

DEPARTMENT OF COMMERCE

CFDA 11.300 INVESTMENTS FOR PUBLIC WORKS AND ECONOMIC DEVELOPMENT FACILITIES

CFDA 11.307 ECONOMIC ADJUSTMENT ASSISTANCE

I. PROGRAM OBJECTIVES

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

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

II. PROGRAM PROCEDURES

In nearly all cases, a recipient of a Public Works or Economic Adjustment Assistance grant is required to provide a matching share. The required matching share varies on a grant-by-grant basis and is set forth in the grant award. Prior to EDA approving the matching share, the recipient must demonstrate to EDA's satisfaction that the matching share is committed to the project, available as needed, and not conditioned or encumbered in any way that would preclude its use consistent with the requirements of the grant award. EDA has greater discretion to award grants under supplemental appropriations for natural disasters at investment rates up to and including one hundred (100) percent.

Section 302 (42 USC 3162) of the Public Works and Economic Development Act of 1965, as amended (PWEDA, 42 USC 3121 *et seq.*), sets forth a CEDS requirement for Public Works and Economic Adjustment Assistance grants, except for planning projects (i.e., strategy grants) under the Economic Adjustment Assistance program. Pursuant to section 214 of PWEDA (42 USC 3154), EDA may waive the CEDS requirements for Economic Adjustment projects located in regions designated as “Special Impact Areas.” If a project is located in a designated “Special Impact Area,” such designation will be specified in the grant award documents.

RLF recipients must manage RLFs in accordance with an RLF Plan approved by EDA. The RLF Plan must be approved by the RLF recipient’s governing board prior to the initial disbursement of EDA funds. 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 5 years. RLF recipients are responsible for ensuring that borrowers are aware of and comply with applicable Federal statutory and regulatory requirements.

Source of Governing Requirements

The Public Works and Economic Adjustment Assistance programs are authorized by PWEDA.

All regulatory section citations contained herein refer to EDA’s regulations as codified at 13 CFR Chapter III, including program regulations for CFDA 11.300 at 13 CFR part 305 and CFDA 11.307 at 13 CFR part 307.

Some grants awarded under CFDA 11.300 or CFDA 11.307 may have been funded, in whole or in part, by funds appropriated by ARRA.

EDA published a final rule in the *Federal Register* on December 19, 2014, (79 FR 76108), which included a number of substantive and non-substantive revisions to the EDA regulations intended to ensure that the regulations reflect the Agency’s focus on innovation and regional collaboration and provide EDA’s stakeholders with the flexibility and local control needed to achieve these ends.

Availability of Other Program Information

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

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this Federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements apply, and then determine which of the applicable requirements is likely to have a direct and material effect on the Federal program at the auditee. For each such requirement, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit.

Compliance Requirements											
A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period of Performance	Procurement/Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	Y	Y	N	N	Y	Y	Y

A. Activities Allowed or Unallowed

1. Activities Allowed

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

- a. Construction grants made under CFDA 11.300 or CFDA 11.307 can be made for the acquisition or development of land and improvements for use for a public works, public service, or development facility. Construction grants can also be made for the acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment (42 USC 3141; 42 USC 3149; and 13 CFR sections 305.2(a) and 307.3).
- b. RLF grants (CFDA 11.307) may be made for the establishment or recapitalization of an RLF, usually for business lending, but RLF grants may also fund public infrastructure or other authorized purposes involving lending if specifically allowed for in the terms and conditions of the recipient’s award (42 USC 3149; and 13 CFR section 307.7).
- c. Other activities that can be funded under the Economic Adjustment Assistance program (CFDA 11.307) (in addition to grants for construction and RLFs) are grants for CEDS (or other strategy) development and grants for CEDS (or other strategy) implementation, which include market or industry research and analysis, technical assistance, public services, training, and other activities as justified by the strategy which meet applicable statutory and regulatory requirements (42 USC 3149; and 13 CFR section 307.3).

- d. A recipient of an Economic Adjustment Assistance grant may directly expend the grant funds or, with prior EDA approval, may redistribute such grant assistance in the form of (1) a subgrant to another eligible recipient that qualifies for an Economic Adjustment Assistance award or (2) a loan or other appropriate assistance to non-profit and private for-profit entities (42 USC 3154c; 13 CFR section 309.2).
- e. A recipient of a Public Works grant (CFDA 11.300) may directly expend the grant funds or, with prior EDA approval, may redistribute such grant assistance in the form of a subgrant to another eligible recipient to fund required components of the scope of work approved for the project (42 USC 3154c; 13 CFR section 309.1).

2. *Activities Unallowed*

RLF capital (as defined in 13 CFR section 307.8) may not be used to:

- a. Acquire an equity position in a private business (13 CFR section 307.17(b)(1)).
- b. Subsidize interest payments on an existing RLF loan (13 CFR section 307.17(b)(2)).
- c. Provide for borrowers' required equity contributions under other Federal agencies' loan programs (13 CFR section 307.17(b)(3)).
- d. 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 increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF (13 CFR section 307.17(b)(4)).
- e. 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 (13 CFR section 307.17(b)(5)).
- f. Refinance existing debt, unless (1) the RLF recipient sufficiently demonstrates in the loan documentation a sound economic justification for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities); for this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification); or (2) 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 a reasonable period of time, as determined by EDA, following the date of refinancing. (13 CFR section 307.17(b)(6)).

