

DEPARTMENT OF COMMERCE

CFDA 11.300 GRANTS FOR PUBLIC WORKS AND ECONOMIC DEVELOPMENT FACILITIES

CFDA 11.307 ECONOMIC ADJUSTMENT ASSISTANCE

I. PROGRAM OBJECTIVES

The Economic Development Administration (EDA) awards grants through its Public Works and Economic Development (Public Works) program to assist the Nation's most distressed communities: (1) revitalize and expand their physical and economic infrastructure and (2) provide support for the creation or retention of jobs for area residents by helping eligible recipients with their efforts to promote the economic development of their local economies. The primary goal of these awards is the creation of new, or the retention of existing, long-term private sector job opportunities in communities experiencing significant economic distress as evidenced by high unemployment, underemployment, low per capita income, outmigration, or a special need arising from actual or threatened severe unemployment or severe changes in local economic conditions. Public Works grants may include construction and related activities, such as acquisition, design and engineering, and related machinery and equipment.

The objective of EDA's Economic Adjustment Assistance program is to address the needs of communities experiencing adverse economic changes that may occur suddenly or over time, including, but not limited to, those caused by military base closures or realignments, depletion of natural resources, Presidentially-declared disasters or emergencies, or international trade. Economic Adjustment Assistance awards may be used to develop a comprehensive economic development strategy (CEDS) or other strategy to alleviate long-term economic deterioration or a sudden and severe economic dislocation, or to fund a project implementing that CEDS or other strategy, including grants for construction and grants for Revolving Loan Funds (RLFs). EDA grants to capitalize or recapitalize RLFs are most commonly used for business lending, but may also fund public infrastructure or other authorized purposes involving lending.

II. PROGRAM PROCEDURES

A recipient of a Public Works or Economic Adjustment Assistance grant is required to provide a matching share. The required matching share varies on a grant-by-grant basis and is set forth in the grant award. Prior to EDA approving the matching share, the recipient must demonstrate to EDA's satisfaction that the matching share is committed to the project, available as needed, and not conditioned or encumbered in any way that would preclude its use consistent with the requirements of the grant award (42 USC 3144-3146; Sections 300.3 and 301.5).

Section 302 of the Public Works and Economic Development Act of 1965, as amended (PWEDA, 42 USC 3121 *et seq.*), sets forth a CEDS requirement for Public Works and Economic Adjustment Assistance grants, except for planning projects (i.e., strategy grants) under the Economic Adjustment Assistance program.

RLF recipients must manage RLFs in accordance with an RLF Plan approved by EDA. The RLF Plan must be approved by the RLF recipient's governing board prior to the initial disbursement of EDA funds. RLF recipients are responsible for ensuring that borrowers are aware of and comply with applicable Federal statutory and regulatory requirements.

Source of Governing Requirements

The programs are authorized by PWEDA, as amended by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108-373). Interim final rule provisions with respect to Public Works awards and Economic Adjustment Assistance awards are effective as of October 1, 2005. All section citations contained herein refer to sections of the interim final rule (70 FR 47002). A final rule will be codified at 13 CFR part 300 *et seq.*

Availability of Other Program Information

Other program information is available on the Internet at <http://www.eda.gov>.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Activities Allowed

The grant budget and grant agreement will specify the purpose or use of funds which include the following:

- a. Construction grants can be made for the acquisition or development of land and improvements for use for a public works, public service, or development facility. Construction grants can also be made for the acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment (42 USC 3141; 42 USC 3149; and Sections 305.2(a) and 307.3).
- b. RLF grants may be made for the establishment or recapitalization of an RLF, usually for business development, but RLF grants may also fund public infrastructure or other authorized purposes involving lending (42 USC 3149; and Section 307.7).
- c. Other activities that can be funded under the Economic Adjustment Assistance program (in addition to grants for construction and RLFs) are grants for CEDS (or other strategy) development and grants for CEDS (or other strategy) implementation, which include market or industry research

and analysis, technical assistance, public services, training, and other activities as justified by the strategy which meet applicable statutory and regulatory requirements (42 USC 3149; and Section 307.3).

- d. A recipient of a Public Works grant may directly expend the grant funds or, with prior EDA approval, may redistribute such grant assistance in the form of a subgrant to another eligible recipient to fund required components of the scope of work approved for the project (42 USC 3154c; Section 309.1).
- e. A recipient of an Economic Adjustment Assistance grant may directly expend the grant funds or, with prior EDA approval, may redistribute such grant assistance in the form of (i) a subgrant to another eligible recipient that qualifies for an Economic Adjustment Assistance award or (ii) a loan or other appropriate assistance to non-profit and private for-profit entities (42 USC 3154c; Section 309.2).

