit Report Due Dates

The audit must be completed and the report package submitted within 9 months following the end of the period audited, unless a longer period has been agreed to in advance. However, for fiscal years ending on or before June 30, 1998, auditees shall have 13 months after the end of the audit period to submit the reporting package. In either case, the required reporting package shall be submitted within 30 days after issuance of the auditor's report to the auditee.

XII. Distribution of the Audit Report

The reporting package should be submitted to the Federal Clearinghouse in accordance with the requirements of OMB Circular A-133, Section 320. In addition, an auditee shall submit the reporting package, leaving

out the data collection form which is strictly for the Clearinghouse's use, to the EDA regional office responsible for monitoring the RLF.

XIII. Auditor Selection

In arranging for audit services, grant recipients are required to follow the administrative requirements and procurement standards prescribed in the applicable Federal administrative document found at 15 CFR, Part 24, or OMB Circular A-110. In addition, guidance in selection of an auditor is available in a document entitled "How to Avoid a Substandard Audit: Suggestions for Procuring an Audit." This document was developed by the National Intergovernmental Audit Forum and is available from the General Accounting Office at telephone number (202) 512-6000.

XIV. Compliance Guidelines

For both program specific audits and single audits, the auditor is required to determine whether the grant recipient has complied with applicable laws and regulations. Compliance testing involves (1) the testing of specific requirements for individual Federal programs, as available, and (2) the testing of general requirements which are applicable to all Federal programs. In addition, there may be other laws and regulations listed in the grant terms which may apply to both the grant recipient and to the RLF loan recipients.

OMB has issued a provisional compliance supplement for use with the revised OMB Circular A-133. The provisional compliance supplement addresses 14 types of compliance areas that are generic to all programs. It also addresses specific requirements for about 100 programs. It is not clear whether the RLF program will be included in the compliance supplement.

A. Specific Compliance Requirements

DOC's proposed compliance requirements and suggested audit procedures for EDA Section 209 RLF grants are provided in Attachment 2. Independent auditors should follow these procedures in testing for specific compliance requirements for RLF grants. Comments and suggestions on this material are welcome and should be submitted to the U.S. Department of Commerce, Office of Inspector General, 401 W. Peachtree Street, N.W., Suite 2342, Atlanta, GA 30308.

B. General Compliance Requirements—Supplemental Information

The OMB Compliance Supplements list fourteen general requirements and suggested auditing procedures which are applicable to all Federal assistance awards. For the general requirement listed as "Allowable Costs And Cost Principles," supplemental information is provided below. This information should be considered when testing general compliance requirements.

1. Background

Eligible Costs For RLF Grants: EDA grant funds and matching funds for an RLF must be used in accordance with the purposes specified in the grant agreement. Eligible uses generally include RLF loans and any specified costs listed in the grant agreement

(e.g., budgeted audit costs). Unless specifically stated in the grant, the costs to administer an RLF program are not eligible for reimbursement from either the EDA grant or the matching funds.

RLF Income: RLF Income includes interest earned on loans, interest earned on accounts holding RLF funds not needed for immediate lending, loan fees and other income generated from RLF activities. RLF Income may be used only for RLF loans or for eligible expenses necessary to operate an RLF program. RLF Income that is used for RLF administrative expenses is subject to applicable OMB cost principles and to the requirements described below.

Only current period expenses may be expensed against current period RLF Income. Any exceptions to this require EDA approval. The accounting period for determining compliance with this requirement is selected by the grant recipient and may be either the recipient's or the Federal fiscal year. The accounting period selected is submitted to EDA in the annual or semiannual reports. (Refer to Section VII. of the prevailing EDA RLF Administrative Manual for additional details.)

RLF program funds (including initial grant and matching funds and the repayments of loan principle and RLF Income) should be separately accounted for in the accounting system of each grant recipient. When possible, expenses charged to an RLF program should be categorized in detail at least at the level indicated in the RLF Income and Expense Statement (see Exhibit A of EDA's prevailing RLF Administrative Manual).

Cost Principles: The applicable OMB Cost Principles are found in either OMB Circular A-21, A-87, or A-122. Administrative costs that may be charged against RLF Income will be classified as either direct or indirect costs. Direct costs include those that can be identified specifically with a particular cost objective, such as an RLF program. Indirect costs are those incurred for a common or joint purpose benefitting more than one program or cost objective and are not readily assignable.

Cost Allocation Plans: Costs may be allocated against RLF Income only to the extent that they can be distributed in reasonable proportion to the benefits received, and are supported by a cost allocation plan and formal accounting records which will substantiate the propriety of charges. Indirect costs may not exceed 100% of allowable direct costs as reflected in the cost allocation plan.

Cost allocation plans, which include indirect cost rate proposals, normally must be approved by the cognizant Federal agency. Local governments (OMB Circular A-87 organizations) are required to retain cost allocation plans and/or indirect cost rate proposals at the local level unless the cognizant agency requests submittal for negotiation and approval. All cost allocation plans and/or indirect cost rate proposals must be approved at the local level and must be available to the cognizant agency, if requested. The independent auditor is responsible for reviewing cost allocation plans and/or indirect cost rate proposals to

determine the reasonableness and validity of costs charged against different cost objectives or programs.

The Office of Inspector General, U.S. Department of Commerce (OIG), is designated the cognizant agency responsible for the audit, approval and negotiation of cost allocation plans and/or indirect cost rate proposals for most EDA economic development districts, as defined in Title IV of PWEDA. When an EDA district organization allocates costs requiring a cost allocation plan and/or an indirect cost rate proposal, the organization is not required to submit either of these to the OIG unless the OIG is the cognizant agency and requests submittal, or the cost allocation plan and/or the indirect cost rate proposal is the initial one for the organization. Cost allocation plans and indirect cost rate proposals must be available for review upon demand, if requested.

2. Common RLF Administrative Costs

A description of common administrative costs that may be charged against RLF Income include, but are not limited to, the following:

Advertising/Marketing: Allowable costs for advertising and marketing include costs for media services to recruit RLF personnel, market the RLF program, solicit RLF loan prospects, procure RLF-related goods and services, and sell RLF assets. Eligible costs may also include the cost of printing RLF brochures and travel and other expenses directly related to the promotion of an RLF program.

Audits: The costs of audits conducted in accordance with the grant audit requirements are allowable. The charges may be treated as either direct or indirect costs consistent with the applicable OMB cost principles. Grant and matching funds may be used for audit costs only to the extent listed in the approved grant budget or grant terms. In addition, auditing costs charged against an RLF program may not exceed an RLF's equitable share of the cost.

Bonding: The costs of premiums for fidelity bonds covering employees who handle RLF funds are allowable to the extent that such costs are reasonable and distributed equitably in proportion to the RLF's share of the costs.

Building Space: Rent for building space or the utilization of depreciation or use allowances is an allowable expense subject to the provisions of the applicable OMB cost principles. Maintenance costs are eligible expenses to the extent that they are not otherwise included in rental or other charges for space. See also "Lease Transactions" below.

Capital Expenditures: In accordance with current OMB cost principles, capital expenditures for equipment and other capital assets require prior EDA approval. For state and local governments (OMB Circular A-87), equipment is defined as tangible, personal property having a useful life of more than one year and an acquisition cost which equals the lesser of the capitalization level established by the organization or \$5,000. For nonprofits (OMB Circular A-122 organizations), equipment is defined as tangible, personal property having a useful life of more than two years and an

acquisition cost of more than \$500 per unit. The dollar amount for nonprofits is expected to increase when OMB Circular A-122 is revised. In the interim, nonprofits may request EDA to approve an amendment to the grant terms to allow for purchases of capital equipment up to the lesser of the capitalization level established by the organization or \$5,000.⁴

Where appropriate, an analysis should be made of lease vs. purchase alternatives to determine which would be the most economical and practical procurement method. To be an allowable charge against RLF Income, a capital expenditure must be reasonable and essential for the operation and administration of an RLF program. Such charges must reflect an RLF's use of the equipment based upon an equitable allocation method.

Alternatively, grant recipients may be compensated for the use of equipment and other nonexpendable personal property through depreciation or use allowances subject to the provisions of the applicable OMB cost principles and the requirements herein.

Procurement transactions must be conducted in a manner which provides, to the maximum extent practical, open and free competition consistent with the procurement standards published at 15 CFR Part 24 or in OMB Circular A-110, as applicable. When acquired personal property is no longer needed for RLF activities or is disposed of for upgrading purposes, the RLF should be compensated for its share of the disposition proceeds. Procedures should be established and followed to provide for the highest possible return on property disposition.

Employee Salaries & Fringe: Allowable employee salaries and fringe includes the compensation for personal services including, but not limited to salaries, wages and fringe benefits. Payrolls must be supportable by time and attendance or equivalent records for individual employees. Salaries, wages and fringe benefits of employees chargeable to more than one grant program or other cost objective must be supportable by appropriate time distribution records, or a cost allocation plan, and distributed equitably in reasonable proportion to the benefits received. Compensation for employee services may include only those services performed during the grant period.

The salaries and expenses of the office of the Governor of a State or the chief executive of a political subdivisions thereof, are considered a cost of general government and are unallowable as an expense against RLF Income. The salary and expenses of an executive director of an EDA economic development district are allowable, provided such costs are allocated equitably relative to the benefits derived and the total costs charged against all grant programs does not exceed 100% of the cost item being allocated.

⁴ A request for a grant amendment would allow the use of current period RLF Income for current purchases (up to \$5,000 per unit) for equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets and which are essential for the operations and administration of the grantee's RLF program.