C. Cash Management

1. Unless otherwise specified in a special award condition, the method of payment for an award for an infrastructure construction project is generally through reimbursement (using SF-271, *Outlay Report and Request for Reimbursement for Construction Programs*) for costs incurred. Prior to disbursing grant funds for an infrastructure construction project, EDA generally must receive an invoice from the recipient; however, EDA may approve the disbursement of funds prior to the tender of all construction contracts if the recipient can demonstrate that a severe hardship will result without such approval (13 CFR sections 305.9(b) and 307.6(b)).
2. The method of repayment for RLFs is on a reimbursement basis i.e., when an obligation is incurred by the RLF recipient at the time of loan approval and loan announcement. An RLF recipient must request a disbursement only to close a loan or disburse RLF funds to a borrower. The RLF recipient must disburse the grant funds to a borrower within thirty (30) days of receipt of the funds. Any grant funds not disbursed within the thirty (30)-day period must be returned to EDA. An RLF recipient is required to submit a written request to EDA for continued use of grant funds beyond a missed disbursement deadline. The amount of disbursed grant funds cannot exceed the difference, if any, between the RLF capital and the amount of a new loan, less the amount, if any, of the matching share required to be disbursed concurrent with the grant funds. However, repaid principal and RLF income held to cover eligible administrative expenses need not be disbursed in order to draw additional grant funds (13 CFR section 307.11).

F. Equipment and Real Property Management

Except as otherwise authorized by EDA, property acquired or improved with EDA grant assistance cannot be used to secure a mortgage or deed of trust or in any way collateralized or otherwise encumbered. An encumbrance includes but is not limited to easements, rights-of-way or other restrictions on the use of any property (13 CFR section 314.6(a)).

G. Matching, Level of Effort, Earmarking

1. Matching

The required matching share varies on a grant-by-grant basis and is set forth in the grant award (42 USC 3144-3146; 13 CFR sections 300.3 and 301.5).

2. **Level of Effort** – Not Applicable
3. **Earmarking** – Not Applicable

H. **Period of Performance**

RLF grant funds may not be disbursed after the disbursement period as defined in the grant agreement, unless (1) within 45 calendar days of the end date of the disbursement period, the recipient will disburse loan funds such that the entire amount of the award will have been disbursed, as evidenced by loan closings occurring prior to the deadline specified in the award conditions; or (2) the EDA Grant Officer has approved a time schedule extension in accordance with 13 CFR section 307.16(a)(2)(iii) (13 CFR section 307.16(a)).

See IV, “Other Information,” concerning continuing compliance requirements for RLFs.

L. **Reporting**

1. **Financial Reporting**

- a. SF-270, *Request for Advance or Reimbursement* – Applicable (required until the RLF is fully disbursed)
- b. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Applicable
- c. SF-425, *Federal Financial Report* – Applicable

2. **Performance Reporting** – Not Applicable

3. **Special Reporting**

The following reporting requirements pertain to RLF recipients:

- a. Form ED-209, *Semi-Annual Report for EDA-Funded RLF Grants (OMB No. 0610-0095)* — All EDA RLF recipients must submit in electronic format Form ED-209 (13 CFR section 307.14(a)) for the 6-month reporting periods ending September 30 and March 31.

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

- (1) *Total Active Loans (Line I.4, No. and RLF \$ Loaned)*
- (2) *Total \$ Leveraged (Line II.A.5, Total Loans and Active Loans)*
- (3) *Non-RLF and Other Leverage Ratios (Line II.B.3, Total Loans and Active Loans)*
- (4) *Current RLF Capital Base (Line III.C.6)*

- (5) *Current Balance Available, Net of Committed RLF\$ (Line III.D.4)*
- (6) *Amount of excess cash for reporting period (Line V.B.1)*
- (7) *Amount of excess cash subject to sequestration (Line V.B.2)*
- (8) *Amount sequestered in a separate account, as reported by grantee (Line V.B.4)*
- (9) *RLF Income Earned During Reporting Period Line V.C.1)*
- (10) *Percentage of RLF Income Used for Administrative Expenses During Reporting Period (Line V.C.3)*

- b. Form ED-209I, *RLF Income and Expense Statement (OMB No. 0610-0095)* – Those RLF recipients electing to use either 50 percent or more (or more than \$100,000) of RLF income to cover all or part of an RLF’s administrative expenses in that same 6-month period (ending September 30 or March 31) must submit an electronic Form ED-209I (13 CFR sections 307.14 (a) and (c)).

