

**EDA REGULATIONS: PART 314 REAL PROPERTY
COMPARISON OF 1999 EXISTING RULES VS 2005 INTERIM-FINAL RULES**

CURRENT FEDERAL REGULATIONS (1999)	INTERIM FINAL RULES (2005)	ANALYSIS / COMMENTS
<p>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. 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. SOURCE: 64 FR 5476, Feb. 3, 1999, unless otherwise noted.</p>	<p>PART 314 PROPERTY Subpart A ~ General Sec. 314.1 Definitions. 314.2 Federal interest. 314.3 Authorized use of Property. 314.4 Unauthorized Use of Property. 314.5 Federal Share. 314.6 Encumbrances. Subpart B ~ Real Property 314.7 Title. 314.8 Recorded statement. Subpart C ~ Personal Property 314.9 Recorded statement—Title. Subpart D ~ Release of EDA’s Property Interest 314.10 Procedures for release of EDA’s Property interest. AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.</p>	
<p>§ 314.2 Definitions. As used in this part 314 of this chapter: <i>Dispose</i> includes sell, lease, abandon, or use for a purpose or purposes not authorized under the grant award or this part.</p>	<p>Subpart A ~ General § 314.1 Definitions. In addition to the defined terms set forth in § 300.3 of this chapter, the following terms shall have the following meanings:</p>	

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<p>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.</p> <p><i>Estimated useful life</i> means that period of years, determined by EDA as the expected lifespan of the project.</p> <p><i>Owner</i> 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.</p>	<p>Adequate Consideration means the fair market value at the time of sale or lease of any Property, as adjusted, in EDA's sole discretion, by any services, property exchanges, contractual commitments, acts of forbearance or other considerations that are in furtherance of the authorized purposes of the Investment Assistance, which are received by the Recipient or Owner in exchange for such Property.</p> <p>Disposition or Dispose means the sale, lease, abandonment or other disposition of any Property and also includes the Unauthorized Use of such Property.</p> <p>Encumbrance or Encumber have the meaning ascribed to them in § 314.6.</p> <p>Estimated Useful Life means the period of years, as determined by EDA, that constitutes the expected useful lifespan of a Project.</p> <p>Federal Interest has the definition ascribed to it in § 314.2(a).</p> <p>Federal Share has the definition ascribed to it in § 314.5.</p> <p>Owner means a fee owner, transferee, lessee or optionee of any Property. The term Owner also includes the holder of other interests in a Property where the interests are such that the holder effectively controls the use of such Property.</p>	

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<p><i>Personal Property</i> means all property other than real property.</p> <p><i>Property</i> includes all forms of property, real, personal (tangible and intangible), and mixed.</p> <p><i>Real property</i> 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.</p> <p><i>Recipient</i> 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.</p>	<p>Personal Property means all tangible and intangible property other than Real Property.</p> <p>Property means Real Property, Personal Property and mixed property.</p> <p>Real Property means any land, whether raw or improved, and includes structures, fixtures, appurtenances and other permanent improvements, excluding moveable machinery and equipment. Real Property includes land that is improved by the construction of Project infrastructure such as, but not limited to, roads, sewers and water lines that are not situated on or under the land, where the infrastructure contributes to the value of such land as a specific purpose of the Project.</p> <p>Successor Recipient means an EDA-approved transferee of Property pursuant to § 314.3(d). A Successor Recipient must be an Eligible Recipient of Investment Assistance.</p> <p>Unauthorized Use means any use of Property acquired or improved in whole or in part for purposes not authorized by EDA Investment Assistance, PWEDA or this chapter, as set forth in § 314.4.</p>	

