

**EDA REGULATIONS:  
2006 EXISTING RULES VS 2008 INTERIM-FINAL RULES**

CURRENT FEDERAL REGULATIONS (2006)	INTERIM FINAL RULES (2008)	ANALYSIS / COMMENTS
<p><b>Part 300 General Information</b></p> <p><b>§ 300.3 Definitions.</b></p> <p><i>Eligible Recipient</i> means any of the following:</p> <p>(7) Private individual or for-profit organization, but only for Training, Research and Technical Assistance Investments <del>under</del> part 306 of this chapter.</p> <p><i>Immediate Family</i> means a person's spouse, parents, grandparents, siblings, children and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person.</p>	<p><b>Part 300 General Information</b></p> <p><b>§ 300.3 Definitions.</b></p> <p><i>Eligible Recipient</i> means any of the following:</p> <p>(7) Private individual or for-profit organization, but only for Training, Research and Technical Assistance Investments <b>pursuant to § 306.1(d)(3)</b> of part 306 of this chapter.</p> <p><i>Immediate Family</i> means a person's spouse <b>(or domestic partner or significant other)</b>, parents, grandparents, siblings, children and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person.</p>	<p><b>Technical modification to definitions to provide increased clarity.</b></p>
<p><b>Part 301—Eligibility , Investment Rate and Proposal and Application Requirements</b></p> <p><b>§ 301.3 Economic distress levels.</b></p> <p>(i) An unemployment rate that is, for the most recent twenty-four (24) month period for which data are available, at least one (1) percent greater than the national average unemployment rate;</p>	<p><b>Part 301—Eligibility , Investment Rate and Proposal and Application Requirements</b></p> <p><b>§ 301.3 Economic distress levels.</b></p> <p>(i) An unemployment rate that is, for the most recent twenty-four (24) month period for which data are available, at least one (1) <b>percentage</b> point greater than the national average unemployment rate;</p>	<p><b>Percent is changed to percentage for clarity purposes and reflects current practice and interpretation.</b></p>

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<p>§ 301.4 Investment rates.</p> <p>SEE TABLE BELOW</p>	<p>§ 301.4 Investment rates.</p> <p>SEE TABLE BELOW</p>	<p><b>Clarifying change: investment rates remain unchanged from existing regulation</b></p>

**Investment Rates from 2005 Regulations**

TABLE 1

Projects located in regions in which:	Maximum allowable investment rates (percentage)
(A) The twenty-four (24) month unemployment rate is at least 225% of the national average; or .....	80
(B) The per capita income is not more than 50% of the national average .....	80
(C) The twenty-four (24) month unemployment rate is at least 200% of the national average; or .....	70
(D) The per capita income is not more than 60% of the national average .....	70
(E) The twenty-four (24) month unemployment rate is at least 175% of the national average; or .....	60
(F) The per capita income is not more than 65% of the national average .....	60
(G) The twenty-four (24) month unemployment rate is at least 1% greater than the national average; or .....	50
(H) The per capita income is not more than 80% of the national average .....	50

**Investment Rates from 2008 Interim Final Rules**

TABLE 1

Projects located in regions in which:	Maximum allowable investment rates (percentage)
(A) The twenty-four (24) month unemployment rate is at least 225% of the national average; or .....	80
(B) The per capita income is not more than 50% of the national average .....	80
(C) The twenty-four (24) month unemployment rate is at least 200% of the national average; or .....	70
(D) The per capita income is not more than 60% of the national average .....	70
(E) The twenty-four (24) month unemployment rate is at least 175% of the national average; or .....	60
(F) The per capita income is not more than 65% of the national average .....	60
(G) The twenty-four (24) month unemployment rate is at least 1 percentage point greater than the national average; or .....	50
(H) The per capita income is not more than 80% of the national average .....	50



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the Eligible Recipient.		
<p><b>§ 301.10 Formal application requirements.</b>            (a) <i>General.</i> For Projects selected from successful proposals, EDA will invite the proponents to submit a formal application for Investment Assistance. The appropriate regional office will provide application materials and guidance in completing them. The applicant will generally have thirty (30) days to submit the completed application materials to the applicable regional office. EDA staff will work with the applicant to resolve application deficiencies.</p>	<p><b>§ 301.10 Formal application requirements.</b>            (a) <i>General.</i> For Projects selected from successful proposals, EDA will invite the proponents to submit a formal application for Investment Assistance. The appropriate regional office will provide application materials and guidance in completing them. The applicant will generally have thirty (30) days to submit the completed application materials to the applicable regional office. EDA staff will work with the applicant to resolve application deficiencies. <b>PWEDA does not require nor does EDA provide an appeals process for an applicant whose application for Investment Assistance is denied.</b></p>	<p><b>Interim rules add language stating that EDA's underlying statute does not require the agency provide an appeals process for applications that have been denied.</b></p>
<p><b>Part 302—General Terms and Conditions for Investment Assistance</b>  <b>§ 302.14 Records and audits.</b>            (a) <i>Records.</i> Recipients of Investment Assistance under PWEDA shall keep such records as EDA shall require, including records that fully disclose:            (1) The amount and the disposition by the Recipient of the proceeds of the awarded Investment Assistance;            (2) The total cost of the Project that the Investment Assistance funds;            (3) The amount and nature of the portion of Project costs provided by other sources; and</p>	<p><b>Part 302—General Terms and Conditions for Investment Assistance</b>  <b>§ 302.14 Records.</b>            (a) <i>Records.</i> Recipients of Investment Assistance under PWEDA shall keep such records as EDA shall require, including records that fully disclose:  <b>(1) The total cost of the Project;</b>  <b>(2) The amount and disposition by the Recipient of the Investment Assistance;</b>    <b>(3) The amount and nature of the portion of Project costs provided by other sources; and</b></p>	<p><b>Clarifying change and rewording of section. Substance is unchanged.</b></p>