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

- (1) *RLF Income*
- (2) *Expenses Charged to RLF Income*
- (3) *Total Expenses*
- (4) *Net RLF Income (1 minus 3)*
- (5) *Cumulative Net RLF Income*
- (6) *Expenses as % of RLF Income (3/1)*
- (7) *For the current reporting period, provide an estimate of projected RLF Income and the percentage expected to be used for RLF administrative expenses.*

N. Special Tests and Provisions

1. Increases to RLF Capital Base and Capital Utilization

Compliance Requirements – RLF income includes all interest earned on outstanding loan principal, interest earned on accounts holding idle RLF funds, loan fees and other loan-related earnings. RLF income does not include repayment of RLF loan principal and any interest remitted to the U.S. Treasury pursuant to a sequestration of excess funds. When an RLF recipient receives proceeds on a defaulted RLF loan, such proceeds shall be applied in the following order of priority: (1) towards any costs of collection;

(2) towards outstanding penalties and fees; (3) towards any accrued interest to the extent due and payable; and (4) towards any outstanding principal balance (13 CFR sections 307.8 and 307.12(c)).

RLF income may fund administrative expenses, provided the following conditions are met: (1) the RLF income and the administrative expense are earned in the same 6-month reporting period; (2) RLF income that is not used for administrative expenses during the 6-month reporting period must be made available for lending activities; (3) RLF income cannot be withdrawn from the RLF capital base in a subsequent reporting period for any use other than lending without the prior written consent of EDA; and (4) the recipient completes an *RLF Income and Expense Statement* if required by EDA's regulations (13 CFR sections 307.12(a) and 307.14(c)).

The RLF capital base is defined as the value of RLF assets administered by the recipient. It is equal to the amount of grant funds used to capitalize (and, if applicable, re-capitalize) the fund, plus the matching funds committed to the RLF at the time of award (and any subsequent additions, but not withdrawals), plus RLF income added to the fund, less loan losses, less disallowances, plus voluntarily contributed capital. The RLF capital must be used for the purpose of making RLF loans that are consistent with the recipient's RLF Plan (13 CFR section 307.17(a)).

The portion of the RLF capital base that is not loaned out must be made available for lending. Generally, EDA requires recipients to have at least 75 percent of the RLF's capital base loaned or committed at any given time. The following exceptions apply:

- a. An RLF recipient that anticipates making large loans relative to the size of its RLF capital base may propose an RLF Plan that provides for maintaining a capital utilization percentage greater than 25 percent; and
- b. EDA may require an RLF recipient with an RLF capital base in excess of \$4 million to adopt an RLF Plan that maintains a proportionately higher percentage of its funds loaned (13 CFR section 307.16(c)).

EDA requires the recipient to sequester "excess funds" in an interest-bearing account if RLF capital loaned or committed falls below 75 percent of the total RLF capital, or alternatively, below the capital utilization standard specified in the RLF Plan (if applicable), in two consecutive reporting periods (13 CFR section 307.16(c)). "Excess funds" can be calculated by taking the difference between the actual value of cash and investments on hand (e.g., that portion of the capital base that is not loaned out or committed) and the allowable value of cash and investments on hand. The allowable value of cash and investments is equal to: $((100\% - (\text{minus}) \text{ capital utilization standard}) \times (\text{multiplied by}) \text{ RLF capital base})$.

For example, an RLF with a capital base of \$1,000,000, a capital utilization standard of 75 percent, and \$500,000 in capital loaned or committed would calculate its excess cash as follows:

$\$1,000,000$ RLF capital base – $\$500,000$ loaned/committed = $\$500,000$ cash/investments

Allowable cash/investments = $(100\% - 75\%) \times \$1,000,000$ capital base = $\$250,000$

Excess cash = $\$500,000$ actual cash/investments – $\$250,000$ allowable = $\$250,000$

EDA also requires the recipient to remit the Federal share of the interest earned on sequestered funds to the U.S. Treasury (13 CFR section 307.16(c)). For example, if the recipient is required to sequester $\$250,000$ in an interest-bearing account, the interest accruing on this account is $\$2,500$, and the Federal share of the RLF award is 50 percent, the recipient would be required to remit $\$1,250$ to the U.S. Treasury.

Audit Objectives – Determine whether (1) all the conditions for RLF income to be used to fund administrative expenses were satisfied; (2) RLF income not used for administrative expenses was added to the RLF capital base and made available for lending; (3) repayments of principal on RLF loans were made available for re-lending; and (4) the recipient is meeting its capital utilization standard and, if not, whether it is fulfilling EDA's requirements related to sequestration of excess funds and remittance of the Federal share of the interest to the U.S. Treasury.

Suggested Audit Procedures

- a. Verify that the amounts recorded in the financial records include RLF income and repayments of principal on RLF loans.
- b. Ascertain that if RLF income was not used for administrative expenses, it was added to the RLF capital base.
- c. Ascertain if all funds arising from repayments of principal on RLF loans were made available for re-lending.
- d. Verify that any "excess funds" have been sequestered in an interest-bearing account, as required, and that the recipient is properly accounting for the Federal share of the interest accruing on these funds and remitting this amount to the U.S. Treasury.

