MEMORANDUM

TO: Lisa Casias
Dennis Alvord

FROM: Matt Erskine
Tom Guevara
Greg Brown

SUBJECT: Follow up Responses to Agency Review Team (ART) Briefing Questions

The enclosed information is EDA’s responses to the following the Agency Review Team questions:

1. Provide a list of performance metrics highlighting any leverage and job created metrics.
2. Provide Terms and Conditions that EDA uses for its grant recipients
3. Revolving Loan Fund: Provide a status of this program over the past several years. Highlighting size, location, etc.
4. Provide a list of grants that are currently in the pipeline especially those going out prior to January 20th 2017. (withdrawn)
5. Provide list of areas of successes for EDA in general and where possible highlight manufacturing successes

cc. Gerald Patterson
    Diane Marston
Performance Metrics

Of the approximately $238 million EDA invested in FY 2015 in locally-driven economic development projects nationwide, approximately $143 million was invested in construction projects that communities determined would enhance their local economic development efforts. Grantees expect these investments will help create or retain approximately 35,000 jobs and generate $4.2 billion in private investment.\(^1\) Traditionally, every $1 of EDA construction project funding leverages $10.08 in private sector investment.

EDA performance goals, measures, and indicators from budget submissions for the FY 2017 Budget follow. This information is used in the Congressional budget submission to measure progress toward goals, inform budget decision making processes, and reduce risks, or enhance cost-effectiveness. This information includes EDA’s GPRA (Government Performance and Results Act) measures (GPRA Goal 1 and Goal 2) as well indicators that reflect EDA’s contribution to the DOC Strategic Plan, FY 2014 to FY 2018 (Strategic Objectives 1.2, 1.3, 2.3, and 3.3).

\(^1\) Please note that the total dollars invested in FY 2015 exceeded EDA’s FY 2015 budget appropriation due to the obligation of funds that were recovered from prior year appropriations. For more information on EDA’s FY 2015 grants and the associated impacts from EDA’s construction investments in FY 2015, please see EDA’s FY 2015 Annual Report at https://www.eda.gov/annual-reports/files/fy2015/EDA-FY2015-Annual-Report-full.pdf.
FY 2017 Performance Planning and FY 2015 Reporting Backup –
CONGRESSIONAL Submission
(Economic Development Administration)

Actual Trends of Indicators

Status of FY 2015 Indicators

Performance Indicator Information

Summary of Performance

- Of EDA's 22 total Strategic Plan and GPRA Goals 1 & 2 indicators, 15 were Exceeded (68%), 2 were Met (23%), and 5 were Not Met (9%).
- Of EDA's 22 total Strategic Plan and GPRA Goals 1 & 2 indicators, 6 were Stable, 6 were Varying, and 10 were Not Enough Data.

Summary of Indicator Performance

GPRA Goal 1:

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Target</th>
<th>Actual</th>
<th>Status</th>
<th>Trend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jobs Created/Retained - 9 year totals</td>
<td>35,097</td>
<td>57,907</td>
<td>Exceeded</td>
<td>Varying</td>
</tr>
<tr>
<td>Jobs Created/Retained - 6 year totals</td>
<td>27,956</td>
<td>13,486</td>
<td>Not Met</td>
<td>Varying</td>
</tr>
<tr>
<td>Jobs Created/Retained - 3 year totals</td>
<td>4,939</td>
<td>12,151</td>
<td>Exceeded</td>
<td>Varying</td>
</tr>
<tr>
<td>Private Investment Leveraged - 9 year totals (in millions)</td>
<td>$1,324</td>
<td>$3,711</td>
<td>Exceeded</td>
<td>Varying</td>
</tr>
<tr>
<td>Private Investment Leveraged - 6 year totals (in millions)</td>
<td>$1,093</td>
<td>$1,281</td>
<td>Exceeded</td>
<td>Varying</td>
</tr>
<tr>
<td>Private Investment Leveraged - 3 year totals (in millions)</td>
<td>$210</td>
<td>$2,075</td>
<td>Exceeded</td>
<td>Varying</td>
</tr>
</tbody>
</table>
GPRA Goal 2:

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Target</th>
<th>Actual</th>
<th>Status</th>
<th>Trend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage of Economic Development District (EDD) and Indian Tribes</td>
<td>95.0%</td>
<td>84.0%</td>
<td>Not Met</td>
<td>Stable</td>
</tr>
<tr>
<td>implementing economic development projects from the Comprehensive</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Economic Development Strategy (CEDS) that lead to private investment and</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>jobs.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage of sub-state jurisdiction members actively participating in the</td>
<td>89.0%</td>
<td>85.3%</td>
<td>Met</td>
<td>Stable</td>
</tr>
<tr>
<td>Economic Development District (EDD) program.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage of University Center Clients Taking Action as a Result of the</td>
<td>75.0%</td>
<td>79.0%</td>
<td>Exceeded</td>
<td>Stable</td>
</tr>
<tr>
<td>Assistance Facilitated by the University Center (UC).</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage of Those Actions Taken by University Center (UC) Clients</td>
<td>83.0%</td>
<td>82.1%</td>
<td>Met</td>
<td>Stable</td>
</tr>
<tr>
<td>that Achieved the Expected Results.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage of Trade Adjustment Assistance Center (TAAC) clients taking</td>
<td>90.0%</td>
<td>68.5%</td>
<td>Not Met</td>
<td>Stable</td>
</tr>
<tr>
<td>action as a result of the assistance facilitated by the TAAC.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage of those actions taken by TAAC clients that achieved the</td>
<td>95.0%</td>
<td>99.5%</td>
<td>Exceeded</td>
<td>Stable</td>
</tr>
<tr>
<td>expected results.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Strategic Plan Objective 1.2: Increase U.S. exports

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Target</th>
<th>Actual</th>
<th>Status</th>
<th>Trend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of grants that support place-based export strategies</td>
<td>59</td>
<td>48</td>
<td>Not Met</td>
<td>Not enough data</td>
</tr>
<tr>
<td>Dollar amount of grants that support place-based export strategies (in</td>
<td>$53.4</td>
<td>$65.8</td>
<td>Exceeded</td>
<td>Not enough data</td>
</tr>
<tr>
<td>millions)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Strategic Plan Objective 1.3: Increase high-impact inward foreign direct investment into the U.S.

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Target</th>
<th>Actual</th>
<th>Status</th>
<th>Trend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recipient-estimated number of jobs generated as a result of grants that</td>
<td>4,516</td>
<td>7,566</td>
<td>Exceeded</td>
<td>Not enough data</td>
</tr>
<tr>
<td>support inward investment</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recipient-estimated dollar amount of private investment generated as a</td>
<td>$2,600.0</td>
<td>$1,264.0</td>
<td>Not Met</td>
<td>Not enough data</td>
</tr>
<tr>
<td>result of grants that support inward investment (in millions)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Strategic Plan Objective 2.3: Catalyze innovation ecosystems

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Target</th>
<th>Actual</th>
<th>Status</th>
<th>Trend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recipient-estimated number of jobs generated as a result of infrastructure for industry-driven skills training</td>
<td>2,588</td>
<td>9,802</td>
<td>Exceeded</td>
<td>Not enough data</td>
</tr>
<tr>
<td>Recipient-estimated dollar amount of private investment generated as a result of infrastructure for industry-driven skills training (in millions)</td>
<td>$484.9</td>
<td>$593.4</td>
<td>Exceeded</td>
<td>Not enough data</td>
</tr>
<tr>
<td>Number of grants that support innovation-based capacity-building activities</td>
<td>169</td>
<td>192</td>
<td>Exceeded</td>
<td>Not enough data</td>
</tr>
<tr>
<td>Dollar amount of grants that support innovation-based capacity-building activities (in millions)</td>
<td>$101.2</td>
<td>$119.5</td>
<td>Exceeded</td>
<td>Not enough data</td>
</tr>
</tbody>
</table>

Strategic Plan Objective 3.3: Strengthen the resiliency of communities and regions

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Target</th>
<th>Actual</th>
<th>Status</th>
<th>Trend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of grants that support resiliency in communities and regions</td>
<td>97</td>
<td>213</td>
<td>Exceeded</td>
<td>Not enough data</td>
</tr>
<tr>
<td>Dollar amount of grants that support resiliency in communities and regions (in millions)</td>
<td>$47.4</td>
<td>$63.7</td>
<td>Exceeded</td>
<td>Not enough data</td>
</tr>
</tbody>
</table>
## Detailed Indicator Plans and Performance

### Recurring Indicators

<table>
<thead>
<tr>
<th>Strategic Goals:</th>
<th>Trade and Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1, 2, and 3</td>
<td>Innovation</td>
</tr>
<tr>
<td></td>
<td>Environment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Objectives:</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.2</td>
<td>Increase U.S. exports</td>
</tr>
<tr>
<td>1.3</td>
<td>Increase high-impact inward foreign direct investment into the U.S.</td>
</tr>
<tr>
<td>2.1</td>
<td>Accelerate advanced manufacturing</td>
</tr>
<tr>
<td>2.3</td>
<td>Catalyze innovation ecosystems</td>
</tr>
<tr>
<td>3.3</td>
<td>Strengthen the resiliency of communities and regions</td>
</tr>
</tbody>
</table>

| Indicator        | Jobs Created/Retained - 9 year totals |
| Category         | Supporting (Non-Strategic Plan) |
| Type             | Output |

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>The formula-driven calculation projects investment data at 3, 6, and 9 year intervals from the investment award. The formula is based on a study done by Rutgers University, which compiled and analyzed the performance of EDA construction investments after 9 years. This approach was reviewed and validated by third-party analysis conducted by Grant Thornton in 2008. Based on this formula and a review of EDA's historical results, EDA estimates that 40% of the 9-year projection would be realized after 3 years, 75% after 6 years, and 100% after 9 years.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Target</td>
<td>72,000</td>
<td>57,800</td>
<td>45,800</td>
<td>44,853</td>
<td>36,386</td>
<td>35,097</td>
<td>33,141</td>
</tr>
<tr>
<td>Actual</td>
<td>66,527</td>
<td>66,058</td>
<td>12,675</td>
<td>33,088</td>
<td>33,822</td>
<td>57,907</td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Met</td>
<td>Met</td>
<td>Not Met</td>
<td>Not Met</td>
<td>Met</td>
<td>Exceeded</td>
<td></td>
</tr>
<tr>
<td>Trend</td>
<td>Varying</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Explanation (if not met in FY 2015) | Not applicable |
| Actions to be taken / Future Plans | None |
| Adjustments to targets             | None |
| Notes                              | None |
| Information Gaps                   | None |
### Strategic Goals: 1, 2, and 3

- **Trade and Investment**
- **Innovation**
- **Environment**

### Objectives:

1. Increase U.S. exports
2. Increase high-impact inward foreign direct investment into the U.S.
3. Accelerate advanced manufacturing
4. Catalyze innovation ecosystems
5. Strengthen the resiliency of communities and regions

### Indicator: Jobs Created/Retained - 6 year totals

### Type: Output

**Description:** The formula-driven calculation projects investment data at 3, 6, and 9 year intervals from the investment award. The formula is based on a study done by Rutgers University, which compiled and analyzed the performance of EDA construction investments after 9 years. This approach was reviewed and validated by third-party analysis conducted by Grant Thornton in 2008. Based on this formula and a review of EDA’s historical results, EDA estimates that 40% of the 9-year projection would be realized after 3 years, 75% after 6 years, and 100% after 9 years.

<table>
<thead>
<tr>
<th>Year</th>
<th>Target</th>
<th>Actual</th>
<th>Status</th>
<th>Trend</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2010</td>
<td>22,427</td>
<td>26,695</td>
<td>Exceeded</td>
<td>Varying</td>
</tr>
<tr>
<td>FY 2011</td>
<td>18,193</td>
<td>26,416</td>
<td>Exceeded</td>
<td></td>
</tr>
<tr>
<td>FY 2012</td>
<td>17,548</td>
<td>36,046</td>
<td>Not Met</td>
<td></td>
</tr>
<tr>
<td>FY 2013</td>
<td>16,570</td>
<td>12,685</td>
<td>Not Met</td>
<td></td>
</tr>
<tr>
<td>FY 2014</td>
<td>15,640</td>
<td>12,486</td>
<td>Not Met</td>
<td></td>
</tr>
<tr>
<td>FY 2015</td>
<td>27,558</td>
<td>13,486</td>
<td>Not Met</td>
<td></td>
</tr>
<tr>
<td>FY 2016</td>
<td>15,834</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY 2017</td>
<td>13,392</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Explanation (if not met in FY 2015)

EDA strives to encourage local economic development organizations to align their grant applications with DOC’s Strategic Plan priorities; however, EDA grants support locally-driven economic development efforts. As a result, despite EDA leading a wide variety of prioritization, training, and outreach efforts to encourage alignment, in any given year the quantity or impact of local economic development organization grants pertaining to a given DOC Strategic Plan priority are subject to fluctuate relative to targeted expectations. These fluctuations are primarily due to local economic circumstances.

### Actions to be taken / Future Plans

None

### Adjustments to targets

Note that EDA’s targets are calculated as the best estimate of future performance, based on prior performance and the most up-to-date data available. For a variety of reasons, including dynamic local economic circumstances, programmatic initiatives, and ongoing target calibration, the calculated targets are subject to fluctuate from one year to the next.

### Notes

None

### Information Gaps

None
Strategic Trade and Investment Goals:  
1, 2, and 3 Environment Objectives:

1.2 Increase U.S. exports
1.3 Increase high-impact inward foreign direct investment into the U.S.
2.1 Accelerate advanced manufacturing
2.3 Catalyze innovation ecosystems
3.3 Strengthen the resiliency of communities and regions

Indicator | Jobs Created/Retained - 3 year totals
Category | Supporting (Non-Strategic Plan)
Type | Output

**Description:** The formula-driven calculation projects investment data at 3, 6, and 9 year intervals from the investment award. The formula is based on a study done by Rutgers University, which compiled and analyzed the performance of EDA construction investments after 9 years. This approach was reviewed and validated by third-party analysis conducted by Grant Thornton in 2008. Based on this formula and a review of EDA's historical results, EDA estimates that 40% of the 9-year projection would be realized after 3 years, 75% after 6 years, and 100% after 9 years.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Target</td>
<td>6,628</td>
<td>6,256</td>
<td>11,183</td>
<td>6,333</td>
<td>5,357</td>
<td>4,939</td>
<td>3,633</td>
<td>4,037</td>
</tr>
<tr>
<td>Actual</td>
<td>9,159</td>
<td>14,842</td>
<td>6,040</td>
<td>13,576</td>
<td>6,538</td>
<td>12,151</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td>Not Met</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trend</td>
<td>Varying</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Explanation (if not met in FY 2015):** Not applicable
**Actions to be taken / Future Plans:** None
**Adjustments to targets:** None
**Notes:** None
**Information Gaps:** None
<table>
<thead>
<tr>
<th>Strategic Goals:</th>
<th>Trade and Investment Innovation Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectives:</td>
<td></td>
</tr>
<tr>
<td>1.2</td>
<td>Increase U.S. exports</td>
</tr>
<tr>
<td>1.3</td>
<td>Increase high-impact inward foreign direct investment into the U.S.</td>
</tr>
<tr>
<td>2.1</td>
<td>Accelerate advanced manufacturing</td>
</tr>
<tr>
<td>2.3</td>
<td>Catalyze innovation ecosystems</td>
</tr>
<tr>
<td>3.3</td>
<td>Strengthen the resiliency of communities and regions</td>
</tr>
<tr>
<td>Indicator</td>
<td>Private Investment Leveraged - 9 year totals (in millions)</td>
</tr>
<tr>
<td>Category</td>
<td>Supporting (Non-Strategic Plan)</td>
</tr>
<tr>
<td>Type</td>
<td>Output</td>
</tr>
<tr>
<td>Description</td>
<td>The formula-driven calculation projects investment data at 3, 6, and 9 year intervals from the investment award. The formula is based on a study done by Rutgers University, which compiled and analyzed the performance of EDA construction investments after 9 years. This approach was reviewed and validated by third-party analysis conducted by Grant Thornton in 2008. Based on this formula and a review of EDA's historical results, EDA estimates that 40% of the 9-year projection would be realized after 3 years, 75% after 6 years, and 100% after 9 years.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Target</th>
<th>Actual</th>
<th>Status</th>
<th>Trend</th>
<th>Dynamic Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2010</td>
<td>$2,410</td>
<td>$2,758</td>
<td>Exceeded</td>
<td>Varying</td>
<td></td>
</tr>
<tr>
<td>FY 2011</td>
<td>$1,940</td>
<td>$3,960</td>
<td>Exceeded</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY 2012</td>
<td>$1,620</td>
<td>$1,593</td>
<td>Met</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY 2013</td>
<td>$1,637</td>
<td>$3,466</td>
<td>Exceeded</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY 2014</td>
<td>$1,349</td>
<td>$2,958</td>
<td>Exceeded</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY 2015</td>
<td>$1,324</td>
<td>$3,711</td>
<td>Exceeded</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY 2016</td>
<td>$1,293</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY 2017</td>
<td>$1,223</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Explanation (if not met in FY 2015) Not applicable
Actions to be taken / Future Plans None
Adjustments to targets None
Notes This performance indicator includes the dollar amount of private investment measured in Strategic Objective 1.3 performance indicator "Recipient-estimated dollar amount of private investment generated as a result of grants that support inward investment" and Strategic Objective 2.3 performance indicator "Recipient-estimated dollar amount of private investment generated as a result of infrastructure for industry-driven skills training".
Information Gaps None
<table>
<thead>
<tr>
<th>Strategic Goals:</th>
<th>Trade and Investment Innovation Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectives:</td>
<td></td>
</tr>
<tr>
<td>1.2</td>
<td>Increase U.S. exports</td>
</tr>
<tr>
<td>1.3</td>
<td>Increase high-impact inward foreign direct investment into the U.S.</td>
</tr>
<tr>
<td>2.1</td>
<td>Accelerate advanced manufacturing</td>
</tr>
<tr>
<td>2.3</td>
<td>Catalyze innovation ecosystems</td>
</tr>
<tr>
<td>3.3</td>
<td>Strengthen the resiliency of communities and regions</td>
</tr>
<tr>
<td>Indicator</td>
<td>Private Investment Leveraged - 6 year totals (in millions)</td>
</tr>
<tr>
<td>Category</td>
<td>Supporting (Non-Strategic Plan)</td>
</tr>
<tr>
<td>Type</td>
<td>Output</td>
</tr>
<tr>
<td>Description</td>
<td>The formula-driven calculation projects investment data at 3, 6, and 9 year intervals from the investment award. The formula is based on a study done by Rutgers University, which compiled and analyzed the performance of EDA construction investments after 9 years. This approach was reviewed and validated by third-party analysis conducted by Grant Thornton in 2008. Based on this formula and a review of EDA's historical results, EDA estimates that 40% of the 9-year projection would be realized after 3 years, 75% after 6 years, and 100% after 9 years.</td>
</tr>
<tr>
<td>FY 2010</td>
<td>Target $824 Actual $2,281 Status Exceeded Trend Varying</td>
</tr>
<tr>
<td></td>
<td>FY 2011</td>
</tr>
<tr>
<td></td>
<td>FY 2012</td>
</tr>
<tr>
<td></td>
<td>FY 2013</td>
</tr>
<tr>
<td></td>
<td>FY 2014</td>
</tr>
<tr>
<td></td>
<td>FY 2015</td>
</tr>
<tr>
<td></td>
<td>FY 2016</td>
</tr>
<tr>
<td></td>
<td>FY 2017</td>
</tr>
<tr>
<td>Explanation (if not met in FY 2015)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Actions to be taken / Future Plans</td>
<td>None</td>
</tr>
<tr>
<td>Adjustments to targets</td>
<td>None</td>
</tr>
<tr>
<td>Notes</td>
<td>This performance indicator includes the dollar amount of private investment measured in Strategic Objective 1.3 performance indicator &quot;Recipient-estimated dollar amount of private investment generated as a result of grants that support inward investment&quot; and Strategic Objective 2.3 performance indicator &quot;Recipient-estimated dollar amount of private investment generated as a result of infrastructure for industry-driven skills training&quot;.</td>
</tr>
<tr>
<td>Information Gaps</td>
<td>None</td>
</tr>
<tr>
<td>Strategic Goals: 1, 2, and 3</td>
<td>Trade and Investment Innovation Environment</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Objectives:</td>
<td></td>
</tr>
<tr>
<td>1.2</td>
<td>Increase U.S. exports</td>
</tr>
<tr>
<td>1.3</td>
<td>Increase high-impact inward foreign direct investment into the U.S.</td>
</tr>
<tr>
<td>2.1</td>
<td>Accelerate advanced manufacturing</td>
</tr>
<tr>
<td>2.3</td>
<td>Catalyze innovation ecosystems</td>
</tr>
<tr>
<td>3.3</td>
<td>Strengthen the resiliency of communities and regions</td>
</tr>
<tr>
<td>Indicator</td>
<td>Private Investment Leveraged - 3 year totals (in millions)</td>
</tr>
<tr>
<td>Category</td>
<td>Supporting (Non-Strategic Plan)</td>
</tr>
<tr>
<td>Type</td>
<td>Output</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>The formula-driven calculation projects investment data at 3, 6, and 9 year intervals from the investment award. The formula is based on a study done by Rutgers University, which compiled and analyzed the performance of EDA construction investments after 9 years. This approach was reviewed and validated by third-party analysis conducted by Grant Thornton in 2008. Based on this formula and a review of EDA’s historical results, EDA estimates that 40% of the 9-year projection would be realized after 3 years, 75% after 6 years, and 100% after 9 years.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Target</td>
<td>$259</td>
<td>$245</td>
<td>$437</td>
<td>$261</td>
<td>$224</td>
<td>$210</td>
<td>$156</td>
<td>$176</td>
</tr>
<tr>
<td>Actual</td>
<td>$1,544</td>
<td>$1,475</td>
<td>$837</td>
<td>$1,076</td>
<td>$951</td>
<td>$2,075</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trend</td>
<td>Varying</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Explanation (if not met in FY 2015) | Not applicable
Actions to be taken / Future Plans | None
Adjustments to targets | None

Notes | This performance indicator includes the dollar amount of private investment measured in Strategic Objective 1.3 performance indicator "Recipient-estimated dollar amount of private investment generated as a result of grants that support inward investment" and Strategic Objective 2.3 performance indicator "Recipient-estimated dollar amount of private investment generated as a result of infrastructure for industry-driven skills training".