Compensation of members of an RLF loan board is discussed under "RLF Loan Board Compensation" below.

Leasing Transactions: The accounting and financial reporting treatment for lease agreements depend on whether the lease is classified as a capital lease or an operating lease.

An *operating lease* is a rental agreement requiring periodic payments for the use of an asset during a given period of time. An operating lease does not transfer a material equity in the property leased. The rent payments under an operating lease are allowable to the extent that the lease rate is reasonable when compared with area market conditions.

A *capital lease* is a rental agreement where the lessee acquires a substantial portion of the rights to an asset. In substance, a capital lease represents the purchase of the asset. Financial Accounting Standards Board (FASB) Statement Number 13, Accounting for Leases, as amended, provides guidelines for capital lease transactions. The periodic payments under a capital lease are reimbursable up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed. For example, reimbursable expenses could include depreciation or use allowances, maintenance, taxes and insurance, but excluding any unallowable costs.

For lease agreements between *related parties*, a determination must be made whether the related parties are required to prepare financial reports as a single reporting entity. If reporting as a single entity is required for financial reporting purposes, the assets of the organizations shall be combined, and any reimbursable expenses between the parties shall be computed based upon the cost of ownership. Specific financial statement disclosures pertaining to related parties are required by FASB 57, Related Party Disclosures.

Materials & Supplies: The costs of materials and supplies used during the accounting period for RLF-related activities are allowable expenses.

Outside Professional Services: The costs of RLF-related services necessary and appropriate to prudently administer and protect RLF assets are allowable. Examples of professional service providers include independent accountants, attorneys, appraisers and others who advise RLF operators and who are not officers or employees of the grantee organization or part of the grantee's department (if the grantee is a governmental entity). Professional service providers generally include those who provide loan packaging, underwriting, closing, monitoring, collections, recovery, sale, and/or protection of collateral services. Costs for professional services are eligible for reimbursement provided they are consistent with the purpose of the grant and allocated equitably based on the benefits derived. (See applicable OMB cost principles for additional information on professional services.)

RLF Loan Board Compensation: RLF loan board members, including advisory board members, who are not employees of the grant

recipient, are not eligible for compensation from RLF Income except as may be provided for in the reimbursement of travel costs consistent with the grant recipient's travel policies or in accordance with Federal Travel Regulations (see "Travel" below). Since RLF loan board members usually serve as representatives of their profession or employer organizations, compensation for other than travel-related expenses is not normally allowed. However, if there are exceptional circumstances that warrant consideration of a waiver, EDA approval may be requested.

Training: The costs of training materials, textbooks, fees charged by educational institutions, and travel costs for part-time education of employees to improve their skills and performance in the management, administration and operation of an RLF are allowable. Extended or full-time training is unallowable except when specifically authorized by EDA in advance. Travel costs to attend meetings and professional conferences are allowable when the primary purpose of the meeting or conference is the dissemination of technical information relating to the grant program.

Travel: The costs for transportation, lodging, subsistence and related items incurred by employees who are on travel status for official business related to RLF activities are allowable. Typical travel expenses might include the costs associated with visiting or meeting potential borrowers, servicing and monitoring loan projects, and meeting with bankers, accountants, attorneys and others affiliated with existing or potential RLF borrowers. It may also include the travel costs associated with marketing the RLF program or hiring RLF program personnel.

Travel costs expensed to RLF Income must be applied consistent with the travel

provisions established by the grant recipient in its regular operations and with the applicable OMB cost circular. Organizational travel provisions should be documented in a policy manual. In the absence of formal travel policies, the "Federal Travel Regulations" as published in the Code of Federal Regulations shall apply.

For additional information on allowable costs, refer to applicable OMB cost principles or contact the Office of Inspector General, U.S. Department of Commerce, or EDA's Regional or Headquarter's Office.

XV. Securitization

RLF grant recipients may, with EDA's prior written consent, further the objectives of the RLF through the sale of loans or Securitization⁵ of its loan portfolio. Auditors should determine whether Securitization has occurred, and if so, whether EDA consent was obtained.

XVI. Administrative Cost and Loan Records Retention

A. Administrative Cost Records

Records of administrative costs incurred for activities relating to the operation of the RLF shall be retained for three (3) years from the actual submission date of the last Semiannual or Annual Report which covers the period during which such costs were claimed, or for five (5) years from the date the costs were claimed, whichever is less. The retention period for records of equipment acquired in connection with the RLF shall be three (3) years from the date of disposition, replacement or transfer of the equipment.

B. Loan Records

Loan files and related documents and records shall be retained over the life of the loan and for a three (3) year period from the

date of final disposition of the loan. The date of final disposition of the loan is defined as the date of: (1) full payment of the principal, interest, fees, penalties and other fees or costs associated with the loan; or (2) final settlement or write-off of any unpaid amounts associated with the loan.

C. General

If any litigation, claim, negotiation, audit or other action involving the RLF or its assets has commenced before the expiration of the three-year or five-year period, all administrative and program records pertaining to such matters shall be retained until completion of the action and the resolution of all issues which arise from it, or until the end of the regular three-year or five-year period, whichever is later.

The record retention periods described in this section are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement. Any records retained for a period longer than so prescribed shall be available for inspection the same as records retained as prescribed. In any event, EDA will not question administrative costs claimed more than three (3) years old. However, if fraud is an issue, records must be retained until the issue is resolved.

Attachment 1—Circulars, Regulations & Other Documents For Audits of EDA RLF Grants

The OMB circulars and Federal regulations relevant to RLF grant recipients are listed in the table below for the different types of RLF grant recipients, i.e., governments, nonprofits or universities. Since these and the other documents listed on page ii are updated periodically, users must be careful to utilize the most current version available.

| Circular or regulation | Government | Nonprofit | University |
|------------------------------------|------------|-----------|------------|
| Administrative Requirements | | | |
| 15 CFR Part 24 | X | | |
| OMB Circular A-110 | | X | X |
| Cost Principles | | | |
| OMB Circular A-21 | | | X |
| OMB Circular A-87 | X | | |
| OMB Circular A-122 | | X | |
| Audit Requirements | | | |
| OMB Circular A-133 | X | X | X |

The regulations for EDA Section 209 (RLF) grants are found in Title 13 of the Code of Federal Regulations (CFR), Part 308. The Department of Commerce regulations implementing the OMB audit requirements are found in 15 CFR, Part 29.

Other duties and responsibilities of grant recipients are defined in the Special Terms and the Standard Terms and Conditions of each EDA RLF grant. Each RLF should have an RLF Plan which is included as part of the Special Terms and Conditions. The RLF Plan summarizes the RLF's lending strategy, the

loan standards and the operational procedures under which an RLF will be administered.

In addition, all RLF grant recipients are required to follow policies and procedures as prescribed by EDA. The most recent are included in the prevailing EDA RLF

⁵Securitization is a financing technique of securing the investment of new capital with the stream of income generated by one or more (usually a large group of) existing loans. For EDA's purposes, the term intentionally encompasses a wide variety

of techniques to access investor capital by securing those investments with the value of an existing RLF economic development loan portfolio. This deliberately broad definition covers a number of actual and potential schemes to access investor

capital that appear to deviate from the more traditional definition and yet provide flexible alternatives to RLF operators for raising additional funds.

Administrative Manual and in the RLF Standard Terms and Conditions. Both documents apply to all EDA RLF grants.

Additional Guidance for State and Local Governmental Entities Audits

American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide, Audits of State and Local Governmental Units, issued May 1, 1996.

AICPA Audit and Accounting Guide, The Not-for-Profit Organizations, issued June 1, 1996.

Government Auditing Standards, issued by the Comptroller General of the United States, 1994 revision (Yellow Book).

OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations, issued June 30, 1997.

OMB Provisional Compliance Supplement for Single Audits (expected to be issued in late 1997).

Additional Guidance for Non-Profit Entities Audits

AICPA, Statement of Position 92-9, Audits of Not-for-Profit Organizations Receiving Federal Awards, issued December 1992. (Note: Because of significant changes to Government Auditing Standards and OMB Circular A-133, much of this is outdated. AICPA is developing a new SOP to supersede SOP 92-9).

AICPA Statement of Auditing Standards No. 74, Compliance Auditing Applicable to Governmental Entities and Other Recipients of Governmental Financial Assistance, issued February 1995.

Attachment 2—Economic Development Administration Section 209 Revolving Loan Fund Grants (CFDA 11.307)

I. Program Objectives

Revolving loan fund (RLF) grants for business development assistance are available under Section 209 of the Public Works and Economic Development Act of 1965 (PWEDA). These grants are administered by the Economic Development Administration (EDA) to help communities adjust to sudden and severe economic dislocations and long-term economic deterioration. RLF grants provide capital to establish loan pools which finance business activities and stimulate economic development in accordance with local development strategies. RLFs typically provide financing that is not otherwise available. Loan repayments plus interest and other income replenish RLF capital to provide a revolving resource for additional loans.

II. Program Procedures

RLF grants are made to EDA designated economic development districts established under Title IV of PWEDA, Indian tribes, states, cities or other political subdivisions, consortia of political subdivisions, Community Development Corporations defined in 42 U.S.C. 9802, nonprofit organizations determined to be representative of a redevelopment area, and certain specified governments. Priority consideration for RLF funding is given to those proposals

which have the greatest potential to benefit areas experiencing or threatened with substantial economic distress.