2. Loan Requirements

Compliance Requirements – The following requirements apply to RLF loans:

- a. The standard loan documentation must include, at a minimum, the (1) loan application, (2) loan agreement, (3) board of directors' meeting minutes approving the RLF loan, (4) promissory note, (5) security agreement(s), (6) deed of trust or mortgage (if applicable), (7) agreement of prior lien holder (if

applicable), and (8) 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 permit the RLF recipient to accept alternate documentation only if such documentation is allowed in the recipient's EDA-approved RLF Plan (13 CFR section 307.15(b)(2)).

- b. An RLF recipient must make loans to implement and assist economic activity only within its EDA-approved lending area, as defined in the special terms and conditions of the grant award and the EDA-approved RLF Plan (13 CFR section 307.18).

Audit Objectives – Determine whether (1) the required standard loan documents are complete for the RLF loans; (2) there is loan documentation to support that credit was not otherwise available to the borrower; and (3) the RLF recipient's financed activity is located in the EDA-approved lending area.

Suggested Audit Procedures

Test a sample of RLF loan files to ascertain if:

- a. All required standard loan documents are complete and in the file.
- b. The RLF recipient documents in the RLF loan file that credit was not otherwise available to the borrower.
- c. The financed activity is located in an EDA-approved lending area.

3. Addition of Lending Areas and Consolidation and Merger of RLFs

Compliance Requirements

An RLF recipient may add a lending area to its existing lending area to create a new merged lending area only with EDA's prior written approval (42 USC 3149 and 13 CFR section 307.18(a)).

EDA may provide written approval for an RLF recipient with more than one EDA RLF grant to consolidate its RLFs into a single RLF. If EDA approves this consolidation, EDA will determine a new grant rate for the resulting RLF (42 USC 3149 and 13 CFR section 307.18(b)(1)).

EDA may provide written approval for multiple RLF recipients to merge their EDA RLFs into a single RLF. If EDA approves this merger, EDA will determine a new grant rate for the resulting RLF, all applicable RLF grant assets of the discharging RLF recipient(s) will transfer to the surviving RLF recipient as of the merger's effective date, and the surviving RLF recipient will become fully responsible for administration of the RLF grant assets transferred and fulfill all surviving RLF grant requirements and any other conditions reasonably requested by EDA (42 USC 3149 and 13 CFR section 307.18(b)(2)).

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

Suggested Audit Procedures

Verify that the RLF recipient has evidence of EDA’s prior written approval for the creation of a new lending area or the consolidation or merger of RLFs.

4. RLF Loan Portfolio Sales and Securitizations

Compliance Requirement - With prior written approval from EDA, an RLF recipient may enter into a sale or a securitization of all or a portion of its RLF loan portfolio, provided it (1) uses all the proceeds of any sale or a securitization to make additional RLF loans, and (2) requests EDA to subordinate its interest in all or a portion of any RLF loan portfolio sold or securitized (42 USC 3149; and 13 CFR section 307.19).

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

Suggested Audit Procedures

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

5. Wage Rate Requirements

Compliance Requirement - All laborers and mechanics employed by contractors or subcontractors on construction projects receiving EDA grant assistance under Public Works and Economic Adjustment Assistance construction grants shall be paid at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40, United States Code (42 USC 3212; 13 CFR section 302.13; Section 1606 of ARRA).

See Wage Rate Requirements Cross-Cutting Section (page 4-20.001-1).

IV. OTHER INFORMATION

Schedule of Expenditures of Federal Awards

For purposes of completing the Schedule of Expenditures of Federal Awards (SEFA), each EDA RLF grant (CFDA 11.307) must be shown as a separate line item calculated as follows:

1. Balance of RLF principal outstanding on loans at the end of the recipient's fiscal year, *plus*
2. Cash and investment balance in the RLF at the end of the recipient's fiscal year, *plus*
3. Administrative expenses paid out of RLF income during the recipient's fiscal year; *plus*
4. The unpaid principal of all loans written off during the recipient's fiscal year; *and then multiply this sum (1+ 2 +3+4) by*
5. The Federal share of the RLF. The Federal share is defined as the Federal participation rate (or the Federal grant rate) as specified in the grant award.

Note: Consolidated or merged RLFs grants must be shown as a single line item on the SEFA (see III.N.3, "Special Tests and Provisions - Addition of Lending Areas and Consolidation and Merger of RLFs." In this case, the Federal share will be the weighted average of the Federal grant rates of the EDA RLF grants used to capitalize the fund. The Federal grant rates for each EDA RLF can be found in the respective grant awards.

As an example, if a recipient received two EDA RLF grants that were subsequently consolidated—one for \$500,000 with a \$500,000 match, and the second for \$500,000 with a \$250,000 match, with the outstanding balance of RLF loans equaling \$2,000,000, a cash and investment balance of \$225,000, allowable administrative expenses paid out of RLF income of \$50,000, and no write-offs for the year—the Federal Awards Expended calculation would be as follows:

$$(\$2,000,000 + \$225,000 + \$50,000) \times [(\$500,000 + \$500,000) \div (\$1,000,000 + \$750,000)] = \$1,300,000$$

For the purposes of calculating Federal expenditures, RLF recipients are not permitted to factor in an allowance for bad debt.