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<p>§ 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.</p>	<p>§ 314.2 Federal interest. (a) Property that is acquired or improved, in whole or in part, with Investment Assistance shall be held in trust by the Recipient for the benefit of the Project for the Estimated Useful Life of the Project, during which period EDA retains an undivided equitable reversionary interest in the Property (the "Federal Interest"). The Federal Interest secures compliance with matters such as the purpose, scope and use of a Project and is often reflected by a recorded lien, statement or other recordable instrument setting forth EDA's Property interest in a Project (e.g., a mortgage, covenant, or other statement of EDA's Real Property interest in the case of a Project involving the acquisition, construction or improvement of a building. See § 314.8.) (b) When the Federal government is fully compensated for the Federal Share of Property acquired or improved, in whole or in part, with Investment Assistance, the Federal Interest is extinguished and the Federal government has no further interest in the Property.</p>	<p>314.2(a) of the interim final rule consolidates current rules 314.1(a) & (b) and clarifies that property acquired through EDA assistance is held in trust by the recipient for the useful life of the project and reaffirms that EDA maintains an undivided equitable interest in the property.</p> <p>314.1(c) of current regulations is eliminated. Successor recipient is defined in interim final rule 314.1 and 314.3(d).</p> <p>Interim final rule section 314.2(b) is substantively the same as current section 314.5(d).</p>
<p>§ 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.</p>	<p>§ 314.3 Authorized use of Property. (a) The Recipient or Owner must use any Property acquired or improved in whole or in part with Investment Assistance only for the authorized purpose of the Project and such Property must not be Disposed of or Encumbered without EDA's prior written authorization.</p>	<p>314.3(a), (b), (c) and (e) are substantively unchanged.</p>

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<p>(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.</p> <p>(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.</p> <p>(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. In extraordinary and compelling circumstances, EDA may allow replacement of real property, with the approval of the Assistant Secretary.</p>	<p>(b) Where EDA and the Recipient determine that Property acquired or improved in whole or in part with Investment Assistance is no longer needed for the original purpose of the Investment Assistance, EDA, in its sole discretion, may approve the use of such Property in other federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and by this chapter.</p> <p>(c) Where EDA determines that the authorized purpose of the Investment Assistance is to develop Real Property to be leased or sold, such sale or lease is permitted provided it is for Adequate Consideration and the sale is consistent with the authorized purpose of the Investment Assistance and with all applicable Investment Assistance requirements including but not limited to nondiscrimination and environmental compliance.</p> <p>(d) EDA, in its sole discretion, may approve the transfer of any Property from a Recipient to a Successor Recipient (or from one Successor Recipient to another Successor Recipient). The Recipient will remain responsible for complying with the rules of this part and the terms and conditions of the Investment Assistance for the period in which it is the Recipient. Thereafter, the Successor Recipient must comply with the rules of this part and with the same terms and conditions as were applicable to the Recipient (unless such terms and conditions are otherwise amended by EDA). The same rules apply to EDA-approved transfers of Property between Successor Recipients.</p>	<p>Adequate consideration is relocated to definitions section and revised to reflect a “fair market” consideration.</p> <p>314.3(d) is similar to current regulation section 314.1(c). However, revisions have been made to clarify transfer mechanism between recipients.</p>

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	<p>(e) When acquiring replacement Personal Property of equal or greater value than Personal Property originally acquired with Investment Assistance, the Recipient may, with EDA's approval, trade in such Personal Property originally acquired or sell the original Personal Property and use the proceeds for the acquisition of the replacement Personal Property; provided that the replacement Personal Property is for use in a Project. The replacement Personal Property is subject to the same requirements as the original Personal Property. In extraordinary and compelling circumstances, the Assistant Secretary may approve the replacement of Real Property used in a Project.</p> <p>(f) With EDA's prior written approval, a Recipient may undertake an incidental use of Property that does not interfere with the scope of the Project or the economic purpose for which the Investment was made, provided that the Recipient is in compliance with applicable law and the terms and conditions of the Investment Assistance, and the incidental use of the Property will not violate the terms and conditions of the Investment Assistance or otherwise adversely affect the economic useful life of the Property. Eligible Applicants and Recipients should contact the appropriate regional office (whose contact information is available via the Internet at www.eda.gov) for guidelines on obtaining approval for incidental use of Property under this section.</p>	<p>314.3(f) is a new section that allows a recipient to put property to a secondary use as long as that use does not interfere with the economic purposes of the property. The recipient must obtain prior written approval from EDA.</p>