III. Compliance Requirements and Suggested Audit Procedures

A. Types of Services Allowed or Unallowed Compliance Requirement

Allowed Services: RLF grant and matching funds may be used only for purposes specified in the grant budget and grant agreement. Eligible uses normally include disbursements for RLF loans and the audit costs of RLF activities. Unlike grant and matching funds, RLF Income¹ may be used for RLF loans as well as for eligible RLF administrative expenses (see Section C. Earmarking below for additional details).

Suggested Audit Procedure

Review grant budget and grant agreement, and determine whether RLF funds were used for specified purposes.

B. Eligibility

Compliance Requirement

Eligibility: Eligibility for RLF assistance is based upon the following: (1) the activity financed being located in an eligible lending area (usually defined in the Special Terms and Conditions of the grant, as may be amended); and (2) the borrower being unable to obtain credit in the private capital market on terms and conditions which would permit the completion and/or successful operation of the project to be financed.

Ineligible Recipients: The RLF grant recipient cannot make a loan to itself, to related parties, or to entities that would violate the conflict of interest provisions of the grant agreement (see Section D.16. of the Standard Terms and Conditions).

Suggested Audit Procedure

Review the Special Terms and Conditions and any amendments thereto, and scan the current addresses of selected RLF borrowers to determine whether borrowers are located within the eligible lending area.

On selected borrowers, test for borrower's inability to obtain private credit by verifying the existence of a loan write-up² in the grant recipient's files. If there is a potential violation, check the RLF Administrative Manual, Section IV.B.3., for exceptions; this Section also discusses the loan write-up. No other tests are necessary.

Review the conflict of interest provisions in the Standard Terms and Conditions, review any procedures that the grant recipient may have to avoid conflicts of interest, scan loan documentation, and determine whether RLF loans were made to ineligible recipients as defined above.

¹ RLF Income includes the interest earned on loans, interest earned on accounts holding RLF funds not needed for immediate lending, loan fees received from borrowers, and other income generated from RLF activities.

² A loan write-up is a written record prepared by the RLF administrator which discusses, at a minimum, the need for providing RLF financing to a borrower. It may be supported by third party supplemental evidence as applicable and obtainable.

C. Matching, Level of Effort, and/or Earmarking Requirements

Matching

Compliance Requirements

A matching share of nonfederal funds required is specified in the grant agreement. Matching funds must be loaned either before or proportionately with EDA grant funds. When loans are repaid, both the matching and the EDA funds must remain in the control of the grant recipient (or subrecipient) for the duration of the RLF.

Suggested Audit Procedures

Determine through the grant documents and recipient accounting records that required levels of matching were met.

Determine that the funds used for matching have been retained in the RLF.

Level of Effort (Capital Utilization)

Compliance Requirements

During the revolving phase³ of an RLF grant, the grant recipient is expected to manage its RLF so at least 75 percent of the RLF's capital is in use. The size of the RLF may justify a variation from this standard percentage. Variations require EDA approval.

Suggested Audit Procedures

Determine that the percentage of outstanding loan dollars to total RLF capital complies with the prescribed usage level in the revolving phase. If the resultant percentage does not comply with the requirement, determine the duration or number of consecutive reporting periods of noncompliance. (See Section X., Capital Utilization Standard, of the EDA RLF Administrative Manual for details, and note that the reporting periods end on September 30 and March 31 of each year.)

Earmarking

Compliance Requirements

Pursuant to the prevailing EDA RLF Administrative Manual, RLF Income⁴ earned in a period may be used for lending or for RLF administrative expenses of the same period only. Any RLF Income remaining at the end of a period must be permanently added to the RLF's capital base to be used for lending. Any exceptions require EDA approval.

(Note: Prior to March 15, 1993, RLF Income was not required to be added to the RLF capital base at the end of a period. The accounting period is selected by the grant recipient and ends on either its fiscal year end or the Federal fiscal year end. Repayments of loan principal may be used only for re-lending.)

Suggested Audit Procedures

Verify that any RLF Income earned within the period has been used for such period's RLF administrative expenses, for loans, or that any unexpended RLF Income earned in the period has been added to the RLF capital base.

³ The revolving phase begins after all available grant and matching funds have been initially disbursed.

⁴ Defined in Footnote 1, Page ii.

D. Special Reporting Requirements**Compliance Requirements**

Grant recipients electing to use RLF Income to cover all or part of an RLF's administrative expense must annually complete an "RLF Income and Expense Statement." (If the grant recipient uses more than fifty percent or more than \$100,000 of a period's RLF Income for RLF administrative expenses, the statement is submitted to EDA within 90 days of the period ending date.)

Suggested Audit Procedures

Review the procedures for preparing the report (See Section VII. of EDA RLF Administrative Manual) and evaluate for adequacy.

E. Special Tests and Provisions**Compliance Requirements**

RLF grant recipients are expected to follow lending practices generally accepted as prudent for public lending programs.

Suggested Audit Procedures

Review the grant recipient's RLF Plan for loan disbursement and collection procedures. Determine whether these procedures are being followed.

During the Disbursement Phase⁵ of an RLF grant, a grant recipient must demonstrate there is sufficient RLF loan activity to draw grant funds within the approved period allotted. This usually is in accordance with the following schedule: 50% of grant and matching funds disbursed within 18 months of the grant award, 80% within two (2) years, and 100% within three (3) years. Any time extensions require EDA's approval. By law, grant funds remain available for disbursement by EDA only until September 30 of the fifth year after the fiscal year of the grant award.

F. Preservation of Government's Interest in Assets**Compliance Requirements**

In instances where RLF grant recipients elect to Securitize their loan portfolios, EDA's prior written consent must be obtained and the value of the Federal Government's reversionary interest in assets retained.

Suggested Audit Procedures

Review grant recipients records where Securitization may have occurred and determine whether grantee obtained EDA's written consent as required.

PARTS 309–313—[RESERVED]**PART 314—PROPERTY****Subpart A—In General****Sec.**

- 314.1 Federal interest, applicability.
- 314.2 Definitions.
- 314.3 Use of property.
- 314.4 Unauthorized use.
- 314.5 Federal share.
- 314.6 Encumbrances.

⁵The Disbursement Phase is defined as the approved time period for drawing all EDA grant funds.

Subpart B—Real Property

- 314.7 Title.
- 314.8 Recorded statement.

Subpart C—Personal Property

- 314.9 Recorded statement—title.
- 314.10 Revolving loan funds.

Subpart D—Release of EDA's Property Interest

- 314.11 Procedures for release of EDA's property interest.

Authority: 42 U.S.C. 3211; 19 U.S.C. 2341–2355; 42 U.S.C. 6701; 42 U.S.C. 184; Department of Commerce Organization Order 10–4.

Subpart A—In General**§ 314.1 Federal interest, applicability.**

(a) Property that is acquired or improved with EDA grant assistance shall be held in trust by the recipient for the benefit of the purposes of the project under which the property was acquired or improved. Limited exceptions to this requirement are listed in § 314.7(c).

(b) During the estimated useful life of the project, EDA retains an undivided equitable reversionary interest in property acquired or improved with EDA grant assistance, except for the exceptions listed in § 314.7(c).

(c) EDA may approve the substitution of an eligible entity for a recipient. The original recipient remains responsible for the period it was the recipient, and the successor recipient holds the project property with the responsibilities of an original recipient under the award.

§ 314.2 Definitions.

As used in this part 314 of this chapter:

Dispose includes sell, lease, abandon, or use for a purpose or purposes not authorized under the grant award or this part.

Estimated useful life means that period of years, determined by EDA as the expected lifespan of the project.

Owner includes fee owner, transferee, lessee, or optionee of real property upon which project facilities or improvements are or will be located, or real property improved under a project which has as its purpose that the property be sold or leased.

Personal Property means all property other than real property.

Project means the activity and property acquired or improved for which a grant is awarded. When property is used in other programs as provided in § 314.3(b), "project" includes such programs.

Property includes all forms of property, real, personal (tangible and intangible), and mixed.

Real property means any land, improved land, structures,

appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land which is improved by the construction of such project facilities as roads, sewers, and water lines which are not situated directly on the land but which contribute to the value of such land as a specific part of the project purpose.

Recipient includes any recipient of grant assistance under the Public Works and Economic Development Act of 1965, as amended, prior to or as amended by Public Law 105–393, or under Title II, Chapters 3 and 5 of the Trade Act of 1974, Title I of the Public Works Employment Act of 1976, the Public Works Employment Act of 1977, or the Community Emergency Drought Relief Act of 1977, and any EDA-approved successor to such recipient.

§ 314.3 Use of property.

(a) The recipient or owner must use any property acquired or improved in whole or in part with grant assistance only for the authorized purpose of the project and such property must not be leased, sold, disposed of or encumbered without the written authorization of EDA.

(b) However, in the event that EDA and the recipient determine that property acquired or improved in whole or in part with grant assistance is no longer needed for the original grant purpose, it may be used in other Federal grant programs, or programs that have purposes consistent with those authorized for support by EDA, but only if EDA approves such use.

(c) When the authorized purpose of the EDA grant is to develop real property to be leased or sold, as determined by EDA, such sale or lease is permitted provided it is for adequate consideration and the sale is consistent with the authorized purpose of the grant and with applicable EDA requirements concerning, but not limited to, nondiscrimination and environmental compliance. The term "adequate consideration" means consideration that is fair and reasonable under the circumstances of the sale or lease, and may include money, services, property exchanges, contractual commitments, or acts of forbearance.