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<p>(4) Such other records as EDA determines will facilitate an effective audit.</p> <p>(b) <i>Audits</i>. The Recipient shall permit the Assistant Secretary, the Inspector General of the Department, the Comptroller General of the United States and/or any of their respective agents or representatives access to its properties in order to examine all books, correspondence, and records, including without limitation computer programs and data processing software, to verify the Recipient's compliance with Investment Assistance requirements.</p>	<p>(4) Such other information as EDA determines will facilitate an effective audit.</p> <p>(b) <b>Access to records</b>. The Recipient shall permit the Assistant Secretary, the Inspector General of the Department, the Comptroller General of the United States or any of their respective agents or representatives access to its properties in order to examine all books, correspondence, and records, including without limitation computer programs and data processing software, to verify the Recipient's compliance with Investment Assistance requirements.</p>	
<p><b>§ 302.16 Reports by Recipients.</b></p> <p>(b) Each report must contain a data specific evaluation of the effectiveness of the Investment Assistance provided in fulfilling the Project's purpose (including alleviation of economic distress) and in meeting the objectives of PWEDA. Data used by a Recipient in preparing reports shall be accurate and verifiable as determined by EDA, and from independent sources (whenever possible). EDA will use <del>this</del> data and report to fulfill its performance measurement reporting requirements under the Government Performance and Results Act of 1993 and to monitor internal, Investment and Project performance through an internal performance measurement system, such as the EDA Balanced Scorecard or other system.</p>	<p><b>§ 302.16 Reports by Recipients.</b></p> <p>(b) Each report must contain a data specific evaluation of the effectiveness of the Investment Assistance provided in fulfilling the Project's purpose (including alleviation of economic distress) and in meeting the objectives of PWEDA. Data used by a Recipient in preparing reports shall be accurate and verifiable as determined by EDA, and from independent sources (whenever possible). EDA will use <b>the</b> data and reports to fulfill its performance measurement reporting requirements under the Government Performance and Results Act of 1993 and to monitor internal, Investment and Project performance through an internal performance measurement system, such as the EDA Balanced Scorecard or other system.</p>	<p><b>Non-substantive changes</b></p>

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(c) To enable EDA to determine the economic development effect of Projects that provide service benefits, EDA may require that Recipients submit a Project service map and information from which to determine whether services are provided to all segments of the Region being assisted.	(c) To enable EDA to determine the economic development effect of a Project that provides service benefits, EDA may require <b>the</b> Recipient <b>to</b> submit a Project service map and information from which to determine whether services are provided to all segments of the Region being assisted.	
<p><b>§ 302.17 Conflicts of interest.</b>  <del>(1) An Interested Party of a Recipient of an RLF Grant shall not receive, directly or indirectly, any personal or financial benefits resulting from the disbursement of RLF loans;</del></p>	<p><b>§ 302.17 Conflicts of interest.</b>  <b>(1) An Interested Party shall not receive any direct or indirect financial or personal benefits in connection with the award of Investment Assistance or its use for payment or reimbursement of costs by or to the Recipient.</b></p>	<p><b>Section reworded. No substantive changes.</b></p>
<p><b>Part 303—Planning Investments and Comprehensive Economic Development Strategies</b></p> <p><b>§ 303.4 Award requirements.</b>  (c) EDA will provide a Planning Investment for the period of time required to develop, revise or replace, and implement a CEDS, generally in thirty-six (36) month renewable Investment <del>award</del> periods.</p>	<p><b>Part 303—Planning Investments and Comprehensive Economic Development Strategies</b></p> <p><b>§ 303.4 Award requirements.</b>  (c) EDA will provide a Planning Investment for the period of time required to develop, revise or replace, and implement a CEDS, generally in thirty-six (36) month renewable Investment <b>project</b> periods.</p>	<p><b>Change from “award” to “project” is for consistency with Department of Commerce guidance</b></p>

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<p><b>Part 305—Public Works and Economic Development Investments</b></p> <p><b>§ 305.6 Allowable methods of procurement for construction services.</b>            (a) Recipients may use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). These methods include but are not limited to design/bid/build, construction management at risk and force account. If an alternate method is used, the Recipient shall submit to EDA for approval a construction services procurement plan and the Recipient must use a design professional to oversee the process. The Recipient shall submit the plan to EDA prior to advertisement for bids and shall include the following, as applicable:            (1) Justification for the proposed method for procurement of construction services;            (2) The scope of work with cost estimates and schedules;            (3) A copy of the proposed construction contract;            (4) The name and qualifications of the selected design professional; and            (5) Procedures to be used to ensure full and open competition, including the selection criteria.</p>	<p><b>Part 305—Public Works and Economic Development Investments</b></p> <p><b>§ 305.6 Allowable methods of procurement for construction services.</b>            (a) Recipients may use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). These methods include but are not limited to design/build, construction management at risk and force account. If an alternate method is used, the Recipient shall submit to EDA for approval a construction services procurement plan and the Recipient must use a design professional to oversee the process. The Recipient shall submit the plan to EDA prior to advertisement for bids and shall include the following, as applicable:            (1) Justification for the proposed method for procurement of construction services;            (2) The scope of work with cost estimates and schedules;            (3) A copy of the proposed construction contract;            (4) The name and qualifications of the selected design professional; and            (5) Procedures to be used to ensure full and open competition, including the selection criteria.</p>	<p><b>Clarifying change regarding design/build practices</b></p>