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<p>§ 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. To that end, EDA may take such actions as are provided in connection with loans and loan guarantees, in § 316.5(c) of this chapter. EDA may pursue its rights under both paragraphs (a) and (b) of this section to recover the Federal share, plus costs and interest. (c) RLF grant projects. (1) EDA may suspend or terminate any RLF grant for cause based on, but not limited to, the following: (i) Failure to make loans in accordance with the RLF Plan, including the time schedule for loan closings; (ii) Failure to obtain prior EDA approval for such changes to the RLF Plan, including provisions for administering the RLF;</p>	<p>§ 314.4 Unauthorized Use of Property. (a) Except as provided in §§ 314.3 (regarding the authorized use of Property) or 314.10 (regarding the release of EDA's interest in certain Property), or as otherwise authorized by EDA, the Federal government must be compensated by the Recipient for the Federal Share whenever, during the Estimated Useful Life of the Project, any Property acquired or improved in whole or in part with Investment Assistance is Disposed of, Encumbered, or no longer used for the purpose of the Project; provided that for equipment and supplies, the Uniform Administrative Requirements for Grants at 15 CFR parts 14 and 24, including any supplements or amendments thereto, shall apply. (b) Additionally, prior to the release of EDA's interest, Real Property or tangible Personal Property acquired or improved with EDA Investment Assistance may not be used: (1) In violation of the nondiscrimination requirements of § 302.20 of this chapter or in violation of the terms and conditions of the Investment Assistance; or (2) For any purpose prohibited by applicable law. (c) Where the Disposition, Encumbrance or use of any Property violates paragraphs (a) or (b) of this section, EDA may assert its interest in the Property to recover the Federal Share for the Federal government and may take such actions as authorized by PWEDA and this chapter, including but not limited to the actions provided in §§ 302.3 and 307.21 of this</p>	<p>314.4(b) is similar to current regulation section 314.11(c)(1)</p> <p>Current regulation section 314.4(c) is eliminated. The references to RLF projects can be found in interim final rule section 307.</p>

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<p>(iii) Failure to submit progress, financial or audit reports as required by the terms and conditions of the grant agreement; (iv) Failure to comply with prohibitions against conflict of interest for any transactions involving the use of RLF funds; or (v) Failure to operate the RLF in accordance with the RLF Plan and the terms and conditions of the grant agreement. (2) Whenever an RLF recipient fails in its fiduciary responsibilities or is unable or unwilling to perform as trustee of the grant, EDA may suspend, terminate or transfer the grant to an eligible successor with jurisdiction over the project area, to administer it as such trustee (replacement grantee). (3) Whenever EDA terminates any RLF grant for cause, in whole or in part, it has the right to recover residual funds and assets of the RLF grant in accordance with the legal rights of the parties. (4) If there is a partial termination of an RLF grant, the full amount of the original non-federal matching share is expected to be retained in the RLF for lending purposes unless otherwise provided for in the grant agreement or agreed to in writing by EDA.</p>	<p>chapter. EDA may pursue its rights under both paragraph (a) of this section and paragraph (c) to recover the Federal Share, plus costs and interest.</p>	

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<p>§ 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.</p>	<p>§ 314.5 Federal Share . For purposes of this part, "Federal Share" means that portion of the current fair market value of any Property (after deducting actual and reasonable selling and repair expenses, if any, incurred to put the Property into marketable condition) 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.e., fifty (50) percent of \$250). If \$10 is spent to put the Property into salable condition, the Federal Share is \$120 (i.e., fifty (50) percent of (\$250-\$10)).</p>	<p>Interim final rule eliminates section (b) and (c) of current regulations. Specifically, the provision discounting the federal share for a recipient's leasehold interest in property is eliminated. In addition, the provision requiring a recipient to compensate EDA for the federal share in the event of an EDA-approved property transfer is removed.</p>

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<p>§ 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</p>	<p>§ 314.6 Encumbrances (a) General. 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 (collectively, an “Encumbrance” or to “Encumber”). An Encumbrance includes but is not limited to easements, rights-of-way or other restrictions on the use of any Property. (b) Exceptions. Subject to EDA’s approval, which will not be unreasonably withheld or unduly delayed, paragraph (a) of this section does not apply to: (1) The use of Recipient-owned Property to secure a grant or loan made by a federal or State agency or other public body participating in the same Project; (2) Recipient-owned Property that is subject to an Encumbrance at the time EDA approves the Project, where EDA determines that the requirements of § 314.7(b) are met; (3) Encumbrances arising solely from the requirements of a pre-existing water or sewer facility or other utility Encumbrances, which by their terms extend to additional Property connected to such facilities; and (4) Encumbrances in cases where all of the following are met: (i) EDA, in its sole discretion, determines that there is good cause for a waiver of paragraph (a) of this section; (ii) All proceeds secured by the Encumbrance on the Property shall be available only to the Recipient and shall be used only for the</p>	<p>Section is substantively unchanged. However provisions have been reordered.</p>