2. *Activities Unallowed*

RLF capital (as defined in Section 307.8) may not be used to:

- a. Acquire an equity position in a private business (Section 307.18(b)(1)).
- b. Subsidize interest payments on an existing RLF loan (Section 307.18(b)(2)).
- c. Provide the equity contribution required of borrowers under other Federal loan programs (Section 307.18(b)(3)).
- d. Enable an RLF borrower to acquire an interest in a business unless there is a sufficient justification and documentation showing the need for RLF financing (Section 307.18(b)(4)).
- e. Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts or other investments not related to the RLF (Section 307.18(b)(5)).
- f. Refinance existing debt unless (i) the RLF recipient sufficiently demonstrates in the loan documentation a “sound economic justification” for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities); for this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a “sound economic justification”; or (ii) RLF capital will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan (Section 307.18(b)(6)).

C. Cash Management

1. Unless otherwise specified in a special award condition, the method of payment for an award for an infrastructure construction project is generally through reimbursement (using Form ED-113, *Outlay Report and Request for Reimbursement for Construction Programs*) for costs incurred. Prior to disbursing grant funds for an infrastructure construction project, EDA also must receive an invoice from the recipient. EDA may approve the disbursement of funds prior to the tender of all construction contracts if the recipient can demonstrate that a severe hardship will result without such approval (Section 305.9(b)).
2. Grant funds also are made available to RLF recipients on a reimbursement basis (when an obligation is incurred by the RLF recipient at the time of loan approval and loan announcement). An RLF recipient must request a disbursement only to close a loan or disburse RLF funds to a borrower (i.e., when the intent is to disburse the funds within fourteen (14) days of receipt). The RLF recipient must disburse the grant funds to a borrower within thirty (30) days of receipt of the funds. Any grant funds not disbursed within the thirty (30) day period must be returned to EDA. An RLF recipient is required to submit a written request for continued use of grant funds beyond a missed disbursement deadline. The amount of disbursed grant funds cannot exceed the difference, if any, between the RLF capital and the amount of a new loan, less the amount, if any, of the matching share required to be disbursed concurrent with the grant funds. However, RLF income held to cover eligible administrative expenses need not be disbursed in order to draw additional grant funds (Section 307.16).

D. Davis-Bacon Act

All laborers and mechanics employed by contractors or subcontractors on construction projects receiving EDA grant assistance shall be paid at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (42 USC 3212; and Section 302.13).

F. Equipment and Real Property Management

Except as otherwise authorized by EDA, property acquired or improved with EDA grant assistance for construction projects cannot be used to secure a mortgage or deed of trust or in any way collateralized or otherwise encumbered. An encumbrance includes but is not limited to easements, rights-of-way or other restrictions on the use of any property. (Section 314.6(a)).

G. Matching, Level of Effort, Earmarking**1. Matching**

The required matching share varies on a grant-by-grant basis and is set forth in the grant award (42 USC 3144-3146; Sections 300.3 and 301.5).

2. Level of Effort - Not Applicable**3. Earmarking - Not Applicable****L. Reporting****1. Financial Reporting**

a. SF-269, *Financial Status Report* - Applicable

b. SF-270, *Request for Advance or Reimbursement* - Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* (ED-113) (OMB No. 0610-0096), which contains substantially the same information that is used in lieu of the SF-271.

d. SF-272, *Federal Cash Transactions Report* - Applicable

2. Performance Reporting - Not Applicable**3. Special Reporting**

a. ED-209S, *Semi-Annual Report for EDA-Funded RLF Grants* and ED-209A, *Annual Report for EDA-Funded RLF Grants* (OMB No. 0610-0095) – All RLF recipients are required to submit Form ED-209S for the periods ending March 30 and September 30, unless EDA has approved the substitution of an annual Form ED-209A (covering the period ending September 30) upon the written request of the RLF recipient (Section 307.14(a)).

Key Line Items - The following line items contain critical information:

<u>ED-209S</u>		<u>ED-209A</u>	
(1)	Line I-A-6	Line C-16	<i>Total Active Loans</i>
(2)	Line III-C-14	Line A-6	<i>Current Level or RLF Base Capital</i>
(3)	Line III-D-20	NA	<i>Current Balance Available as a Percent of Base Capital</i>

(4)	NA	Line A-11	<i>RLF Capital Utilization Rate</i>
(5)	Line V-C-9	NA	<i>Amount of RLF Income Earned in the most recent 12-month period</i>
(6)	Line V-C-11	NA	<i>Percentage of RLF Income used for Administrative Costs</i>

- b. ED-209I, *RLF Income and Expense Statement (OMB No. 0610-0095)* – RLF recipients electing to use either 50 percent or more (or more than \$100,000) of RLF income to cover all or part of an RLF’s administrative expenses must submit annually a completed Form ED-209I (Section 307.14(c)) (see also III.N.1, “Increase to RLF Capital Base”).