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<p><b>Part 307—Economic Adjustment Assistance Investments</b></p> <p><b>§ 307.8 Definitions.</b>  <i>Closed Loan</i> means any loan for which all required documentation has been received, reviewed and executed by an RLF Recipient.</p> <p><del><i>Guaranteed Loan</i> means a loan made and serviced by a third party lending institution under a loan guaranty agreement providing that an RLF Recipient will purchase the guaranteed portion of the loan in the event of borrower default.</del></p>	<p><b>Part 307—Economic Adjustment Assistance Investments</b></p> <p><b>§ 307.8 Definitions.</b>  <i>Closed Loan</i> means any loan for which all required documentation has been received, reviewed and executed by an RLF Recipient.</p> <p><b><i>Reporting Period</i>, for purposes of this subpart B only, means the period from April 1st to September 30th or the period from October 1st to March 31st.</b></p>	<p><b>Interim rules eliminate the definition for “Guaranteed Loan,” which RLF grantees are no longer allowed to make and provides a new definition for “Reporting Period.”</b></p>
<p><b>§ 307.9 Revolving Loan Fund Plan.</b>  All RLF Recipients shall manage RLFs in accordance with an RLF plan (the “<i>RLF Plan</i>” or “<i>Plan</i>”) as described in this section. The Plan shall be submitted to and approved by EDA.</p> <p>(a) <i>Format and content.</i>  (1) Part I of the Plan titled “Revolving Loan Fund Strategy” shall summarize the CEDS and business development objectives and shall describe the RLF’s financing strategy, policy and portfolio standards.  (b)(1) The Plan must be consistent with the CEDS or EDA-approved strategy for the Region;</p>	<p><b>§ 307.9 Revolving Loan Fund Plan.</b>  All RLF Recipients shall manage RLFs in accordance with an RLF plan (the “<i>RLF Plan</i>” or “<i>Plan</i>”) as described in this section. The Plan shall be submitted <b>in electronic format</b> to EDA for approval, <b>unless EDA approves a paper submission.</b></p> <p>(a) <i>Format and content.</i>  (1) Part I of the Plan titled “Revolving Loan Fund Strategy” shall summarize the Region’s CEDS <b>or EDA-approved economic development plan, if applicable</b>, and business development objectives, and shall describe the RLF’s financing strategy, policy and portfolio standards.  (b)(1) The Plan must be consistent with the CEDS or EDA-approved economic development plan, <b>if applicable</b>, for the</p>	<p><b>Reflects that RLF plans must be submitted in an electronic format unless EDA approves a paper submission</b></p>

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<p>(c) <i>Modification of RLF Plans.</i> An RLF Recipient must request and obtain EDA approval prior to any modification of the Plan.</p>	<p>Region. (c) <b>Revision and Modification of RLF Plans.</b> <b>(1) An RLF Recipient must update its Plan as necessary in accordance with changing economic conditions in the Region; however, at a minimum, an RLF Recipient must submit an updated Plan to EDA every five (5) years.</b> <b>(2) An RLF Recipient must notify EDA of any change(s) to its Plan. Any material modification, such as a merger or change in the EDA-approved lending area under § 307.18, a change in critical management staff, or a change to the strategic purpose of the RLF, must be submitted to EDA for approval prior to any revision of the Plan. If EDA approves the modification, the RLF Recipient must submit an updated Plan to EDA in electronic format, unless EDA approves a paper submission.</b></p>	<p><b>Entire section revised to reflect new requirement that RLF plans must be updated every five years</b></p>
<p><b>§ 307.12 Revolving Loan Fund Income.</b> (a) (1) Such RLF Income and the administrative costs are incurred in the <del>same twelve-month (12)</del> reporting period; (2) RLF Income that is not used for administrative costs during the <del>twelve-month (12)</del> reporting period is made available for lending activities; (3) RLF Income shall not be withdrawn from the RLF Capital base in a subsequent reporting period for any purpose other than lending</p>	<p><b>§ 307.12 Revolving Loan Fund Income.</b> (a) (1) Such RLF Income and the administrative costs are incurred in the same <b>six-month (6)</b> Reporting Period; (2) RLF Income that is not used for administrative costs during the <b>six month (6)</b> Reporting Period is made available for lending activities; (3) RLF Income shall not be withdrawn from the RLF Capital base in a subsequent Reporting Period for any purpose other than</p>	<p><b>Change reflects new six month reporting period</b></p>

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<p>without the prior written consent of EDA; and  <del>(4) The RLF Recipient completes an RLF Income and Expense Statement (the “Income and Expense Statement”) as required under § 307.14(c).</del>            (b) <i>Compliance guidelines.</i> When charging costs against RLF Income, RLF Recipients must comply with applicable <del>OMB</del> cost principles and <del>RLF</del> audit guidelines as found in:            (1) OMB Circular A–87 for State, local, and Indian tribal governments, OMB Circular A–122 for non-profit organizations other than institutions of higher education, hospitals or organizations named in OMB Circular A–122 as not subject to such circular, and OMB Circular A–21 for educational institutions; and</p>	<p>lending without the prior written consent of EDA; and             (b) <i>Compliance guidance.</i> When charging costs against RLF Income, RLF Recipients must comply with applicable <b>federal</b> cost principles and audit requirements as found in:            (1) <b>2 CFR part 225</b> (OMB Circular A–87 for State, local, and Indian tribal governments), <b>2 CFR part 230</b> (OMB Circular A–122 for non-profit organizations other than institutions of higher education, hospitals or organizations named in OMB Circular A–122 as not subject to such Circular), and 2 CFR part 220 (OMB Circular A–21 for educational institutions); and</p>	
<p><b>§ 307.13 Records and retention.</b>            (b) <i>Administrative records.</i> RLF Recipients must at all times:            (2) Retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF for three (3) years from the actual submission date of the last semi-annual <del>or annual report</del> that covers the period that such costs were claimed, <del>or for five (5) years from the date the costs were claimed, whichever is less.</del></p>	<p><b>§ 307.13 Records and retention.</b>            (b) <i>Administrative records.</i> RLF Recipients must at all times:            (2) Retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF for three (3) years from the actual submission date of the last semiannual report that covers the Reporting Period in which such costs were claimed.</p>	<p><b>Revises regulations to clarify that all administrative records must be retained for three years</b></p>