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<p>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.</p>	<p>Project for which the Investment Assistance applies or for related activities of which the Project is an essential part; (iii) A grantor/lender will not provide funds without the security of a lien on the Property; and (iv) There is a reasonable expectation, as determined by EDA, that the Recipient will not default on its obligations. (c) Encumbering Recipient-owned Property, other than as permitted in this section, is an Unauthorized Use of the Property under § 314.4.</p>	
<p>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.</p>	<p>Subpart B ~ Real Property § 314.7 Title. (a) General. The Recipient must hold title to the Real Property required for a Project at the time the Investment Assistance is awarded or as provided by paragraph (c) of this section and must maintain title at all times during the Estimated Useful Life of the Project, except in those limited circumstances as provided in paragraph (c) of this section. The Recipient must also 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 any easements, rights-of-way, State or local government permits, long-term leases or other items required for the Project have been or will be obtained by the Recipient within an acceptable time, as determined by EDA.</p>	<p>314.7(a) is substantively unchanged</p>

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<p>(b)(1) The recipient must disclose to EDA all:</p> <ul style="list-style-type: none"> (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. <p>(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.</p>	<p>(b)(1) The Recipient must disclose to EDA all Encumbrances, including but not limited to the following:</p> <ul style="list-style-type: none"> (i) Liens; (ii) Mortgages; (iii) Reservations; (iv) Reversionary interests; and (v) Other restrictions on title or on the Recipient's interest in the Property. <p>(2) No Encumbrance will be acceptable if, as determined by EDA, the Encumbrance interferes with the construction, use, operation or maintenance of the Project during its Estimated Useful Life.</p> <p>(c) Exceptions. The following are exceptions to the requirements of paragraph (a) of this section that the Recipient hold title to the Real Property required for a Project.</p> <p>(1) Where the acquisition of Real Property required for a Project is contemplated as part of an Investment Assistance award, EDA may determine that an agreement for the Recipient to purchase the Real Property will be acceptable for purposes of paragraph (a) of this section if:</p> <ul style="list-style-type: none"> (i) The Recipient provides EDA with reasonable assurances that it will obtain fee title to the Real Property prior to or concurrent with the initial disbursement of the Investment Assistance; and (ii) EDA, in its sole discretion, determines that the terms and conditions of the purchase agreement adequately safeguard the Federal government's interest in the Real Property. 	<p>314.7(c)(1) is a new section that says EDA may determine that certain real property purchase agreements, along with reasonable assurances from the recipient that it will obtain fee title for real estate is acceptable in meeting title ownership requirements.</p>

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<p>(c) EDA may determine that a longterm 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.</p> <p>(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.</p> <p>(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:</p> <p>(i) That the State or local government will operate and maintain the improvements for the useful life of the project as determined by EDA;</p> <p>(ii) That the State or local government will not sell the improvements for the useful life of the project, as determined by EDA; and</p>	<p>(2) EDA may determine that a long-term leasehold interest for a period not less than the Estimated Useful Life of the Real Property required for a Project will be acceptable for purposes of paragraph (a) of this section if:</p> <p>(i) Fee title to the Real Property is not otherwise obtainable; and</p> <p>(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>(3) When a Project includes construction within a railroad's right-of-way or over a railroad crossing, EDA may find it acceptable for the work to be completed by the railroad and for the railroad to continue to own, operate and maintain that portion of the Project, if required by the railroad; and provided that, the construction is a minor but essential component of the Project.</p> <p>(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:</p> <p>(i) State or local government will operate and maintain the improvements for the Estimated Useful Life of the Project;</p>	<p>Interim final rule section 314.7 (c)(2), (3) and (4) are substantively the same as current rule sections 314.7(c), (1) and (2).</p>