(d) When acquiring replacement personal property of equal or greater value, the recipient may, with EDA's approval, trade-in the property originally acquired or sell the original property and use the proceeds in the acquisition of the replacement property, provided that the replacement property shall be used for the project and be

subject to the same requirements as the original property.

§ 314.4 Unauthorized use.

(a) Except as provided in §§ 314.3(b), (c) or (d), whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of, or no longer used for the authorized purpose of the project, the Federal Government must be compensated by the recipient for the Federal share of the value of the property; provided that for equipment and supplies, the standards of the Uniform Administrative Requirements for Grants at 15 CFR parts 14 and 24 or any supplements or successors thereto, as applicable, shall apply.

(b) If property is disposed of or encumbered without EDA approval, EDA may assert its interest in the property to recover the Federal share of the value of the property for the Federal Government. EDA may pursue its rights under both paragraphs (a) and (b) of this section to recover the Federal share, plus costs and interest.

§ 314.5 Federal share.

(a) For purposes of this part, the Federal share of the value of property is that percentage of the current fair market value of the property attributable to the EDA participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale). The Federal share excludes that value of the property attributable to acquisition or improvements before or after EDA's participation in the project and not included in project costs.

(b) Where the recipient's interest in property is a leasehold for a term of years less than the depreciable remaining life of the property, that factor will be considered in determining the percentage of the Federal share.

(c) If property is transferred from the recipient to another eligible entity, as provided in § 314.1(c), the Federal Government must be compensated the Federal share of any money or money equivalent paid by or on behalf of the successor recipient to or for the benefit of the original recipient, provided that EDA may first permit the recovery by the original recipient of an amount not exceeding its investment in the project nor exceeding that percentage of the value of the property that is not attributable to the EDA participation in the project.

(d) When the Federal Government is fully compensated for the Federal share of the value of property acquired or

improved in whole or in part with grant assistance, EDA has no further interest in the ownership, use, or disposition of the property.

§ 314.6 Encumbrances.

(a) Except as provided in § 314.6(c), recipient-owned property acquired or improved in whole or in part with grant assistance may not be used to secure a mortgage or deed of trust or otherwise be used as collateral or encumbered except to secure a grant or loan made by a State or Federal agency or other public body participating in the same project. This provision does not prevent projects from being developed on previously encumbered property, if the requirements of § 314.7(b) are met.

(b) Encumbering project property other than as permitted in this section is an unauthorized use of the property requiring compensation to the Federal Government as provided in §§ 314.4 and 314.5.

(c) EDA may waive the provisions of § 314.6(a) for good cause when EDA determines all of the following:

(1) All proceeds from the grant/loan to be secured by the encumbrance on the property shall be available only to the recipient, and all proceeds from such secured grant/loan shall be used only on the project for which the EDA grant was awarded or on related activities of which the project is an essential part;

(2) The grantor/lender would not provide funds without the security of a lien on the project property; and

(3) There is a reasonable expectation that the borrower/recipient will not default on its obligation.

(d) EDA may waive the provisions of § 314.6(a) as to an encumbrance on property which is acquired and/or improved by an EDA grant when EDA determines that the encumbrance arises solely from the requirements of a pre-existing water or sewer facility or other utility encumbrance which by its terms extends to additional property connected to such facilities.

Subpart B—Real Property

§ 314.7 Title.

(a) The recipient must hold title to the real property required for a project, except in limited cases as provided in paragraph 314.7(c) of this section.

Except in those limited cases, the recipient must furnish evidence, satisfactory in form and substance to EDA, that title to real property required for a project (other than property of the United States) is vested in the recipient, and that such easements, rights-of-way, State permits, or long-term leases as are required for the project have been or

will be obtained by the recipient within an acceptable time as determined by EDA.

(b)(1) The recipient must disclose to EDA all:

- (i) Liens,
- (ii) Mortgages,
- (iii) Other encumbrances,
- (iv) Reservations,
- (v) Reversionary interests, or
- (vi) Other restrictions on title or the recipient's interest in the property.

(2) No such encumbrance or restriction will be acceptable if, as determined by EDA, the encumbrance or restriction will interfere with the construction, use, operation or maintenance of the project during its estimated useful life.

(c) EDA may determine that a long-term leasehold interest for a period not less than the estimated useful life of the project, or an agreement for the recipient to purchase the property, will be acceptable, but only if fee title is not obtainable and the lease or purchase agreement provisions adequately safeguard the Federal Government's interest in the project. Also, EDA may permit the following exceptions to the requirement that the recipient hold title to the real property required for a project.

(1) When a project includes construction within a railroad's right-of-way or over a railroad crossing, it may be 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 this is a minor but essential component of the project.

(2) When a project includes construction on a State-owned or local government-owned highway, it may be acceptable for the State or local government to own, operate and maintain that portion of the project, if required by the State or local government, provided that this is a minor but essential component of the project, the construction is completed in accordance with EDA requirements, and the State or local government provides assurances to EDA:

(i) That the State or local government will operate and maintain the improvements for the useful life of the project as determined by EDA;

(ii) That the State or local government will not sell the improvements for the useful life of the project, as determined by EDA; and

(iii) That the use of the property will be consistent with the authorized purpose of the project.

(3) When the authorized purpose of the project is to construct facilities to

serve industrial or commercial parks or sites owned by the recipient for sale or lease to private parties, such sale or lease is permitted so long as EDA requirements continue to be met. EDA may require evidence that the recipient has title to the park or site prior to such sale or lease.

(4) When the authorized purpose of the project is to construct facilities to serve privately owned industrial or commercial parks or sites for sale or lease, such ownership, sale or lease is permitted so long as EDA requirements continue to be met. EDA may require evidence that the private party has title to the park or site prior to such sale or lease, and may condition the award of project assistance upon assurances by the private party relating to the sale or lease that EDA determines are necessary to assure consistency with the project purposes.

§ 314.8 Recorded statement.

(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 EDA's interest in the property acquired or improved in whole or in part with the funds made available under the award. The statement shall specify in years the estimated useful life of the project and shall include, but not be limited to disposition, encumbrance, and compensation of Federal share requirements of this part 314. The statement shall be satisfactory in form and substance to EDA.

(b) The statement of EDA's interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with local 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.

Subpart C—Personal Property

§ 314.9 Recorded statement—Title.

For all projects which EDA determines involve the acquisition or improvement of significant items of tangible personal property, including but not limited to ships, machinery, equipment, removable fixtures or structural components of buildings, the recipient shall execute a security interest or other statement of EDA's interest in the property, acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with local law,

with continuances refiled as appropriate. Whether or not a statement is required by EDA to be recorded, the recipient must hold title to the personal property acquired or improved as part of the project, except as otherwise provided in this part.

§ 314.10 Revolving loan funds.

(a) With EDA's consent, recipients holding revolving loan fund (RLF) property (including but not limited to money, notes, and security interests) may sell such property or encumber such property as part of a securitization of the RLF portfolio. The net transaction proceeds must be used for additional loans as part of the RLF project;

(b) When a recipient determines that it is no longer necessary or desirable to operate an RLF, the RLF may be terminated; provided that, unless otherwise stated in the award, the recipient must compensate the Federal Government for the Federal share of the value of the RLF property. The Federal share is that percentage of the capitalized RLF contributed by EDA applied to all RLF property, including the present value of all outstanding loans. However, with EDA's prior approval, upon termination the recipient may use for other economic development purposes that portion of such RLF property that EDA determines is attributable to the payment of interest.

Subpart D—Release of EDA's Property Interest

§ 314.11 Procedures for Release of EDA's Property Interest.

(a) Before the expiration of the estimated useful life of the grant project, EDA may release, in whole or in part, any real property interest, or tangible personal property interest, in connection with a grant after the date that is 20 years after the date on which the grant was awarded. (The term "tangible personal property" excludes debt instruments, currency, and accounts in financial institutions.) Except as provided in paragraph (b) of this section, such release is not automatic; it requires EDA's approval, which will not be withheld except for good cause. The release may be unconditional, or may be conditioned upon some activity of the recipient intended to be pursued as a consequence of the release.

(b) EDA hereby releases all of its real and tangible personal property interests in projects awarded under the Public Works Employment Act of 1976 (Pub. L. 94-369) and under that act as amended by the Public Works Employment Act of 1977 (Pub. L. 95-28).

(c)(1) Notwithstanding §§ 314.11(a) and (b), in no event, either before or after the release of EDA's interest, may project property be used:

(i) In violation of the nondiscrimination requirements of the project award, or

(ii) For religious purposes prohibited by the holding of the U.S. Supreme Court in *Tilton v. Richardson*, 403 U.S. 672 (1971).

(2) Such use voids the release, and is an unauthorized use of the property, as provided in § 314.4.

PART 315—CERTIFICATION AND ADJUSTMENT ASSISTANCE FOR FIRMS

Subpart A—General Provisions

Sec.

- 315.1 Purpose and scope.
- 315.2 Definitions.
- 315.3 Confidential business information.
- 315.4 Eligible applicants.
- 315.5 Selection process.
- 315.6 Evaluation criteria.
- 315.7 Award requirements.

Subpart B—Trade Adjustment Assistance Centers

- 315.8 Purpose and scope.

Subpart C—Certification of Firms

- 315.9 Certification requirements.
- 315.10 Processing petitions for certification.
- 315.11 Hearings, appeals and final determinations.
- 315.12 Termination of certification and procedure.
- 315.13 Loss of certification benefits.

Subpart D—Assistance to Industries

- 315.14 Assistance to firms in import-impacted industries.