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<p><b>§ 307.14 Revolving Loan Fund semi-annual and annual reports.</b></p> <p>(a) <i>Frequency of reports.</i> All RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, must submit semi-annual reports. <del>EDA may approve the substitution of annual reports for semi-annual reports upon written request by the Recipient if the following conditions have been met:</del></p> <p><del>(1) At least one (1) year has passed from the date that the RLF has loaned an aggregate amount equal to its initial RLF Capital base;</del></p> <p><del>(2) The RLF Recipient has timely submitted accurate semi-annual reports for the preceding two (2) years;</del></p> <p><del>(3) The RLF Recipient has ensured completion and submission to EDA of required periodic audits for the most recent audit period within the preceding two (2) years; and</del></p> <p><del>(4) EDA determines that the RLF is in compliance with all applicable RLF requirements.</del></p> <p>(b) <i>Report contents.</i> RLF Recipients must certify as part of the semi-annual <del>or annual</del> report to EDA that the RLF is operating in accordance with the applicable RLF Plan. RLF Recipients must also describe (and propose pursuant to § 307.9) any modifications to the RLF Plan to ensure effective use of the RLF as a strategic financing tool.</p>	<p><b>§ 307.14 Revolving Loan Fund semiannual report and Income and Expense Statement.</b></p> <p>(a) <i>Frequency of reports.</i> All RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, must <b>complete and</b> submit a semiannual report <b>(Form ED-209 or any successor form) in electronic format, unless EDA approves a paper submission.</b></p> <p>(b) <i>Report contents.</i> RLF Recipients must certify as part of the semi-annual report to EDA that the RLF is operating in accordance with the applicable RLF Plan. RLF Recipients also must describe (and propose pursuant to § 307.9) any modifications to the RLF Plan to ensure effective use of the RLF as a strategic financing tool.</p>	<p><b>Section is rewritten to include requirement for all RLF recipients to submit a semi-annual report in an electronic format unless EDA approves a paper submission.</b></p>

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<p>(c) <i>RLF Income and Expense Statement.</i>  <del>(1) An RLF Recipient using either fifty (50) percent or more (or more than \$100,000) of RLF Income for administrative costs in the twelve-month (12) reporting period must submit a completed Income and Expense Statement annually to the appropriate regional office within ninety (90) days of the end of its fiscal year. An RLF Recipient using less than fifty (50) percent and less than \$100,000 of RLF Income for administrative costs in the twelve-month (12) reporting period must prepare and retain for four (4) years a completed Income and Expense Statement for the applicable fiscal year, which shall be made available to EDA upon request.</del>  <del>(2) Performance measures. As part of the semi-annual or annual report, RLF Recipients shall submit to EDA the information identified as the “Core Performance Measures” in the special award conditions of the Grant documents. EDA will advise RLF Recipients within a reasonable time of any required modifications to the information submitted.</del></p>	<p>(c) <i>RLF Income and Expense Statement.</i> An RLF Recipient using either fifty (50) percent or more (or more than \$100,000) of RLF Income for administrative costs in <b>a six-month (6) Reporting Period must submit to EDA a completed Income and Expense Statement (Form ED-209I or any successor form) for that Reporting Period in electronic format, unless EDA approves a paper submission.</b></p>	<p><b>Section is rewritten to require the RLF recipient that uses either 50 percent or more (or more than \$100,000) of RLF income for administrative costs in a six-month period to submit an income and expense statement. Report must be submitted electronically, unless EDA approves a paper submission.</b></p>
<p><b>§ 307.15 Prudent management of Revolving Loan Funds.</b>            (b)(2) Prior to the disbursement of any EDA funds, the RLF Recipient shall certify that standard RLF loan documents reasonably necessary or advisable for lending are in place and that these documents have been</p>	<p><b>§ 307.15 Prudent management of Revolving Loan Funds.</b>            (b)(2) Prior to the disbursement of any EDA funds, the RLF Recipient shall certify that standard RLF loan documents reasonably necessary or advisable for lending are in place and that these documents have been</p>	

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<p>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 must include, at a minimum, the following:</p> <ul style="list-style-type: none"> <li>(i) Loan application;</li> <li>(ii) Loan agreement;</li> <li>(iii) Promissory note;</li> <li>(iv) Security agreement(s);</li> <li>(v) Deed of trust or mortgage (as applicable);</li> <li>(vi) Agreement of prior lien holder (as applicable); and</li> <li><del>(vii) Guaranty agreement (as applicable).</del></li> </ul> <p>(c) <i>Interest rates.</i> An RLF Recipient may make loans <del>and may guarantee loans</del> to eligible borrowers at interest rates and under conditions determined by the RLF Recipient to be appropriate in achieving the goals of the RLF. <del>However,</del> the minimum interest rate an RLF can charge is four (4) percentage points below the lesser of the current money center prime interest rate quoted in the <i>Wall Street Journal</i>, or the maximum interest rate allowed</p>	<p>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 must include, at a minimum, the following:</p> <ul style="list-style-type: none"> <li>(i) Loan application;</li> <li>(ii) Loan agreement;</li> <li><b>(iii) Board of directors' meeting minutes approving the RLF loan;</b></li> <li>(iv) Promissory note;</li> <li>(v) Security agreement(s);</li> <li>(vi) Deed of trust or mortgage (as applicable);</li> <li>(vii) Agreement of prior lien holder (as applicable); and</li> <li><b>(viii) Signed bank turn-down letter demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. EDA will accept alternate documentation only if such documentation is allowed in the RLF Recipient's EDA-approved RLF Plan.</b></li> </ul> <p>(c) <i>Interest rates—</i> <b>(1) General rule.</b> An RLF Recipient may make loans to eligible borrowers at interest rates and under conditions determined by the RLF Recipient to be appropriate in achieving the goals of the RLF. The minimum interest rate an RLF Recipient may charge is four (4) percentage points below the lesser of the current money center prime interest rate quoted in the <i>Wall Street Journal</i>, or the</p>	<p><b>Regulations add additional loan documentation requirements. Strikes guaranty agreements. RLF operators are no longer allowed to guarantee loans.</b></p> <p><b>Section reworded. No substantive changes.</b></p>