A note showing the figures used in this calculation should be included in the SEFA.

Continuing Compliance Requirements for RLFs

Federal funds used to capitalize a RLF are not subject to the limitation on the period of availability of Federal funds but continue to retain their Federal character in perpetuity or until the grant is terminated. As such, required reporting and EDA oversight of the RLF also continue in perpetuity or until the grant is terminated. Additionally, grantees are required to continue to use the funds in accordance with the applicable Federal requirements of the RLF award. Therefore, if a grantee has established a RLF, auditors should include in their samples loans made from the fund during the audit period. Such transactions should be reviewed in the same manner as any other expenditure under the program.

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DEPARTMENT OF COMMERCE

CFDA 11.557 BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM

I. PROGRAM OBJECTIVES

The Broadband Technology Opportunities Program (BTOP) is intended to facilitate the deployment of broadband infrastructure in the United States, enhance broadband capacity at public computer centers, and promote sustainable broadband adoption projects. The expansion of broadband deployment, availability, and adoption funded by BTOP projects is designed to provide communities an opportunity to develop and expand job-creating businesses and institutions, spur technological and infrastructural development, and stimulate long-term economic growth and opportunity.

II. PROGRAM PROCEDURES

Section 6001 of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5, 123 Stat. 115, February 17, 2009) directed the National Telecommunications and Information Administration (NTIA), within the Department of Commerce (DOC), to establish a grant program to (1) provide access to broadband service for consumers residing in unserved or underserved areas; (2) support community anchor institutions (CAIs) (e.g., schools, libraries, medical and healthcare providers) in expanding broadband access and awareness; (3) assist eligible entities to implement broadband initiatives that spur job creation, stimulate long-term economic growth and opportunity, narrow gaps in broadband deployment and adoption; and (4) support public safety agencies.

BTOP funds are available through three categories of eligible projects: (1) Broadband Infrastructure (BI) (known as Comprehensive Community Infrastructure (CCI) in Round 2); (2) Public Computer Centers (PCC); and (3) Sustainable Broadband Adoption (SBA). NTIA funded BTOP awards through two rounds of funding: (1) Round 1 Notice of Funds Availability (Round 1 NOFA), which opened on July 14, 2009 and closed August 14, 2009; (2) Round 2 Notice of Funds Availability (Round 2 NOFA), which opened February 16, 2010 and closed March 15, 2010. The Round 2 NOFA was extended, under a limited reopening from June 1, 2010 to July 1, 2010, to accept applications from public safety entities that received waivers from the Federal Communications Commission (FCC) to operate public safety broadband networks over the 700 MHz spectrum (700 MHz Reopening NOFA). NTIA awarded all three categories of projects during both funding rounds.

The Infrastructure (BI/CCI) category funded projects that deploy new or improved broadband Internet facilities (e.g., laying new fiber-optic cables or upgrading wireless towers) and connect CAIs such as schools, libraries, hospitals, and public safety facilities. These networks help ensure sustainable community growth and provide the foundation for enhanced household and business broadband Internet services.

The PCC category funded projects that provide broadband access to the general public or a specific vulnerable population, such as low-income, unemployed, aged, children, minorities, and people with disabilities. PCC projects create, upgrade, or expand public computer centers, including those at community colleges that meet a specific public need for broadband service,

including, but not limited to, education, employment, economic development, and enhanced service for health-care delivery, children, and vulnerable populations.

The SBA category funded innovative projects that promote broadband demand, including projects focused on providing broadband education, awareness, training, access, equipment, or support, particularly among vulnerable population groups where broadband technology has traditionally been underutilized.

Recipients may be subject to different rules depending upon whether they received Round 1 or Round 2 awards.

Source of Governing Requirements

This program is authorized by Section 6001 of ARRA. The program and its compliance requirements are described in the Round 1 NOFA, 74 FR 33104 (July 9, 2009); the Round 2 NOFA, 75 FR 3792 (January 22, 2010); and the 700 MHz Reopening NOFA, 75 FR 27984 (May 19, 2010).

Availability of Other Program Information

NTIA has published a program-specific audit guide to assist auditors with for-profit audits of the BTOP program. The BTOP Program-Specific Audit Guide is available at <http://www2.ntia.doc.gov/compliance>.