Information Gaps | None
<table>
<thead>
<tr>
<th>Strategic Goals: 1, 2, and 3</th>
<th>Trade and Investment Innovation Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectives:</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Increase U.S. exports</td>
</tr>
<tr>
<td>1.3</td>
<td>Increase high-impact inward foreign direct investment into the U.S.</td>
</tr>
<tr>
<td>2.1</td>
<td>Accelerate advanced manufacturing</td>
</tr>
<tr>
<td>2.3</td>
<td>Catalyze innovation ecosystems</td>
</tr>
<tr>
<td>3.3</td>
<td>Strengthen the resiliency of communities and regions</td>
</tr>
<tr>
<td>Indicator</td>
<td>Percentage of Economic Development District (EDD) and Indian Tribes implementing economic development projects from the Comprehensive Economic Development Strategy (CEDS) that lead to private investment and jobs.</td>
</tr>
<tr>
<td>Category</td>
<td>Supporting (Non-Strategic Plan)</td>
</tr>
<tr>
<td>Type</td>
<td>Output</td>
</tr>
<tr>
<td>Description</td>
<td>This measure provides an indication of whether the CEDS process is market based and whether EDA is helping to create an environment conducive to the creation and retention of higher skill, higher wage jobs. Research conducted on FY 2002 data established a baseline measure for subsequent years.</td>
</tr>
<tr>
<td>FY 2010</td>
<td>95.0%</td>
</tr>
<tr>
<td>FY 2011</td>
<td>95.0%</td>
</tr>
<tr>
<td>FY 2012</td>
<td>95.0%</td>
</tr>
<tr>
<td>FY 2013</td>
<td>95.0%</td>
</tr>
<tr>
<td>FY 2014</td>
<td>95.0%</td>
</tr>
<tr>
<td>FY 2015</td>
<td>95.0%</td>
</tr>
<tr>
<td>FY 2016</td>
<td>95.0%</td>
</tr>
<tr>
<td>FY 2017</td>
<td>95.0%</td>
</tr>
<tr>
<td>Target</td>
<td></td>
</tr>
<tr>
<td>Actual</td>
<td>89.1%</td>
</tr>
<tr>
<td>Actual</td>
<td>86.0%</td>
</tr>
<tr>
<td>Actual</td>
<td>60.0%</td>
</tr>
<tr>
<td>Actual</td>
<td>89.2%</td>
</tr>
<tr>
<td>Actual</td>
<td>92.4%</td>
</tr>
<tr>
<td>Status</td>
<td>Met</td>
</tr>
<tr>
<td>Status</td>
<td>Met</td>
</tr>
<tr>
<td>Status</td>
<td>Met</td>
</tr>
<tr>
<td>Status</td>
<td>Met</td>
</tr>
<tr>
<td>Status</td>
<td>Met</td>
</tr>
<tr>
<td>Status</td>
<td>Not Met</td>
</tr>
<tr>
<td>Trend</td>
<td>Stable</td>
</tr>
<tr>
<td>Explanation (if not met in FY 2015)</td>
<td>EDA strives to encourage local economic development organizations to align their grant applications with DOC's Strategic Plan priorities; however, EDA grants support locally-driven economic development efforts. As a result, despite EDA leading a wide variety of prioritization, training, and outreach efforts to encourage alignment, in any given year the quantity or impact of local economic development organization grants pertaining to a given DOC Strategic Plan priority are subject to fluctuate relative to targeted expectations. These fluctuations are primarily due to local economic circumstances.</td>
</tr>
<tr>
<td>Actions to be taken / Future Plans</td>
<td>None</td>
</tr>
<tr>
<td>Adjustments to targets</td>
<td>None</td>
</tr>
<tr>
<td>Notes</td>
<td>None</td>
</tr>
<tr>
<td>Information Gaps</td>
<td>None</td>
</tr>
</tbody>
</table>
### Strategic Goals:
1. Trade and Investment
2. Innovation
3. Environment

### Objectives:
1. Increase U.S. exports
2. Increase high-impact inward foreign direct investment into the U.S.
3. Accelerate advanced manufacturing
4. Catalyze innovation ecosystems
5. Strengthen the resiliency of communities and regions

### Indicator
Percentage of sub-state jurisdiction members actively participating in the Economic Development District (EDD) program.

### Category
Supporting (Non-Strategic Plan)

### Type
Output

### Description
EDDs generally consist of three or more counties that are considered member jurisdictions. Sub-state jurisdiction participation indicates the District’s responsiveness to the area it serves and shows that the services it provides are of value. Active participation was defined as either attendance at meetings or financial support of the EDD during the reporting period. Sub-state jurisdiction members are independent units of government (cities, towns, villages, counties, etc.) and eligible entities substantially associated with economic development, as set forth by the District’s bylaws or alternate enabling document.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Target</td>
<td>89.0%</td>
<td>89.0%</td>
<td>89.0%</td>
<td>89.0%</td>
<td>89.0%</td>
<td>89.0%</td>
<td>89.0%</td>
<td>89.0%</td>
</tr>
<tr>
<td>Actual</td>
<td>87.1%</td>
<td>85.0%</td>
<td>87.0%</td>
<td>83.7%</td>
<td>80.3%</td>
<td>85.3%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Met</td>
<td>Met</td>
<td>Met</td>
<td>Met</td>
<td>Met</td>
<td>Met</td>
<td>Met</td>
<td></td>
</tr>
<tr>
<td>Trend</td>
<td>Stable</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Explanation (if not met in FY 2015)
Not applicable

### Actions to be taken / Future Plans
None

### Adjustments to targets
None

### Notes
None

### Information Gaps
None
<table>
<thead>
<tr>
<th>Strategic Goals: Innovation, Environment</th>
<th>Trade and Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectives:</td>
<td></td>
</tr>
<tr>
<td>1.2 Increase U.S. exports</td>
<td></td>
</tr>
<tr>
<td>1.3 Increase high-impact inward foreign direct investment into the U.S.</td>
<td></td>
</tr>
<tr>
<td>2.1 Accelerate advanced manufacturing</td>
<td></td>
</tr>
<tr>
<td>2.3 Catalyze innovation ecosystems</td>
<td></td>
</tr>
<tr>
<td>3.3 Strengthen the resiliency of communities and regions</td>
<td></td>
</tr>
<tr>
<td>Indicator</td>
<td>Percentage of University Center Clients Taking Action as a Result of the Assistance Facilitated by the University Center (UC).</td>
</tr>
<tr>
<td>Category</td>
<td>Supporting (Non-Strategic Plan)</td>
</tr>
<tr>
<td>Type</td>
<td>Output</td>
</tr>
<tr>
<td>Description</td>
<td>This measure determines the perceived value added by the UCs to their clients. EDA funds UCs to provide technical assistance and specialized services (e.g., feasibility studies, marketing research, economic analysis, environmental services, and technology transfer) to local officials and communities. This assistance improves the community's capacity to plan and manage successful development projects. UCs develop client profiles and report findings to EDA, which evaluates the performance of each center once every 3 years and verifies the data. &quot;Taking action as a result of the assistance facilitated&quot; means to implement an aspect of the technical assistance provided by the UC in one of several areas: economic development initiatives and training session development; linkages to crucial resources; economic development planning; project management; community investment package development; geographic information system services; strategic partnering to public or private sector entities; increased organizational capacity; technology transfer; new company, product, or patent development; and other services.</td>
</tr>
<tr>
<td>Target</td>
<td>75.0%</td>
</tr>
<tr>
<td>Actual</td>
<td>75.9%</td>
</tr>
<tr>
<td>Status</td>
<td>Exceeded</td>
</tr>
<tr>
<td>Trend</td>
<td>Stable</td>
</tr>
<tr>
<td>Explanation (if not met in FY 2015)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Actions to be taken / Future Plans</td>
<td>None</td>
</tr>
<tr>
<td>Adjustments to targets</td>
<td>None</td>
</tr>
<tr>
<td>Notes</td>
<td>None</td>
</tr>
<tr>
<td>Information Gaps</td>
<td>None</td>
</tr>
</tbody>
</table>
### Strategic Goals:

**1.** Increase U.S. exports
**2.** Increase high-impact inward foreign direct investment into the U.S.
**3.** Strengthen the resiliency of communities and regions

### Objectives:

1. Increase U.S. exports
2. Increase high-impact inward foreign direct investment into the U.S.
3. Accelerate advanced manufacturing
4. Catalyze innovation ecosystems
5. Strengthen the resiliency of communities and regions

### Indicator:

**Percentage of Those Actions Taken by University Center (UC) Clients that Achieved the Expected Results.**

### Category:

Supporting (Non-Strategic Plan)

### Type:

Output

### Description:

This measure is a follow up to the previous measure: "Percentage of UC clients taking action as a result of the assistance facilitated by the UC." This measure determines if the assistance provided by the UC is market based and results in desired outcomes. UCs develop client profiles and report to EDA, which will evaluate and verify the performance of each UC once every three years.

<table>
<thead>
<tr>
<th>Category</th>
<th>Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supporting (Non-Strategic Plan)</td>
<td>Output</td>
<td>This measure is a follow up to the previous measure: &quot;Percentage of UC clients taking action as a result of the assistance facilitated by the UC.&quot; This measure determines if the assistance provided by the UC is market based and results in desired outcomes. UCs develop client profiles and report to EDA, which will evaluate and verify the performance of each UC once every three years.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Target</td>
<td>80.0%</td>
<td>80.0%</td>
<td>80.0%</td>
<td>80.0%</td>
<td>80.0%</td>
<td>83.0%</td>
<td>83.0%</td>
</tr>
<tr>
<td>Actual</td>
<td>89.8%</td>
<td>83.0%</td>
<td>82.0%</td>
<td>90.1%</td>
<td>91.7%</td>
<td>82.1%</td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td>Met</td>
<td></td>
</tr>
<tr>
<td>Trend</td>
<td>Stable</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Explanation (if not met in FY 2015):** Not applicable

**Actions to be taken / Future Plans:** None

**Adjustments to targets:** None

**Notes:** None

**Information Gaps:** None
<table>
<thead>
<tr>
<th>Strategic Goals: 1, 2, and 3</th>
<th>Trade and Investment Innovation Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectives: 1.2</td>
<td>Increase U.S. exports</td>
</tr>
<tr>
<td>1.3</td>
<td>Increase high-impact inward foreign direct investment into the U.S.</td>
</tr>
<tr>
<td>2.1</td>
<td>Accelerate advanced manufacturing</td>
</tr>
<tr>
<td>2.3</td>
<td>Catalyze innovation ecosystems</td>
</tr>
<tr>
<td>3.3</td>
<td>Strengthen the resiliency of communities and regions</td>
</tr>
<tr>
<td>Indicator</td>
<td>Percentage of Trade Adjustment Assistance Center (TAAC) clients taking action as a result of the assistance facilitated by the TAAC.</td>
</tr>
<tr>
<td>Category</td>
<td>Supporting (Non-Strategic Plan)</td>
</tr>
<tr>
<td>Type</td>
<td>Output</td>
</tr>
<tr>
<td>Description</td>
<td>This measure determines the value of assistance provided by TAAC to its clients. Eleven EDA funded TAACs work with U.S. firms and industries that have been adversely impacted as a result of increased imports of similar or competitive goods to identify specific actions to improve each firm's competitive position in world markets. &quot;Taking action as a result of the assistance facilitated&quot; means to implement an aspect of the Trade Adjustment Assistance provided by the TAAC. The TAACs provide three main types of assistance to firms: help in preparing petitions for certification (which must be approved by EDA in order for the firm to receive technical assistance), analysis of the firm's strengths and weaknesses and development of an adjustment proposal, and in depth assistance for implementation of the recovery strategy as set forth in the adjustment proposal.</td>
</tr>
<tr>
<td>Target</td>
<td>90.0%</td>
</tr>
<tr>
<td>Actual</td>
<td>82.2%</td>
</tr>
<tr>
<td>Status</td>
<td>Met</td>
</tr>
<tr>
<td>Trend</td>
<td>Stable</td>
</tr>
<tr>
<td>Explanation (if not met in FY 2015)</td>
<td>EDA strives to encourage local economic development organizations to align their grant applications with DOC's Strategic Plan priorities; however, EDA grants support locally-driven economic development efforts. As a result, despite EDA leading a wide variety of prioritization, training, and outreach efforts to encourage alignment, in any given year the quantity or impact of local economic development organization grants pertaining to a given DOC Strategic Plan priority are subject to fluctuate relative to targeted expectations. These fluctuations are primarily due to local economic circumstances.</td>
</tr>
<tr>
<td>Actions to be taken / Future Plans</td>
<td>None</td>
</tr>
<tr>
<td>Adjustments to targets</td>
<td>None</td>
</tr>
<tr>
<td>Notes</td>
<td>None</td>
</tr>
<tr>
<td>Information Gaps</td>
<td>None</td>
</tr>
</tbody>
</table>
### Strategic Trade and Investment Goals: Innovation 1, 2, and 3 Environment

#### Objectives:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.2</td>
<td>Increase U.S. exports</td>
</tr>
<tr>
<td>1.3</td>
<td>Increase high-impact inward foreign direct investment into the U.S.</td>
</tr>
<tr>
<td>2.1</td>
<td>Accelerate advanced manufacturing</td>
</tr>
<tr>
<td>2.3</td>
<td>Catalyze innovation ecosystems</td>
</tr>
<tr>
<td>3.3</td>
<td>Strengthen the resiliency of communities and regions</td>
</tr>
</tbody>
</table>

#### Indicator

Percentage of those actions taken by TAAC clients that achieved the expected results.

#### Category

Supporting (Non-Strategic Plan)

#### Type

Output

#### Description

This is a follow up to the previous measure: “Percentage of TAAC clients taking action as a result of the assistance facilitated by the TAAC.” This measure will determine if the assistance facilitated by the TAACs is market based and results in desired outcomes. The centers conduct client surveys and report findings to EDA.

#### Table

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Target</strong></td>
<td>95.0%</td>
<td>95.0%</td>
<td>95.0%</td>
<td>95.0%</td>
<td>95.0%</td>
<td>95.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Actual</strong></td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>99.5%</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Status</strong></td>
<td>Exceeded</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Trend</strong></td>
<td>Stable</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Explanation (if not met in FY 2015)

Not applicable

#### Actions to be taken / Future Plans

None

#### Adjustments to targets

None

#### Notes

None

#### Information Gaps

None
<table>
<thead>
<tr>
<th>Strategic Goal 1</th>
<th>Trade and Investment: Expand the U.S. economy through increased exports and inward investment that lead to more and better American jobs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objective #1.2</td>
<td>Increase U.S. exports</td>
</tr>
<tr>
<td>Indicator</td>
<td>Number of grants that support place-based export strategies</td>
</tr>
<tr>
<td>Category</td>
<td>Supporting (Strategic Plan)</td>
</tr>
<tr>
<td>Type</td>
<td>Input</td>
</tr>
<tr>
<td>Description</td>
<td>This performance indicator measures the number of EDA grants which support place-based export strategies</td>
</tr>
<tr>
<td>Target</td>
<td>35</td>
</tr>
<tr>
<td>Actual</td>
<td>66</td>
</tr>
<tr>
<td>Status</td>
<td>Exceeded</td>
</tr>
<tr>
<td>Trend</td>
<td>Not enough data</td>
</tr>
</tbody>
</table>

**Explanation (if not met in FY 2016)**
EDA strives to encourage local economic development organizations to align their grant applications with DOC’s Strategic Plan priorities; however, EDA grants support locally-driven economic development efforts. As a result, despite EDA leading a wide variety of prioritization, training, and outreach efforts to encourage alignment, in any given year the quantity or impact of local economic development organization grants pertaining to a given DOC Strategic Plan priority are subject to fluctuate relative to targeted expectations. These fluctuations are primarily due to local economic circumstances.

**Actions to be taken / Future Plans**
None

**Adjustments to targets**
Note that EDA’s targets are calculated as the best estimate of future performance, based on prior performance and the most up-to-date data available. For a variety of reasons, including dynamic local economic circumstances, programmatic initiatives, and ongoing target calibration, the calculated targets are subject to fluctuate from one year to the next.

**Notes**
None

**Information Gaps**
None
<table>
<thead>
<tr>
<th>Strategic Goal 1.</th>
<th>Trade and Investment: Expand the U.S. economy through increased exports and inward investment that lead to more and better American jobs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objective #1.2</td>
<td>Increase U.S. exports</td>
</tr>
<tr>
<td>Indicator</td>
<td>Dollar amount of grants that support place-based export strategies</td>
</tr>
<tr>
<td>Category</td>
<td>Supporting (Strategic Plan)</td>
</tr>
<tr>
<td>Type</td>
<td>Input</td>
</tr>
<tr>
<td>Description</td>
<td>This performance indicator measures the dollar amount of EDA grants which support place-based export strategies</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Target ($M)</td>
<td>$30.0</td>
<td>$53.4</td>
<td>$59.2</td>
<td>$59.2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actual ($M)</td>
<td>$59.3</td>
<td>$65.8</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trend</td>
<td>Not enough data</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<p>| Explanation (if not met in FY 2015) | Not applicable |
| Actions to be taken / Future Plans  | None |
| Adjustments to targets              | None |
| Notes                               | None |
| Information Gaps                    | None |</p>
<table>
<thead>
<tr>
<th>Strategic Goal 1</th>
<th>Trade and Investment: Expand the U.S. economy through increased exports and inward investment that lead to more and better American jobs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objective #1.3</td>
<td>Increase high-impact inward foreign direct investment into the U.S.</td>
</tr>
<tr>
<td>Indicator</td>
<td>Recipient-estimated number of jobs generated as a result of grants that support inward investment</td>
</tr>
<tr>
<td>Category</td>
<td>Key</td>
</tr>
<tr>
<td>Type</td>
<td>Output</td>
</tr>
<tr>
<td>Description</td>
<td>This performance indicator measures the recipient-estimated number of jobs generated as a result of EDA grants which support foreign direct investment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Target</td>
<td>4,020</td>
<td>4,516</td>
<td>6,908</td>
<td>6,908</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actual</td>
<td>5,018</td>
<td>7,566</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Exceeded</td>
<td>Exceeded</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trend</td>
<td>Not enough data</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Explanation (if not met in FY 2015) | Not applicable
Actions to be taken / Future Plans | None
Adjustments to targets | Note that EDA's targets are calculated as the best estimate of future performance, based on prior performance and the most up-to-date data available. For a variety of reasons, including dynamic local economic circumstances, programmatic initiatives, and ongoing target calibration, the calculated targets are subject to fluctuate from one year to the next.
Notes | None
Information Gaps | None
Strategic Goal 1: Trade and Investment: Expand the U.S. economy through increased exports and inward investment that lead to more and better American jobs

Objective #1.3: Increase high-impact inward foreign direct investment into the U.S.

Indicator: Recipient-estimated dollar amount of private investment generated as a result of grants that support inward investment

<table>
<thead>
<tr>
<th>Category</th>
<th>Key</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type</td>
<td>Output</td>
</tr>
</tbody>
</table>

Description: This performance indicator measures the recipient-estimated dollar amount of EDA grants which support foreign direct investment.

<table>
<thead>
<tr>
<th>Year</th>
<th>Target ($M)</th>
<th>Actual ($M)</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2010</td>
<td>$176.0</td>
<td>$2,008.0</td>
<td>Exceeded</td>
</tr>
<tr>
<td>FY 2011</td>
<td>$2,600.0</td>
<td>$1,264.0</td>
<td>Not Met</td>
</tr>
<tr>
<td>FY 2012</td>
<td>$1,100.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY 2013</td>
<td>$1,100.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY 2014</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY 2015</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY 2016</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY 2017</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Explanation (if not met in FY 2015): EDA strives to encourage local economic development organizations to align their grant applications with DOC's Strategic Plan priorities; however, EDA grants support locally-driven economic development efforts. As a result, despite EDA leading a wide variety of prioritization, training, and outreach efforts to encourage alignment, in any given year the quantity or impact of local economic development organization grants pertaining to a given DOC Strategic Plan priority are subject to fluctuate relative to targeted expectations. These fluctuations are primarily due to local economic circumstances.

Actions to be taken / Future Plans: None

Adjustments to targets: Note that EDA's targets are calculated as the best estimate of future performance, based on prior performance and the most up-to-date data available. For a variety of reasons, including dynamic local economic circumstances, programmatic initiatives, and ongoing target calibration, the calculated targets are subject to fluctuate from one year to the next.