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<p>under State law. In no event shall the interest rate be less than four (4) percent. However, should the prime interest rate listed in the <i>Wall Street Journal</i> exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of the RLF Recipient to implement its financing strategy.</p>	<p>maximum interest rate allowed under State law. In no event shall the interest rate be less than the lower of four (4) percent <b>or 75 percent of the prime interest rate listed in the <i>Wall Street Journal</i>.</b></p> <p><b>(2) Exception.</b> Should the prime interest rate listed in the <i>Wall Street Journal</i> exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of the RLF Recipient to implement its financing strategy.</p> <p><b>(e) RLF certification course.</b> EDA may establish a mandatory RLF certification program to enhance RLF Recipients' ability to administer RLF Grants in a prudent manner. If so required by EDA, the RLF Recipient must satisfactorily complete this program, and may consider the cost of attending the certification courses as an administrative cost, provided the requirements set forth in § 307.12 are satisfied.</p>	<p><b>Clarifying language regarding interest rates</b></p> <p><b>New section allowing EDA to require certification for RLF operators</b></p>
<p><b>§ 307.16 Effective utilization of Revolving Loan Funds.</b> (c)(2)(i) <i>Sequestration of excess funds.</i> If the RLF Recipient fails to satisfy the applicable capital utilization percentage requirement for two (2) consecutive reporting intervals, EDA may require the RLF Recipient to deposit excess funds in an interest-bearing account</p>	<p><b>§ 307.16 Effective utilization of Revolving Loan Funds.</b> (c)(2)(i) <i>Sequestration of excess funds.</i> If the RLF Recipient fails to satisfy the applicable capital utilization percentage requirement for two (2) consecutive Reporting <b>Periods</b>, EDA may require the RLF Recipient to deposit excess funds in an interest-bearing account.</p>	<p><b>Clarifying language on the sequestration of excess funds</b></p>

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<p><del>separate from the EDA funds account.</del> The portion of interest earned on the account holding excess funds attributable to the RLF Grant shall be remitted to the U.S. Treasury. RLF Recipients must obtain EDA's written authorization to withdraw any sequestered funds.</p>	<p>The portion of interest earned on the account holding excess funds attributable to the <b>Federal Share (as defined in § 314.5 of this chapter)</b> of the RLF Grant shall be remitted to the U.S. Treasury. The RLF Recipient must obtain EDA's written authorization to withdraw any sequestered funds.</p> <p><b>(d) Loan default rates. (1) EDA shall monitor the RLF Recipient's loan default rate to ensure proper protection of the Federal Share (as defined in § 314.5 of this chapter) of the RLF property, and request information from the RLF Recipient as necessary to determine whether it is collecting loan repayments and complying with the financial obligations under the RLF Grant. Such information may include:</b></p> <p><b>(i) A written analysis of the RLF Recipient's portfolio, which shall consider the Recipient's business plan, loan and collateral policies, loan servicing and collection policies and procedures, the rate of growth of the RLF Capital base, and detailed information on any loan in default; and</b></p> <p><b>(ii) A corrective action plan subject to EDA's approval, which shall include specific actions the RLF Recipient must take to reduce the loan default rate; and</b></p> <p><b>(iii) A quarterly status report indicating the RLF Recipient's progress on achieving the milestones outlined in the corrective action</b></p>	<p><b>New regulation section stating EDA will monitor an RLF operator's loan default rate and can request information to determine if loan payments are being properly collected. If the RLF operator fails to provide requested information, enforcement action may be taken.</b></p>

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	<p><b>plan.</b>  <b>(2) Failure to provide the information requested and to take steps to protect the Federal Share may subject the RLF Recipient to enforcement action under § 307.21 and the terms and conditions of the Grant.</b></p>	
<p><b>§ 307.17 Uses of capital.</b>            (a) <i>General.</i> RLF Capital shall be used for the purpose of making RLF loans that are consistent with an RLF Plan or such other purposes approved by EDA. To ensure that RLF funds are used as intended, each loan agreement must clearly state the purpose of each loan.            (b) <i>Restrictions on use of RLF Capital.</i> RLF Capital shall not be used to:            (1) Acquire an equity position in a private business;            (2) Subsidize interest payments on an existing RLF loan;            (3) Provide for borrowers' required equity contributions under other Federal Agencies' loan programs;            (4) Enable borrowers to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or</p>	<p><b>§ 307.17 Uses of capital.</b>            (a) <i>General.</i> RLF Capital shall be used for the purpose of making RLF loans that are consistent with an RLF Plan or such other purposes approved by EDA. To ensure that RLF funds are used as intended, each loan agreement must clearly state the purpose of each loan.            (b) <i>Restrictions on use of RLF Capital.</i> RLF Capital shall not be used to:            (1) Acquire an equity position in a private business;            (2) Subsidize interest payments on an existing RLF loan;            (3) Provide for borrowers' required equity contributions under other Federal Agencies' loan programs;            (4) Enable borrowers to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or</p>	