Authority: 42 U.S.C. 3211; 19 U.S.C. 2391, *et seq.*; 42 U.S.C. 5141; E.O. 12372; Department of Commerce Organization Order 10-4.

Subpart A—General provisions

§ 315.1 Purpose and scope.

The regulations in this part implement certain changes to responsibilities of the Secretary of Commerce under Chapter 3 of Title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*) (Trade Act), concerning adjustment assistance for firms. The statutory authority and responsibilities of the Secretary of Commerce relating to adjustment assistance are delegated to EDA. EDA has the duties of certifying firms as eligible to apply for adjustment assistance, providing technical adjustment assistance to eligible recipients, and providing assistance to organizations representing trade injured industries.

§ 315.2 Definitions.

As used in this part 315 of this chapter:

Adjustment assistance is technical assistance provided to firms or industries under Chapter 3 of Title II of the Trade Act.

Adjustment proposal means a certified firm's plan for improving its economic situation.

Certified firm means a firm which has been determined by EDA to be eligible to apply for adjustment assistance.

Confidential business information means information submitted to EDA or TAACs by firms that concerns or relates to trade secrets for commercial or financial purposes which is exempt from public disclosure under 5 U.S.C. 552(b)(4), 5 U.S.C. 552b(c)(4) and 15 CFR part 4.

Decreased absolutely means a firm's sales or production has declined:

(1) Irrespective of industry or market fluctuations; and

(2) Relative only to the previous performance of the firm.

Directly competitive means:

(1) Articles which are substantially equivalent for commercial purposes, i.e., are adapted to the same function or use and are essentially interchangeable; and

(2) Oil or natural gas (exploration, drilling or otherwise produced).

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 including fishing, agricultural entities and those which explore, drill or otherwise produce oil or natural gas. When a firm owns or controls other firms as described below, for purposes of receiving benefits under this part, 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. Such other firms include:

- (1) Predecessor;
- (2) Successor;
- (3) Affiliate; or
- (4) Subsidiary.

A group of workers threatened with total or partial separation means there is reasonable evidence that such total or partial separation is imminent.

Like articles means articles which are substantially identical in their intrinsic characteristics.

Partial separation means either:

(1) A reduction in an employee's work hours to 80 percent or less of the employee's average weekly hours during

the year of such reductions as compared to the preceding year; or

(2) A reduction in the employee's weekly wage to 80 percent or less of his/her average weekly wage during the year of such reduction as compared to the preceding year.

Person means individual, organization or group.

The record means:

(1) A petition for certification of eligibility to qualify for adjustment assistance;

(2) Any supporting information submitted by the petitioner;

(3) Report of the EDA investigation in regard to the petition; and

(4) Any information developed during the investigation or in connection with any public hearing held on the petition.

Recipient means a firm, Trade Adjustment Assistance Center or other party receiving adjustment assistance or through which adjustment assistance is provided under the Trade Act.

A significant number or proportion of workers means 5 percent of the firm's work force or 50 workers, whichever is less. An individual farmer is considered a significant number or proportion of workers.

Substantial interest means a direct, material, economic interest in the certification or noncertification of the petitioner.

Technical Assistance means assistance provided to firms or industries under Chapter 3 of Title II of the Trade Act.

A totally separated worker means an employee who has been laid off or whose employment has been terminated by his/her employer for lack of work.

§ 315.3 Confidential business information.

EDA will follow the procedures set forth in 15 CFR § 4.7, and submitters should so designate any information they believe confidential.

§ 315.4 Eligible applicants.

(a) Trade Adjustment Assistance Centers (TAACs) are eligible applicants. A TAAC can be:

- (1) A university affiliate;
- (2) State or local government affiliate;
- (3) Non-profit organization.

(b) Firms;

(c) 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 the following:

- (1) Existing agencies;
- (2) Private individuals;
- (3) Firms;
- (4) Universities;

- (5) Institutions;
- (6) Associations;
- (7) Unions; or
- (8) Other non-profit industry organizations.

§ 315.5 Selection process.

(a) TAACs are selected in accordance with the following:

(1) Currently funded TAACs are invited by EDA 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 assure funding by EDA; and

(2) New TAACs will be invited to submit proposals, and if they are acceptable, EDA will invite an application on a form approved by OMB. An application will be accompanied by a narrative scope of work, proposed budget and such other information as requested by EDA. Acceptance of an application does not assure funding by EDA.

(b) Firms are selected in accordance with the following:

(1) Firms may apply for certification generally through a TAAC by filling out a petition for certification. The TAAC will provide technical assistance to firms wishing to fill out such petitions;

(2) Once firms are certified in accordance with the procedures described in §§ 315.9 and 315.10, an adjustment proposal is usually prepared with technical assistance from a party independent of the firm, usually the TAAC, and submitted to EDA;

(3) Certified firms which have submitted acceptable adjustment proposals within the time limits described in § 315.13 below, may begin implementation of such proposal, generally through the TAAC and often with Technical Assistance from the TAAC, by submitting a request to the TAAC to provide assistance in implementing an accepted adjustment proposal; and

(4) EDA determines whether or not to provide assistance for adjustment proposals based upon § 315.6(c)(2).

(c) Organizations representing trade injured industries must meet with an EDA representative to discuss the industry problems, opportunities and assistance needs, and if invited by EDA may then submit an application as

approved by OMB, as well as a scope of work and proposed budget.

§ 315.6 Evaluation criteria.

(a) Currently funded TAACs are generally evaluated based on the following:

(1) How well they have performed under cooperative agreements with EDA and if they are in compliance with the terms and conditions of such cooperative agreements;

(2) Proposed scope of work, budget and application or amended application; and

(3) The availability of funds.

(b) New TAACs are generally evaluated on the following:

(1) Demonstrates competence in administering business assistance programs;

(2) Background and experience of staff;

(3) Proposed scope of work, budget and application; and

(4) The availability of funding.

(c) Firms are generally evaluated based on the following:

(1) For certification, firms' petitions are selected strictly on the basis of conformance with requirements set forth in § 315.9 below;

(2) An adjustment proposal is evaluated on the basis of the following:

(i) The proposal must be submitted to EDA within 2 years after the date of the certification of the firm; and

(ii) The adjustment proposal must include a description of any technical assistance requested to implement such proposal including financial and other supporting documentation as EDA determines is necessary, based upon either:

(A) An analysis of the firm's problems, strengths and weaknesses and an assessment of its prospects for recovery; or

(B) If EDA so determines, an acceptable adjustment proposal can be prepared on the basis of other available information.

(iii) The adjustment proposal must be evaluated to determine that it:

(A) Is reasonably calculated to contribute materially to the economic adjustment of the firm, i.e., that such proposal will be a constructive aid to the firm in establishing a competitive position in the same or a different industry;

(B) Gives adequate consideration to the interests of a sufficient number of separated workers of the firm, by providing for example that the firm will:

(1) Give a rehiring preference to such workers;

(2) Make efforts to find new work for a number of such workers; and

(3) Assist such workers in obtaining benefits under available programs.

(C) Demonstrates that the firm will make all reasonable efforts to use its own resources for economic development, though under certain circumstances, resources of related firms or major stockholders will also be considered.

(d) Organizations representing trade injured industries must demonstrate that the industry is injured by increased imports and that the activities to be funded will yield some short-term actions that the industry itself (and individual firms) can and will take toward the restoration of the industry's international competitiveness.

(1) The emphasis is on practical results that can be implemented in the near term, and long-term research and development activities are given low priority.

(2) It is also expected that the industry will continue activities on its own without the need for continued Federal assistance.

§ 315.7 Award requirements.

(a) Award periods are as follows:

(1) TAACs are generally funded for 12 months;

(2) Firms are generally provided assistance over a 2-year period; and

(3) Organizations representing trade injured industries are generally funded for 12 months.

(b) Matching requirements are as follows:

(1) There are no matching requirements for certification assistance provided by the TAACs to firms or for administrative expenses for the TAACs;

(2) All adjustment proposals and implementation assistance must include not less than 25% nonfederal match, provided to the extent practicable, by firms being assisted; and

(3) Contributions of at least 50% of the total project cash cost, in addition to appropriate in kind contributions, are expected from organizations representing trade injured industries.

Subpart B—Trade Adjustment Assistance Centers

§ 315.8 Purpose and scope.

(a) Trade Adjustment Assistance Centers (TAACs) are available to assist firms in all fifty states, the District of Columbia and the Commonwealth of Puerto Rico in obtaining adjustment assistance. TAACs provide technical assistance in accordance with this subpart either through their own staffs or by arrangements with outside consultants. Information concerning TAACs serving particular areas can be

obtained from EDA. See the annual FY NOFA for the appropriate point of contact and address.

(b) Prior to submitting a request for technical assistance to EDA, a firm should determine the extent to which the required technical assistance can be provided through a TAAC. EDA will provide technical assistance through TAACs whenever EDA determines that such assistance can be provided most effectively in this manner. Requests for technical assistance will normally be made through TAACs.

(c) TAACs generally provide technical assistance to a firm by providing the following:

(1) Assistance to a firm in preparing its petition for certification;

(2) Assistance to a certified firm in diagnosing its strengths and weaknesses and developing an adjustment proposal for the firm; and

(3) Assistance to a certified firm in the implementation of the adjustment proposal for the firm.

Subpart C—Certification of Firms

§ 315.9 Certification requirements.