Notes: None

Information Gaps: None
<table>
<thead>
<tr>
<th>Strategic Goal 2</th>
<th>Innovation: Foster a more innovative U.S. economy - one that is better at inventing, improving, and commercializing products and technologies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objective #2.3</td>
<td>Catalyze innovation ecosystems</td>
</tr>
<tr>
<td>Indicator</td>
<td>Recipient-estimated number of jobs generated as a result of infrastructure for industry-driven skills training</td>
</tr>
<tr>
<td>Category</td>
<td>Supporting (Strategic Plan)</td>
</tr>
<tr>
<td>Type</td>
<td>Output</td>
</tr>
<tr>
<td>Description</td>
<td>This performance indicator measures the recipient-estimated number of jobs generated as a result of EDA grants supporting infrastructure for industry-driven skills training</td>
</tr>
<tr>
<td>Target</td>
<td>3,500</td>
</tr>
<tr>
<td>Actual</td>
<td>2,876</td>
</tr>
<tr>
<td>Status</td>
<td>Not Met</td>
</tr>
<tr>
<td>Trend</td>
<td>Not enough data</td>
</tr>
<tr>
<td>Explanation (if not met in FY 2015)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Actions to be taken / Future Plans</td>
<td>None</td>
</tr>
<tr>
<td>Adjustments to targets</td>
<td>Note that EDA’s targets are calculated as the best estimate of future performance, based on prior performance and the most up-to-date data available. For a variety of reasons, including dynamic local economic circumstances, programmatic initiatives, and ongoing target calibration, the calculated targets are subject to fluctuate from one year to the next.</td>
</tr>
<tr>
<td>Notes</td>
<td>None</td>
</tr>
<tr>
<td>Information Gaps</td>
<td>None</td>
</tr>
<tr>
<td>Strategic Goal 2</td>
<td>Innovation: Foster a more innovative U.S. economy - one that is better at inventing, improving, and commercializing products and technologies</td>
</tr>
<tr>
<td>-----------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Objective #2.3</td>
<td>Catalyze innovation ecosystems</td>
</tr>
<tr>
<td>Indicator</td>
<td>Recipient-estimated dollar amount of private investment generated as a result of infrastructure for industry-driven skills training</td>
</tr>
<tr>
<td>Category</td>
<td>Supporting (Strategic Plan)</td>
</tr>
<tr>
<td>Type</td>
<td>Output</td>
</tr>
<tr>
<td>Description</td>
<td>This performance indicator measures the recipient-estimated dollar amount of private investment generated as a result of EDA grants supporting infrastructure for industry-driven skills training</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Target ($M)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$155.0</td>
<td>$484.9</td>
<td>$534.1</td>
<td>$534.1</td>
</tr>
<tr>
<td>Actual ($M)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$538.7</td>
<td>$593.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Exceeded</td>
<td>Exceeded</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trend</td>
<td>Not enough data</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<p>| Explanation (if not met in FY 2015) | Not applicable |
| Actions to be taken / Future Plans | None |
| Adjustments to targets | Note that EDA's targets are calculated as the best estimate of future performance, based on prior performance and the most up-to-date data available. For a variety of reasons, including dynamic local economic circumstances, programmatic initiatives, and ongoing target calibration, the calculated targets are subject to fluctuate from one year to the next. |
| Notes | None |
| Information Gaps | None |</p>
<table>
<thead>
<tr>
<th>Strategic Goal 2</th>
<th>Innovation: Foster a more innovative U.S. economy - one that is better at inventing, improving, and commercializing products and technologies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objective #2.3</td>
<td>Catalyze innovation ecosystems</td>
</tr>
<tr>
<td>Indicator</td>
<td>Number of grants that support innovation-based capacity-building activities</td>
</tr>
<tr>
<td>Category</td>
<td>Key</td>
</tr>
<tr>
<td>Type</td>
<td>Input</td>
</tr>
<tr>
<td>Description</td>
<td>This performance indicator measures the number of EDA grants supporting innovation-based capacity-building activities</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Target</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>200</td>
<td>169</td>
<td>173</td>
<td>173</td>
</tr>
<tr>
<td>Actual</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>188</td>
<td>192</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Met</td>
<td>Exceeded</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trend</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Not enough data</td>
<td></td>
</tr>
</tbody>
</table>

Explanation (if not met in FY 2015): Not applicable
Actions to be taken / Future Plans: None
Adjustments to targets: None
Notes: None
Information Gaps: None
<table>
<thead>
<tr>
<th>Strategic Goal 2</th>
<th>Innovation: Foster a more innovative U.S. economy - one that is better at inventing, improving, and commercializing products and technologies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objective #2.3</td>
<td>Catalyze innovation ecosystems</td>
</tr>
<tr>
<td>Indicator</td>
<td>Dollar amount of grants that support innovation-based capacity-building activities</td>
</tr>
<tr>
<td>Category</td>
<td>Key</td>
</tr>
<tr>
<td>Type</td>
<td>Input</td>
</tr>
<tr>
<td>Description</td>
<td>This performance indicator measures the dollar amount of EDA grants supporting innovation-based capacity-building activities</td>
</tr>
<tr>
<td>Target ($M)</td>
<td>$95.0</td>
</tr>
<tr>
<td>Actual ($M)</td>
<td>$112.4</td>
</tr>
<tr>
<td>Status</td>
<td>Exceeded</td>
</tr>
<tr>
<td>Trend</td>
<td>Not enough data</td>
</tr>
<tr>
<td>Explanation (if not met in FY 2015)</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Actions to be taken / Future Plans</td>
<td>None</td>
</tr>
<tr>
<td>Adjustments to targets</td>
<td>None</td>
</tr>
<tr>
<td>Notes</td>
<td>None</td>
</tr>
<tr>
<td>Information Gaps</td>
<td>None</td>
</tr>
<tr>
<td>Strategic Goal 3</td>
<td>Environment: Help communities and businesses prepare for and prosper in a changing environment</td>
</tr>
<tr>
<td>----------------</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Objective #3.3</td>
<td>Strengthen the resiliency of communities and regions</td>
</tr>
<tr>
<td>Indicator</td>
<td>Number of grants that support resiliency in communities and regions</td>
</tr>
<tr>
<td>Category</td>
<td>Supporting (Strategic Plan)</td>
</tr>
<tr>
<td>Type</td>
<td>Input</td>
</tr>
<tr>
<td>Description</td>
<td>This performance indicator measures the number of EDA grants supporting resiliency in communities and regions</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Target</td>
<td></td>
<td></td>
<td></td>
<td>12</td>
<td>97</td>
<td>192</td>
<td>192</td>
<td></td>
</tr>
<tr>
<td>Actual</td>
<td></td>
<td></td>
<td></td>
<td>108</td>
<td>213</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Exceeded</td>
<td>Exceeded</td>
<td></td>
</tr>
<tr>
<td>Trend</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Not enough data</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Explanation (if not met in FY 2015)**
Not applicable

**Actions to be taken / Future Plans**
None

**Adjustments to targets**
Note that EDA's targets are calculated as the best estimate of future performance, based on prior performance and the most up-to-date data available. For a variety of reasons, including dynamic local economic circumstances, programmatic initiatives, and ongoing target calibration, the calculated targets are subject to fluctuate from one year to the next.

**Notes**
None

**Information Gaps**
None
<table>
<thead>
<tr>
<th>Strategic Goal 3</th>
<th>Environment: Help communities and businesses prepare for and prosper in a changing environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objective #3.3</td>
<td>Strengthen the resiliency of communities and regions</td>
</tr>
<tr>
<td>Indicator</td>
<td>Dollar amount of grants that support resiliency in communities and regions</td>
</tr>
<tr>
<td>Category</td>
<td>Supporting (Strategic Plan)</td>
</tr>
<tr>
<td>Type</td>
<td>Input</td>
</tr>
<tr>
<td>Description</td>
<td>This performance indicator measures the dollar amount of EDA grants supporting resiliency in communities and regions</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Target ($M)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$14.0</td>
<td>$47.4</td>
<td>$57.4</td>
<td>$57.4</td>
</tr>
<tr>
<td>Actual ($M)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$52.6</td>
<td>$63.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Exceeded</td>
<td>Exceeded</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trend</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Not enough data</td>
<td>Not enough data</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Explanation (if not met in FY 2015): Not applicable

**Non-Recurring Indicators**
None

**Other Indicators**
None
## Resource Requirements Table

(Obligation Amounts in Millions)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DOC Goal 1: Trade &amp; Investment</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries and Expenses (S&amp;E)</td>
<td>10.7</td>
<td>10.4</td>
<td>10.0</td>
<td>9.2</td>
<td>8.7</td>
<td>8.7</td>
<td>9.8</td>
<td>10.3</td>
<td>0.6</td>
<td>10.9</td>
</tr>
<tr>
<td>Public Works (PW)</td>
<td>37.3</td>
<td>28.6</td>
<td>32.3</td>
<td>24.3</td>
<td>33.3</td>
<td>26.3</td>
<td>25.0</td>
<td>25.0</td>
<td>-3.8</td>
<td>21.3</td>
</tr>
<tr>
<td>Planning (PL)</td>
<td>7.8</td>
<td>7.8</td>
<td>7.3</td>
<td>7.1</td>
<td>7.3</td>
<td>7.7</td>
<td>8.0</td>
<td>8.0</td>
<td>0.8</td>
<td>8.8</td>
</tr>
<tr>
<td>Technical Assistance (TA)</td>
<td>2.8</td>
<td>3.3</td>
<td>3.2</td>
<td>2.9</td>
<td>2.9</td>
<td>2.6</td>
<td>2.6</td>
<td>2.6</td>
<td>0.4</td>
<td>3.0</td>
</tr>
<tr>
<td>Trade Adjustment Assistance for Firms (TAAF)</td>
<td>5.0</td>
<td>4.5</td>
<td>4.9</td>
<td>4.4</td>
<td>2.2</td>
<td>5.9</td>
<td>3.8</td>
<td>3.8</td>
<td>-0.9</td>
<td>2.9</td>
</tr>
<tr>
<td>Economic Adjustment Assistance (EAA)</td>
<td>11.1</td>
<td>19.7</td>
<td>9.7</td>
<td>11.3</td>
<td>14.9</td>
<td>9.4</td>
<td>8.8</td>
<td>8.8</td>
<td>3.8</td>
<td>12.5</td>
</tr>
<tr>
<td>Regional Innovation Strategies (RIS)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2.5</td>
<td>3.8</td>
<td>3.8</td>
<td>1.3</td>
<td>5.0</td>
</tr>
<tr>
<td>Assistance to Coal</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1.3</td>
<td>3.8</td>
<td>3.8</td>
<td>(3.5)</td>
<td>-</td>
</tr>
<tr>
<td>Loan Guarantees</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total DOC Goal 1: Trade &amp; Investment</strong></td>
<td>$74.8</td>
<td>$74.3</td>
<td>$67.4</td>
<td>$59.2</td>
<td>$60.3</td>
<td>$64.6</td>
<td>$65.6</td>
<td>$66.1</td>
<td>($1.6)</td>
<td>$64.4</td>
</tr>
<tr>
<td><strong>Total FTE Goal 1</strong></td>
<td>47.0</td>
<td>47.0</td>
<td>51.0</td>
<td>44.0</td>
<td>41.0</td>
<td>51.0</td>
<td>56.0</td>
<td>56.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>DOC Goal 2: Innovation</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries and Expenses (S&amp;E)</td>
<td>25.7</td>
<td>24.9</td>
<td>23.9</td>
<td>22.0</td>
<td>20.8</td>
<td>20.8</td>
<td>23.4</td>
<td>24.8</td>
<td>1.3</td>
<td>26.1</td>
</tr>
<tr>
<td>Public Works (PW)</td>
<td>89.6</td>
<td>68.7</td>
<td>77.5</td>
<td>58.4</td>
<td>79.8</td>
<td>63.1</td>
<td>60.0</td>
<td>60.0</td>
<td>(9.0)</td>
<td>51.0</td>
</tr>
<tr>
<td>Planning (PL)</td>
<td>18.9</td>
<td>18.8</td>
<td>17.5</td>
<td>17.0</td>
<td>17.6</td>
<td>18.4</td>
<td>19.2</td>
<td>19.2</td>
<td>1.8</td>
<td>21.0</td>
</tr>
<tr>
<td>Technical Assistance (TA)</td>
<td>6.8</td>
<td>8.0</td>
<td>7.6</td>
<td>7.0</td>
<td>6.8</td>
<td>6.7</td>
<td>6.3</td>
<td>6.3</td>
<td>0.9</td>
<td>7.2</td>
</tr>
<tr>
<td>Research &amp; Evaluation</td>
<td>1.9</td>
<td>1.4</td>
<td>1.4</td>
<td>1.5</td>
<td>0.5</td>
<td>1.7</td>
<td>1.5</td>
<td>1.5</td>
<td>1.5</td>
<td>3.0</td>
</tr>
<tr>
<td>Trade Adjustment Assistance for Firms (TAAF)</td>
<td>12.1</td>
<td>10.9</td>
<td>11.8</td>
<td>10.7</td>
<td>5.4</td>
<td>14.1</td>
<td>9.2</td>
<td>9.2</td>
<td>(2.1)</td>
<td>7.1</td>
</tr>
<tr>
<td>Economic Adjustment Assistance (EAA)</td>
<td>26.5</td>
<td>47.2</td>
<td>23.3</td>
<td>27.0</td>
<td>36.7</td>
<td>22.5</td>
<td>21.0</td>
<td>21.0</td>
<td>9.0</td>
<td>30.0</td>
</tr>
<tr>
<td>Regional Innovation Strategies (RIS)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>5.9</td>
<td>9.0</td>
<td>9.0</td>
<td>3.0</td>
<td>12.0</td>
</tr>
<tr>
<td>Assistance to Coal</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3.2</td>
<td>9.0</td>
<td>9.0</td>
<td>(9.0)</td>
<td>-</td>
</tr>
<tr>
<td>Loan Guarantees</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.1</td>
<td>-</td>
<td>-</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td><strong>Total DOC Goal 2: Innovation</strong></td>
<td>181.3</td>
<td>179.9</td>
<td>163.0</td>
<td>143.7</td>
<td>166.6</td>
<td>156.5</td>
<td>158.6</td>
<td>160.0</td>
<td>(2.6)</td>
<td>157.4</td>
</tr>
<tr>
<td><strong>Total FTE Goal 2</strong></td>
<td>113.0</td>
<td>113.0</td>
<td>121.0</td>
<td>105.0</td>
<td>97.0</td>
<td>123.0</td>
<td>134.0</td>
<td>134.0</td>
<td></td>
<td>134.0</td>
</tr>
<tr>
<td>---------------</td>
<td>----------------</td>
<td>----------------</td>
<td>----------------</td>
<td>----------------</td>
<td>----------------</td>
<td>-----------------</td>
<td>----------------</td>
<td>------------------</td>
<td>------------------</td>
<td></td>
</tr>
<tr>
<td><strong>DOC Goal 1: Trade &amp; Investment</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries and Expenses (S&amp;E)</td>
<td>10.7</td>
<td>10.4</td>
<td>10.0</td>
<td>9.2</td>
<td>9.8</td>
<td>10.0</td>
<td>0.6</td>
<td>10.9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Works (PW)</td>
<td>37.3</td>
<td>28.6</td>
<td>32.3</td>
<td>33.3</td>
<td>26.3</td>
<td>25.0</td>
<td>-3.8</td>
<td>21.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Planning (PL)</td>
<td>7.8</td>
<td>7.8</td>
<td>7.3</td>
<td>7.3</td>
<td>6.9</td>
<td>6.0</td>
<td>0.8</td>
<td>8.8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technical Assistance (TA)</td>
<td>2.8</td>
<td>3.3</td>
<td>3.2</td>
<td>2.9</td>
<td>2.6</td>
<td>2.6</td>
<td>0.4</td>
<td>3.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trade Adjustment Assistance for Firms (TAAF)</td>
<td>5.0</td>
<td>4.5</td>
<td>4.9</td>
<td>4.4</td>
<td>2.2</td>
<td>3.8</td>
<td>-0.9</td>
<td>2.9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Economic Adjustment Assistance (EAA)</td>
<td>11.1</td>
<td>10.7</td>
<td>10.7</td>
<td>14.9</td>
<td>9.4</td>
<td>8.8</td>
<td>3.8</td>
<td>12.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regional Innovation Strategies (RIS)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2.5</td>
<td>3.8</td>
<td>5.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistance to Coal</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1.3</td>
<td>3.8</td>
<td>5.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loan Guarantees</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total DOC Goal 1: Trade &amp; Investment</strong></td>
<td>$74.8</td>
<td>$74.3</td>
<td>$67.4</td>
<td>$59.2</td>
<td>$69.3</td>
<td>$64.6</td>
<td>$65.6</td>
<td>$66.1</td>
<td>(1.6)</td>
<td></td>
</tr>
<tr>
<td><strong>Total FTE Goal 1</strong></td>
<td>47.0</td>
<td>47.0</td>
<td>51.0</td>
<td>44.0</td>
<td>41.0</td>
<td>51.0</td>
<td>56.0</td>
<td>56.0</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td><strong>DOC Goal 2: Innovation</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries and Expenses (S&amp;E)</td>
<td>25.7</td>
<td>24.9</td>
<td>23.9</td>
<td>22.0</td>
<td>20.8</td>
<td>20.8</td>
<td>1.3</td>
<td>26.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Works (PW)</td>
<td>89.6</td>
<td>68.7</td>
<td>77.5</td>
<td>58.4</td>
<td>79.8</td>
<td>63.1</td>
<td>(9.0)</td>
<td>51.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Planning (PL)</td>
<td>18.9</td>
<td>18.8</td>
<td>17.5</td>
<td>17.0</td>
<td>17.6</td>
<td>18.4</td>
<td>1.8</td>
<td>21.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technical Assistance (TA)</td>
<td>6.6</td>
<td>8.0</td>
<td>7.6</td>
<td>7.0</td>
<td>6.8</td>
<td>6.3</td>
<td>0.9</td>
<td>7.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research &amp; Evaluation</td>
<td>1.9</td>
<td>1.4</td>
<td>1.4</td>
<td>1.6</td>
<td>1.7</td>
<td>1.5</td>
<td>0.8</td>
<td>3.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trade Adjustment Assistance for Firms (TAAF)</td>
<td>12.1</td>
<td>11.0</td>
<td>11.8</td>
<td>11.7</td>
<td>9.4</td>
<td>9.2</td>
<td>(2.1)</td>
<td>7.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Economic Adjustment Assistance (EAA)</td>
<td>28.5</td>
<td>47.2</td>
<td>23.3</td>
<td>35.7</td>
<td>22.6</td>
<td>21.0</td>
<td>9.0</td>
<td>30.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regional Innovation Strategies (RIS)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>5.9</td>
<td>9.0</td>
<td>3.0</td>
<td>12.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistance to Coal</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3.2</td>
<td>9.0</td>
<td>(9.0)</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loan Guarantees</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total DOC Goal 2: Innovation</strong></td>
<td>181.3</td>
<td>179.9</td>
<td>163.8</td>
<td>145.7</td>
<td>166.8</td>
<td>156.8</td>
<td>157.4</td>
<td>157.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total FTE Goal 2</strong></td>
<td>113.0</td>
<td>113.0</td>
<td>121.0</td>
<td>105.0</td>
<td>134.0</td>
<td>134.0</td>
<td>-</td>
<td>134.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>DOC Goal 3: Environment</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries and Expenses (S&amp;E)</td>
<td>6.4</td>
<td>6.2</td>
<td>6.0</td>
<td>5.6</td>
<td>5.2</td>
<td>5.2</td>
<td>0.3</td>
<td>6.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Works (PW)</td>
<td>22.4</td>
<td>17.2</td>
<td>19.4</td>
<td>14.6</td>
<td>20.0</td>
<td>15.0</td>
<td>10.0</td>
<td>12.8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Planning (PL)</td>
<td>4.7</td>
<td>4.7</td>
<td>4.4</td>
<td>4.3</td>
<td>4.4</td>
<td>4.6</td>
<td>0.5</td>
<td>5.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technical Assistance (TA)</td>
<td>1.7</td>
<td>2.0</td>
<td>1.9</td>
<td>1.7</td>
<td>1.7</td>
<td>1.6</td>
<td>0.2</td>
<td>1.8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Economic Adjustment Assistance (EAA)</td>
<td>5.6</td>
<td>11.8</td>
<td>5.8</td>
<td>8.9</td>
<td>5.6</td>
<td>5.3</td>
<td>2.3</td>
<td>7.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regional Innovation Strategies (RIS)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistance to Coal</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.8</td>
<td>2.3</td>
<td>3.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loan Guarantees</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Global Climate Change Mitigation Incentive Fund</td>
<td>25.0</td>
<td>17.5</td>
<td>-</td>
<td>2.6</td>
<td>1.0</td>
<td>0.1</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total DOC Goal 3: Environment</strong></td>
<td>41.8</td>
<td>41.0</td>
<td>37.5</td>
<td>32.9</td>
<td>40.2</td>
<td>35.2</td>
<td>37.5</td>
<td>35.9</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total FTE Goal 3</strong></td>
<td>28.0</td>
<td>28.0</td>
<td>30.0</td>
<td>26.0</td>
<td>24.0</td>
<td>31.0</td>
<td>34.0</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total EDAP</strong></td>
<td>255.1</td>
<td>254.6</td>
<td>228.0</td>
<td>198.1</td>
<td>241.4</td>
<td>221.6</td>
<td>222.3</td>
<td>216.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total S&amp;E</strong></td>
<td>42.8</td>
<td>41.5</td>
<td>39.9</td>
<td>36.7</td>
<td>34.7</td>
<td>34.7</td>
<td>39.1</td>
<td>41.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td>297.9</td>
<td>296.1</td>
<td>267.9</td>
<td>234.8</td>
<td>276.1</td>
<td>256.3</td>
<td>261.4</td>
<td>258.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Grand Total FTE</strong></td>
<td>188.0</td>
<td>188.0</td>
<td>202.0</td>
<td>175.0</td>
<td>162.0</td>
<td>205.0</td>
<td>224.0</td>
<td>224.0</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes:
1) The allocation of amounts between goals is a proportional spread based on FY 2014 actuals.
2) Amounts represent Direct Obligations, not budget authority, and do not include reimbursements or Category B Disaster obligations.
# DEPARTMENT OF COMMERCE

## FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

### Table of Contents

**PREFACE**.................................................................................................................................................. 4

**A. PROGRAMMATIC REQUIREMENTS** .................................................................................................. 5

  .01 Performance (Technical) Reports ........................................................................................................... 5
  .02 Reporting on Real Property .................................................................................................................... 5
  .03 Unsatisfactory Performance ................................................................................................................... 5
  .04 Programmatic Changes .......................................................................................................................... 6
  .05 Other Federal Awards with Similar Programmatic Activities ............................................................... 6
  .06 Non-Compliance with Award Provisions ................................................................................................ 6
  .07 Prohibition against Assignment by the Non-Federal Entity .................................................................... 6
  .08 Disclaimer Provisions ............................................................................................................................ 6

**B. FINANCIAL REQUIREMENTS** .............................................................................................................. 7

  .01 Financial Management ........................................................................................................................ 7
  .02 Financial Reports ................................................................................................................................... 7
  .03 Award Payments .................................................................................................................................... 8
  .04 Federal and Non-Federal Sharing .......................................................................................................... 9
  .05 Budget Changes and Transfer of Funds among Categories ................................................................... 10
  .06 Indirect or Facilities and Administrative Costs .................................................................................. 10
  .07 Incurring Costs or Obligating Federal Funds Before and After the Period of Performance ............... 13
  .08 Tax Refunds ......................................................................................................................................... 13

**C. INTERNAL CONTROLS** .......................................................................................................................... 14

**D. PROPERTY STANDARDS** .................................................................................................................... 14

  .01 Standards .......................................................................................................................................... 14
  .02 Real and Personal Property .................................................................................................................. 14
  .03 Intellectual Property Rights .................................................................................................................. 15

**E. PROCUREMENT STANDARDS** .............................................................................................................. 18

**F. AUDITS** ................................................................................................................................................. 18

  .01 Organization-Wide, Program-Specific, and Project Audits ................................................................. 18
.02 Audit Resolution Process ................................................................. 19
G. DEBTS .......................................................................................... 20
    .01 Payment of Debts Owed the Federal Government ......................... 20
    .02 Late Payment Charges ................................................................... 21
    .03 Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees .............................................. 21
    .04 Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs ...... 22
H. GOVERNMENTWIDE DEBARMENT AND SUSPENSION .............. 22
I. LOBBYING RESTRICTIONS ............................................................. 22
    .01 Statutory Provisions ...................................................................... 22
    .02 Disclosure of Lobbying Activities .................................................. 22
J. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS ....................................................... 23
    .01 Conflicts of Interest and Codes of Conduct ...................................... 23
    .02 Applicability of Award Provisions to Subrecipients ......................... 23
    .03 Competition and Codes of Conduct for Subawards ......................... 25
    .04 Applicability of Provisions to Subawards, Contracts, and Subcontracts .... 26
    .05 Pilot Program for Enhancement of Employee Whistleblower Protections .... 27
    .06 Small Businesses, Minority Business Enterprises and Women’s Business Enterprises 27
    .07 Subaward and/or Contract to a Federal Agency ................................. 28
K. NATIONAL POLICY REQUIREMENTS ............................................. 28
    .01 Non-Discrimination Requirements ............................................... 28
        a. Statutory Provisions .................................................................. 28
        b. Other Provisions ...................................................................... 29
        c. Title VII Exemption for Religious Organizations ......................... 30
    .02 Environmental Requirements ....................................................... 30
        c. Executive Order 11988 (“Floodplain Management”) and Executive Order 11990 (“Protection of Wetlands”) ............................................. 31
        d. Clean Air Act (42 U.S.C. §§ 7401 et seq.), Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.) (Clean Water Act), and Executive Order 11738 (“Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans”) ............................................. 31

2|December 26, 2014
.00 INTRODUCTION
.01 FEDERAL NORMATIVE REQUIREMENTS
     b. The Budget and Accounting Act of 1921 (31 U.S.C. §§ 1101-1109 et seq.) ................................................................. 31
     e. The Flood Disaster Protection Act (42 U.S.C. §§ 4002 et seq.) ................................................................. 31
     f. The Endangered Species Act (16 U.S.C. §§ 1531 et seq.) ................................................................. 32
     g. The Coastal Zone Management Act (16 U.S.C. §§ 1451 et seq.) ................................................................. 32
     h. The Coastal Barriers Resources Act (16 U.S.C. §§ 3501 et seq.) ................................................................. 32
     i. The Wild and Scenic Rivers Act (16 U.S.C. §§ 1271 et seq.) ................................................................. 32
     k. The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.) ................................................................. 32
     m. Executive Order 12898 ("Environmental Justice in Minority Populations and Low Income Populations") ................................................................. 33

.03 OTHER NATIONAL POLICY REQUIREMENTS
     a. Criminal and Prohibited Activities ................................................................. 33
     b. Drug-Free Workplace ................................................................. 33
     c. Foreign Travel ................................................................. 33
     d. Increasing Seat Belt Use in the United States ................................................................. 34
     e. Research Involving Human Subjects ................................................................. 35
     f. Federal Employee Expenses ................................................................. 35
     g. Minority Serving Institutions Initiative ................................................................. 36
     h. Research Misconduct ................................................................. 36
     i. Publications, Videos, and Acknowledgment of Sponsorship ................................................................. 36
     j. Care and Use of Live Vertebrate Animals ................................................................. 37
     l. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations ................................................................. 38
     m. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 C.F.R. Part 175 ................................................................. 39
     o. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown ................................................................. 48
PREFACE

This document sets out the standard terms and conditions generally applicable to U.S. Department of Commerce ("DOC" or "Commerce") financial assistance awards (hereinafter referred to as the "DOC ST&Cs" or "Standard Terms"). A non-Federal entity, receiving a DOC financial assistance award must, in addition to the assurances made as part of the application, comply and require each of its contractors and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (E.O.s), Office of Management and Budget (OMB) circulars, provisions of the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (codified at 2 C.F.R. Part 200) (OMB Uniform Guidance), provisions of these Standard Terms, any other incorporated terms and conditions, and approved applications.