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<p>increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF;</p> <p>(5) Provide RLF loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposit or any investment unrelated to the RLF; or</p> <p>(6) Refinance existing debt, unless:</p> <p>(i) The RLF Recipient sufficiently demonstrates in the loan documentation a “<i>sound economic justification</i>” 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</p> <p>(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. RLF Capital may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF’s costs plus a reasonable portion of the outstanding RLF loan within eighteen (18) months following the date of refinancing;</p> <p><del>(c) Credit not otherwise available. RLF Recipients must determine and clearly</del></p>	<p>increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF;</p> <p>(5) Provide RLF loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposit or any investment unrelated to the RLF; or</p> <p>(6) Refinance existing debt, unless:</p> <p>(i) The RLF Recipient sufficiently demonstrates in the loan documentation a “<i>sound economic justification</i>” 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</p> <p>(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. RLF Capital may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF’s costs plus a reasonable portion of the outstanding RLF loan within eighteen (18) months following the date of refinancing.</p> <p><b>(c) Compliance and Loan Quality Review. To ensure that the RLF Recipient makes eligible</b></p>	<p><b>New provision requiring an independent third party to conduct a compliance review every three years. The RLF operator may undertake the review as an administrative</b></p>

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<p>demonstrate in the loan documentation for each RLF loan that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed.</p> <p>(d) <i>Use of In-Kind Contributions.</i> In-Kind Contributions may satisfy Matching Share requirements when specifically authorized in the terms and provisions of the RLF Grant and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs.</p> <p><del>(e) <i>Loan guaranty agreements.</i> Prior to the full disbursement of Grant funds, the RLF Recipient shall not use RLF Capital to guarantee loans made by other lending institutions. After the full disbursement of Grant funds, RLF Capital may be used to guarantee loans of private lenders, provided the RLF Recipient has obtained prior written approval from EDA of its proposed loan guaranty activities and submitted to EDA:</del></p> <p><del>(1) The maximum guaranty percentage offered by the RLF Recipient and accepted by the lender;</del></p> <p><del>(2) The loan guaranty agreement which must (at a minimum) document:</del></p> <p><del>(i) The RLF Recipient's maximum liability;</del></p> <p><del>(ii) The respective rights, representations and obligations of the RLF Recipient and lender with regard to collection procedures, servicing</del></p>	<p>RLF loans consistent with its RLF Plan or such other purposes approved by EDA, EDA shall require an independent third party to conduct a compliance and loan quality review for the RLF Grant every (3) three years. The RLF Recipient may undertake this review as an administrative cost associated with the RLF's operations, provided the requirements set forth in § 307.12 are satisfied.</p> <p>(d) <i>Use of In-Kind Contributions.</i> In-Kind Contributions may satisfy Matching Share requirements when specifically authorized in the terms and conditions of the RLF Grant and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs.</p>	<p><b>cost.</b></p> <p><b>Provision regarding loan guaranty agreement is eliminated. Agency no longer allows RLFs to make loan guarantees.</b></p>

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<p>requirements, borrower delinquency, events of defaults and termination of the loan guaranty agreement;            (iii) The responsible party's obligations in the event of any foreclosure, bankruptcy or insolvency proceeding;            (iv) The responsible party's obligations with respect to collateral disposition and the call provisions for the Guaranteed Loan; and            (v) The distribution of interest income and loan fees, if any, to the RLF; and            (3) Certification from the RLF Recipient's legal counsel that the loan guaranty agreement is valid and enforceable under applicable State law; and            (4) An amended RLF Plan accommodating the loan guaranty activities approved by EDA (as necessary).</p>		
<p><b>§ 307.18 Addition of lending areas; merger of RLFs.</b>            (b)(1)(i) It meets the requirements to obtain <del>annual report status</del> identified in paragraphs (a)(2) through (a)(4) of § 307.14;            (2)(i) The surviving RLF Recipient meets the requirements to obtain <del>annual report status</del> identified in paragraphs (a)(2) through (a)(4) of § 307.14;</p>	<p><b>§ 307.18 Addition of lending areas; merger of RLFs.</b>            (b) (1)(i) It is up-to-date with all <b>semiannual reports</b> in accordance with § 307.14;            (2) (i) The surviving RLF Recipient is up-to-date with all <b>semi-annual reports</b> in accordance with § 307.14;</p>	<p><b>Changed to reflect semi-annual reporting requirements</b></p>

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<p><b>§ 307.20 Partial liquidation and liquidation upon termination.</b></p> <p><del>(a) <i>Partial liquidation.</i> EDA may require an RLF Recipient to transfer any RLF loans that are more than one hundred and twenty (120) days delinquent to an RLF Third Party for liquidation.</del></p> <p><del>(b) <i>Liquidation upon termination.</i> When EDA approves the termination of an RLF Grant, EDA may assign or transfer assets of the RLF to an RLF Third Party for liquidation.</del></p> <p><del>(c) <i>Terms.</i> The following terms will govern any liquidation:</del></p> <p><del>(1) EDA shall have sole discretion in choosing the RLF Third Party;</del></p> <p><del>(2) The RLF Third Party may be an Eligible Applicant or a for-profit organization not otherwise eligible for Investment Assistance;</del></p> <p><del>(3) EDA may enter into an agreement with the RLF Third Party to liquidate the assets of one</del></p> <p><del>(1) or more RLFs or RLF Recipients;</del></p> <p><del>(4) EDA may allow the RLF Third Party to retain a portion of the RLF assets, consistent with the agreement referenced in paragraph (c)(3) of this section, as reasonable compensation for services rendered in the liquidation; and</del></p> <p><del>(5) EDA may require additional reasonable terms and conditions.</del></p>	<p><b>§ 307.20 Partial liquidation; liquidation upon termination.</b></p> <p><b>(a) <i>Partial liquidation or disallowance of a portion of an RLF Grant.</i> If the RLF Recipient engages in certain problematic practices, EDA may disallow a corresponding proportion of the Grant or direct the RLF Recipient to transfer loans to an RLF Third Party for liquidation. Problematic practices for which EDA may disallow a portion of an RLF Grant and recover the pro-rata Federal Share (as defined in § 314.5 of this chapter) include but are not limited to the RLF Recipient:</b></p> <p><b>(1) Having RLF loans that are more than one hundred and twenty (120) days delinquent;</b></p> <p><b>(2) Having excess cash sequestered for twelve (12) months or longer and EDA has not approved an extension request;</b></p> <p><b>(3) Making an ineligible loan;</b></p> <p><b>(4) Failing to disburse the EDA funds in accordance with the time schedule prescribed in the RLF Grant; or</b></p> <p><b>(5) Determining that it does not wish to further invest in the RLF or cannot maintain operations at the degree originally contemplated upon receipt of the RLF Grant and requests that a portion of the RLF Grant be disallowed, and EDA agrees to allow the disallowance.</b></p>	<p><b>Section rewritten to make clear that a partial liquidation is separate from a liquidation upon EDA approving a termination of the RLF grant. The interim rule revises regulation to extend the partial liquidation action to problematic instances beyond the RLF recipient having loans that are more than 120 days delinquent.</b></p>