The Round 1 NOFA is available at http://www.ntia.doc.gov/files/ntia/publications/fr_bbnofa_090709.pdf

The Round 2 NOFA is available at http://www.ntia.doc.gov/frnotices/2010/FR_BTOPNOFA_100115.pdf

The 700 MHz Reopening NOFA is available at http://www.ntia.doc.gov/frnotices/2010/FR_BTOPApplicationReopening_05132010.pdf

DOC Pre-Award Notification Requirements for Grants and Cooperative Agreements, 66 FR 49917 (Feb. 11, 2008) (DOC Pre-Award Notification) are available at http://www2.ntia.doc.gov/files/DOC_pre-award_notification_requirements_73_FR_7696.pdf

Recipient Guidance, including fact sheets with specific guidance (e.g., Davis-Bacon, Federal interest), is available at http://www2.ntia.doc.gov/files/Recipient_Handbook_v1.1_122110.pdf#page=1

DOC Financial Assistance Standard Terms & Conditions (DOC Standard Terms) (http://www2.ntia.doc.gov/files/award_docs/DOC-STCsMAR08Rev.pdf)

DOC ARRA Award Terms (http://www2.ntia.doc.gov/files/award_docs/ARRA-DOC-Award-Terms-Final-5-20-09PDF.doc.pdf)

Other program information is available at <http://www2.ntia.doc.gov/>.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this Federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements apply, and then determine which of the applicable requirements is likely to have a direct and material effect on the Federal program at the auditee. For each such requirement, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit.

Compliance Requirements											
A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period of Performance	Procurement/Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	Y	Y	N	Y	Y	Y	Y

A. Activities Allowed or Unallowed

1. *Activities Allowed –BI/CCI Projects*

- a. Constructing or improving facilities required to provide broadband services; and:
 - (1) Long-term leasing (for terms greater than one year) of facilities required to provide broadband services, including infeasible right-of-use (IRU) agreements. Operating lease costs are allowable to the extent that they are incurred during the award period and are consistent with the relevant accounting principles; and
 - (2) Indirect costs associated with the construction, deployment, or installation of facilities and equipment used to provide broadband service, provided that they are included as a line item in the

recipient's approved budget (ARRA, Section 6001(g); Round 1 NOFA, Section V.D.2.a; Round 2 NOFA, Section V.E.2.a).

- b. For 700 MHz recipients, in addition to the above, the following activities are allowed:
 - (1) Acquiring broadband radio access network components, such as antennas, base station nodes, transceivers, amplifiers, and remote radio heads;
 - (2) Hardening of existing cell sites, such as installing backup power and enhancing security measures; and
 - (3) Leasing wireline or wireless network infrastructure to facilitate broadband connectivity for a 700 MHz public safety broadband network, including backhaul from cell sites and any associated installation charges paid to a vendor (ARRA, Section 6001(g); 700 MHz Reopening NOFA, Section I.C).

2. *Activities Allowed – PCC Projects*

- a. Acquiring broadband-related equipment, instrumentation, networking capability, hardware and software, and digital network technology for broadband services, including the purchasing of word processing software, computer peripherals such as mice and printers, and computer maintenance services and virus-protection software.
- b. Developing and providing training, education, support, and awareness programs or web-based resources, including compensation for qualified instructors, technicians, managers, and other employees essential for these types of programs.
- c. Facilitating access to broadband services, including, but not limited to, making public computer centers accessible to the disabled.
- d. Installing or upgrading broadband facilities on a one-time, capital improvement basis in order to increase broadband capacity.
- e. Constructing, acquiring, or leasing a new facility, provided that the recipient explains why it is necessary to construct, acquire, or lease a new facility to facilitate public access to broadband services or expand computer center capacity.
- f. Indirect costs associated with eligible project activities, provided that they are included as a line item in the recipient's budget (ARRA, Section 6001(g); Round 1 NOFA, Section V.D.3.b; Round 2 NOFA, Section V.E.3.a).

3. *Activities Allowed – SBA Projects*

- a. Acquiring broadband-related equipment, instrumentation, networking capability, hardware and software, and digital network technology for broadband services.
- b. Developing and providing training, education, support, and awareness programs, as well as web-based content that is incidental to the program's purposes, including reasonable compensation for qualified instructors for these types of programs.
- c. Conducting broadband-related public education, outreach, support, and awareness campaigns.
- d. Implementing programs to facilitate greater access to broadband service, devices, and equipment.
- e. Indirect costs associated with eligible project activities, provided that they are included as a line item in the recipient's budget (ARRA, Section 6001(g); Round 1 NOFA, Section V.D.3.c; Round 2 NOFA, Section V.E.4.a)

4. *Activities Allowed – All BTOP Projects*

In addition to the activities cited in paragraphs A.1, A.2, and A.3, the following activities are allowed for all Round 1 and Round 2 recipients:

- a. Expenses related to undertaking such other projects and activities that the Assistant Secretary finds to be consistent with the purposes for which BTOP is established (for example, a project may have costs related to promoting the BTOP project to community anchor institutions, and a PCC project may have expenses for promotional items, such as mousepads, t-shirts, or pencils to promote broadband training programs).
- b. Pre-application expenses, which include expenses related to preparing an application, in an amount not to exceed five percent of the award, if the expenses are incurred after the publication date of the NOFA, which was July 9, 2009 for Round 1 recipients, January 22, 2010 for Round 2 recipients, and May 13, 2010 for Round 2 700 MHz recipients; and for Round 1 recipients prior to the date on which the application was submitted or for Round 2 recipients prior to the date of issuance of the grant award from NTIA. Lobbying costs and contingency fees are not reimbursable (ARRA, Section 6001(g); Round 1 NOFA, Section V.D.2.a; Round 2 NOFA, Sections V.E.2.a, V.E.3.a, and V.E.4.a).