Key Line Items - The following line items contain critical information:

- (1) *RLF Income*
- (2) *Expenses Charged to RLF Income (2.a through 2.l)*
- (3) *Total Expenses (sum of 2.a through 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.*

N. Special Tests and Provisions

1. Increases to RLF Capital Base

Compliance Requirements - RLF income includes all interest earned on outstanding loan principal, interest earned on accounts holding idle RLF funds, loan fees and other loan-related earnings. RLF income does not include repayment of RLF loan principal and any interest remitted to the U.S. Treasury pursuant to a sequestration of excess funds. In accounting for RLF income, any proceeds from the sale, collection, or liquidation of a defaulted RLF loan, up to the amount of the unpaid principal, will be treated as RLF principal and placed into the RLF capital base for lending purposes only. Any proceeds in excess of the unpaid principal will be treated as RLF income (Sections 307.8 and 307.12).

RLF income may fund administrative expenses, provided the following conditions are met: (1) the RLF income and the administrative expense are earned in the same 12-month reporting period; (2) RLF income that is not used for administrative expenses during the 12-month reporting period must be added to the RLF capital base and made available for lending activities; (3) RLF income cannot be withdrawn from the RLF capital base in a subsequent reporting period for any use other than lending without the prior written consent of EDA; and (4) the recipient completes an RLF Income and Expense Statement (Section 307.12(a)).

RLF capital includes the aggregate amount of cash held by the RLF recipient from any of the following sources: grant funds, matching share, repayment of principal from RLF loans, and RLF income. Generally, RLF capital must be used for the purpose of making RLF loans that are consistent with an RLF Plan or other purposes approved by EDA (Sections 307.8 and 307.18(a)).

Audit Objective - Determine whether (1) all the conditions for RLF income to be used to fund administrative expenses were satisfied, (2) RLF income not used for administrative expenses was added to the RLF capital base for lending activities, and (3) repayments of principal on RLF loans were placed in the RLF capital base for re-lending.

Suggested Audit Procedures

- a. Verify that the amounts recorded in the financial records include RLF income and repayments of principal on RLF loans.
- b. Ascertain if RLF income not used for administrative expenses was added to the RLF capital base.
- c. Ascertain if repayments of principal on RLF loans were placed into the RLF capital base.

2. Loan Requirements

Compliance Requirements - The following requirements apply to RLF loans:

- a. RLFs must operate in accordance with generally accepted accounting principles (GAAP). Within sixty (60) days prior to the initial disbursement of EDA funds, an independent accountant familiar with the RLF recipient's accounting system must certify to EDA and the RLF recipient that such system is adequate to identify, safeguard and account for all RLF capital, outstanding RLF loans and other RLF operations (Section 307.15(a) and (b)).

- b. Prior to the disbursement of any EDA funds, the RLF recipient must certify that standard RLF loan documents necessary or advisable for lending are in place and that these documents have been reviewed by its legal counsel for adequacy and compliance with the terms and conditions of the grant and applicable State and local law. The standard loan documents include, at a minimum, the (1) loan application, (2) loan agreement, (3) promissory note, (4) security agreement(s), (5) deed of trust or mortgage (if applicable), (6) agreement of prior lien holder (if applicable), and (7) guaranty agreement (for officers or owners of corporate borrowers, if applicable) (Section 307.15(b)(2)).
- c. An RLF recipient must make loans to implement and assist economic activity only within its EDA-approved lending area, as defined in the special terms and conditions of the grant award and the RLF Plan (Section 307.11).
- d. Unless otherwise provided in the grant agreement or modified in writing by EDA, a borrower is not eligible for RLF financing if credit is otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. The RLF recipient is responsible for determining that each borrower meets this requirement and for documenting the basis for its determination in the loan documents for each RLF loan (Section 307.18(c)).

Audit Objective - Determine whether (1) the required standard loan documents were completed for the RLF loans; (2) an independent accountant certified to EDA and to the RLF recipient that the accounting system is adequate to identify, safeguard and account for all RLF operations; (3) the financed activity is located in an EDA-approved lending area; and (4) there is loan documentation to support that credit was not otherwise available to the borrower.

Suggested Audit Procedures

Test a sample of RLF loan files and ascertain if:

- a. The standard loan documents were properly completed.
- b. The financed activity is located in an EDA-approved lending area.
- c. The RLF recipient documents in the RLF loan file that that credit was not otherwise available to the borrower.