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(d) (2) <i>Second</i> , for the payment of EDA's Federal Share (as defined in § 314.5 of this chapter); and	(d)(2) <i>Second</i> , for the payment of EDA's Federal Share; and	
<p><b>§ 307.21 Termination of Revolving Loan Funds.</b></p> <p>(a) EDA may suspend or terminate an RLF Grant for cause, including but not limited to the following reasons:</p> <p>(1) Failure to operate the RLF in accordance with the Plan, the RLF Grant or this part;</p> <p>(2) Failure to obtain prior EDA approval for material changes to the Plan, including provisions for administering the RLF;</p> <p><del>(3) Failure to submit timely progress, financial and audit reports as required by the RLF Grant and § 307.14; and</del></p> <p>(4) Failure to comply with the conflicts of interest provisions set forth in § 302.17.</p>	<p><b>§ 307.21 Termination of Revolving Loan Funds.</b></p> <p>(a)(1) EDA may suspend or terminate an RLF Grant for cause, including but not limited to the RLF Recipient's failure to:</p> <p><b>(i) Operate the RLF in accordance with the Plan, the RLF Grant or this part;</b></p> <p><b>(ii) Obtain prior EDA approval for material changes to the Plan, including provisions for administering the RLF;</b></p> <p><b>(iii) Submit an updated Plan to EDA in accordance with § 307.9(c);</b></p> <p><b>(iv) Submit timely progress, financial and audit reports in the format required by the RLF Grant and § 307.14, including the semi-annual report and the Income and Expense Statement (if applicable);</b></p> <p><b>(v) Manage the RLF Grant in accordance with Prudent Lending Practices, as defined in § 307.8;</b></p> <p><b>(vi) Sequester excess funds or remit the interest on EDA's portion of the sequestered funds to the U.S. Treasury, as directed by EDA;</b></p> <p><b>(vii) Submit the documentation requested by EDA regarding a high loan default rate and collection efforts, or correct a high loan default rate, as determined by EDA;</b></p>	<p><b>Interim rules add additional causes for termination or suspension of an RLF grant</b></p>

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	<p>(viii) Comply with the audit requirements set forth in OMB Circular A-133 and the Compliance Supplement, including timely submission of audit reports to the Federal Audit Clearinghouse and the correct designation of the RLF as a major program (as defined in OMB Circular A-133), as applicable;</p> <p>(ix) Comply with an EDA-approved corrective action plan to remedy RLF related audit findings; and</p> <p>(x) Comply with the conflicts of interest provisions set forth in § 302.17.</p> <p><b>(2) To maintain effective control over and accountability of RLF Grant funds and assets, EDA shall determine the manner and timing of any suspension or termination action. EDA may require the RLF Recipient to repay the Federal Share in a lump-sum payment or enter into a Sale, or EDA may agree to enter into a repayment agreement with the RLF Recipient for repayment of the Federal Share.</b></p>	

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<p><b>PART 308—PERFORMANCE INCENTIVES</b></p> <p><b>§ 308.3 Planning performance awards.</b>            (a) At the discretion of the Assistant Secretary, a Recipient of Investment Assistance awarded on or after the date of enactment of section 216 of PWEDA located in an EDA-funded Economic Development District may receive a planning performance award in an amount not to exceed five (5) percent of the amount of the applicable Investment award if EDA determines <del>no later than three (3) years following</del> closeout of the Project that:</p> <p>(1) The Recipient, through the Project, actively participated in the economic development activities of the District;</p> <p>(2) The Project demonstrated exceptional fulfillment of one (1) or more components of, and is otherwise in accordance with, the applicable CEDS, including any job creation or job retention requirements; and</p> <p>(3) The Recipient demonstrated exceptional collaboration with Federal, State and local economic development entities throughout the development of the Project.</p>	<p><b>PART 308—PERFORMANCE INCENTIVES</b></p> <p><b>§ 308.3 Planning performance awards.</b>            (a) A Recipient of Investment Assistance awarded on or after the date of enactment of section 216 of PWEDA for a Project located in an EDA-funded Economic Development District may, at the discretion of the Assistant Secretary, receive a planning performance award in an amount not to exceed five (5) percent of the amount of the applicable Investment award if EDA determines before closeout of the Project that:</p> <p>(1) The Recipient, through the Project, actively participated in the economic development activities of the District;</p> <p>(2) The Project demonstrated exceptional fulfillment of one (1) or more components of, and is otherwise in accordance with, the applicable CEDS, including any job creation or job retention requirements; and</p> <p>(3) The Recipient demonstrated exceptional collaboration with federal, State and local economic development entities throughout the development of the Project.</p>	<p><b>Section is revised to eliminate the three year limitation on distributing a planning performance award</b></p>