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<p>(iii) That the use of the property will be consistent with the authorized purpose of the project.</p> <p>(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.</p>	<p>(ii) State or local government will not sell the improvements for the Estimated Useful Life of the Project; and</p> <p>(iii) Use of the Property will be consistent with the authorized purposes of the Project.</p> <p>(5)(i) When an authorized purpose of the Project is to construct facilities to serve Real Property owned by the Recipient, including but not limited to industrial or commercial parks, for sale or lease to private parties, such sale or lease is permitted so long as:</p> <p>(A) In cases where an authorized purpose of the Project is to sell Real Property, the Recipient provides evidence sufficient to EDA that it holds title to the Real Property required for such Project prior to the disbursement of any portion of the Investment Assistance and will retain title until the sale of the Property;</p> <p>(B) In cases where an authorized purpose of the Project is to lease Real Property, the Recipient provides evidence sufficient to EDA that it holds title to the Real Property required for such Project prior to the EDA disbursement of any portion of the Investment Assistance and will retain title for the entire Estimated Useful Life of the Project;</p> <p>(C) The Recipient completes the Project according to the terms of the Investment Assistance;</p> <p>(D) Any sale or lease of any portion of the Project within the later to occur of the (x) ten (10) year anniversary of the award date of the Investment Assistance or (y) third (</p>	<p>Interim rule 314.7 (c)(5) significantly rewrites current rule section 314.7(c)(3) to include all real property, not just industrial or commercial, in the construction of facilities that serve a project recipient.</p>

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	<p>(3rd) transfer of the Project, must be for Adequate Consideration and the terms and conditions of the Investment Assistance and the purposes of the Project must continue to be fulfilled after such sale or lease; provided, however, that EDA may waive this provision for any sale or lease occurring after this period;</p> <p>(E) The Recipient agrees that the termination, cessation, abandonment or other failure on behalf of the Recipient, purchaser or lessee to complete the Project by the later of the (x) five (5) year anniversary of the award date of the Investment Assistance, or (y) second (2nd) transfer of the Real Property by sale, lease or otherwise, constitutes a failure on behalf of the Recipient to use the Real Property for the economic purposes justifying the Project; and</p> <p>(F) The Recipient agrees that a violation of this paragraph by the Recipient, purchaser or lessee constitutes an Unauthorized Use of the Real Property and the Recipient must further agree to compensate EDA for the Federal government's Federal Share of the Project in the case of such Unauthorized Use.</p> <p>(ii) EDA may also condition the sale or lease on the satisfaction by the Recipient, purchaser or lessee (as the case may be) of any additional requirements that EDA may impose, including but not limited to EDA's pre-approval of the sale or lease.</p>	

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<p>(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.</p>	<p>(6)(i) When an authorized purpose of the Project is to construct facilities to serve privately-owned Real Property, including but not limited to industrial or commercial parks, the ownership, sale or lease of such Real Property is permitted so long as:</p> <p>(A) The Owner provides evidence sufficient to EDA that it holds title to the Real Property improved or benefited by the EDA Investment Assistance prior to the disbursement of any portion of the Investment Assistance and will retain title to the Real Property for the entire Estimated Useful Life of the Property or until the sale of such Real Property;</p> <p>(B) The Recipient and the Owner agree to use Real Property improved or benefited by the EDA Investment Assistance only for the authorized purposes of the Project and in manner consistent with the terms and conditions of the EDA Investment Assistance for the Estimated Useful Life of the Project;</p> <p>(C) The Recipient must provide adequate assurances that the Owner will complete the Project according to the terms of the Investment Assistance;</p> <p>(D) Any sale or lease of any portion of the Project within the later to occur of the (x) ten (10) year anniversary of the award date of the Investment Assistance or (y) third (3rd) transfer of the Project, must be for Adequate Consideration and the terms and conditions of the Investment Assistance and the purposes of the Project must continue to be fulfilled after such sale or</p>	<p>Interim rule 314.7 (c)(6) significantly rewrites current rule section 314.7(c)(4) to address the construction of facilities to serve privately-owned real property.</p>

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	<p>lease; provided, however, that EDA may waive this provision for any sale or lease occurring after this period;</p> <p>(E) The Recipient agrees that the termination, cessation, abandonment or other failure on behalf of the Recipient, Owner, purchaser or lessee to complete the Project by the later of the (x) five (5) year anniversary of the award date of the Investment Assistance, or (y) second (2nd) transfer of the Real Property by sale, lease or otherwise, constitutes a failure on behalf of the Recipient to use the Real Property for the economic purposes justifying the Project; and</p> <p>(F) The Recipient further agrees that a violation of this paragraph by the Owner, purchaser or lessee constitutes an Unauthorized Use of the Real Property and the Recipient must further agree to compensate EDA for the Federal government's Federal Share of the Project in the case of such Unauthorized Use.</p> <p>(ii) EDA may also condition its Investment Assistance on the satisfaction by the Recipient, Owner or by the purchaser or lessee (as the case may be) of any additional requirements that EDA may impose, including but not limited to EDA's pre-approval of a sale or lease.</p>	