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: public laws, regulations, applicable notices published in the Federal Register, E.O.s, OMB circulars, DOC ST&Cs, agency standard award conditions (if any), and special award conditions. A special award condition may amend or take precedence over a Standard Term on a case-by-case basis, when allowed by the DOC ST&Cs.

Some of the Standard Terms herein contain, by reference or substance, a summary of the pertinent statutes, regulations published in the Federal Register or Code of Federal Regulations (C.F.R.), E.O.s, OMB circulars, or the certifications and assurances provided by applicants through Standard Forms (e.g., SF-424, SF-424B, or SF-424D) or through DOC forms (e.g., Form CD-511). To the extent that it is a summary, such Standard Term provision is not in derogation of, or an amendment to, any such statute, regulation, E.O., OMB circular, certification, or assurance.

1 Please note that the OMB Uniform Guidance uses the term "non-Federal entity" to generally refer to an entity that carries out a Federal award as a recipient or subrecipient. Because some of the provisions of these DOC ST&Cs apply to recipients rather than subrecipients, or vice versa, for clarity, these DOC ST&Cs use the terms "non-Federal entity", "recipient", and "subrecipient". In addition, the OMB Uniform Guidance uses the term "pass-through entity" to refer to a non-Federal entity that makes a subaward.

"Non-Federal entity" is defined at 2 C.F.R. § 200.69 as "a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient."

"Recipient" is defined at 2 C.F.R. § 200.86 as "a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients."

"Subrecipient" is defined at 2 C.F.R. § 200.93 as "a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency."

"Pass-through entity" is defined as 2 C.F.R. § 200.74 as "a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program."

2 As set forth in 2 C.F.R. § 200.101(c), Federal agencies may apply 2 C.F.R. Part 200, subparts A through E, to for-profit entities, foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international obligations of the United States or the statute or regulations of a foreign government.
A. PROGRAMMATIC REQUIREMENTS

.01 Performance (Technical) Reports

a. Recipients must use OMB-approved governmentwide standard information collections when
providing financial and performance information and, as appropriate and in accordance with
the above-mentioned information collections, are required to relate financial data to the
performance accomplishments of the Federal award. When applicable, recipients must also
provide cost information to demonstrate cost effective practices (e.g., through unit cost data).
The recipient's performance will be measured in a way that will help the Federal awarding
agency and other non-Federal entities to improve program outcomes, share lessons learned,
and spread the adoption of promising practices. As described in 2 C.F.R. § 200.210
"Information contained in a Federal award," the Federal awarding agency will identify the
timing and scope of expected performance by the award recipient as related to the outcomes
intended to be achieved by the Federal program.

b. Recipients must submit performance (technical) reports, which may be Form SF-PPR
"Performance Progress Report" or any successor form, or another format as required by the
Federal awarding agency, electronically or in hard copy (no more than an original and
two copies), in accordance with the award conditions, to the Federal Program Officer.
Performance reports should be submitted in the same frequency as the Form SF-425 "Federal
Financial Report", unless otherwise authorized by the Grants Officer.

c. Performance (technical) reports shall contain the information prescribed in the
OMB Uniform Guidance, specifically 2 C.F.R. § 200.328 ("Monitoring and reporting
program performance"), unless otherwise specified in the award conditions.

.02 Reporting on Real Property

The Federal awarding agency or pass-through entity (as defined at 2 C.F.R. § 200.74) must
require a non-Federal entity to submit reports (using Form SF-429 "Real Property Status Report"
or any successor form) at least annually on the status of real property in which the Federal
government retains an interest, unless the Federal interest in the real property extends 15 years or
longer. In those instances where the Federal interest attached is for a period of 15 years or more,
the Federal awarding agency or pass-through entity, at its option, may require the non-Federal
entity to report at various multi-year frequencies (e.g., every two years or every three years, not
to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may
require annual reporting for the first three years of a Federal award and thereafter require
reporting every five years).

.03 Unsatisfactory Performance

Failure to perform the work in accordance with the terms of the award and maintain satisfactory
performance as determined by the Federal awarding agency may result in the imposition of
additional award conditions pursuant to 2 C.F.R. § 200.207 ("Specific conditions") or other
appropriate enforcement action as specified in 2 C.F.R. § 200.338 ("Remedies for noncompliance"). See also DOC ST&C A.06 "Non-Compliance with Award Provisions."

.04 Programmatic Changes

In accordance with 2 C.F.R. § 200.308 ("Revisions of budget and program plans"), the recipient shall report programmatic changes, including all changes to the scope of the award, to the Program Officer, who forwards the request to the Grants Officer. In addition, the recipient shall request prior approvals in accordance with 2 C.F.R § 200.407 ("Prior written approval (prior approval)").

.05 Other Federal Awards with Similar Programmatic Activities

The non-Federal entity shall immediately provide written notification to the Federal Program Officer and the Grants Officer in the event that, subsequent to receipt of the DOC award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the DOC award. DOC will not pay for costs that are funded by other sources.

.06 Non-Compliance with Award Provisions

Failure to comply with the provisions of an award may be considered grounds for appropriate enforcement action pursuant to 2 C.F.R. § 200.338 ("Remedies for noncompliance"), including but not limited to: the imposition of additional award conditions in accordance with 2 C.F.R. § 200.207 ("Specific conditions"); temporarily withholding award payments pending the correction of the deficiency; the disallowance of award costs and the establishment of an accounts receivable; wholly or partially suspending or terminating an award; initiating suspension or debarment proceedings in accordance with 2 C.F.R. parts 180 and 1326; and such other remedies as may be legally available. See also 2 C.F.R. §§ 200.339 ("Termination") through 200.342 ("Effects of suspension and termination"). In addition, the failure to comply with the provisions of a DOC award may adversely impact the availability of funding under other active DOC or Federal awards and may also have a negative impact on a recipient’s eligibility for future DOC or Federal awards.

.07 Prohibition against Assignment by the Non-Federal Entity

The non-Federal entity shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express written approval of the Grants Officer.

.08 Disclaimer Provisions

a. The United States expressly disclaims any and all responsibility or liability to the non-Federal entity or third persons for the actions of the non-Federal entity or third persons

6 December 26, 2014
resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any subaward, contract, or subcontract under this award.

b. The acceptance of this award or any subaward by the non-Federal entity does not in any way constitute an agency relationship between the United States and the non-Federal entity.

B. FINANCIAL REQUIREMENTS

.01 Financial Management

a. In accordance with 2 C.F.R. § 200.302(a) ("Financial Management"), each State must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's own funds. In addition, the State's and any other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with Federal statutes, regulations, and the terms and conditions applicable to the Federal award. See also 2 C.F.R. § 200.450 ("Lobbying") for additional management requirements to verify that Federal funds are not used for unallowable lobbying costs.

b. The financial management system of each non-Federal entity must provide all information required by 2 C.F.R. § 200.302(b). See also 2 C.F.R. §§200.333 ("Retention requirements for records"); 200.334 ("Requests for transfer of records"); 200.335 ("Methods for collection, transmission and storage of information"); 200.336 ("Access to records"); and 200.337 ("Restrictions on public access to records").

.02 Financial Reports

a. In accordance with 2 C.F.R. § 200.327 ("Financial reporting"), the recipient shall submit a "Federal Financial Report" (Form SF-425 or any successor form) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period. A final Form SF-425 shall be submitted within 90 days after the expiration of the period of performance.

b. The reports must be submitted to the Federal awarding agency as directed by the Grants Officer electronically, or in hard copy (no more than an original and two copies), in accordance with the award conditions.
.03 Award Payments


b. Consistent with 2 C.F.R. § 200.305(b), for non-Federal entities other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.

1. The Grants Officer determines the appropriate method of payment and, unless otherwise specified in a special award condition, the advance method of payment shall be authorized. Advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs. DOC policy requires that in the usual case, non-Federal entities time advance payment requests so that Federal funds are on hand for a maximum of three calendar days before being disbursed by the non-Federal entity for eligible award costs. In no case should advances exceed the amount of cash required for a 30-day period. Interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $500 per year may be retained by the non-Federal entity for administrative expenses.

2. If a non-Federal entity demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity or if a non-Federal entity otherwise fails to continue to qualify for the advance method of payment, the Grants Officer may change the method of payment to reimbursement only.

c. Unless otherwise provided for in the award terms, payments under this award will be made using the Department of Treasury’s Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers directly to the non-Federal entity’s bank account, in accordance with the requirements of the Debt Collection Improvement Act of 1996. In order to receive payments under ASAP, non-Federal entities are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP:

1. ASAP account number – the Federal award identification number found on the cover sheet of the award;

2. Agency Location Code (ALC); and
3. Region Code.

Non-Federal entities enrolled in the ASAP system do not need to submit a Form SF-270 “Request for Advance or Reimbursement”, for payments relating to their award. Awards paid under the ASAP system will contain a special award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.

When the Form SF-270 “Request for Advance or Reimbursement” (or successor form) is used to request payment, the non-Federal entity shall submit the request no more frequently than monthly, and advances shall be approved for periods to cover only expenses anticipated over the next 30 days. In these cases, the non-Federal entity must complete the Form SF-3881 “ACH Vendor Miscellaneous Payment Enrollment Form” (or successor form) and Form SF-270 and submit these forms to the Grants Officer. Form SF-3881 enrollment must be completed before the first award payment can be made via a Form SF-270 request.

d. The Federal award identification number must be included on all payment-related correspondence, information, and forms.

.04 Federal and Non-Federal Sharing

a. Awards that include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs exceed the total approved budget, the Federal share shall not exceed the total Federal dollar amount authorized by the award.

b. The non-Federal share, whether in cash or in-kind, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the non-Federal entity must meet its cost share commitment over the life of the award; failure to do so may result in the assignment of special award conditions or other further action as specified in Standard Term A.06 “Non-Compliance with Award Provisions”. In addition, under 2 C.F.R. § 200.306(c) “(Cost sharing or matching”), unrecovered indirect costs, including indirect costs on cost sharing or matching, may be included as part of cost sharing or matching only with the written prior approval of the Federal awarding agency. The non-Federal entity must create and maintain sufficient records justifying all non-federal sharing requirements to facilitate questions and audits, see Section F of these Standard Terms, “Audits,” for audit requirements. See 2 C.F.R. § 200.306 for additional requirements regarding cost sharing.

c. Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with Federal awarding agency regulations and specified
in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity. Furthermore, only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. See also 2 C.F.R. §§ 200.414 (“Indirect (F&A) costs”), 200.203 (“Notices of funding opportunities”), and Appendix I to 2 C.F.R. Part 200—Full Text of Notice of Funding Opportunity.

.05 Budget Changes and Transfer of Funds among Categories

a. Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with 2 C.F.R. § 200.308 (“Revision of budget and program plans”). Requests for such budget or project changes must be submitted to the Grants Officer who shall make the final determination on such requests and notify the non-Federal entity in writing.

b. In accordance with 2 C.F.R. § 200.308(e), transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is $150,000 or less. For awards in which the Federal share of the project exceeds $150,000, transfers of funds among direct cost categories must be approved in writing by the Grants Officer when the cumulative amount of such direct costs transfers exceeds 10 percent of the total budget as last approved by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same requirements apply to the cumulative amount of transfer of funds among programs, functions, and activities. This transfer authority does not authorize the recipient to create new budget categories within an approved budget without Grants Officer approval. Any transfer that causes any Federal appropriation, or part thereof, to be used for an unauthorized purpose will not be permitted. In addition, this provision does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. See 2 C.F.R. § 200.308 (as applicable) for specific requirements concerning budget revisions and transfer of funds between budget categories.

.06 Indirect or Facilities and Administrative Costs

a. Indirect costs (or facilities and administration (F&A)) costs for major institutions of higher education and major nonprofit organizations) can generally be defined as costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. Indirect (F&A) costs will not be allowable charges against an award unless permitted under the award and specifically included as a line item in the award’s approved budget. See the definition of indirect (F&A) costs at 2 C.F.R. § 200.56 (“Indirect (facilities & administrative (F&A)) costs”).
b. Excess indirect costs may not be used to offset unallowable direct costs.

c. Cognizant Agency for Indirect (F&A) Costs.

OMB established the cognizant agency concept, under which a single agency represents all others in dealing with non-Federal entities in common areas. The cognizant agency for indirect costs reviews and approves non-Federal entities' indirect cost rates.

1. Determining the Cognizant Agency for Non-Federal Entities that are State, local, and Indian Tribal Governments; Institutions of Higher Education; Hospitals; and Non-Profit Organizations (Non-Commercial Organizations). In accordance with 2 C.F.R. § 200.19 ("Cognizant agency for indirect costs"), the cognizant agency for indirect costs is the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals on behalf of all Federal agencies. Approved rates must be accepted by other agencies, unless required by Federal statute or regulation or when approved by a Federal agency awarding head or delegate in accordance with 2 C.F.R. § 200.414(c) ("Indirect (F&A) costs").

If indirect costs are permitted and the non-Federal entity would like to include indirect costs in its budget, but the non-Federal entity has not previously established an indirect cost rate with a Federal agency, the requirements for determining the relevant cognizant agency and developing and submitting indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III – VII to 2 C.F.R. Part 200 as follows:

i. Appendix III to 2 C.F.R. Part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

ii. Appendix IV to 2 C.F.R. Part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

iii. Appendix V to 2 C.F.R. Part 200 – State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans;


2. Commercial Organizations. For commercial organizations, the term “cognizant Federal agency” generally is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. See 48 C.F.R. § 42.003. If the only Federal funds received by a commercial organization are DOC award funds, then DOC becomes the cognizant Federal agency for the purpose of indirect cost negotiations. For those organizations for which DOC is cognizant, DOC or its designee will negotiate a rate in accordance with the provisions of 2 C.F.R. § 200.414 using the cost principles found in 48 C.F.R. Part 31, “Contract Cost Principles and Procedures.” For guidance on how to put an indirect cost plan together go to:


i. Within 90 days of the award start date the non-Federal entity shall submit to the Grants Officer of the relevant funding bureau any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow the agency to perform the indirect cost rate proposal review.

ii. The non-Federal entity can use the fixed rate proposed in the indirect cost plan as a provisional rate until such time as the DOC provides a response to the submitted plan.

4. When DOC is not the oversight or cognizant Federal agency, the non-Federal entity shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.

d. If the non-Federal entity fails to submit required documentation to DOC within 90 days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the non-Federal entity’s delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

c. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient shall be the lesser of:

1. The line item amount for the Federal share of indirect costs contained in the approved award budget, including all budget revisions approved in writing by the Grants Officer; or

2. The Federal share of the total indirect costs allocable to the award based on the indirect cost rate approved by the cognizant agency for indirect costs and applicable to the period in which the cost was incurred, provided that the rate is approved on or before the award end date.

f. In accordance with 2 C.F.R. § 200.414(g), any non-Federal entity that has a negotiated indirect cost rate may apply to the entity’s cognizant agency for indirect costs for a one-time extension of a currently negotiated indirect cost rate for a period of up to four years, reducing the frequency of rate calculations and negotiations between an institution and its cognizant agency.

g. In addition, in accordance with 2 C.F.R. § 200.414(f), any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Paragraph D.1.b of Appendix VII to 2 C.F.R. Part 200 (specifically, a governmental department or agency that receives more than $35 million in direct Federal funding), may elect to charge a de minimis rate of 10 percent of modified total direct costs.
.07 Incurring Costs or Obligating Federal Funds Before and After the Period of Performance

a. In accordance with 2 C.F.R. § 200.309 ("Period of performance"), a non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance, which is the period established in the award document during which Federal sponsorship begins and ends and, as defined at 2 C.F.R. § 200.77, is "the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award". The period of performance may sometimes be referred to as the "project period" or "award period".

b. In accordance with 2 C.F.R. § 200.458 ("Pre-award costs"), pre-award costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency.

c. The non-Federal entity shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the period of performance. The only costs that are authorized for a period of up to 90 days following the end of the period of performance are those strictly associated with close-out activities. Close-out activities are normally limited to the preparation of final progress, financial, and required project audit reports unless otherwise approved in writing by the Grants Officer. The Federal awarding agency or pass-through entity may approve extensions of the 90-day closeout period upon a request by the non-Federal entity as provided in 2 C.F.R. § 200.343 ("Closeout").

d. Unless otherwise authorized in 2 C.F.R § 200.343(a) or a special award condition, any extension of the period of performance can only be authorized by the Grants Officer in writing. Verbal or written assurances of funding from anyone other than the Grants Officer shall not constitute authority to obligate funds for programmatic activities beyond the end of the period of performance.

e. The DOC has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the period of performance is at the sole discretion of DOC.

.08 Tax Refunds

Refunds of Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes received by the non-Federal entity during or after the period of performance must be refunded or credited to DOC where the benefits were financed with Federal funds under the award. The non-Federal entity agrees to contact the Grants Officer immediately upon receipt of these refunds and further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the period of performance ends.
C. INTERNAL CONTROLS

Consistent with 2 C.F.R. § 200.303 ("Internal controls"), each non-Federal entity must:

1. Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States (available online at [http://www.gao.gov/assets/80/76455.pdf](http://www.gao.gov/assets/80/76455.pdf)) and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) (available online at [http://www.coso.org/documents/Internal%20Control-Integrated%20Framework.pdf](http://www.coso.org/documents/Internal%20Control-Integrated%20Framework.pdf)).

2. Comply with Federal statutes, regulations, and the terms and conditions of Federal awards.

3. Evaluate and monitor the non-Federal entity’s compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

4. Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; and

5. Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

D. PROPERTY STANDARDS

.01 Standards


.02 Real and Personal Property

a. In accordance with 2 C.F.R. § 200.316, real property, equipment, and intangible property acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property’s estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). During the duration of the Federal Interest, the non-Federal entity shall comply with all use and disposition requirements and restrictions as
set forth in 2 C.F.R. §§ 200.310 through 200.316, as applicable, and in the terms and conditions of the Federal award.

b. The Grants Officer may require a non-Federal entity to execute a security interest or other public notice of record to indicate that real or personal property acquired or improved in whole or in part with Federal funds is subject to the Federal Interest, and that certain use and disposition requirements apply to the property. The security interest or other public notice must be acceptable in form and substance to the DOC and must be perfected and placed of record in accordance with applicable State and local law, with continuances re-filed as appropriate. In such cases, the Grants Officer may further require the non-Federal entity to provide the DOC with a written statement from a licensed attorney in the jurisdiction where the property is located certifying that the Federal Interest has been protected, as required under the award and in accordance with applicable State and local law. The attorney’s statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, shall be returned to the Grants Officer. The Grants Officer may elect not to release any or a portion of the Federal award funds until the non-Federal entity has complied with this provision and any other applicable award terms or conditions, unless other arrangements satisfactory to the Grants Officer are made.

c. In accordance with 2 C.F.R. § 200.329 (“Reporting on real property”), the Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports (using Form SF 429 “Real Property Status Report” or any successor form) at least annually on the status of real property in which the Federal government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal Interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years). The Federal awarding agency or pass-through entity may also require a non-Federal entity to periodically submit reports (using Form SF-428 “Tangible Personal Property Report”) or any successor form) concerning tangible personal property in which the Federal Government retains an interest. In addition, the Federal awarding agency or pass-through entity may require a non-Federal entity to submit Form SF-429 and/or Form SF-428 in connection with a non-Federal entity’s request to acquire, encumber, dispose of, or take any other action pertaining to real property or tangible personal property acquired or improved, in whole or in part, under a DOC financial assistance award or to Federally-owned property provided under a DOC award.

.03 Intellectual Property Rights

a. General. The rights to any work produced or purchased under a Federal award are determined by 2 C.F.R. § 200.315 (“Intangible property”). The non-Federal entity owns any work produced or purchased under a Federal award subject to the DOC’s royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work
or authorize others to receive, reproduce, publish, or otherwise use the work for Government purposes. In accordance with 2 C.F.R. § 200.315(d), the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award and authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

b. Inventions. Unless otherwise provided by law, the rights to any invention made by a non-Federal entity under a Federal award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified in 35 U.S.C. § 200 et seq., except as otherwise required by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail in 37 C.F.R. Part 401 and in particular, in the standard patent rights clause in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this award.

1. Ownership.

i. Non-Federal entity. The non-Federal entity has the right to elect to retain title to any invention it makes (conceived or first actually reduced to practice) or is made by its employees. A non-Federal entity that is a non-profit organization, which includes a university or other institution of higher learning, may not assign to a third party its rights to such an invention without the permission of DOC unless that assignment is to a patent management organization (e.g., a university's Research Foundation). The non-Federal entity's ownership rights are subject to the Government's nonexclusive, nontransferable, irrevocable, paid-up license and other rights.

ii. Department. If the non-Federal entity elects not to retain title, fails to disclose the invention to the Federal awarding agency within the required time limits, or does not file a patent application within the time limits set forth in the standard patent rights clause, the DOC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive revocable license for the non-Federal entity. The DOC owns any invention made solely by its employees, but may license the non-Federal entity in accordance with the procedures in 37 C.F.R. Part 404.

iii. Inventor/Employee. If neither the non-Federal entity nor the DOC is interested in owning an invention by a non-Federal entity employee, the non-Federal entity, with the written concurrence of the DOC, may allow the inventor/employee to retain ownership of the invention subject to certain restrictions as described in 37 C.F.R. § 401.9.

iv. Joint inventions. Inventions made jointly by a non-Federal entity and a DOC employee will be owned jointly by the non-Federal entity and the DOC. However, the DOC may transfer or license its rights to the non-Federal entity as authorized by 35 U.S.C. § 202(e) and 37 C.F.R. § 401.10 if the non-Federal entity is willing to patent and license the invention usually in exchange for a share of "net" royalties.
based on the number of inventors (e.g., 50-50 if there is one non-Federal entity inventor and one DOC employee inventor). The agreement will be prepared by the DOC and may include other provisions, such as a royalty free license to the Government and certain other entities. The provision at 35 U.S.C. § 202(e) also authorizes the non-Federal entity to transfer its rights to the Government, which can agree to share royalties similarly as described above.