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<p><b>PART 314—PROPERTY</b></p> <p><b>§ 314.5 Federal Share.</b> For purposes of this part, “<i>Federal Share</i>” means that portion of the current fair market value of any Property <del>(after deducting actual and reasonable selling and repair expenses, if any, incurred to put the Property into marketable condition)</del> attributable to EDA’s participation in the Project. The Federal Share excludes that portion of the current fair market value of the Property attributable to acquisition or improvements before or after EDA’s participation in the Project, which are not included in the total Project costs. For example, if the total Project costs are \$100, consisting of \$50 of Investment Assistance and \$50 of Matching Share, the Federal Share is fifty (50) percent. If the Property is disposed of when its current fair market is \$250, the Federal Share is \$125 (<i>i.e.</i>, fifty (50) percent of \$250). If \$10 is spent to put the Property into salable condition, the Federal Share is \$120 (<i>i.e.</i>, fifty (50) percent of (\$250-\$10)).</p>	<p><b>PART 314—PROPERTY</b></p> <p><b>§ 314.5 Federal Share.</b> (a) For purposes of this part, “<i>Federal Share</i>” means that portion of the current fair market value of any Property attributable to EDA’s participation in the Project.</p> <p><b>The Federal Share shall be the current fair market value of the Property after deducting:</b> <b>(1) Reasonable repair expenses, if any, incurred to put the Property into marketable condition; and</b> <b>(2) Sales, commission and marketing costs.</b> (b) The Federal Share excludes that portion of the current fair market value of the Property attributable to acquisition or improvements before or after EDA’s participation in the Project, which are not included in the total Project costs. For example, if the total Project costs are \$100, consisting of \$50 of Investment Assistance and \$50 of Matching Share, the Federal Share is fifty (50) percent. If the Property is disposed of when its current fair market is \$250, the Federal Share is \$125 (<i>i.e.</i>, fifty (50) percent of \$250). If \$10 is spent to put the Property into salable condition, the Federal Share is \$120 (<i>i.e.</i>, fifty (50) percent of (\$250-\$10)).</p>	<p><b>Interim rule adds language to clarify the federal share of property attributable to EDA’s participation in a project</b></p>

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<p><b>§ 314.6 Encumbrances.</b>            (a) <i>General.</i> Except as provided in paragraph (b) of this section or as otherwise authorized by EDA, Recipient owned Property acquired or improved in whole or in part with Investment Assistance must not be used to secure a mortgage or deed of trust or in any way collateralized or otherwise encumbered, except to secure a grant or loan made by a Federal Agency or State agency or other public body participating in the same Project. <del>An encumbrance includes but is not limited to easements, rights-of-way or other restrictions on the use of any Property.</del></p> <p>(b)(3)(iv) There is a reasonable expectation, as determined by EDA, that the Recipient will not default on its obligations.</p>	<p><b>§ 314.6 Encumbrances.</b>            (a) <i>General.</i> Except as provided in paragraph (b) of this section or as otherwise authorized by EDA, Recipient-owned Property acquired or improved in whole or in part with Investment Assistance must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered, except to secure a grant or loan made by a Federal Agency or State agency or other public body participating in the same Project.</p> <p>(b)(3)(iv) There is a reasonable expectation, as determined by EDA, that the Recipient will not default on its obligations. <b>In determining whether an expectation is reasonable for purposes of this paragraph, EDA shall take into account whether a Recipient that is a non-profit organization is joined in the Project with a co-Recipient that is a public body, whether the non-profit organization has demonstrated stability over time, and such other factors as EDA deems appropriate.</b></p>	<p><b>Language revision regarding encumbrances</b></p> <p><b>EDA will take into account whether a recipient that is a non-profit organization is joined in a project with a co-recipient that is a public body, whether the non-profit organization has demonstrated stability over time and other factors to be determined by EDA.</b></p>

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<p><b>§ 314.7 Title.</b> (c)(2)(ii) EDA, in its sole discretion, determines that the terms and conditions of the lease adequately safeguard the Federal government’s interest in the Real Property.</p> <p><del>(4) When a Project includes construction on a State-owned or local government-owned highway (i.e., where the Recipient is not the State or local government owner), EDA may find it 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, construction 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 that the:</del></p> <p><del>(i) State or local government will operate and maintain the improvements for the Estimated Useful Life of the Project;</del></p> <p><del>(ii) State or local government will not sell the improvements for the Estimated Useful Life of the Project; and</del></p>	<p><b>§ 314.7 Title.</b> (c)(2)(ii) EDA, in its sole discretion, determines that the terms and conditions of the lease adequately safeguard the Federal government’s interest in the Real Property <b>and demonstrate the economic development and public benefits of the leasehold transaction.</b></p> <p>(4) When the Project includes construction on a <b>public</b> highway the owner of which is not the Recipient, <b>EDA may allow the Project to be constructed in whole or in part in the right-of-way of such public highway, provided that:</b></p> <p><b>(i) All EDA-funded</b> construction is completed in accordance with EDA requirements;</p> <p><b>(ii) The Recipient confirms in writing to EDA, satisfactory to EDA, that:</b></p> <p><b>(A) The Recipient is committed during the Estimated Useful Life of the Project to operate, maintain and repair all improvements for the Project consistent with the Investment Assistance; and</b></p> <p><b>(B) If at any time during the Estimated Useful Life of the Project any or all of the improvements in the Project within the public highway are relocated for any reason pursuant to requirements of the owner of</b></p>	<p><b>Expands and clarifies criteria for EDA-funded highway construction</b></p>

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<p>(iii) Use of the Property will be consistent with the authorized purposes of the Project.</p>	<p>the public highway, the Recipient shall be responsible for accomplishing such relocation, including as necessary expending the Recipient's own funds, so that the Project continues as authorized by the Investment Assistance; and</p> <p><b>(iii) The Recipient obtains all written authorizations (i.e., State or county permit(s)) necessary for the Project to be constructed within the public highway, copies of which shall be submitted to EDA. Such authorizations shall contain no time limits that EDA determines substantially restrict the use of the public highway for the Project during the Estimated Useful Life of the Project.</b></p>	