A firm will be certified eligible to apply for adjustment assistance based upon the petition for certification if EDA determines, under section 251(c) of the Trade Act, that:

(a) A significant number or proportion of workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated;

(b) Either sales or production, or both of the firm have decreased absolutely; or sales or production, or both of any article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely; and

(c) Increases of imports (absolute or relative to domestic production) of articles like or directly competitive with articles produced by such firm contributed importantly to such total or partial separation or threat thereof, and to such decline in sales or production; provided that imports will not be considered to have contributed importantly if other factors were so dominant, acting singly or in combination, that the worker separation or threat thereof, or decline in sales or production would have been essentially the same irrespective of the influence of imports.

§ 315.10 Processing petitions for certification.

(a) Firms are encouraged to consult with a TAAC or EDA for guidance and

assistance in the preparation of their petitions for certification.

(b) A firm seeking certification shall complete a petition (OMB Control Number 0610-0091) in the form prescribed by EDA with the following information about such firm:

(1) Identification and description of the firm, including legal form of organization, economic history, major ownership interests, officers, directors, management, parent company, subsidiaries or affiliates, and production and sales facilities;

(2) Description of goods and services produced and sold;

(3) Description of imported articles like or directly competitive with those produced;

(4) Data on its sales, production and employment for the two most recent years;

(5) Copies of its audited financial statements, or if not available, unaudited financial statements and Federal income tax returns for the two most recent years;

(6) Copies of unemployment insurance reports for the two most recent years;

(7) Information concerning its major customers and their purchases; and

(8) Such other information as EDA may consider material.

(c) EDA shall determine whether the petition has been properly prepared and can be accepted. Immediately thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the petitioner that the petition has not been accepted, but may be resubmitted at any time without prejudice when the specified deficiencies have been corrected and the resubmission will be treated as a new petition.

(d) A notice of acceptance of a petition shall be published in the **Federal Register**.

(e) An investigation shall be initiated by EDA to determine whether the petitioner meets requirements set forth in section 251(c) of the Trade Act and § 315.9 above. The investigation can be terminated at any time for failure to meet such requirements. A report of this investigation shall become part of the record upon which a determination of the petitioner's eligibility to apply for adjustment assistance shall be made.

(f) A petitioner may withdraw a petition for certification if a request for withdrawal is received by EDA before a certification determination or denial is made. Such firm may submit a new petition at any time thereafter in accordance with the requirements of this section and § 315.9.

(g) Following acceptance, EDA shall decide what action to take on petitions for certification as follows:

(1) Make a determination based on the record as soon as possible after all material has been submitted. In no event may the period exceed 60 days from the date on which the petition was accepted; and

(2) Either certify the petitioner eligible to apply for adjustment assistance or deny the petition, and in either event EDA shall promptly give notice of the action in writing to the petitioner. A notice to the petitioner or any parties requesting notice as specified in § 315.10(d) of a denial of a petition shall specify the reasons upon which the denial is based. If a petition is denied, the petitioner shall not be entitled to resubmit its petition within one year from the date of the denial. At the time of the denial of a petition EDA may waive the 1-year limitation for good cause.

§ 315.11 Hearings, appeals and final determinations.

(a) Any petitioner may appeal to EDA from a denial of certification provided that the appeal is received by EDA in writing by personal delivery or by registered mail within 60 days from the date of notice of denial under § 315.10(g). The appeal shall state the grounds on which the appeal is based, including a concise statement of the supporting facts and law. The decision of EDA on the appeal shall be the final determination within the Department of Commerce. In the absence of an appeal by the petitioner under this paragraph, such final determination shall be determined under § 315.10(g).

(b) A firm, its representative or any other interested domestic party aggrieved by a final determination under paragraph (a) of this section may, within 60 days after notice of such determination, begin a civil action in the United States Court of International Trade for review of such determination in accordance with section 284 of the Trade Act (19 U.S.C. 2395).

(c) EDA will hold a public hearing on an accepted petition not later than 10 days after the date of publication of the Notice of Acceptance in the **Federal Register** if requested by either the petitioner or any other person found by EDA to have a substantial interest in the proceedings, under procedures, as follows:

(1) The petitioner and other interested persons shall have an opportunity to be present, to produce evidence, and to be heard;

(2) A request for public hearing must be delivered by hand or by registered

mail to EDA. A request by a person other than the petitioner shall contain:

(i) The name, address, and telephone number of the person requesting the hearing; and

(ii) A complete statement of the relationship of the person requesting the hearing to the petitioner and the subject matter of the petition, and a statement of the nature of its interest in the proceedings.

(3) If EDA determines that the requesting party does not have a substantial interest in the proceedings, a written notice of denial shall be sent to the requesting party. The notice shall specify the reasons for the denial;

(4) 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 hearing;

(5) EDA shall appoint the presiding officer of the hearing who shall determine all procedural questions;

(6) Procedures for requests to appear are as follows:

(i) Within 5 days after publication of the Notice of Public Hearing in the **Federal Register**, each party wishing to be heard must file a request to appear with EDA. Such request may be filed by:

(A) The party requesting such hearing;

(B) Any other party with substantial interest; or

(C) Any other party demonstrating to the satisfaction of the presiding officer that it should be allowed to be heard.

(ii) The party filing the request shall submit the names of the witnesses and a summary of the evidence it wishes to present; and

(iii) Such requests to appear may be approved as deemed appropriate by the presiding officer.

(7) Witnesses will testify in the order and for the time designated by the presiding officer, except that the petitioner shall have the opportunity to make its presentation first. After testifying, a witness may be questioned by the presiding officer or his/her designee. The presiding officer may allow any person who has been granted permission to appear to question the witnesses for the purpose of assisting him/her in obtaining relevant and material facts on the subject matter of the hearing;

(8) The presiding officer may exclude evidence which s/he deems improper or irrelevant. Formal rules of evidence shall not be applicable. Documentary material must be of a size consistent with ease of handling, transportation, and filing. Large exhibits may be used during the hearing, but copies of such exhibits must be provided in reduced size for submission as evidence. Two

copies of all documentary evidence must be furnished to the presiding officer during the hearing;

(9) Briefs may be presented to the presiding officer by parties who have entered an appearance. Three copies of such briefs shall be filed with the presiding officer within 10 days of the completion of the hearing; and

(10) Procedures for transcripts are as follows:

(i) All hearings will be transcribed. Persons interested in transcripts of the hearings may inspect them at the U.S. Department of Commerce in Washington, D.C., or purchase copies as provided in 15 CFR part 4, Public Information; and

(ii) Confidential business information as determined by EDA shall not be a part of the transcripts. Any confidential business information may be submitted directly to the presiding officer prior to the hearing. Such information shall be labeled Confidential Business Information. For the purpose of the public record, a brief description of the nature of the information shall be submitted to the presiding officer during the hearing.

§ 315.12 Termination of certification and procedure.

(a) 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 Notice.

(b) EDA shall immediately notify the petitioner and shall state the reasons for such termination.

§ 315.13 Loss of certification benefits.

A firm may fail to obtain benefits of certification, regardless of whether its certification is terminated for any of the following reasons:

(a) Failure to submit an acceptable adjustment proposal within 2 years after date of certification. While approval of an adjustment proposal may occur after the expiration of such 2-year period, an acceptable adjustment proposal must be submitted before such expiration;

(b) Failure to submit documentation necessary to start implementation or modify its request for adjustment assistance consistent with its adjustment proposal within 6 months after approval of the adjustment proposal and 2 years have elapsed since the date of certification. If the firm anticipates that a longer period will be required to submit documentation, such longer period should be indicated in its

adjustment proposal. If the firm becomes unable to submit its documentation within the allowed time, it should notify EDA in writing of the reasons for the delay and submit a new schedule. EDA has the discretion to accept or refuse a new schedule;

(c) If the firm's request for adjustment assistance has been denied, the time period allowed for the submission of any documentation in support of such request has expired, and 2 years have elapsed since the date of certification; or

(d) Failure to diligently pursue an approved adjustment proposal, and 2 years have elapsed since the date of certification.

Subpart D—Assistance to Industries

§ 315.14 Assistance to firms in import-impacted industries.

(a) Whenever the International Trade Commission makes an affirmative finding under section 202(B) of the Trade Act that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, EDA shall provide to the firms in such industry, assistance in the preparation and processing of petitions and applications for benefits under programs which may facilitate the orderly adjustment to import competition of such firms.

(b) EDA may provide technical assistance, on such terms and conditions as EDA deems appropriate for the establishment of industry wide programs for new product development, new process development, export development or other uses consistent with the purposes of this part.

(c) Expenditures for technical assistance under this section may be up to \$10,000,000 annually per industry and shall be made under such terms and conditions as EDA deems appropriate.

PART 316—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

Sec.

- 316.1 Environment.
- 316.2 Excess capacity.
- 316.3 Nonrelocation.
- 316.4 Procedures in disaster areas.
- 316.5 Project servicing for loans and loan guarantees.
- 316.6 Public information.
- 316.7 Relocation assistance and land acquisition policies.
- 316.8 Additional requirements; Federal policies and procedures.
- 316.9 Amendments and changes.
- 316.10 Preapproval award costs.
- 316.11 Intergovernmental review of projects under EDA's public works, economic adjustment, planning, local technical assistance, and university center programs.

316.12 Fees for paying attorneys and consultants.

316.13 Economic development information clearinghouse.

316.14 Project administration, operation, and maintenance.

316.15 Maintenance of standards.

316.16 Records and audits.

316.17 Acceptance of certifications by applicants.

316.18 Reports by recipients.

316.19 Project administration by districts.

Authority: 42 U.S.C. 3211; 19 U.S.C. 2391, *et seq.*; Department of Commerce Organization Order 10-4.