3. Addition of Lending Areas; Merger of RLFs

- a. An RLF recipient may add an additional lending area to its existing lending area to create a new lending area only with EDA's prior written approval and subject to the following conditions: (1) EDA has disbursed the full amount of the award to the RLF recipient; (2) the additional lending area must fulfill the economic distress criteria for Economic Adjustment Assistance grants; (3) prior to EDA's disbursement of additional funds to the RLF recipient, EDA determines a new grant rate for the new lending area; (4) the RLF recipient shows that the additional

lending area is consistent with its CEDS, or modifies its CEDS for any additional lending area; (5) the RLF recipient modifies its RLF Plan to incorporate the additional lending area and revises its lending strategy; and (6) the RLF recipient fulfills any other conditions reasonably requested by EDA (42 USC 3149; and Section 307.11(a)).

- b. EDA may provide written approval for a single RLF recipient to merge its RLFs, provided the following conditions are satisfied: (1) it meets the requirements to obtain annual report status; (2) it demonstrates a rational basis for undertaking the merger and the borrower criteria identified in the different RLF Plans are compatible, or will be compatible, for all RLFs to be consolidated; (3) it amends and consolidates its RLF Plan to account for the merger of RLFs; (4) it fulfills any other conditions reasonably requested by EDA; and (5) prior to EDA's disbursement of additional funds, EDA determines a new grant rate for the new lending area (42 USC 3149; and Section 307.11(b)(1)).
- c. EDA may provide written approval for multiple RLF recipients to merge their RLFs, provided the following conditions are satisfied: (1) the surviving RLF recipient meets the requirements to obtain annual report status; (2) the surviving RLF recipient amends and consolidates its RLF Plan to account for the merger of RLFs; (3) prior to EDA's disbursement of additional funds to the surviving RLF recipient, EDA determines a new grant rate for the new lending area; (4) EDA provides written approval of the merger agreement(s), modifications and revisions to the RLF Plans; (5) all applicable RLF grant assets of the discharging RLF recipient(s) transfer to the surviving RLF recipient as of the merger's effective date; and (6) the surviving RLF recipient becomes fully responsible for administration of the RLF grant assets transferred and fulfills all surviving RLF grant requirements and any other conditions reasonably requested by EDA (42 USC 3149; and Section 307.11(b)(2)).

Audit Objectives - Determine whether (1) EDA has provided prior written approval to an RLF recipient, permitting it to (a) create a new lending area or (b) merge two or more of its EDA-funded RLFs into one surviving RLF; (2) the applicable preconditions have been fulfilled; and (3) EDA has provided prior written approval to two or more RLF recipients to consolidate their EDA-funded RLFs into one surviving RLF.

Suggested Audit Procedures

- a. Verify that the RLF recipient has evidence of EDA's prior written approval for the creation of a new lending area or the merger of RLFs.
- b. Ascertain if the RLF recipient has modified its CEDS to account for an additional lending area, if necessary.
- c. Ascertain if the RLF recipient has amended and/or consolidated, as necessary, its RLF Plan to account for a new lending area or merger of RLFs.

4. RLF Loan Portfolio Sales and Securitizations

With prior approval from EDA, an RLF recipient may enter into a sale or a securitization of all or a portion of its RLF loan portfolio, provided it: (1) uses all the proceeds of any sale or a securitization to make additional RLF loans; and (2) requests EDA to subordinate its interest in all or a portion of any RLF loan portfolio sold or securitized (42 USC 3149; and Section 307.19).

Audit Objectives – In the event an RLF recipient has sold or securitized RLF loans, verify whether it (1) requested EDA’s prior approval and (2) used all the proceeds from the sale or securitization to make additional RLF loans.

Suggested Audit Procedures

- a. Verify that the RLF recipient has a written record demonstrating EDA’s approval to sell or securitize all or a portion of its RLF loan portfolio.
- b. Ascertain that all the proceeds from the sale or securitization (net of reasonable transactions costs) were used to make additional RLF loans.

IV. OTHER INFORMATION

For the RLF part of the Economic Adjustment Assistance program, calculation of Federal awards expended for determining when an audit is required under OMB Circular A-133 and determining Type A programs shall consider the following:

1. Balance of RLF loans outstanding at the end of the fiscal year, plus
2. Cash and investment balance in the RLF at the end of the fiscal year, plus
3. Administrative expenses paid out of RLF income during the fiscal year.

Only the Federal share (which excludes the matching share) of the RLF shall be used in this determination. Federal awards expended for the RLF part of the Economic Adjustment Assistance program shall be added to other Federal awards expended to determine total Federal awards expended for the program.

See Appendix VI for information concerning a Hurricane Katrina-related waiver.