2. Responsibilities - iEdison. The non-Federal entity has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The non-Federal entity is expected to comply with all the requirements of the standard patent rights clause and 37 C.F.R. Part 401. Non-Federal entities are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Non-Federal entities may obtain a waiver of this electronic submission requirement by providing to DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.

c. Patent Notification Procedures. Pursuant to E.O. 12889 (58 FR 69681, 1993), the DOC is required to notify the owner of any valid patent covering technology whenever the DOC or a non-Federal entity, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the non-Federal entity uses or has used patented technology under this award without a license or permission from the owner, the non-Federal entity must notify the Grants Officer.

This notice does not constitute authorization or consent by the Government to any copyright or patent infringement occurring under the award.

d. A non-Federal entity may copyright any work produced under a Federal award, subject to the DOC’s royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work, or authorize others to do so for Government purposes. Works jointly authored by DOC and non-Federal entity employees may be copyrighted, but only the part of such works authored by the non-Federal entity is protectable in the United States because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. On occasion and as permitted under 17 U.S.C. § 105, DOC may require the non-Federal entity to transfer to DOC a copyright in a particular work for Government purposes or when DOC is undertaking primary dissemination of the work.

e. Freedom of Information Act (FOIA). In response to a FOIA request for research data relating to published research findings (as defined by 2 C.F.R. § 200.315(e)(2)) produced under a Federal award that were used by the Federal government in developing an agency action that has the force and effect of law, the Federal awarding agency will request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA.
E. PROCUREMENT STANDARDS

1. States. Pursuant to 2 C.F.R. § 200.317 ("Procurements by states"), when procuring property and services under this Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State must comply with 2 C.F.R. § 200.322 ("Procurement of recovered materials"), and ensure that every purchase order or other contract includes any clauses required by 2 C.F.R. § 200.326 ("Contract provisions").

2. Other Non-Federal Entities. All other non-Federal entities, including subrecipients of a State, must follow the requirements of 2 C.F.R. §§ 200.318 ("General procurement standards") through 200.326 ("Contract provisions"). This includes the requirement that non-Federal entities maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

F. AUDITS

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, §§ 1 et seq., an audit of the award may be conducted at any time. The Inspector General of the DOC, or any of his or her duly authorized representatives, shall have the right to access any pertinent books, documents, papers, and records of the non-Federal entity, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. This right also includes timely and reasonable access to the non-Federal entity’s personnel for the purpose of interview and discussion related to such documents. See 2 C.F.R. § 200.336 ("Access to records"). When the DOC Office of Inspector General (OIG) requires a program audit on a DOC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other Federal, State, or local audit entity.

.01 Organization-Wide, Program-Specific, and Project Audits

a. Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by Subpart F to 2 C.F.R. Part 200, “Audits Requirements.” Non-Federal entities that are subject to the provisions of 2 C.F.R. Part 200 and that expend $750,000 or more in a year in Federal awards shall have an audit conducted for that year in accordance with the relevant requirements. Within the earlier of 30 calendar days after receipt of the auditor’s report(s), or nine months after the end of the audit period, a copy of the audit shall be submitted electronically to the Federal Audit Clearinghouse website at: http://harvester.census.gov/sac/. If it is necessary to submit by paper, the address for submission is:
Federal Audit Clearinghouse  
Bureau of the Census  
1201 E. 10th Street  
Jeffersonville, IN 47132

Within 90 days of the end of the fiscal year of a non-Federal entity subject to Subpart F of 2 C.F.R. Part 200, the entity is responsible for notifying the Grants Officer of the amount of Federal awards, including all DOC and non-DOC awards, the non-Federal entity expended during its fiscal year.

b. Unless otherwise specified in the terms and conditions of the award, non-Federal entities that are not subject to Subpart F of 2 C.F.R. Part 200 (e.g., for-profit entities) and that expend $750,000 or more in DOC funds during their fiscal year must have an audit conducted for that year in accordance with Subpart F of 2 C.F.R. Part 200. The audit shall be completed and submitted to the Grants Officer within the earlier or 30 calendar days of the non-Federal entity’s receipt of the audit report or nine months following the end of the non-Federal entity’s fiscal year.

For-profit entities that expend less than $750,000 in DOC funds in a given fiscal year are not required to have an annual audit for that year but must make their award-related records available to DOC or other designated officials for review and audit. Failure to provide audit reports within the timeframes specified above may result in appropriate enforcement action, up to and including termination of the award, and may jeopardize eligibility for receiving future DOC awards.

c. Some DOC programs have specific audit guidelines that will be incorporated into the award. When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in 2 C.F.R. § 200.507 (“Program-specific audits”). The non-Federal entity may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Grants Officer.

d. Non-Federal entities are responsible for compliance with the above audit requirements and for informing the Grants Officer of the status of their audit, including when the relevant audit has been completed and submitted in accordance with the requirements of this section. In accordance with 2 C.F.R. § 200.331(d)(3), pass-through entities are responsible for issuing a management decision for any audit findings pertaining to the Federal award provided to a subrecipient.

.02 Audit Resolution Process

a. An audit of the award may result in the disallowance of costs incurred by the non-Federal entity and the establishment of a debt (account receivable) due DOC. For this reason, the non-Federal entity should take seriously its responsibility to respond to all audit findings and
recommendations with adequate explanations and supporting evidence whenever audit results are disputed.

b. In accordance with the Federal Register notice dated January 27, 1989 (54 FR 4053), a non-Federal entity whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. The non-Federal entity has 30 days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.

2. The non-Federal entity has 30 days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.

3. The DOC shall review the documentary evidence submitted by the non-Federal entity and shall notify the non-Federal entity of the results in an Audit Resolution Determination Letter. The non-Federal entity has 30 days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal, unless this deadline is extended in writing by the DOC. The appeal is the last opportunity for the non-Federal entity to submit written comments and documentary evidence to the DOC to dispute the validity of the audit resolution determination.

4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on the debt. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.

5. The DOC shall review the non-Federal entity’s appeal and notify the non-Federal entity of the results in an Appeal Determination Letter. After the opportunity to appeal has expired or after the appeal determination has been rendered, DOC will not accept any further documentary evidence from the non-Federal entity. No other administrative appeals are available in DOC.

G. DEBTS

.01 Payment of Debts Owed the Federal Government

a. The non-Federal entity must promptly pay any debts determined to be owed the Federal Government. Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal government. In accordance with 2 C.F.R. § 200.345 ("Collection of amounts due"), if not paid within 90 calendar days after demand, DOC may reduce a debt owed to the Federal Government by:
1. Making an administrative offset against other requests for reimbursement;
2. Withholding advance payments otherwise due to the non-Federal entity; or
3. Taking any other action permitted by Federal statute.

b. DOC debt collection procedures are set out in 15 C.F.R. Part 19. In accordance with 2 C.F.R. § 200.345 and 31 U.S.C. § 3717, failure to pay a debt owed to the Federal Government shall result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. Commerce entities will transfer any Commerce debt that is more than 180 days delinquent to the U.S. Department of the Treasury’s Financial Management Service for debt collection services, a process known as “cross-servicing,” pursuant to 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12, and 15 C.F.R. § 19.9, and may result in DOC taking further action as specified in DOC ST&C A.06 “Non-Compliance With Award Provisions.” Funds for payment of a debt must not come from other Federally-sponsored programs, and the DOC may conduct on-site visits, audits, and other reviews to verify that other Federal funds have not been used to pay a debt.

.02 Late Payment Charges

a. Interest shall be assessed on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701 et seq.). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury’s Current Value of Funds Rate (CVFR). The CVFR is available online at http://www.fms.treas.gov/cvfr/index.html and also published by the Department of the Treasury in the Federal Register (http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR) and in the Treasury Financial Manual Bulletin. The assessed rate shall remain fixed for the duration of the indebtedness.

b. Penalties shall accrue at a rate of not more than six percent per year or such other higher rate as authorized by law.

c. Administrative charges, i.e., the costs of processing and handling a delinquent debt, shall be determined by the Commerce entity collecting the debt, as directed by the Office of the Chief Financial Officer and Assistant Secretary for Administration.

.03 Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees

Pursuant to 31 U.S.C. § 3720B and 31 C.F.R. § 901.6, unless waived, the DOC is not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans.
.04 Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs

Pursuant to 28 U.S.C. § 3201(e), unless waived by the DOC, a debtor who has a judgment lien against the debtor’s property for a debt to the United States shall not be eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

H. GOVERNMENTWIDE DEBARMENT AND SUSPENSION

The non-Federal entity shall comply with the provisions of 2 C.F.R. Part 1326, “Nonprocurement Debarment and Suspension” (published in the Federal Register on December 21, 2006, 71 FR 76573), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions, and which sets forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

I. LOBBYING RESTRICTIONS

.01 Statutory Provisions

Non-Federal entities shall comply with 2 C.F.R. § 200.450 (“Lobbying”), which incorporates the provisions of 31 U.S.C. § 1352; the “New Restrictions on Lobbying” published at 55 FR 6736 (February 26, 1990); and OMB guidance and notices on lobbying restrictions. In addition, non-Federal entities must comply with the DOC regulations published at 15 C.F.R. Part 28, which implement the “New Restrictions on Lobbying”. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal Government in connection with the award, and require the disclosure of the use of non-Federal funds for lobbying. Lobbying includes attempting to improperly influence, meaning any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter, either directly or indirectly. Costs incurred on to improperly influence are unallowable. See 2 C.F.R. § 200.450(b) and (c).

.02 Disclosure of Lobbying Activities

Any non-Federal entity that receives more than $100,000 in Federal funding shall submit a completed Form SF-LLL, “Disclosure of Lobbying Activities,” regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects
J. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS

.01 Conflicts of Interest and Codes of Conduct

a. General conflicts of interest requirements. In accordance with 2 C.F.R. § 200.112 ("Conflicts of interest"), each non-Federal entity must comply with the conflicts of interest policy provided by the Grants Officer. Any non-Federal entity must disclose in writing any potential conflicts of interest to the DOC or pass-through entity. In addition, pursuant to the certification in Form SF-424B, paragraph 3 and Form SF-424D, paragraph 7, as applicable, the recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of an award.

b. Procurement-related conflicts of interest. In addition, in accordance with 2 C.F.R. § 200.318 ("General procurement standards"), non-Federal entities must maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award and administration of contracts. See Section E. of these DOC ST&Cs entitled “Procurement Standards.”

.02 Applicability of Award Provisions to Subrecipients

a. The recipient or pass-through entity shall require all subrecipients, including lower tier subrecipients, under the award to comply with the provisions of the award, including applicable provisions of the OMB Uniform Guidance (2 C.F.R. Part 200), and all associated terms and conditions. See 2 C.F.R. §§ 200.330 (“Subrecipient and contractor determinations”) through 200.332, (“Subrecipient Monitoring and Management”) and 2 C.F.R. § 200.101(b)(1) (“Applicability”), which describes the applicability of 2 C.F.R. Part 200 to various types of Federal awards.

b. In accordance with 2 C.F.R. § 200.331 ("Requirements for pass-through entities"), all pass-through entities must:

1. Subaward identification. Clearly identify every subaward to the subrecipient at the time of the subaward, including changes in subsequent subaward modification. In accordance with 2 C.F.R. § 200.331(a), required information includes:

   i. All Federal Award Information data elements set out at 2 C.F.R. § 200.331(a)(1);
ii. All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;

iii. Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency, including identification of required financial and performance reports;

iv. Indirect cost rate information in accordance with 2 C.F.R. § 200.331(a)(4);

v. Access requirements to the subrecipient’s records and financial statements in accordance with 2 C.F.R. § 200.331(a)(5); and

vi. Appropriate terms and conditions concerning closeout of the subaward.

2. Risk-Based Subrecipient Evaluations. Evaluate each subrecipient’s risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring in accordance with 2 C.F.R. § 200.331(b).

3. Subaward conditions. Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in 2 C.F.R. § 200.207 (“Specific conditions”).

4. Subrecipient Monitoring. In accordance with 2 C.F.R. § 200.331(d), monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal requirements; and that the subaward performance goals are achieved. Subrecipient monitoring must include:

i. Reviewing financial and programmatic reports required by the pass-through entity;

ii. Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means; and

iii. Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by 2 C.F.R. § 200.521 (“Management decision”).

5. Utilizing Risk-Based Monitoring Tools. In accordance with 2 C.F.R. § 200.331(e), depending on the recipient’s evaluation of each subrecipient’s risk, utilize appropriate monitoring tools, including training and technical assistance, performing on-site reviews, and arranging agreed-upon-procedures engagements as described in 2 C.F.R. § 200.425 (“Audit Services”).
6. Subrecipient Audits. Verify that every subrecipient is audited as required by 2 C.F.R. Part 200, Subpart F “Audit requirements” when it is expected that the subrecipient’s Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 C.F.R. § 200.501 (“Audit requirements”).

7. Necessary adjustments to the pass-through entity’s records. Consider whether the results of the subrecipient’s audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity’s own records.

8. Enforcement action. Considering taking enforcement action against noncompliant subrecipients as described in 2 C.F.R. § 200.338 and in applicable program regulations.

See also 2 C.F.R. § 200.331 for the full text of requirements for pass-through entities.

.03 Competition and Codes of Conduct for Subawards

a. The non-Federal entity must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition.

b. The non-Federal entity shall maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the non-Federal entity shall neither solicit nor accept anything of monetary value from subrecipients. However, the non-Federal entity may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

c. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.
.04 Applicability of Provisions to Subawards, Contracts, and Subcontracts

a. The non-Federal entity shall include the following notice in each request for applications or bids for a subaward, contract, or subcontract, as applicable:

Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under $25,000 not requiring the consent of a DOC official) are subject to Subpart C of 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement).” In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than $100,000 of Federal funds at any tier are subject to 15 C.F.R. Part 28, “New Restrictions on Lobbying.” Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, applications for a lower tier covered transaction must include a Form CD-512, “Certification Regarding Lobbying—Lower Tier Covered Transactions,” completed without modification.

b. The non-Federal entity shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts), that the award is subject to Subpart C of 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement).”

c. Required subaward and contractual provisions.

1. The non-Federal entity shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding $100,000 in Federal funds, that the subaward, contract, or subcontract is subject to 31 U.S.C § 1352, as implemented at 15 C.F.R. Part 28, “New Restrictions on Lobbying.” The non-Federal entity shall further require the subrecipient, contractor, or subcontractor to submit a completed “Disclosure of Lobbying Activities” (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the recipient. The recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.

2. In addition to other provisions required by the Federal agency or non-Federal entity, in accordance with 2 C.F.R. § 200.326 (“Contract provisions”), all contracts made by the non-Federal entity under the Federal award must contain the applicable provisions set out at 2 C.F.R. Part 200, Appendix II, “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards”, which address various contractual requirements including remedies, termination for cause and convenience, Equal Employment Opportunity, the
Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, rights to inventions, environmental quality, energy efficiency, debarment and suspension, the Byrd Anti-Lobbying Amendment, and procurement of recovered materials. See Appendix II to 2 C.F.R. Part 200 for a full explanation of these requirements.

.05 Pilot Program for Enhancement of Employee Whistleblower Protections

The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. No. 112-239, enacted January 2, 2013 and codified at 41 U.S.C. § 4712) includes a pilot program of whistleblower protection. It applies to all DOC awards, subawards, or contracts under awards issued beginning July 1, 2013 through January 1, 2017. The following term implements that law:

In accordance with 41 U.S.C. § 4712, an employee of a non-Federal entity or contractor under a Federal award or subaward may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward. These persons or bodies include:

a. A Member of Congress or a representative of a committee of Congress.
b. An Inspector General.
d. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
e. An authorized official of the Department of Justice or other law enforcement agency.
f. A court or grand jury.
g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Non-Federal entities and contractors under Federal awards and subawards shall inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

.06 Small Businesses, Minority Business Enterprises and Women’s Business Enterprises

In accordance with 2 C.F.R. § 200.321 (“Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms”), the non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus areas firms are used when possible. DOC encourages non-Federal entities to
utilize small businesses, minority business enterprises and women’s business enterprises in contracts under financial assistance awards. The Minority Business Development Agency within the DOC will assist non-Federal entities in matching qualified minority business enterprises with contract opportunities. For further information visit MBDA’s website at http://www.mbdagov. If you do not have access to the Internet, you may contact MBDA via telephone or mail:

U.S. Department of Commerce  
Minority Business Development Agency  
Herbert C. Hoover Building  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230  
(202) 482-0101

.07 Subaward and/or Contract to a Federal Agency

a. The non-Federal entity, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency or employee of DOC and/or other Federal department, agency, or instrumentality without the prior written approval of the Grants Officer.

b. The non-Federal entity must submit requests for approval of such action to the Federal Program Officer who shall review and make a recommendation to the Grants Officer. The Grants Officer must forward all requests to the Federal Assistance Law Division in the Office of the Department of Commerce Assistant General Counsel for Finance and Litigation for review prior to making the final determination. The Grants Officer will notify the non-Federal entity in writing of the final determination.

K. NATIONAL POLICY REQUIREMENTS

.01 Non-Discrimination Requirements

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The non-Federal entity agrees to comply with the non-discrimination requirements below:


1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and DOC implementing regulations published at 15 C.F.R. Part 8 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;

3. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;

4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 C.F.R. 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.

For purposes of complying with the accessibility standards set forth in 15 C.F.R. § 8b.18(c), non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286). The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design” (2010 Standards), which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

5. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and DOC implementing regulations published at 15 C.F.R. Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance; and

6. Any other applicable non-discrimination law(s).

b. Other Provisions


2. E.O. 13166 (65 FR 50121, 2000), “Improving Access to Services for Persons With Limited English Proficiency,” requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have

---

meaningful access to them. The DOC issued policy guidance on March 24, 2003 (68 FR 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that non-Federal entities provide meaningful access to their LEP applicants and beneficiaries.

**c. Title VII Exemption for Religious Organizations**

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., provides that it shall be an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual’s race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination on the basis of religion, a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

### .02 Environmental Requirements

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to approve: (1) a proposal for Federal assistance; (2) the proposal with mitigation; or (3) a different proposal having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. Each non-Federal entity must comply with all environmental standards, to include those prescribed under the following statutes and E.O.s, and shall identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a special award condition requiring the non-Federal entity to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

**a. The National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.)**

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations (40 C.F.R. Parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions significantly affecting the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency’s decision to fund non-Federal projects under grants and cooperative agreements when the award activities remain subject to Federal authority and control. Non-Federal entities are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency in complying with NEPA. Non-Federal entities may also be requested to assist DOC in drafting an environmental assessment or environmental impact statement if DOC determines such documentation is required. Until such time as the appropriate NEPA documentation is complete and in the event that any additional information is required during the period of performance to assess project environmental impacts, funds can be
withheld by the Grants Officer under a special award condition requiring the non-Federal entity to submit the appropriate NEPA documentation sufficient to enable DOC to make an assessment on any impacts that a project may have on the environment.


Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f) and the Advisory Council on Historic Preservation implementing regulations (36 C.F.R. Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties. Non-Federal entities are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Non-Federal entities may also be requested to assist DOC in consulting with State or Tribal Historic Preservation Officers or other applicable interested parties necessary to identify, assess, and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation are complete and in the event that any additional information is required during the period of performance in order to assess project impacts on historic properties, funds can be withheld by the Grants Officer under a special award condition requiring the non-Federal entity to submit any information sufficient to enable DOC to make the requisite assessment under the NHPA.

c. Executive Order 11988 ("Floodplain Management") and Executive Order 11990 ("Protection of Wetlands")

Non-Federal entities must identify proposed actions in Federally defined floodplains and wetlands to enable DOC to make a determination whether there is an alternative to minimize any potential harm.

d. Clean Air Act (42 U.S.C. §§ 7401 et seq.), Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.) (Clean Water Act), and Executive Order 11738 ("Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans")

Non-Federal entities must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 et seq.), Clean Water Act (33 U.S.C. §§ 1251 et seq.), and E.O. 11738 (38 FR 25161, 1973), and shall not use a facility on the Environmental Protection Agency’s (EPA) List of Violating Facilities (this list is incorporated into the Excluded Parties List System located at https://www.sam.gov/portal/public/SAM/) in performing any award that is nonexempt under 2 C.F.R. § 1532, and shall notify the Program Officer in writing if it intencs to use a facility that is on the EPA List of Violating Facilities or knows that the facility has been recommended to be placed on the List.

e. The Flood Disaster Protection Act (42 U.S.C. §§ 4002 et seq.)

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas.
f. The Endangered Species Act (16 U.S.C. §§ 1531 et seq.)

Non-Federal entities must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the reviews required under the Endangered Species Act, as applicable.

g. The Coastal Zone Management Act (16 U.S.C. §§ 1451 et seq.)

Funded projects must be consistent with a coastal State’s approved management program for the coastal zone.

h. The Coastal Barriers Resources Act (16 U.S.C. §§ 3501 et seq.)

Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

i. The Wild and Scenic Rivers Act (16 U.S.C. §§ 1271 et seq.)

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.


This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.

k. The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.)

This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that non-Federal entities give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.


These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.
m. Executive Order 12898 ("Environmental Justice in Minority Populations and Low Income Populations")

Federal agencies are required to identify and address the disproportionately high and adverse human health or environmental effects of Federal programs, policies, and activities on low income and minority populations.

.03 OTHER NATIONAL POLICY REQUIREMENTS

a. Criminal and Prohibited Activities

1. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 et seq.), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).

2. The False Claims Amendments Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.

3. The Civil False Claims Act (31 U.S.C. §§ 3729 - 3733), provides that suits can be brought by the government, or a person on behalf of the government, for false claims made under Federal assistance programs.

4. The Copeland "Anti-Kickback" Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract. The Copeland "Anti-Kickback" Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

b. Drug-Free Workplace

The non-Federal entity shall comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8102) and DOC implementing regulations published at 15 C.F.R. Part 29 "Government wide Requirements for Drug-Free Workplace (Financial Assistance),” which require that the non-Federal entity take steps to provide a drug-free workplace.

c. Foreign Travel

1. Each non-Federal entity shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 through 301-10.143.
2. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency’s mission.

3. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple "Open Skies Agreements" currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA website http://www.gsa.gov/portal/content/103191. Information on the Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State’s website http://www.state.gov/e/eb/tr/.