§ 316.1 Environment.

(a) The purpose of this section is to ensure proper environmental review of EDA's actions under PWEDA and the Trade Act and to comply with the Federal environmental statutes and regulations in making a determination that balances economic development and environmental enhancement and mitigates adverse environmental impacts to the extent possible.

(b) Environmental assessments of EDA actions will be conducted in accordance with the statutes, regulations, and Executive Orders listed below. This list will be supplemented and modified, as applicable, in EDA's annual FY NOFA.

(1) Requirements under the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, as amended, 42 U.S.C. 4321 *et seq.* as implemented under 40 CFR parts 1500 *et seq.* including the following:

(i) The implementing regulations of NEPA require 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, records of decision etc., to the affected public as specified in 40 CFR 1506.6(b); and

(ii) Depending on the project location, environmental information concerning specific projects can be obtained from the Environmental Officer in the appropriate Washington, D.C. or regional office listed in the NOFA;

(2) Clean Air Act, Pub. L. 88-206 as amended, 42 U.S.C. 7401 *et seq.*;

(3) Clean Water Act (Federal Water Pollution Control Act), c. 758, 62 Stat. 1152 as amended, 33 U.S.C. 1251 *et seq.*;

(4) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Pub. L. 96-510, as amended, 42 U.S.C. 9601 *et seq.* and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, as amended;

(5) Floodplain Management Executive Order 11988 (May 24, 1977);

(6) Protection of Wetlands Executive Order 11990 (May 24, 1977);

(7) Resource Conservation and Recovery Act of 1976, Pub.L. 94-580 as amended, 42 U.S.C. 6901 *et seq.*;

(8) Historical and Archeological Data Preservation Act, Pub. L. 86-523, as amended, 16 U.S.C. § 469a-1 *et seq.*;

(9) National Historic Preservation Act of 1966, Pub. L. 89-665, as amended, 16 U.S.C. § 470 *et seq.*;

(10) Endangered Species Act of 1973, Pub. L. 93-205, as amended, 16 U.S.C. § 1531 *et seq.*;

(11) Coastal Zone Management Act of 1972, Pub. L. 92-583, as amended, 16 U.S.C. § 1451 *et seq.*;

(12) Flood Disaster Protection Act of 1973, Pub. L. 93-234, as amended, 42 U.S.C. § 4002 *et seq.*;

(13) Safe Drinking Water Act of 1974, Pub. L. 92-523, as amended, 42 U.S.C. § 300f-j26;

(14) Wild and Scenic Rivers Act, Pub. L. 90-542, as amended, 16 U.S.C. § 1271 *et seq.*;

(15) Environmental Justice in Minority Populations and Low-Income Populations Executive Order 12898 (February 11, 1994);

(16) Farmland Protection Policy Act, Pub. L. 97-98, as amended, 7 U.S.C. § 4201 *et seq.*; and

(17) Other Federal Environmental Statutes and Executive Orders as applicable.

§ 316.2 Excess capacity.

(a) *Definitions.* For purposes of this section only the following definitions apply:

Beneficiary means a firm or group of firms, enterprise or organization (public or private) that provides a commercial product or service and that benefits from an EDA-assisted project.

Capacity means the maximum amount of a product or service that can be supplied to the market area over a sustained period by existing enterprises through the use of present facilities and customary work schedules for the industry.

Commercial product or service means a product or service that competes with other providers of the same kinds of product or service.

Demand means the actual quantity of a commercial product or service that users are willing to purchase in the market area served by the intended beneficiary of the EDA assisted project.

Efficient capacity means that part of capacity derived from the use of contemporary structures, machinery and equipment, designs, and technologies.

Existing competitive enterprise means an established operation which either produces or delivers the same kind of

commercial product or service to all or a substantial part of the market area served by the intended beneficiary of the EDA assisted project.

Firm means any enterprise which produces or sells a commercial product or service.

Market Area means the geographic area within which commercial products or services compete for purchase by customers.

Product or service means a good, material, or commodity, or the availability of a service or facility.

Section 208 means section 208 of PWEDA.

(1) A section 208 study is a detailed economic analysis/evaluation of competitive impact.

(2) A section 208 report is a summary of supply/demand factors.

(3) A section 208 exemption may apply to a project having one or more of the characteristics listed in paragraph (e) of this section.

(b) Under section 208:

(1) No financial assistance under PWEDA shall be extended to any project when the result would be to increase the production of products or services when there is not sufficient demand for such products or services, to employ the efficient capacity of existing competitive commercial or industrial enterprises; and

(2) When EDA considers extending assistance for a project that benefits a firm or industry that provides a commercial product or service, the beneficiary is subject to a 208 report, study, or exemption, resulting in a finding that the project will or will not violate section 208. A section 208 study or report is required, except as provided in paragraph (e) of this section.

(c) The following procedures shall be followed to the extent necessary to provide EDA with sufficient information to prepare a 208 study or report:

(1) The beneficiary shall submit, as early as possible, the following information with regard to each commercial product or service affected by the project:

(i) A detailed description of the commercial product or service;

(ii) Current and projected amount and value of annual sales or receipts;

(iii) Market area; and

(iv) Name of other suppliers and amount of commercial product or service presently available in the market area.

(2) If the beneficiary has conducted or commissioned a relevant market study, it shall be made available to EDA as early as possible, for possible use by EDA in the 208 study or report.

(d) A section 208 report will form an acceptable basis on which to make a

section 208 compliance finding when the beneficiary's projected new or additional annual output is less than one percent of the last recorded annual output in the market area, or when it is otherwise apparent that a 208 study is not required to determine that the project will not violate section 208.

(e) Unless EDA determines that circumstances require a section 208 study or report, EDA will make a finding of compliance with section 208 without doing a section 208 report or study for those projects which have one or more of the following characteristics:

(1) The project is primarily for the use and benefit of the community as a whole without contributing to a new or significantly expanded output of commercial products or services;

(2) The project will not contribute directly to the production or distribution of new or expanded output of commercial products or services, to any significant degree;

(3) The project will replace or restore capacity recently destroyed by flood, fire, wind, or other natural disaster, without contributing to significant expansion of the previously existing supply of the same kinds of commercial products or services;

(4) The project will assure the retention of physical capacity and/or employment without significantly expanding the existing supply of commercial products or services;

(5) The project will assure the reopening of facilities closed within two years of the date of reopening, if the facility will provide the same kinds of products or services as previously provided, without a significant increase in output;

(6) The project will replace, rebuild or modernize, within the same labor market area, facilities which within the previous two years have been, or are to be, displaced by official governmental action, without a change in the kind or significant increase in output of the commercial product or service previously provided;

(7) The project assures completion of a project previously assisted by EDA, where further funding is required because of revised project cost estimates, rather than for additional productive capacity;

(8) The project is wholly or primarily for planning, technical assistance, research, evaluation, other studies, or for the training of workers, and not for the benefit of a firm or industry that produces a commercial product or service; or

(9) No firm benefitted by the project will use 50 percent or more of any EDA-financed service or facility.

§ 316.3 Nonrelocation.

(a) General requirements for nonrelocation for funding under PWEDA are as follows:

(1) EDA financial assistance will not be used to assist employers who transfer jobs from one commuting area to another. A commuting area ("area") is that area defined by the distance people travel to work in the locality of the project receiving EDA financial assistance;

(2) Every applicant for EDA financial assistance has an affirmative duty to inform EDA of any employer who will benefit from such assistance who will transfer jobs (not persons) in connection with the EDA grant;

(3) EDA will determine compliance with this requirement prior to grant award based upon information provided by the applicant during the project selection process; and

(4) Each applicant and identified primary beneficiary of EDA assistance, which for purposes of this section means an entity providing economic justification for the project, must submit its certification of compliance with this section, and other applicable information as determined by EDA.

(b) The nonrelocation requirements stated in paragraph (a) of this section shall not apply to businesses which:

(1) Relocated to the area prior to the date of the applicant's request for EDA assistance;

(2) Have moved or will move into the area primarily for reasons which have no connection to the EDA assistance;

(3) Will expand employment in the area where the project is to be located substantially beyond employment in the area in which the business had originally been located;

(4) Are relocating from technologically obsolete facilities to be competitive;

(5) Are expanding into the new area by adding a branch, affiliate, or subsidiary while maintaining employment levels in the old area or areas; or

(6) Are determined by EDA to be exempt.

§ 316.4 Procedures in Disaster Areas.

When non-statutory EDA administrative or procedural conditions for financial assistance awards cannot be met by applicants under PWEDA as the result of a disaster, EDA may waive such conditions.

§ 316.5 Project servicing for loans and loan guarantees.

EDA will provide project servicing to borrowers and lenders who received EDA loans and/or guaranteed loans

under any programs administered by EDA. This includes but is not limited to loans under PWEDA prior to the effective date of Public Law 105-393, the Trade Act and the Community Emergency Drought Relief Act of 1977.

(a) EDA will continue to monitor such loans and guarantees in accordance with the loan or guarantee program.

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

(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 or guarantees made or evidences of indebtedness purchased, 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 financial assistance extended;

(2) Collect or compromise all obligations assigned to or held by it in connection with EDA financial assistance projects until such time as such obligations may be referred to the Attorney General for suit or collection; and

(3) Take any and all other actions determined by it to be necessary or desirable in purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively dealing with or realizing on loans or guaranties made or evidences of indebtedness purchased.

§ 316.6 Public information.

The rules and procedures regarding public access to the records of the Economic Development Administration are found at 15 CFR part 4.