5. *Activities Unallowed – Infrastructure Projects*

a. For Round 1 and Round 2 Recipients:

- (1) Operating expenses of the project, including fixed and recurring costs.
- (2) Costs incurred prior to the date on which the application was submitted with the exception of eligible pre-application expenses (see paragraph A.4.b, which limits eligible pre-applications expenses for Round 1 to those eligible expenses before the application is submitted, but for Round 2 includes the period up to the date of award issuance).
- (3) Acquisition of an affiliate, including the acquisition of the stock of an affiliate.
- (4) Purchasing or leasing any vehicle other than those used primarily in construction or system improvements.
- (5) Merger or consolidation of entities.
- (6) Acquiring spectrum as part of an FCC auction or in a secondary market acquisition (Round 1 NOFA, Section V.D.2.b; Round 2 NOFA, Section V.E.2.b).

6. *Activities Unallowed – SBA Projects*

Constructing or leasing broadband facilities and infrastructure (Round 1 NOFA, Section V.D.3.d; Round 2 NOFA, Section V.E.4.b).

F. Equipment and Real Property Management

Under the terms and conditions that govern BTOP grant awards, recipients and subrecipients of awards for construction, including Round 1 and Round 2 Infrastructure awards (BI/CCI) and PCC awards involving construction, must execute and record appropriate documentation of NTIA's undivided equitable reversionary interest (the "Federal Interest") in all real or personal property, whether tangible or intangible, that it acquires or improves, in whole or in part, with Federal funds ("BTOP Property"). Recipients of SBA and PCC awards without construction are not required to do so, although the Federal Interest nevertheless applies to the BTOP Property under these programs.

The recipient shall execute a security interest or other statement of NTIA's interest in real property, including broadband facilities and equipment acquired or improved with Federal funds acceptable to NTIA, which must be perfected and placed on record in accordance with local law. Documentation of the Federal Interest is to be perfected and recorded/filed in accordance with state and/or local law concurrent with or as soon as

possible following any purchase, lease or other acquisition of BTOP Property and, unless otherwise approved in writing by the Grants Officer, not later than the date on which the BTOP financial assistance award is officially closed out.

During the pendency of the Federal Interest, the recipient or subrecipient shall not (1) sell, lease, transfer, assign, convey, hypothecate, mortgage, or otherwise convey any interest in the BTOP Property without the prior written approval of the Grants Officer; or (2) use the BTOP Property for purposes other than the purposes for which the award was made without the prior written approval of the Grants Officer.

Although, recipients may not sell or lease any portion of the award-funded broadband facilities or equipment during their useful life, except as otherwise approved by NTIA (e.g., fiber, tower, antennae, switches), NTIA may grant a waiver of this requirement. However, Round 1 recipients may not receive a waiver on any sale or lease until after the tenth year from the date of issuance of the grant unless NTIA were to waive this 10-year prohibition. NTIA's useful life schedule is available at http://www2.ntia.doc.gov/files/fact_sheet_useful_life_schedule_082510_v1.pdf. Nothing in this section is meant to limit Infrastructure recipients from leasing facilities to another service provider for the provision of broadband services, nor is this restriction meant to restrict a transfer of control of the recipient. Specifically, the sale or lease restrictions do not apply to BI/CCI recipients' provision of IRUs in BTOP-funded fiber optic networks to other broadband service providers for the provision of broadband service. Additionally, if meeting certain requirements outlined in the second Sale/Lease IRU Special Award Condition, recipients may enter into IRU arrangements directly with end-users purchasing the IRU for their own use (see III.A.1.a, "Activities Allowed or Unallowed – *BI/CCI Projects*") (Round 1 NOFA, Sections V.E. and IX.C.2; Round 2 NOFA, Sections V.F.d and IX.C.2; BTOP Special Award Conditions).

G. Matching, Level of Effort, Earmarking

1. Matching

Recipients must provide, from non-Federal sources, not less than 20 percent of the total allowable project costs, unless the Assistant Secretary grants a waiver allowing a lesser percentage. Recipients' award documents and approved budget contain the specific percentage of non-Federal matching funds that they must provide to the project.

The non-Federal share, whether cash or in-kind, is expected to be paid out at the same general rate as the Federal share, unless the Grants Office has approved a waiver of this requirement (e.g., through an award amendment on Form CD-451) (ARRA, Section 6001(f); Round 1 NOFA, Section V.C.4.b.; Round 2 NOFA, Section V.C.1).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

H. Period of Performance

Recipients must substantially complete their projects no later than 2 years, and projects must be fully completed no later than 3 years, following the date of the issuance of the award (Round 1 NOFA, Sections IV.B.6 and V.C1.b; Round 2, NOFA, Section IV.F.).