4. If a foreign air carrier is anticipated to be used for any portion of travel under a DOC financial assistance award the non-Federal entity must receive prior approval from the Grants Officer. When requesting such approval, the non-Federal entity must provide a justification in accordance with guidance provided by 41 C.F.R.-§ 301-10.142, which requires the non-Federal entity to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the non-Federal entity meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the non-Federal entity must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer shall make the final determination and notify the non-Federal entity in writing. Failure to adhere to the provisions of the Fly America Act will result in the non-Federal entity not being reimbursed for any transportation costs for which any non-Federal entity improperly used a foreign air carrier.

d. Increasing Seat Belt Use in the United States

Pursuant to E.O. 13043 (62 FR 19217, 1997), non-Federal entities should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally owned vehicles.
e. Research Involving Human Subjects

1. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. Part 27, “Protection of Human Subjects.” No research involving human subjects is permitted under this award unless expressly authorized by special award condition, or otherwise in writing by the Grants Officer.

2. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

3. DOC regulations at 15 C.F.R. Part 27 require that non-Federal entities maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the non-Federal entity shall submit appropriate documentation to the Federal Program Officer for approval by the appropriate DOC officials. This documentation may include:

   i. Documentation establishing approval of the project by an Institutional Review Board (IRB) approved for Federal-wide use under Department of Health and Human Services guidelines (see also 15 C.F.R. § 27.103);

   ii. Documentation to support an exemption for the project under 15 C.F.R. § 27.101(b); or

   iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.

4. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. In accordance with 15 C.F.R. § 27.118, if research involving human subjects is proposed after an award is made, the non-Federal entity must contact the Federal Program Officer and provide required documentation. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

f. Federal Employee Expenses

Federal agencies are generally barred from accepting funds from a non-Federal entity to pay transportation, travel, or other expenses for any Federal employee. Use of award funds (Federal or non-Federal) or the non-Federal entity’s provision of in-kind goods or services, for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts,
including travel payments for Federal employees, from non-Federal entities or applicants regardless of the source.

g. Minority Serving Institutions Initiative

Pursuant to E.O.s 13555 (“White House Initiative on Educational Excellence for Hispanics”) (75 FR 65417, 2010), 13592 (“Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities”) (76 FR 76603, 2011), and 13532 (“Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities”) (75 FR 9749, 2010), DOC is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance programs. DOC’s goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation’s capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants and non-Federal entities to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

h. Research Misconduct

The DOC adopts, and applies to financial assistance awards for research, the “Federal Policy on Research Misconduct” (Federal Policy) issued by the Executive Office of the President’s Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Non-Federal entities that conduct extramural research funded by DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Non-Federal entities also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Non-Federal entities must notify the Grants Officer of any allegation that meets the definition of research misconduct and detail the entity’s inquiry to determine whether there is sufficient evidence to proceed with an investigation, as well as the results of any investigation. The DOC may take appropriate administrative or enforcement action at any time under the award, up to and including award termination and possible suspension or debarment, and referral to the Commerce OIG, the U.S. Department of Justice, or other appropriate investigative body.

i. Publications, Videos, and Acknowledgment of Sponsorship

1. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (e.g., scientific research).
2. Non-Federal entities may be required to submit a copy of any publication materials, including but not limited to print, recorded, or Internet materials, to the funding agency.

3. When releasing information related to a funded project, non-Federal entities must include a statement that the project or effort undertaken was or is sponsored by DOC.

4. Non-Federal entities are responsible for assuring that every publication of material based on, developed under, or otherwise produced under a DOC financial assistance award, except scientific articles or papers appearing in scientific, technical, or professional journals, contains the following disclaimer or other disclaimer approved by the Grants Officer:

   This [report/video/etc.] was prepared by [non-Federal entity name] using Federal funds under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce.

j. Care and Use of Live Vertebrate Animals

Non-Federal entities must comply with the Laboratory Animal Welfare Act of 1966, as amended, (Pub. L. No. 89-544, 7 U.S.C. §§ 2131 et seq.) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations (9 C.F.R. Parts 1, 2, and 3); the Endangered Species Act (16 U.S.C. §§ 1531 et seq.); Marine Mammal Protection Act (16 U.S.C. §§ 1361 et seq.) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. §§ 4701 et seq.) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC financial assistance award unless authorized by the Grants Officer.


If the performance of a grant award requires non-Federal entity personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term "routine access" is defined as more than 180 days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services’ (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under a financial assistance award shall comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12, “Policy for a Common Identification Standard for Federal Employees and Contractors”, FIPS PUB 201, and OMB Memorandum M-05-24. The non-Federal entity shall
ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The non-Federal entity shall insert the following term in all subawards and contracts when the subaward non-Federal entity or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

The subrecipient or contractor shall comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.

The subrecipient or contractor shall account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee’s employment; (3) Upon subaward or contract completion or termination.

I. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations

1. This clause applies to the extent that this financial assistance award involves access to export-controlled items.

2. In performing this financial assistance award, a non-Federal entity may gain access to items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The non-Federal entity is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR’s deemed exports and reexports provisions. The non-Federal entity shall establish and maintain effective export compliance procedures at DOC and non-DOC facilities throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled items, including by foreign nationals.

3. Definitions

i. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the DOC’s Bureau of Industry and Security. These are generally known as “dual-use” items, items with a military and commercial application.

38|December 26, 2014
ii. Deemed Export/Reexport. The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is “deemed” to be an export to the home country of the foreign national (see 15 C.F.R. § 734.2(b)(2)(ii)). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national’s home country. Licenses from DOC may be required for deemed exports or reexports.

4. The non-Federal entity shall control access to all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that access to, or release of, such items are restricted, or licensed, as required by applicable Federal laws, E.O.s, and/or regulations, including the EAR.

5. As applicable, non-Federal entity personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items.

6. To the extent the non-Federal entity wishes to provide foreign nationals with access to export-controlled items, the non-Federal entity shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed reexports.

7. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, E.O.s or regulations.

8. Compliance with this term will not satisfy any legal obligations the non-Federal entity may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports of munitions items subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including releases of such items to foreign nationals.

9. The non-Federal entity shall include this clause, including this paragraph (i), in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled items.

m. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 C.F.R. Part 175

Award Term from 2 C.F.R. § 175.15(b):

**Trafficking in persons.**

a. **Provisions applicable to a recipient that is a private entity.**

1. You as the recipient, your employees, subrecipients under this award, and
   subrecipients' employees may not—
   i. Engage in severe forms of trafficking in persons during the period of time that the
      award is in effect;
   ii. Procure a commercial sex act during the period of time that the award is in
       effect; or
   iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without
   penalty, if you or a subrecipient that is a private entity—
   i. Is determined to have violated a prohibition in paragraph a.1 of this award term;
      or
   ii. Has an employee who is determined by the agency official authorized to terminate
       the award to have violated a prohibition in paragraph a.1 of this award term
       through conduct that is either—(A) Associated with performance under this
       award; or (B) Imputed to you or the subrecipient using the standards and due
       process for imputing the conduct of an individual to an organization that are
       provided in 2 C.F.R. Part 180, “OMB Guidelines to Agencies on
       Governmentwide Debarment and Suspension (Nonprocurement),” as
       implemented by DOC at 2 C.F.R. Part 1326, “Nonprocurement Debarment and
       Suspension.”

b. **Provision applicable to a recipient other than a private entity.** We as the Federal
   awarding agency may unilaterally terminate this award, without penalty, if a
   subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this
   award term; or

2. Has an employee who is determined by the agency official authorized to terminate the
   award to have violated an applicable prohibition in paragraph a.1 of this award term
   through conduct that is either—
   i. Associated with performance under this award; or
   ii. Imputed to the subrecipient using the standards and due process for imputing the
       conduct of an individual to an organization that are provided in 2 C.F.R. Part
       180, “OMB Guidelines to Agencies on Governmentwide Debarment and
       Suspension (Nonprocurement),” as implemented by DOC at 2 C.F.R. Part 1326,
       “Nonprocurement Debarment and Suspension.”
c. **Provisions applicable to any recipient.**

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
   i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
   ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

**d. Definitions. For purposes of this award term:**

1. “**Employee**” means either:
   i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
   ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. “**Forced labor**” means: labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “**Private entity**”:
   i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25;
   ii. Includes: (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b); and (B) A for-profit organization.

4. “**Severe forms of trafficking in persons,**” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).

1. Searchable Website Requirements. The Federal Funding Accountability and Transparency Act of 2006 (FFATA) requires information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at www.USASpending.gov. Recipients and subrecipients must include the following required data elements in their application:

- Name of entity receiving award;
- Award amount;
- Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;
- Location of entity, primary location of performance (City/State/Congressional District/Country; and
- Unique identifier of entity.

See also 2 C.F.R. § 200.211 ("Public access to Federal award information").

2. Reporting Subawards and Executive Compensation. Prime grant recipients awarded a new Federal grant greater than or equal to $25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The prime recipient is required to file a FFATA subaward report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to $25,000. See Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (see 31 U.S.C. 6101 note). The reporting requirements are located in Appendix A of 2 C.F.R. Part 170 and are available on the Government Printing Office’s (GPO’s) FDSys website: http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vold1/pdf/CFR-2011-title2-vold1-part170-appA.pdf.

Award Term from Appendix A of 2 C.F.R. Part 170:

Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
2. Where and when to report.
   i. You must report each obligating action described in paragraph a.i. of this award term to http://www.fsrs.gov.
   ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at http://www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
   i. the total Federal funding authorized to date under this award is $25,000 or more;
   ii. in the preceding fiscal year, you received—
      (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and
      (B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and
   iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report executive total compensation described in paragraph b.i. of this award term:
   i. As part of your registration profile at http://www.ccr.gov.
   ii. By the end of the month following the month in which this award is made, and annually thereafter.
c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient’s five most highly compensated executives for the subrecipient’s preceding completed fiscal year, if—
   i. in the subrecipient’s preceding fiscal year, the subrecipient received—
      (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and
      (B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), Federal financial assistance subject to the Transparency Act (and subawards); and
   ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm). See also 2 C.F.R. § 200.300(b).

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1 of this award term:
   i. To the recipient.
   ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

   d. Exemptions. If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report: i. Subawards, and ii. The total compensation of the five most highly compensated executives of any subrecipient.

   e. Definitions. For purposes of this award term:

      1. Entity means all of the following, as defined in 2 C.F.R. Part 25:
1. A Governmental organization, which is a State, local government, or Indian tribe;
2. A foreign public entity;
3. A domestic or foreign nonprofit organization;
4. A domestic or foreign for-profit organization;
5. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:
   i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient awarded to an eligible subrecipient.
   ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. 210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
   iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:
   i. Receives a subaward from you (the recipient) under this award; and
   ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
   i. Salary and bonus.
   ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
   iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
   iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
   v. Above-market earnings on deferred compensation which is not tax-qualified.
vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

3. Central Contractor Registration (CCR) and Universal Identifier requirements. In accordance with 2 C.F.R. Part 25, recipients must obtain a DUNS number and maintain an active registration in the CCR database. In addition, recipients must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the prime recipient. The requirements are located in Appendix A of 2 C.F.R. Part 25 and are available on GOP’s FDsys website at: http://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-part25.pdf.

Award Term from Appendix A of 2 C.F.R. Part 25:

Central Contractor Registration and Universal Identifier Requirements

a. Requirement for Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

b. Requirement for Data Universal Numbering System (DUNS) Numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

c. Definitions for purposes of this award term:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management Internet site (currently at https://www.sam.gov/portal/public/SAM).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone.
3. **Entity**, as it is used in this award term, means all of the following, as defined at 2 C.F.R. part 25, subpart C:

   a. A Governmental organization, which is a State, local government, or Indian Tribe;

   b. A foreign public entity;

   c. A domestic or foreign nonprofit organization;

   d. A domestic or foreign for-profit organization; and

   e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. **Subaward**:

   a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

   b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. 2.210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).

   c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. **Subrecipient** means an entity that:

   a. Receives a subaward from you under this award; and

   b. Is accountable to you for the use of the Federal funds provided by the subaward.

   See also 2 C.F.R. § 200.300(b).
n. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown

This term sets forth initial guidance that will be implemented for Federal assistance awards in the event of a lapse in appropriations, or a government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

1. Unless there is an actual rescission of funds for specific grant obligations, non-Federal entities under Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Non-Federal entities are advised that ongoing activities by Federal employees involved in grant administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.

2. All award actions will be delayed during a government shutdown; if it appears that a non-Federal entity’s performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible government shutdown, the Program Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise non-Federal entities that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, non-Federal entities whose ability to withdraw funds is subject to prior agency approval, which in general are non-Federal entities that have been designated high risk, non-Federal entities under construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able to draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Non-Federal entities should plan to work with the Grants Officer to request prior approvals in advance of a shutdown whenever possible. Non-Federal entities whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.

3. The ASAP system should remain operational during a government shutdown. Non-Federal entities that do not require any Grants Officer or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a government shutdown and advanced funds held for more than 30 days will have to be returned with interest.
U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS

Title II of the Public Works and
Economic Development Act of 1965
Public Works and Economic Development Facilities
and
Economic Adjustment Assistance Construction Components

February 12, 2016
## TABLE OF CONTENTS

Contents

PREFACE.................................................................................................................................................. 6

A. GENERAL REQUIREMENTS AND RESPONSIBILITIES ................................................................. 7
   1. Purpose........................................................................................................................................... 7
   2. Authority and Policies ................................................................................................................. 7
   3. Definitions ................................................................................................................................... 8
   4. Grant Recipient as Trustee. ......................................................................................................... 9
   5. Reaffirmation of Application and Award Acceptance .............................................................. 9
   6. Noncompliance with Award Provisions ...................................................................................... 10

B. FINANCIAL REQUIREMENTS. ........................................................................................................ 10
   1. Financial Reports ....................................................................................................................... 10
   2. Disbursements ............................................................................................................................. 11
   3. Federal and Non-Federal Cost Sharing ..................................................................................... 12
   4. Budget Revisions and Transfers of Funds Among Budget Categories ...................................... 12
   5. Indirect Costs and Facilities and Administrative Costs .......................................................... 13
   6. Incurring Costs Prior to Award ................................................................................................ 15
   7. Incurring Costs or Obligating Federal Funds Beyond the Project Expiration Date ................ 15
   8. Time Extensions ......................................................................................................................... 16
   9. Tax Refunds ............................................................................................................................... 16
   10. Program Income ....................................................................................................................... 16

C. PROGRAMMATIC REQUIREMENTS ............................................................................................ 17
   1. Project Progress and Performance Reporting .......................................................................... 17
   2. Reporting on Real Property ....................................................................................................... 18
   3. Interim Reporting of Significant Project Developments ......................................................... 18
   4. Government Performance and Results Act Reporting ............................................................ 18
   5. Unsatisfactory Performance ..................................................................................................... 18
   6. Programmatic Changes ............................................................................................................. 18
   7. Other Federal Awards with Similar Programmatic Activities ............................................... 19
   8. Beneficiary Compliance ........................................................................................................... 19
   9. Prohibition Against Assignment by the Recipient ................................................................... 19
   10. Disclaimer Provisions; Hold Harmless Requirement ............................................................ 19
11. Prohibition on Use of Third Parties to Secure Award ................................................................. 20
12. Payment of Attorneys’ or Consultants’ Fees ............................................................................ 20
13. Recipient’s Duty to Refrain from Employing Certain Government Employees .................. 20
14. Commencement of Construction and Project Sign .................................................................... 21
15. Efficient Administration of Project ............................................................................................ 21
16. Conflicts-of-Interest Rules ......................................................................................................... 22
17. Record-Keeping Requirements ................................................................................................ 22
18. Termination Actions .................................................................................................................. 24
19. Project Closeout Procedures ..................................................................................................... 25
20. Freedom of Information Act ...................................................................................................... 26

D. ADDITIONAL REQUIREMENTS RELATING TO CONSTRUCTION PROJECTS .................. 26
   2. The Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 3701-3708) ... 27
   8. Compliance with Local Construction Requirements ............................................................ 27

E. NONDISCRIMINATION REQUIREMENTS .............................................................................. 27
   1. Statutory Provisions ................................................................................................................ 27
   2. Other Provisions ....................................................................................................................... 28
   3. Title VII Exemption for Religious Organizations ...................................................................... 29

F. AUDITS .................................................................................................................................... 29
   1. Organization-Wide, Program-Specific, and Project Audits ..................................................... 29
   2. Requirement to Submit a Copy of the Audit to EDA .............................................................. 31
   3. Audit Resolution Process ....................................................................................................... 31

G. DEBTS .................................................................................................................................... 32
   1. Payment of Debts Owed the Federal Government ................................................................. 32
   2. Late Payment Charges .......................................................................................................... 32
   3. Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees .......................................................... 33
   4. Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs ................. 33
H. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) ................................. 33
I. DRUG-FREE WORKPLACE ........................................................................................................... 33
J. LOBBYING RESTRICTIONS ........................................................................................................ 33
K. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS. .................................................................................................................. 34
   1. Code of Conduct for Recipients ............................................................................................... 34
   2. Applicability of Award Provisions to Subrecipients ............................................................. 35
   3. Competition and Codes of Conduct for Subawards ............................................................ 36
   4. Applicability of Provisions to Subawards, Contracts, and Subcontracts ......................... 37
   5. Pilot Program for Enhancement of Employee Whistleblower Protections .......................... 38
   7. Subaward to or Contract with a Federal Agency ................................................................. 39
   8. EDA Contracting Provisions for Construction Projects ..................................................... 39
L. PROPERTY .................................................................................................................................... 39
   1. Standards ............................................................................................................................... 39
   2. Title ........................................................................................................................................ 39
   3. EDA’s Interest in Award Property ......................................................................................... 40
   4. Insurance and Bonding .......................................................................................................... 42
   5. Leasing Restrictions ............................................................................................................... 42
   6. Eminent Domain ................................................................................................................... 43
   7. Disposal of Real Property ..................................................................................................... 43
M. FEDERAL ENVIRONMENTAL REQUIREMENTS ..................................................................... 43
   4. Clean Air Act (42 U.S.C. § 7401 et seq.), Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) (Clean Water Act), and Executive Order 11738 (“Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans”) ........................................... 44
   6. Executive Order 11988 (“Floodplain Management”) and Executive Order 11990 (“Protection of Wetlands”) ... 45
   7. The Flood Disaster Protection Act (42 U.S.C. § 4002 et seq.), and regulations and guidelines issued thereunder by the U.S. Federal Emergency Management Administration (“FEMA”) or by EDA .................................................. 45
   8. The Coastal Zone Management Act (16 U.S.C. § 1451 et seq.) ......................................... 45
11. The Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.) ................................................. 45
15. Executive Order 12898 ("Environmental Justice in Minority Populations and Low-Income Populations") ................................................................. 46
16. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4821 et seq.) .................................................... 46
N. NOTICE AND EVIDENCE OF COMPLIANCE WITH ALL APPLICABLE ENVIRONMENTAL REQUIREMENTS ................................................................. 46
O. MISCELLANEOUS REQUIREMENTS ........................................................................................................ 47
  1. Criminal and Prohibited Activities ........................................................................................................ 47
  2. Foreign Travel .......................................................................................................................................... 47
  3. American-Made Equipment and Products ............................................................................................. 48
  4. Intellectual Property Rights .................................................................................................................. 48
  5. Increasing Seat Belt Use in the United States ............................................................................................ 50
  6. Research Involving Human Subjects ..................................................................................................... 50
  7. Federal Employee Expenses .................................................................................................................. 51
  8. Minority Serving Institutions Initiative ................................................................................................ 51
  9. Research Misconduct ............................................................................................................................ 51
  10. Publications, Videos, and Acknowledgment of Sponsorship .............................................................. 52
  11. Care and Use of Live Vertebrate Animals ............................................................................................. 52
  13. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations ......................................................................................................................................................................................... 53
  14. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as Amended, and the Implementing Regulations at 2 CFR part 175. ..................................................................................................................... 54
  16. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown .......... 61
PREFACE

This document sets out the Standard Terms and Conditions for Construction Projects (hereinafter referred to as the “Construction Standard Terms and Conditions” or “Construction ST&Cs”) applicable to Economic Development Administration (“EDA”) financial assistance awards. A Recipient of an EDA construction financial assistance award must, in addition to the assurances made as part of the Application, comply and require each of its subrecipients, contractors, and subcontractors employed in the completion of the Project to comply with all applicable statutes, regulations, executive orders, Office of Management and Budget (“OMB”) circulars, provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (codified at 2 CFR part 200) (“Uniform Guidance”), provisions of these Construction ST&Cs, the EDA-approved Project budget and scope of work, any other incorporated terms and conditions, and approved Applications (collectively, “Terms and Conditions of the Award”).

This Award is subject to the laws and regulations of the United States. Any inconsistency or conflict in the Terms and Conditions specified in this Award will be resolved according to the following order of precedence: public laws, regulations (including applicable notices published in the Federal Register (Fed. Reg.)), executive orders, OMB circulars, EDA’s Construction ST&Cs, and special award conditions. A special award condition may amend or take precedence on a case-by-case basis over a Construction ST&C when warranted by specific Project circumstances.

Some of these Construction ST&Cs contain, by reference or substance, a summary of the pertinent statutes or regulations published in the Federal Register or the Code of Federal Regulations (“CFR”), executive orders, OMB circulars, or the certifications and assurances provided by applicants through Standard Forms (e.g., Forms SF-424B and SF-424D). To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, executive order, OMB circular, or assurance.
ECONOMIC DEVELOPMENT ADMINISTRATION
STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS

Public Works and Economic Development Facilities and
Economic Adjustment Assistance Construction Components

A. GENERAL REQUIREMENTS AND RESPONSIBILITIES.

1. Purpose.

The Economic Development Administration’s (“EDA’s”) grants for (i) public works
(42 U.S.C. § 3141) and (ii) construction economic adjustment assistance (42 U.S.C. § 3149)
Projects awarded under the Public Works and Economic Development Act of 1965, as amended
(42 U.S.C. § 3121 et seq.) (“PWEDA”) are designed to enhance regional competitiveness and
promote long-term economic development in regions experiencing substantial economic distress.
EDA provides construction, design, and engineering grants to assist distressed communities and
regions revitalize, expand, and upgrade their physical infrastructure to attract new industry,
encourage business expansion, diversify local economies, and generate or retain long-term
private sector jobs and investment. The requirements set forth in these Construction ST&Cs are
applicable to construction, design, and engineering Projects funded in whole or in part by EDA.
Any necessary modifications of these requirements will be addressed in special award conditions
to accommodate individual Projects. In addition, these Construction ST&Cs apply to
construction projects of revolving loan funds (“RLFs”) awarded between January 1, 1975 and
February 10, 1999 under EDA’s Title IX Economic Adjustment Assistance Program, as well as
to RLFs funded after February 11, 1999 under section 209 of PWEDA (42 U.S.C. § 3149).