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<p>§ 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.</p>	<p>§ 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 EDA Investment Assistance. The statement shall specify the Estimated Useful Life of the Project and shall include, but not be limited to, the Disposition, Encumbrance and Federal Share requirements. The statement shall be satisfactory in form and substance to EDA. (b) The statement of EDA's interest must be perfected and placed of record in the Real Property records of the jurisdiction in which the Real Property is located, all in accordance with applicable law. (c) Facilities in which the EDA Investment is only a small part of a large project, as determined by EDA, may be exempted from the requirements of this section.</p>	<p>Section is substantively unchanged.</p>

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<p>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.</p>	<p>Subpart C ~ Personal Property § 314.9 Recorded statement—Title. For all Projects which EDA determines involve the acquisition or improvement of significant items of 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 Personal Property, acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with applicable law, with continuances re-filed as appropriate. Whether or not a statement is required by EDA to be recorded, the Recipient must hold title to the Personal Property acquired or improved as part of the Project, except as otherwise provided in this part.</p>	<p>Section is substantively unchanged.</p>
<p>§ 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</p>		<p>This section has been removed and incorporated into interim final rule section 307.</p>

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<p>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.</p> <p>(c) In the event of the sale, collection, or liquidation of RLF 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. The net transaction proceeds must be used for additional loans as part of the RLF project.</p>		

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<p>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 <i>Tilton v. Richardson</i>, 403 U.S. 672 (1971). (2) Such use voids the release, and is an unauthorized use of the property, as provided in § 314.4.</p>	<p>Subpart D ~ Release of EDA’s Property Interest § 314.10 Procedures for release of EDA’s Property interest. (a) General. Upon the request of a Recipient and before the expiration of the Estimated Useful Life of a Project, EDA may release, in whole or in part, any Real Property or tangible Personal Property interest held by EDA, in connection with Investment Assistance after the date that is twenty (20) years after the date on which the Investment Assistance was awarded. (b) Exception. EDA releases all of its Real Property and tangible Personal Property interests in Projects awarded under the Public Works Employment Act of 1976 (Public Law 94–369), as amended by the Public Works Employment Act of 1977 (Public Law 95–28). (c)(1) Unauthorized Use. Notwithstanding the release of EDA’s interest pursuant to paragraph (a) of this section, Real Property or tangible Personal Property acquired or improved with Investment Assistance may not be used: (i) In violation of the nondiscrimination requirements set forth in § 302.20 of this chapter; or (ii) For inherently religious activities prohibited by applicable federal law. (2) Violation of this paragraph (c) constitutes an Unauthorized Use of the Real Property or of the tangible Personal Property.</p>	<p>314.10 (a)-(c) are substantively unchanged from the current regulations.</p>

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	<p>(d) Release. (1) Except as provided in paragraph (b) of this section, the release of EDA’s interest pursuant to this section is not automatic; it requires EDA’s approval, which will not be withheld except for good cause, as determined in EDA’s sole discretion. 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. (2) When requesting a release of EDA’s interest pursuant to paragraph (a) of this section, the Recipient will be required to disclose to EDA the intended future use of the Real Property or the tangible Personal Property for which the release is requested. (i) A Recipient not intending to use the Real Property or tangible Personal Property for inherently religious activities following EDA’s release will be required to execute a covenant of use. A covenant of use with respect to Real Property shall be recorded in the jurisdiction where the Real Property is located in accordance with § 314.8. A covenant of use with respect to items of tangible Personal Property shall be perfected and recorded in accordance with applicable law, with continuances re-filed as appropriate. See § 314.9. A covenant of use shall (at a minimum) prohibit the use of the Real Property or the tangible Personal Property:</p>	<p>314.10 (d) is a new section to reflect changes in the EDA Reauthorization Act of 2004.</p>

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	<p>(A) For inherently religious activities in violation of applicable federal law; and (B) For any purpose that would violate the nondiscrimination requirements set forth in § 302.20 of this chapter. (ii) EDA may require a Recipient (or its successors in interest) who intends or foresees the use of Real Property or tangible Personal Property for inherently religious activities following the release of EDA's interest to compensate EDA for the Federal Share of such Property. EDA recommends that a Recipient who intends or foresees the use of Real Property or tangible Personal Property (including by successors of the Recipient) for inherently religious activities to contact EDA well in advance of requesting a release pursuant to this section.</p>	