J. Program Income

Recipients' projects that generate program income during the grant period shall spend such income as follows:

1. Add program income to the award to further eligible project objectives, including (a) reinvestment in project facilities, (b) funding BTOP compliance costs, and (c) paying operating expenses of the PCC or SBA project; or
2. Finance the non-Federal share of the project

(Round 1 NOFA, Section V.E; Round 2 NOFA, Section V.F; Program Income Special Award Condition (applying Round 2 NOFA provision to Round 1 awards)).

L. Reporting

1. Financial Reporting

- a. SF-270, *Request for Advance or Reimbursement* – Not Applicable
- b. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Applicable (if specified by DOC)
- c. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

N. Special Tests and Provisions

1. Nondiscrimination and Interconnection Obligations

Compliance Requirements – Recipients of Infrastructure projects must commit to nondiscrimination and interconnection obligations that include (1) adherence to principles contained in the FCC's Internet Policy Statement (FCC 05-151, adopted August 5, 2005), which can be found at http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-05-151A1.pdf, or any subsequent ruling or statement; (2) not favoring any lawful Internet application or content over others; (3) displaying any network management policies in a prominent location on the service provider's web page and providing notice to customers of changes to these policies; (4) connecting to the public Internet directly or indirectly, such that the project is not an entirely private, closed network; and (5) offering interconnection, where

technically feasible, without exceeding current or reasonably anticipated capacity limitations, at reasonable rates and terms to be negotiated with requesting parties.

These conditions apply for the useful life of the recipient's facilities used in the project and not to any existing network arrangements at the time of the award. The useful life schedule is available at

http://www2.ntia.doc.gov/files/fact_sheet_useful_life_schedule_082510_v1.pdf. For Round 1 recipients, the conditions apply to any contractors or subcontractors of recipients and subrecipients that operate the network facilities for the infrastructure project. (Round 1 NOFA, Section V.C.2.c; Round 2 NOFA, Section V.D.3.b).

Audit Objective – Determine whether the recipient is adhering to nondiscrimination and interconnection obligations.

Suggested Audit Procedures

- a. Verify that the recipient has, in effect, written interconnection, nondiscrimination, and network management policies (submitted to NTIA at the time of application).
- b. Verify that the recipient displays its network management policies in a prominent location on its primary website and has provided notice to customers of changes to these policies. For this purpose, prominent means that a link to these policies and notices must be available within one-click from the main page.
- c. For Round 1 recipients, determine whether the recipient has included nondiscrimination and interconnection requirements in any of its subaward or service contracts to deploy or operate the network facilities under the BTOP award.
- d. Verify that the recipient has a written outreach policy that advertises availability and ensures provision of a public Internet connection, rather than just a connection to its own services, using media of general distribution. This policy must contain reasonable advertisement and monitoring of, as well as timely response to, enforcement actions associated with complaints received by recipient regarding its rates. To the extent that a recipient's interconnection rates are incorporated into its BTOP award, it should not charge rates higher than those rates.
- e. Verify that the recipient maintains a publicly available list of all Points of Interconnection associated with its BTOP network, including latitude/longitude, nearest street address, and elevation (if relevant).
- f. Verify that the recipient maintains a standardized method for parties to make inquiries and request service. Verify that the recipient responds to all such requests in a reasonable period of time (typically not more than 10 business days).

2. Duplicate Federal Funding for Broadband Projects

Compliance Requirements – A BTOP recipient must not duplicate activities that would result in unjust enrichment as a result of support for non-recurring costs through another Federal program for service in the area or duplicate funds that the recipient received under Federal Universal Service support programs administered by the Universal Service Administration Company (“FCC USF Programs”), grant or loan programs administered by the Department of Agriculture’s Rural Utilities Service (RUS), or any other Federal program (ARRA Section 6001(h)(2)(D); Round 2 NOFA Section IX.C.5.e).

Audit Objective – Determine whether the recipient is receiving support from FCC USF Programs that duplicate BTOP award funds expended for recipient’s BTOP funded project.

Suggested Audit Procedures

- a. Verify that an SBA or PCC recipient does not receive BTOP funds to pay for any discounted portion of telecommunications services or Internet connections for which it receives support from FCC USF Programs.
- b. Verify that an Infrastructure or a PCC recipient does not contribute, as part of its match, internal connections or other equipment-related non-recurring costs that were funded by FCC USF Programs.

3. Wage Rate Requirements

Compliance Requirement - Contractors and subcontractors are required to pay prevailing wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the Secretary of Labor to laborers and mechanics in compliance with Wage Rate Requirements. Recipients must review the weekly certified payroll documentation they receive from their subrecipients, contractors, and subcontractors on an ongoing basis. Recipients must maintain, in their files, the original Davis-Bacon Act payroll records they prepare for themselves, as well as those prepared by subrecipients, contractors, and subcontractors. (40 USC 3141 *et seq.*; **ARRA Section 1606**; Round 1 NOFA, Section X.G; Round 2 NOFA, Section X.G; 29 CFR sections 3.3 and 3.4).

See Wage Rate Requirements Cross-Cutting Section (page 4-20.001-1).