2. Authority and Policies.

EDA is a bureau within the U.S. Department of Commerce (“DOC” or “Department”) established under PWEDA. See 13 CFR § 300.1 (“Overview of eligibility requirements”). As a Federal agency, EDA is obligated to promulgate regulations and establish policies and procedures to:

a. Ensure compliance with applicable Federal requirements;
b. Safeguard the public’s interest in the grant assets; and
c. Promote the effective use of grant funds in accomplishing the purposes for which they were awarded.

The Department or EDA may issue changes from time to time to the regulations and other requirements and policies that apply to this Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering this Award in a manner that is mutually beneficial to EDA and to the non-Federal entity. The implementation of any such regulatory, administrative, or programmatic change in administering this Award requires EDA’s prior written approval.

EDA’s policy is to administer all awards uniformly; however, there may be special circumstances that warrant a variance. To accommodate these circumstances and to encourage innovative and creative ways to address economic development problems, EDA will consider
requests for variances to the procedures set out in these Construction ST&Cs if they do not conflict with applicable Federal statutory and regulatory requirements, are consistent with the goals of EDA’s programs, and make sound economic and financial sense.

3. Definitions.

Whenever used in these Construction ST&Cs, the following words and phrases shall have the following meanings:

a. “Application” means all forms, documentation, and any information submitted to the Government as part and in furtherance of a request for an Award and includes submissions made in response to information requested by the Government after submission of the initial Application;

b. “Assistant Secretary” refers to the Assistant Secretary of Commerce for Economic Development;

c. “Award” refers to the Federal financial assistance that a Recipient receives directly from EDA (see also 2 CFR § 200.38);

d. “Closeout” or “Project Closeout” refers to the process by which the Grants Officer determines that all applicable administrative actions and all required work under the Award have been completed by the Recipient and EDA (see also 2 CFR § 200.16);

e. “Contract” means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the Project or program under this Award. As defined at 2 CFR § 200.22, the term does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward (see also 2 CFR § 200.22);

f. “Contractor” means an entity that receives a contract as defined in this section and at 2 CFR § 200.22 (see also 2 CFR § 200.23);

g. “Department” or “DOC” refers to the U.S. Department of Commerce;

h. “Government” or “Federal Government” refers to EDA;

i. “Grants Officer” refers to the official responsible for all business management and administrative aspects of this Award and, under these Construction ST&Cs, is the Regional Director in the appropriate Regional Office;

j. “Non-Federal entity” is a State, local government, Indian tribe, institution of higher education ("IHE"), or nonprofit organization that carries out a Federal award as a recipient or subrecipient (see also 2 CFR § 200.69);

k. “Pass-through entity” is a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (see also 2 CFR § 200.74);

l. “Project” refers to the activity for which the EDA grant was awarded;

m. “Project Officer” refers to the EDA official responsible for technical or other programmatic aspects of the Award. During the post-approval stage of the Award, EDA generally assigns this role to an EDA Engineer/Construction Manager;
n. "Recipient" is a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term "Recipient" does not include subrecipients (see also 2 CFR § 200.86);
o. "Regional Office" refers to an EDA Regional Office;
p. "Subaward" means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity (see also 2 CFR § 200.92);
q. "Subrecipient" is a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency (see also 2 CFR § 200.92); and
r. "Terms and Conditions of the Award" is defined in the first paragraph of the Preface above.

Capitalized terms used but not otherwise defined in these Construction ST&Cs have the meanings ascribed to them in EDA’s regulations at 13 CFR §§ 300.3 (“Definitions”), 302.20 (“Civil rights”), 307.8 (“Definitions”), and 314.1 (“Definitions”).

4. Grant Recipient as Trustee.

The Recipient holds grant funds and any EDA-assisted Project property in trust for the purposes for which the Award was made. The Recipient’s obligation to the Federal Government continues for the estimated useful life of the Project, as determined by EDA, during which EDA retains an undivided equitable reversionary interest (the “Federal Interest”) in property acquired or improved, in whole or in part, with the EDA investment. See 13 CFR § 314.2 (“Federal Interest”).

If EDA determines that the Recipient fails or has failed to meet this obligation, the Government may exercise any rights or remedies with respect to its Federal Interest in the Project. However, EDA’s forbearance in exercising any right or remedy in connection with the Federal Interest does not constitute a waiver thereof.

The Recipient agrees to provide EDA with information and documentation necessary for EDA to conduct due diligence to ensure the financial integrity and responsibility of the Recipient and key individuals associated with the Recipient in the management or administration of this Award.

5. Reaffirmation of Application and Award Acceptance.

The Recipient acknowledges that the Recipient’s Application for this Award may have been submitted to the Government and signed by the Recipient, or by an authorized representative of the Recipient, electronically without providing an original “wet” signature. In addition, the Recipient, or an authorized representative of the Recipient, may have accepted the Award electronically, which includes drawing down any funds at any time under this Award. Regardless of who submitted the Application to the Government or the means by which the Recipient submitted the Application or accepted the Award, the Recipient hereby reaffirms and states that:

a. All data in the Application were true and correct when the Application was submitted and remain true and correct as of the date of this Award;
b. The Application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and

c. The Recipient has read, understood, and will comply with all terms of this Award, including the assurances and certifications submitted with, or attached to, the Application.

The Recipient agrees to immediately notify the Grants Officer of any material changes to the Application within 30 calendar days of the date the Recipient becomes aware of such changes.


Failure to comply with the provisions of this Award may be grounds for appropriate enforcement action pursuant to 2 CFR § 200.338 ("Remedies for noncompliance"), including but not limited to:

a. The imposition of additional Award conditions in accordance with 2 CFR § 200.207 ("Specific conditions");

b. Temporarily withholding Award payments pending the correction of the deficiency;

c. The disallowance of Award costs and the establishment of an account receivable;

d. Wholly or partially suspending or terminating this Award;

e. Initiating suspension or debarment proceedings in accordance with 2 CFR parts 180 ("OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)") and 1326 ("Nonprocurement Debarment and Suspension");

f. Withholding further Federal awards for the Project or program; and

g. Such other remedies as may be legally available. See also 2 CFR §§ 200.339 ("Termination") through 200.342 ("Effects of suspension and termination").

In addition, failure to comply with the provisions of this Award may adversely impact the availability of funding under other active EDA or Federal awards and may also have a negative impact on the Recipient's eligibility for future EDA or other Federal awards.

B. FINANCIAL REQUIREMENTS.

1. Financial Reports.

a. During the period of performance, the Recipient shall submit financial reports as follows or as otherwise specified in the special award conditions.

i. Reports on Award Reimbursements. In accordance with 2 CFR § 200.327 ("Financial reporting"), the Recipient shall submit a "Federal Financial Report" (Form SF-425 or any successor form) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 calendar days following the end of each reporting period, and instructions for completing and submitting Form SF-425 will be discussed during the Project kick-off meeting. Recipients may contact their EDA Project Officer with questions on how to complete or submit the report, if necessary, but they are required to submit reports on time and are encouraged to pose such questions sufficiently
before the deadline to allow for complete, accurate, and timely submission of required reports.

ii. **Reports on Award Advances.** While EDA generally does not advance funds, when the agency does so, the Recipient must submit Form SF-425 within 15 business days following the end of each quarter for an award under $1 million, 15 business days following the end of each month for an award totaling $1 million or more, or as otherwise specified in a special award condition.

b. The Recipient must submit a final financial report using Form SF-425 within 90 calendar days of the expiration date of the Award.

c. Noncompliance with the financial reporting requirements will result in appropriate enforcement action under this Award, including but not limited to suspension of Award payments or disallowance of costs.

d. Financial reports should be submitted to the Project Officer in electronic format, unless otherwise specified in the special award conditions.

2. **Disbursements.**

a. **Method of Payment.** The Grants Officer determines the appropriate method of payment. Unless otherwise specified in a special award condition, the method of payment under this Award will be reimbursement. Payments will be made through electronic funds transfers directly to the Recipient’s bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3720B et seq.). The Award number shall be included on all payment-related correspondence, information, and forms.


ii. **Recipients Other than States.** Consistent with 2 CFR § 200.305(b), for Recipients other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.

b. **Disbursement Requests.** The Recipient shall use Form SF-271, “Outlay Report and Request for Reimbursement for Construction Programs,” to request reimbursement under the Award. Substantiating invoices and/or vouchers also must be provided. Each request for the disbursement of funds shall be made to the Project Officer. Form SF-271 can be downloaded from OMB’s website at [www.whitehouse.gov/omb/grants/grants_forms.html](http://www.whitehouse.gov/omb/grants/grants_forms.html).

i. **Initial Disbursement Request.** For the initial disbursement only, the Recipient must complete and submit Form SF-3881, “ACH Vendor/Miscellaneous Payment Enrollment Form,” along with Form SF-271, to the Project Officer.

ii. **Interim Disbursement Requests.** All requests for interim disbursement shall be submitted using Form SF-271 and include substantiating invoices and/or vouchers.
iii. **Final Disbursement Request.** See section C.19 “Project Closeout Procedures” in these Construction ST&Cs.

3. **Federal and Non-Federal Cost Sharing.**

   a. For purposes of this Award, the Federal share is the amount of EDA funds invested under the Award, while the non-Federal share, or “Matching Share,” means non-EDA funds and any in-kind contributions that are approved by EDA and provided by the Recipient or by third parties as a condition of the Award. Awards that include a Federal and non-Federal share incorporate an estimated budget consisting of shared allowable costs. If actual allowable costs are less than the total approved estimated budget, the Federal share and Matching Share shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. See 13 CFR §§ 305.10 (“Bid underrun and overrun”) and 308.1 (“Use of funds in projects constructed under projected cost”). As noted below in section B.4 “Budget Revisions and Transfers of Funds Among Cost Categories” of these Construction ST&Cs, if actual allowable costs are greater than the total approved estimated budget, the Federal share shall not exceed the total Federal dollar amount authorized by this Award.

   b. The Matching Share, whether cash or in-kind, shall be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the Recipient must meet its non-Federal cost share commitment over the Award period of performance; failure to do so may result in the assignment of special award conditions or other further action as specified in section A.6 “Noncompliance with Award Provisions” of these Construction ST&Cs.

   c. The Recipient must create and maintain sufficient records justifying the required Matching Share to facilitate questions, audits, and other inquiries necessary to meet EDA’s requirements to safeguard Federal funds, and must provide these records if requested by EDA, auditors, or other Federal parties. See also section C.17 “Record-Keeping Requirements” of these Construction ST&Cs. EDA may disallow undocumented costs. See 2 CFR § 200.306 for additional requirements regarding cost sharing.

   d. The Recipient shall show that the Matching Share is committed to the Project, available as needed, and not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA Investment Assistance. See 13 CFR § 301.5 (“Matching share requirements”).

4. **Budget Revisions and Transfers of Funds Among Budget Categories.**

The EDA-approved budget is the budget plan for the Project. The Recipient must notify EDA of deviations from the budget or program plans in accordance with 2 CFR § 200.308 (“Revision of budget and program plans”), including any change in scope of work or the objective of the Project (even if there is no associated budget revision requiring prior written approval). If prior written approval is not required under 2 CFR § 200.308, the Recipient may request the Grants Officer’s review of and guidance on proposed revisions to the budget.
a. Requests for budget revisions to the EDA-approved budget in accordance with the provisions below must be submitted through the Project Officer to the Grants Officer, who shall make the final determination on such requests and notify the Recipient in writing.

b. In accordance with 2 CFR § 200.308(g), EDA’s prior written approval and an amendment executed by the Grants Officer and the Recipient using Form CD-451 or any successor form are required for budget revisions when:

i. The revision results from changes in the scope or the objective of the Project;

ii. The need arises for additional EDA funds to complete the Project;

iii. The Federal share exceeds $150,000 and the cumulative amount of transfers among direct cost categories exceeds or is expected to exceed 10 percent of the total budget as last approved by EDA; and

iv. A revision is desired that involves specific costs for which prior written approval requirements may be imposed consistent with applicable cost principles listed in subpart E of 2 CFR part 200 (“Cost Principles”).

c. When an Award supports both construction and non-construction work, the Recipient must obtain prior written approval from the Grants Officer before making any fund or budget transfers from non-construction to construction or vice versa. See 2 CFR § 200.308(g)(5).

d. Transfers shall not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the Recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior written approval. See 2 CFR § 200.308.

e. Project Underrun Amounts. Underrun amounts shall be transferred to the contingencies line item. Contingency funds are to be used to address situations resulting from unknown conditions and changes required for the fulfillment of authorized activities under this Award. EDA may approve the use of underrun funds to increase the Federal share of the Project or further improve the Project, as long as EDA determines that the use is consistent with the original purpose of the approved EDA investment. See 13 CFR § 308.1 (“Use of funds in projects constructed under projected cost”).

f. Additional EDA Funding in Case of Project Overrun Amounts. In accepting this Award, the Recipient agrees to fund any overrun amounts from non-Federal sources. Additional EDA assistance for the Project may not be approved.

5. Indirect Costs and Facilities and Administrative Costs.

a. Indirect costs, or facilities and administrative (“F&A”) costs for educational institutions, are generally not applicable under this Award. See the definition of indirect costs at 2 CFR § 200.56 (“Indirect (facilities & administrative (F&A)) costs”).

b. When indirect costs are applicable, they will not be allowable charges against the Award unless approved under the Award and specifically included as a line item in the Award’s approved budget.

c. Excess indirect costs may not be used to offset unallowable direct costs.
d. Under 2 CFR § 200.306(c) ("Cost sharing or matching"), unrecovered indirect costs, including indirect costs on cost sharing or matching, may be included as part of cost sharing or matching only with the prior written approval of EDA.

e. **Cognizant Agency for Indirect (F&A) Costs.** OMB established the cognizant agency concept, under which a single agency represents all others in dealing with Recipients in common areas, including reviewing and approving indirect cost rates applicable to Federal grants.

   i. **Determining the Cognizant Agency for Non-Commercial Organizations.** In accordance with 2 CFR § 200.19 ("Cognizant agency for indirect costs"), the cognizant agency for indirect costs is the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals on behalf of all Federal agencies. Approved rates must be accepted by other agencies, unless a Federal statute or regulation requires use of a different rate or a Federal agency awarding head or delegate approves a different rate in accordance with 2 CFR § 200.414(c) ("Indirect (F&A) costs").

   If indirect costs are permitted, but the Recipient has not previously established an indirect cost rate with a Federal agency, the Recipient may consult Appendices III–VII to 2 CFR part 200 for information on determining the relevant cognizant agency and developing and submitting indirect (F&A) cost rate proposals and cost allocation plans:

   (1) Appendix III to 2 CFR part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

   (2) Appendix IV to 2 CFR part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

   (3) Appendix V to 2 CFR part 200 – State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans;

   (4) Appendix VI to 2 CFR part 200 – Public Assistance Cost Allocation Plans; and

   (5) Appendix VII to 2 CFR part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals.

   ii. **General Review Procedures When DOC Is the Cognizant Agency.**

   (1) Within 90 days of the Award start date the Recipient shall submit to the Grants Officer any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow the agency to perform the indirect cost rate proposal review.

   (2) The Recipient may use the fixed rate proposed in the indirect cost plan as a provisional rate until DOC provides a response to the submitted plan.

   iii. **When DOC Is Not the Oversight or Cognizant Agency.** When the cognizant Federal agency is not DOC, the non-Federal entity shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.

   f. If the Recipient entity fails to submit required documentation to DOC within 90 days of the Award start date, the Grants Officer may amend the Award to preclude the recovery of any indirect costs under the Award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the Recipient’s delay in
submitting the documentation, an extension of the 90-day due date may be approved by the
Grants Officer.

g. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the
recipient shall be the lesser of:

i. The line item amount for the Federal share of indirect costs contained in the approved
Award budget, including all budget revisions approved in writing by the Grants Officer;
or

ii. The Federal share of the total indirect costs allocable to the Award based on the indirect
cost rate approved by the cognizant agency for indirect costs and applicable to the period
in which the cost was incurred, provided that the rate is approved on or before the Award
end date.

h. In accordance with 2 CFR § 200.414(g) ("Indirect (F&A) costs"), any Recipient that has a
negotiated indirect cost rate may apply to the entity’s cognizant agency for indirect costs for a
one-time extension of a currently negotiated indirect cost rate for a period of up to four years,
reducing the frequency of rate calculations and negotiations between an institution and its
cognizant agency.

i. Any Recipient that has never received a negotiated indirect cost rate, except for those
Recipients described in Paragraph D.1.b of Appendix VII to 2 CFR part 200 (specifically, a
governmental department or agency that receives more than $35 million in direct Federal
funding), may elect to charge a de minimis rate of 10 percent of modified total direct costs. See 2 CFR § 200.414(f).

6. Incurring Costs Prior to Award.

Project activities carried out prior to EDA’s approval of this Award shall be carried out at the
sole risk of the Recipient. Such activity may result in the rejection of the Application, the
disallowance of costs, or other adverse consequences as a result of noncompliance with EDA or
Federal law, including but not limited to procurement requirements, civil rights requirements,
Federal labor standards, or environmental and historic preservation requirements. The
Grants Officer must authorize pre-award costs in writing, and such costs must also be allowable
under relevant Federal cost principles and the specific Award terms and be included in the
EDA approved budget. Pre-award costs not included in the authorized budget are not allowable
and may not be reimbursed. See 13 CFR § 302.8 ("Pre-approval Investment Assistance costs").

7. Incurring Costs or Obligating Federal Funds Beyond the Project Expiration Date.

a. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the Project,
program, or activities beyond the authorized period of performance documented in the Award
agreement, unless a written time extension of this Award is granted by the Grants Officer.
The only costs that are authorized for a period of up to 90 calendar days following the end
date of the period of performance are those strictly associated with Closeout activities.
Closeout activities are generally limited to the preparation of final progress, financial, and
required Project audit reports unless otherwise approved in writing by the Grants Officer.
The Grants Officer may approve extensions of the 90 calendar-day Closeout period upon a
request by the Recipient as provided in 2 CFR § 200.343 ("Closeout"), as applicable.
b. The Recipient shall adhere to the development time schedule and time limits set out in the special award conditions if they differ from those provided in these Construction ST&Cs.

c. Neither DOC nor EDA has any obligation to provide any additional prospective funding. Any amendment of the Award to increase funding and to extend the period of performance is at the sole discretion of DOC and/or EDA.

8. Time Extensions.

a. Unless otherwise authorized in 2 CFR § 200.308 ("Revision of budget and program plans"), or a special award condition, any extension of the period of performance can only be authorized by the Grants Officer in writing. A verbal or written assurance of funding from other than the Grants Officer, including Regional Office staff other than the Grants Officer, does not constitute authority to obligate funds for programmatic activities beyond the expiration date of the period of performance.

b. The Recipient is responsible for implementing the Project in accordance with the development time schedule contained in this Award. As soon as the Recipient becomes aware that it will not be possible to meet the development time schedule, the Recipient must notify the Grants Officer. The Recipient's notice to EDA must contain the following:

i. An explanation of the Recipient's inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor's ability to excavate the site, major re-engineering required in order to obtain State or Federal approvals, unplanned environmental mitigation required);

ii. A statement that no other changes to the Project are contemplated;

iii. Documentation that demonstrates there is still a bona fide need for the Project; and

iv. A statement that no further delay is anticipated and that the Project can be completed within the revised time schedule.

EDA reserves the right to withhold disbursements while the Recipient is not in compliance with the time schedule and to suspend or terminate this Award if the Recipient fails to proceed with reasonable diligence to accomplish the Project as intended.


Refunds of Federal Insurance Contributions Act ("FICA") or Federal Unemployment Tax Act ("FUTA") taxes received by the Recipient during or after the period of performance must be refunded or credited to DOC where the benefits were financed with Federal funds under the Award. The Recipient agrees to contact the Grants Officer immediately upon receipt of these refunds. The Recipient further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the expiration of the Award period of performance.

10. Program Income.

For Projects that generate rental revenue (e.g., buildings or real property constructed or improved for the purpose of renting or leasing space), the Recipient agrees, for the estimated useful life (as
determined by EDA) of the EDA-assisted facility, to use such income generated from the rental or lease of any Project facility in the following order of priority:

a. Administration, operation, maintenance, and repair of Project facilities in a manner consistent with good property management practice and in accordance with established building codes. This includes, where applicable, repayment of indebtedness resulting from any EDA approved encumbrance (e.g., approved mortgage) on the EDA-assisted facility.

b. Economic development activities that are authorized for support by EDA, provided such activities meet the economic development purposes of PWEDA.

c. Any income in excess of paragraphs a. and b. of this section must be deducted from total allowable Project costs in accordance with 2 CFR § 200.307(c).

See 2 CFR § 200.307 ("Program income").

C. PROGRAMMATIC REQUIREMENTS.

1. Project Progress and Performance Reporting.

a. Project progress reports must be submitted in accordance with the procedures set out in 2 CFR § 200.328 ("Monitoring and reporting program performance"), as applicable, and as indicated below. Failure to submit required reports in a timely manner may result in the withholding of payments under this Award; deferral of processing of new awards, amendments, or supplemental funding pending the receipt of the overdue reports; or the establishment of an account receivable for the difference between the total Federal share of outlays last reported and the amount disbursed. See 13 CFR § 302.18 ("Post-approval requirements").

b. Unless otherwise specified in this Award, the Project progress report will contain the following information for each Project program, function, or activity:

i. A comparison of planned and actual accomplishments according to the timetable or list of Project objectives in this Award;

ii. An explanation of any delays or failures to meet the Project timetable or Project goals; and

iii. Any other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

Project progress reports shall be submitted for each calendar quarter to the Project Officer. Each Project progress report must be submitted in accordance with the deadlines outlined in the special award conditions, or, where not otherwise specified, Project progress reports will be due on a quarterly basis not later than January 31, April 30, July 31, and October 31 for the immediate previous quarter. The final Project progress report shall be submitted to EDA no more than 90 calendar days after the Project Closeout date. This reporting requirement begins with the Recipient's acceptance of this Award and ends when EDA approves Project Closeout.

The Recipient shall submit quarterly Project progress reports to the EDA Project Officer electronically unless otherwise specified in the special award conditions.
2. **Reporting on Real Property.**

The Recipient must submit reports (using Form SF-429 “Real Property Status Report” or any successor form) at least annually on the status of real property in which EDA retains an interest, unless the Federal interest in the real property extends 15 years or longer. When EDA’s interest extends for a period of 15 years or more, EDA, at its option, may require the Recipient to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or annual reporting for the first three years of the Award and thereafter every five years). See 2 CFR § 200.329 (“Reporting on real property”) and section L.3.h “EDA’s Interest in Award Property” of these Construction ST&Cs.

3. **Interim Reporting of Significant Project Developments.**

The Recipient must report any event that will or may have a significant impact upon the Project, including delays or adverse conditions that materially may affect the ability of the Recipient to attain Project objectives within established time periods or meet the development time schedule. The Recipient should report such events to the Project Officer in the most time-expedient way possible and then, if the initial report was not in writing, report the event to the Project Officer in writing. Such a report shall include a statement of the event or issue, a statement of the course of action taken or contemplated to resolve the matter, and any Federal assistance needed to resolve the situation. If budget changes are required, the Recipient must submit a written budget revision request. See 2 CFR § 200.328(d) (“Monitoring and reporting program performance”).