§ 316.7 Relocation assistance and land acquisition policies.

Recipients of EDA financial assistance under PWEDA and the Trade Act (States and political subdivisions of States and non-profits as applicable) are subject to requirements set forth at 15 CFR part 11.

§ 316.8 Additional requirements; Federal policies and procedures.

Recipients, as defined under § 314.2 of this chapter, are subject to all Federal laws and to Federal, Department of Commerce, and EDA policies, regulations, and procedures applicable

to Federal financial assistance awards, including 15 CFR part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 15 CFR part 14, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Other Non-Profit and Commercial Organizations, whichever is applicable.

§ 316.9 Amendments and changes.

(a) Requests by recipients for amendments to a grant shall be submitted in writing to EDA for approval, and shall contain such information and documentation necessary to justify the request.

(b) Any changes made without approval by EDA are made at grantee's own risk of suspension or termination of the project.

(c) Changes of project scope after the time the project grant funds could be obligated will not be approved by EDA. In most cases, project grant funds cannot be obligated after September 30 of the fiscal year the grant is awarded.

§ 316.10 Preapproval award costs.

Project activities carried out before approval of an application by EDA are carried out at the sole risk of the applicant. Such activity could result in rejection of such project application, the disallowance of costs, or other adverse consequences as a result of non-compliance with Federal requirements, including, but not limited to, civil rights requirements, Federal labor standards, or Federal environmental, historic preservation or related requirements.

§ 316.11 Intergovernmental review of projects under EDA's public works, economic adjustment, planning, local technical assistance, and university center programs.

(a) When the applicant is not a State, Indian tribe or other general-purpose governmental authority, the applicant must afford the appropriate general purpose local governmental authority of the area a minimum of 15 days in which to review and comment on the proposed project. The applicant shall furnish with the application a copy of such comments, or a statement of the efforts made to obtain them together with an explanation of the actions taken to address any comments received.

(b) Applicants as appropriate, must also give State and local governments a reasonable opportunity to review and comment on the proposed project if the State has a Single Point of Contact review process, including comments from areawide planning organizations in

metropolitan areas as provided for in 15 CFR part 13.

§ 316.12 Fees for paying attorneys and consultants.

Grant funds must not be used directly or indirectly to pay for attorney's or consultant's fees in connection with obtaining grants and contracts for projects funded under PWEDA.

§ 316.13 Economic development information clearinghouse.

EDA will provide assistance and information as follows:

(a) Maintain a central information clearinghouse on matters relating to economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment programs and activities of the Federal and State governments, including political subdivisions of States;

(b) Assist potential and actual applicants for economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment assistance under Federal, State, and local laws in locating and applying for the assistance; and

(c) Assist areas described in § 301.2(b) and other areas by providing to interested persons, communities, industries, and businesses in the areas any technical information, market research, or other forms of assistance, information, or advice that would be useful in alleviating or preventing conditions of excessive unemployment or underemployment in the areas.

§ 316.14 Project administration, operation, and maintenance.

EDA shall approve Federal assistance under PWEDA only if satisfied that the project for which Federal assistance is granted will be properly and efficiently administered, operated, and maintained.

§ 316.15 Maintenance of standards.

In accordance with sec. 602 of PWEDA all laborers and mechanics employed by contractors or subcontractors on public projects assisted by EDA under PWEDA shall be paid in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5).

§ 316.16 Records and audits.

(a) Each recipient of Federal assistance under PWEDA shall keep such records as the Secretary shall require, including records that fully disclose—

(1) The amount and the disposition by the recipient of the proceeds of the assistance;

(2) The total cost of the project in connection with which the assistance is given or used;

(3) The amount and nature of the portion of the cost of the project provided by other sources; and

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

(b) Access to books for examination and audit—The Secretary, the Inspector General of the Department, and the Comptroller General of the United States, or any duly authorized representative, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that relate to assistance received under PWEDA.

§ 316.17 Acceptance of certifications by applicants.

EDA will accept an applicant's certifications, accompanied by evidence satisfactory to EDA, that the applicant meets the requirements of PWEDA. Each applicant must include in such evidence satisfactory information that any non-Federal funds (or eligible Federal funds) required to match the EDA share of project costs are committed to the project and will be available as needed.

§ 316.18 Reports by recipients.

(a) In general, each recipient of assistance under PWEDA must submit reports to EDA at such intervals and in such manner as EDA shall require, except that no report shall be required to be submitted more than 10 years after the date of closeout of the assistance award.

(b) Each report must contain an evaluation of the effectiveness of the economic assistance provided in meeting the need that the assistance was designed to address and in meeting the objectives of PWEDA

§ 316.19 Project administration by District organization.

When an Economic Development District is not a recipient or co-recipient of an award for a project involving construction, the District organization may administer the project for such recipient if the following conditions are met, as determined by EDA:

(a) The recipient has requested (either in the application or by separate written request) that the district organization for the area in which the project is located perform the project administration;

(b) The recipient certifies and EDA finds that:

(1) Administration of the project is beyond the capacity of the recipient's current staff to perform and would require hiring additional staff or contracting for such services,

(2) No local organization/business exists that would be able to administer the project in a more efficient or cost-effective manner than the staff of the district, and

(3) The staff of the district would administer the project themselves, without subcontracting the work out;

(c) EDA approves the request either by approving the application in which the request is made, or by separate specific written approval; and

(d) The allowable costs for the administration of the project by the district organization staff will not exceed the customary and reasonable amount that would be allowable if the district were the recipient.

PART 317—CIVIL RIGHTS

Sec.

317.1 Civil rights.

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

§ 317.1 Civil rights.

(a) Discrimination is prohibited in programs receiving federal financial assistance from EDA in accordance with the following authorities:

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

(2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex);

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

(4) 42 U.S.C. 6101, as amended, and the Department of Commerce's implementing regulations found at 15 CFR part 20; and

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

(b) Definitions:

(1) Other Parties means, as an elaboration of the definition in 15 CFR part 8, entities which, or which are intended to create and/or save 15 or more permanent jobs as a result of EDA assistance provided that they are also either specifically named in the application as benefitting from the project, or are or will be located in an EDA building, port, facility, or industrial, commercial or business park prior to EDA's final disbursement of funds awarded for the project.

(2) Additional definitions are provided in EDA's Civil Rights Guidelines and 15 CFR part 8.

(c) All recipients of EDA financial assistance under PWEDA and the Trade Act, and Other Parties are required to submit the following to EDA:

(1) Written assurances that they will comply with Department of Commerce and EDA regulations, and such other requirements as may be applicable, prohibiting discrimination;

(2) Employment data in such form and manner as determined by EDA;

(3) Information on civil rights status and involvement in charges of discrimination in employment or the provision of services during the 2 years previous to the date of submission of such data as follows:

(i) Description of the status of any lawsuits, complaints or the results of compliance reviews; and

(ii) Statement indicating any administrative findings by a Federal or State agency.

(4) Whenever deemed necessary by EDA to determine that applicants and other parties are in compliance with civil rights regulations, such applicants and other parties shall submit additional information in the form and manner requested by EDA; and

(5) In addition to employment record requirements found in 15 CFR 8.7, complete records on all employees and applicants for employment, including information on race, sex, national origin, age, education and job-related criteria must be retained by employers.

(d) To enable EDA to determine that there is no discrimination in the distribution of benefits in projects which provide service benefits, in addition to requirements listed in paragraph (c) of this section, applicants are required to submit any other information EDA may deem necessary for such determination.

(e) EDA assisted planning organizations must meet the following requirements:

(1) For the selection of representatives, EDA expects planning organizations and OEDP Committees to take appropriate steps to ensure that there is adequate representation of minority and low-income populations, women, people with disabilities and Federal and State recognized American Indian tribes and that such representation is accomplished in a nondiscriminatory manner; and

(2) EDA assisted planning organizations and OEDP Committees shall take appropriate steps to ensure that no individual will be subject to discrimination in employment because of their race, color, national origin, sex, age or disability.

(f) Reporting and other procedural matters are set forth in 15 CFR parts 8, 8(b), 8(c), and 20 and the Civil Rights Guidelines which are available from EDA's Regional Offices. See part 300 of this chapter.

PART 318—EVALUATIONS OF UNIVERSITY CENTERS AND ECONOMIC DEVELOPMENT DISTRICTS

Sec.

318.1 University Center performance evaluations.

318.2 Economic Development District performance evaluations.

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

§ 318.1 University Center performance evaluations.

(a) EDA will evaluate the performance of each University Center. EDA will:

(1) Evaluate each University Center at least once every three years;

(2) Assess the University Center's contribution to providing technical

assistance, conducting applied research, and disseminating project results, in accordance with the scope(s) of work funded during the evaluation period; and

(3) For peer review, ensure the participation of at least one other University Center, as appropriate, in the evaluation.

(b) The purpose of the evaluations of University Centers is to determine which centers are performing well and are worthy of continued grant assistance from EDA, and which should not receive continued assistance, so that university centers that have not previously received assistance may receive EDA assistance.

§ 318.2 Economic Development District performance evaluations.

EDA will evaluate the performance of each Economic Development District. EDA will:

(a) Evaluate each Economic Development District at least once every three years;

(b) Assess the Economic Development District's management standards, financial accountability, and program performance in accordance with the current instructions for Economic Development District performance appraisals; and

(c) For peer review, ensure the participation of at least one other Economic Development District organization, as appropriate, in the evaluation.

Dated: January 20, 1999.

Phillip A. Singerman,

Assistant Secretary, Economic Development Administration.

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