4. **Government Performance and Results Act Reporting.**

In addition to quarterly Project progress reports, EDA may require the Recipient to report on Project performance beyond the Project Closeout date for Government Performance and Results Act (“GPRA”) purposes. In no case shall the Recipient be required to submit any report more than ten years after the Project Closeout date. Data used by the Recipient in preparing reports shall be accurate and, whenever possible, from independent sources. See 13 CFR § 302.16 (“Accountability”).

5. **Unsatisfactory Performance.**

Failure to perform the work in accordance with the Terms and Conditions of the Award and maintain at least satisfactory performance may result, at EDA’s discretion, in the assignment of additional award conditions pursuant to 2 CFR § 200.207 (“Specific conditions”) or other appropriate enforcement actions as specified in 2 CFR § 200.338 (“Remedies for noncompliance”). See also section A.6 “Noncompliance with Award Provisions” of these Construction ST&Cs.

6. **Programmatic Changes.**

a. In accordance with 2 CFR § 200.308 (“Revisions of budget and program plans”), the Recipient shall report programmatic changes, including all changes to the scope of the Award, to the Project Officer. In accordance with section B.4 “Budget Revisions and Transfers of Funds Among Budget Categories” of these Construction ST&Cs, certain budget revisions require the prior written approval of EDA. In these cases, the Project Officer will
forward the request to the Grants Officer, who makes the final decision on approving the
request. In addition, the Recipient shall request prior written approvals for certain items of
cost in accordance with 2 CFR § 200.407 (“Prior written approval (prior approval)”).

b. Any changes made to the Project without EDA’s approval are made at the Recipient’s risk of
nonpayment of costs, suspension, termination, or other EDA action with respect to the
Award. See 13 CFR § 302.7(b) (“Amendments and changes”).

c. Contract Change Orders. After construction contracts for the Project have been executed, it
may become necessary to alter them, which requires a formal contract change order that must
be issued by the Recipient and accepted by the contractor. All contract change orders must be
reviewed by EDA, even if EDA is not participating in the cost of the change order or the
contract price is to be reduced. Work on the Project may continue pending EDA review and
approval of the change order, but all such work shall be at the Recipient’s risk as to whether
the cost of the work is eligible for EDA participation until the Recipient receives EDA’s
written approval for the change order. See 13 CFR § 305.13 (“Contract change orders”).

7. Other Federal Awards with Similar Programmatic Activities.

The Recipient shall immediately notify the Project Officer and the Grants Officer in writing if,
after receipt of this Award, other financial assistance is received to support or fund any portion
of the scope of work incorporated into this Award. EDA will not pay for costs that are funded by
other sources.

8. Beneficiary Compliance.

In the event a beneficiary of the Project fails to comply in any manner with certifications,
assurances, or agreements that such beneficiary has entered into in accordance with EDA’s
requirements, the Recipient will reimburse the Government the Award amount or an amount to
be determined by the Government pursuant to 13 CFR §§ 314.4 (“Unauthorized use of
property”) and 314.5 (“Federal share”). Where the Government determines that the failure of a
beneficiary to comply with EDA requirements affects a portion of the property benefited by the
Award, the Recipient will reimburse the Government proportionately.

9. Prohibition Against Assignment by the Recipient.

The Recipient shall not transfer, pledge, mortgage, or otherwise assign the Award, or any interest
therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other
financing or financial institutions without the express prior written approval of the Grants
Officer, which approval may be provided in a special award condition.


a. The United States expressly disclaims any and all responsibility or liability to the Recipient,
subrecipient, or third persons for the actions of the Recipient, subrecipient, or third persons
resulting in death, bodily injury, property damages, or any other losses resulting in any way
from the performance of this Award or any subaward or subcontract under this Award.
b. The acceptance of this Award or any subaward by the Recipient or subrecipient does not in any way constitute an agency relationship between the United States and the Recipient or subrecipient.

c. To the extent permitted by law, the Recipient agrees to indemnify and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an award to assist, directly or indirectly, in the preparation of the Project site or construction, renovation, or repair of any facility on the Project site, to the extent that such liabilities are incurred because of toxic or hazardous contamination or groundwater, surface water, soil, or other conditions caused by operations of the Recipient or any of its predecessors (other than the Government or its agents) on the property. See 13 CFR § 302.19 ("Indemnification").

11. Prohibition on Use of Third Parties to Secure Award.

Unless otherwise specified in the special award conditions to this Award, the Recipient warrants that no person or selling agency has been employed or retained to solicit or secure this Award upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the Recipient for the purpose of securing business. For breach or violation of this warrant, the Government has the right to annul this Award without liability, or at its discretion, to deduct from the Award sum, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

12. Payment of Attorneys' or Consultants' Fees.

No Award funds shall be used, directly or indirectly, to reimburse attorneys' or consultants' fees incurred in connection with obtaining Investment Assistance under PWEDA, such as, for example, preparing the Application for EDA Investment Assistance. However, ordinary and reasonable attorneys' and consultants' fees incurred for meeting Award requirements (e.g., conducting a title search or preparing plans and specifications) may be eligible Project costs and may be paid out of Award funds, provided such costs are otherwise eligible. See 13 CFR § 302.10 ("Attorneys' and consultants' fees, employment of expediters, and post-employment restriction").


a. Pursuant to section 606(2) of PWEDA (42 U.S.C. § 3216), for the two-year period beginning on the date EDA executes this Award, any Recipient that is a nonprofit organization, District Organization, or for-profit entity agrees that it will not employ, offer any office or employment to, or retain for professional services any person who:

i. On the date the Government executes this Award or within the one-year period ending on that date, served as an officer, attorney, agent, or employee of the Department, and

ii. Occupied a position or engaged in activities that the Assistant Secretary determines involved discretion with respect to the awarding of Investment Assistance under PWEDA.
b. In addition to the types of Recipients noted in paragraph a above, EDA may require another Eligible Applicant to execute an agreement to abide by the above-described post-employment restriction on a case-by-case basis—for example, when an institution of higher education implements activities under or related to the Investment Assistance through a separate nonprofit organization or association.

c. The two-year period and associated restrictions referenced above also shall apply beginning on the date that EDA executes any cost amendment to this Award that provides additional funds to the Recipient.

See also 13 CFR § 302.10 ("Attorneys' and consultants' fees, employment of expediters, and post-employment restriction").


a. Delayed Construction Starts. If significant construction (as determined by EDA) is not commenced within two years of the Award date or by the date estimated for start of construction in this Award (or the expiration of any extension granted in writing by EDA), whichever is later, this Award will be automatically suspended and may be terminated if EDA determines, after consultation with the Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously.

b. Early Construction Starts. The Recipient shall make a written request to EDA for early construction start permission (that is, after the date of Award, but before EDA gives formal approval for construction to commence). For Project costs to be eligible for EDA reimbursement, EDA must determine that the award of all contracts necessary for design and construction of the Project facilities is in compliance with the Terms and Conditions of this Award. If construction commences prior to EDA's determination, the Recipient proceeds at its own risk until EDA's review and concurrence. See 13 CFR § 305.11 ("Contract awards; early construction start").

c. Project Sign. The Recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the Project site indicating that the Federal Government is participating in the Project. EDA will provide specifications for the sign and may require more than one sign if site conditions so warrant. If the EDA-recommended sign specifications conflict with State or local law, the Recipient may modify such recommended specifications so as to comply with State or local law. See 13 CFR § 305.12 ("Project sign").

15. Efficient Administration of Project.

The Recipient agrees to properly and efficiently administer, operate, and maintain the Project for its estimated useful life, as required by section 504 of PWEDA (42 U.S.C. § 3194). If the Government determines, at any time during the estimated useful life of the facility, that the Project is not being properly and efficiently administered, operated, and maintained, the Government may terminate this Award (if it is still active) and/or may take appropriate enforcement action to protect the Federal Interest in the Project, including requiring the Recipient to repay the Federal Share. See 13 CFR §§ 302.12 ("Project administration, operation and maintenance"), 302.18 ("Post-approval requirements"), and 314.2 ("Federal interest") through 314.5 ("Federal share").

a. An “Interested Party” is defined in 13 CFR § 300.3 (“Definitions”) as “any officer, employee, or member of the board of directors or other governing board of the Recipient, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the Recipient, such as agents, advisors, consultants, attorneys, accountants, or shareholders.” An Interested Party includes the Interested Party’s “Immediate Family” (defined in 13 CFR § 300.3 as “a person’s spouse (or domestic partner or significant other), parents, grandparents, siblings, children and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person”) and other persons directly connected to the Interested Party by law or through a business organization.

b. The Recipient must disclose in writing any potential conflicts of interest to EDA or the pass-through entity. In addition, the Recipient must maintain written standards of conduct to establish safeguards to prohibit an Interested Party from using its position for a purpose that constitutes or presents the appearance of personal or organizational conflicts-of-interest or of personal gain in the administration of an award. See 13 CFR § 302.17(a) and (b) (“Conflicts of interest”), 2 CFR § 200.112 (“Conflict of interest”), as applicable, and Forms SF-424B (“Assurances – Non-Construction Projects”) and SF-424D (“Assurances – Construction Projects”).

c. An Interested Party must not receive any direct or indirect financial or personal interests or benefits in connection with this Award or its use for payment or reimbursement of costs by or to the Recipient. A financial interest or benefit may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance, services, or advice. It also could result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field. See 13 CFR § 302.17(a) and (b).

d. Procurement-related conflicts of interest. In addition, in accordance with 2 CFR § 200.318(c) (“General procurement standards”), the Recipient must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts. See 2 CFR §§ 200.317–200.326 (“Procurement Standards”).

17. Record-Keeping Requirements.

a. Records. The Recipient must maintain records that document compliance with the Terms and Conditions of this Award. At a minimum, the Recipient’s records must fully disclose:

i. The amount and disposition of EDA investment assistance;

ii. All Project expenditures and procurement actions;

iii. The total cost of the Project that the Award funds;

iv. Copies of all reports and disbursement requests submitted to EDA;
v. The benefits/impacts of the Project, as reported through GPRA and other reports to EDA;

vi. The amount and nature of the portion of Project costs provided by non-EDA sources;

vii. Contractor compliance with applicable Federal requirements; and

viii. Such other records as EDA determines will facilitate an effective audit.

b. Records Retention. In general and in accordance with 2 CFR § 200.333 (“Retention requirements for records”), all records pertinent to this Award must be retained for a period of three years from the date of submission of the final Project expenditure report (the final Form SF-271 for disbursement). The only exceptions are the following:

i. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final actions taken.

ii. When the Recipient is notified in writing by EDA, the cognizant agency for either audit or indirect costs, the oversight agency for audit, or the relevant pass-through entity to extend the retention period, it must retain the records as directed.

iii. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition of the relevant real property or equipment.

iv. When records are transferred or maintained by EDA, the three-year retention requirement is not applicable to the Recipient.

v. Records for program income transactions after the period of performance. In some cases Recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the Recipient’s fiscal year in which the program income is earned.

vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission.

(2) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

c. Monitoring and Reporting Obligations. The Recipient is responsible for monitoring any subrecipients and contractors to ensure their compliance with the records retention requirements. The Recipient must immediately notify the Project Officer if records are lost,
destroyed, or are otherwise no longer available, or if the Recipient anticipates that it will not be able to comply with the record retention requirements under the Award for the general retention periods noted above. See 13 CFR § 302.14 ("Records"), as applicable.

18. Termination Actions.

a. In accordance with 2 CFR § 200.339 ("Termination"), this Award may be terminated in whole or in part as follows:

i. **Termination by EDA for the Recipient’s Failure to Comply with the Terms and Conditions of the Award.** EDA may terminate this Award, in whole or in part, if the Recipient fails to comply with the Terms and Conditions of the Award, including if:

   (1) Any representation made by the Recipient to the Federal awarding agency in connection with the Application for Federal assistance is incorrect or incomplete in any material respect;

   (2) The Project has changed substantially, without EDA approval, so as to affect significantly the accomplishment of the Project as intended (including an unauthorized use of property as provided in 13 CFR § 314.4 ("Unauthorized use of property");

   (3) The Recipient has violated commitments it made in its Application and supporting documents or has violated any of the Terms and Conditions of the Award;

   (4) The conflicts-of-interest rules at 13 CFR § 302.17 ("Conflicts of interest") are violated; or

   (5) The Recipient fails to report immediately to the Federal awarding agency any change of authorized representative acting in lieu of or on behalf of the Recipient.

ii. **Termination by EDA for Cause.** EDA may terminate this Award for cause if required by a circumstance beyond EDA’s control, such as a Congressional mandate.

iii. **Termination by the Recipient.** The Recipient may terminate this Award in whole or in part upon sending the EDA Grants Officer written notification; setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if EDA determines in the case of partial termination that the reduced or modified portion of the EDA Award will not accomplish the purposes for which the EDA Award was made, EDA may terminate the Award in its entirety.

iv. **Termination Upon Mutual Agreement.** EDA and the Recipient may mutually agree to terminate this Award in whole or in part. In such cases, EDA and the Recipient must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

b. If the Award is wholly or partially terminated, the Recipient remains responsible for compliance with the requirements in 2 CFR §§ 200.343 ("Closeout") and 200.344 ("Post-closeout adjustments and continuing responsibilities").

As noted above in section C.15 “Efficient Administration of Project” of these Construction ST&Cs, after construction is completed and the Project is closed out financially, the Recipient has an ongoing responsibility to properly administer, operate, and maintain the Project for its estimated useful life (as determined by EDA) in accordance with its original purpose. See 13 CFR § 302.12 (“Project administration, operation and maintenance”). The Recipient must comply with all Award requirements and maintain records to document such compliance, which shall be made available for inspection by EDA or other Government officials as required.

a. **Final Disbursement.** When Project construction and final inspection have been completed, or substantially completed as determined by EDA, and the Recipient has accepted the Project from the contractor, the Recipient can begin the Closeout process by submitting the following documentation to EDA:

i. A request for final disbursement on an executed Form SF-271;

ii. A written certification that all costs charged against this Award (Federal and non-Federal shares) are for eligible activities and represent allowable costs, for which there is documentation in the Recipient’s records;

iii. An executed certificate of final acceptance signed by the Recipient and the Recipient’s architect/engineer;

iv. The Recipient’s certification that its currently valid single or program-specific audit in accordance with subpart F of 2 CFR part 200 (“Audit Requirements”), if applicable, does not contain any material findings (if the Recipient’s currently valid audit does contain material findings, the Recipient shall submit the applicable audit preferably via e-mail to the Project Officer, who will review with the Grants Officer);

v. The Recipient’s certification that its currently valid audit (in accordance with subpart F of 2 CFR part 200), if applicable, has been submitted to the Federal Audit Clearinghouse; and

vi. Other documentation as may be required by EDA.

EDA shall advise the Recipient of costs determined to be allowable and unallowable. If a balance of this Award is due to the Recipient, the balance will be paid by wire transfer. If the Recipient has received an amount in excess of the amount due the Recipient, the Recipient must refund the excess to EDA. The Recipient shall contact the Project Officer for refund instructions.

As noted above, if the Recipient’s currently valid audit completed pursuant to subpart F of 2 CFR part 200 contains material findings, the Recipient shall submit the audit, preferably via e-mail, to the Project Officer, who will review with the Grants Officer before final disbursement. If e-mail is unavailable, the Recipient may submit a hardcopy version of the audit to the Project Officer.

b. The Recipient shall submit, within 90 calendar days after the Project Closeout date, all financial, performance, and other reports as required by the Terms and Conditions of this Award. The Grants Officer may extend the 90 calendar day Closeout period upon a written request from the Recipient.
c. As required under GPRA and in accordance with a schedule that will be provided by EDA, the Recipient must submit additional Performance Measurement Reports, generally three, six, and nine years after the date of the Award to accurately and completely report the impacts of the Project, especially in terms of job creation and private investment leveraging.

d. Unless EDA authorizes an extension, the Recipient shall liquidate all obligations incurred under this Award no later than 90 calendar days after acceptance of the Project from the contractor or within 90 calendar days of the expiration date of this Award, whichever occurs earlier.

e. In accordance with 2 CFR § 200.344 “Post-closeout adjustments and continuing responsibilities,” the Closeout of this Award does not affect any of the following:

   i. The right of EDA to disallow costs and recover funds on the basis of a later audit or other Project review;
   ii. The Recipient’s obligation to return any funds due as a result of later corrections or other transactions;
   iii. Audit requirements per subpart F of 2 CFR part 200; and
   iv. Requirements for property management and disposition, records retention, and performance measurement reports. See subpart D of 2 CFR part 200 (“Post Federal Award Requirements”), as applicable.


EDA is responsible for meeting its Freedom of Information Act (“FOIA”) (5 U.S.C. § 552) responsibilities for its records. DOC regulations at 15 CFR part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of Applications and other information submitted by applicants and Recipients may be released in response to a FOIA request. The Recipient should be aware that EDA may make certain Application and other submitted information publicly available. Accordingly, as set forth in 15 CFR § 4.9, the Recipient should identify in its Application any “business information” it believes to be protected from disclosure pursuant to 5 U.S.C. § 552(b)(4).

D. ADDITIONAL REQUIREMENTS RELATING TO CONSTRUCTION PROJECTS.

The Recipient and any subrecipients must, in addition to other statutory and regulatory requirements detailed in these Construction ST&Cs and the assurances made to EDA in connection with the Award, comply and require each of its contractors and subcontractors employed in the completion of the Project to comply with all applicable Federal, State, territorial, and local laws, and in particular, the following Federal public laws (and the regulations issued thereunder), executive orders, OMB circulars, Uniform Guidance, and local law requirements.

1. The Davis-Bacon Act, as amended (40 U.S.C. §§ 3141–3144, 3146, 3147; 42 U.S.C. § 3212), which requires minimum wages for mechanics and laborers employed on Federal Government public works projects to be based on the wages that the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the Project is to be performed, or in the District of Columbia if the Project is to be performed there.
2. The Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 3701-3708), which provides work hour standards for every laborer and mechanic employed by any contractor or subcontractor in the performance of a Federal public works project.


4. The Historical and Archeological Data Preservation Act of 1974, as amended (16 U.S.C. § 469a-1 et seq.), which requires appropriate surveys and preservation efforts if a Federally licensed project may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data.

5. The Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 et seq.), and the regulations issued thereunder, which prescribe standards for the design and construction of any building or facility intended to be accessible to the public or that may house handicapped employees.

6. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 et seq.), and implementing regulations issued at 49 CFR part 24 ("Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs"), which establish uniform policies for the fair and equitable treatment of persons, businesses, or farm operations affected by the acquisition, rehabilitation, or demolition of real property acquired for a project financed wholly or in part with Federal financial assistance.


8. Compliance with Local Construction Requirements. The Recipient will comply with current local building codes, standards, and other requirements applicable to the Project.

E. NONDISCRIMINATION REQUIREMENTS.

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Recipient agrees to comply with the nondiscrimination requirements below.


   a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and DOC implementing regulations published at 15 CFR part 8 ("Nondiscrimination in Federally Assisted Programs of the Department of Commerce—Effectuation of Title VI of the Civil Rights Act of 1964"), which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance. See the Department's Title VI compliance provisions at 15 CFR §§ 8.7 ("Cooperation, compliance reports and reviews and access to records") through 8.15 ("Effect on other laws; supplementary instructions; coordination").
b. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), which prohibits discrimination on the basis of sex under Federally assisted education programs or activities.

c. Pub. L. No. 92-65, 42 U.S.C. § 3123, which proscribes discrimination on the basis of sex in EDA assistance provided under PWEDA; Pub. L. No. 94-369, 42 U.S.C. § 6709, which proscribes discrimination on the basis of sex under the Local Public Works Program; and the Department's implementing regulations at 15 CFR §§ 8.7 ("Cooperation, compliance reports and reviews and access to records") -8.15 ("Effect on other laws; supplementary instructions; coordination").

d. The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) (ADA), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereof, as well as public or private entities that provide public transportation.

e. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 CFR part 8b ("Prohibition of Discrimination Against the Handicapped in Federally Assisted Programs Operated by the Department of Commerce"), which prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.


f. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) and DOC implementing regulations published at 15 CFR part 20 ("Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance"), which prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance.

g. Other applicable Federal statutes, regulations, and executive orders, and other applicable nondiscrimination laws.

2. Other Provisions.

b. Executive Order 13166 (August 11, 2000), “Improving Access to Services for Persons With Limited English Proficiency,” requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (“LEP”), and develop and implement a system to provide those services so that LEP persons can have meaningful access to them. The DOC issued policy guidance on March 24, 2003 (“Guidance to Federal Financial Assistance Recipients on the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons”, 68 Fed. Reg. 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that Recipients provide meaningful access to their LEP applicants and beneficiaries.

3. Title VII Exemption for Religious Organizations.

Generally, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) provides that it shall be an unlawful employment practice for an employer to discharge any individual or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual’s race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination on the basis of religion, a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

F. AUDITS.

Under the Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 et seq.), an audit of the Award may be conducted at any time. The Department’s Inspector General, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. This right also includes timely and reasonable access to the Recipient’s personnel for the purpose of interview and discussion related to such documents. See 2 CFR § 200.336 (“Access to records”). When the Office of the Inspector General (“OIG”) requires a program audit on a DOC Award, the OIG will usually make the arrangements to audit the Award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other Federal, State, or local audit entity.

1. Organization-Wide, Program-Specific, and Project Audits.

a. Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by subpart F of 2 CFR part 200 (“Audit Requirements”). Recipients that expend $750,000 or more in Federal awards during their fiscal year shall have an audit conducted for that year in accordance with the requirements set forth in subpart F of 2 CFR part 200. Within the earlier of 30 calendar days after receipt of the auditor’s report, or nine months after the end of the audit period, a copy of the audit shall be submitted electronically to the Federal Audit Clearinghouse website at http://harvester.census.gov/sae/.

If it is necessary to submit using paper, the address for submission is:
Within 90 days of the end of the fiscal year of a Recipient subject to subpart F of 2 CFR part 200, the entity is responsible for notifying the Grants Officer of the amount of Federal awards, including all DOC and non-DOC awards, the Recipient expended during its fiscal year.

A Recipient that expends less than $750,000 in Federal awards during its fiscal year is exempt from Federal audit requirements for that year, except as noted at 2 CFR § 200.503 ("Relation to other audit requirements"), but records must be available for review and audit by EDA, DOC, or other designated Government officials.

Failure to provide audit reports within the timeframes specified may result in appropriate enforcement action, up to and including termination of the Award, and may jeopardize eligibility for receiving future DOC awards.

b. Unless otherwise specified in the Terms and Conditions of this Award, for-profit hospitals, commercials entities, and other organizations that are not subject to subpart F of 2 CFR part 200 ("Audit Requirements") shall have a program specific audit performed by an independent auditor when the Federal share amount awarded is $750,000 or more over the duration of the period of performance. An audit is required at least once every two years using the following schedule for audit report submission:

i. For Awards where the period of performance is less than two years, an audit is required within 90 calendar days of the end of the period of performance to cover the entire Project (the Project Closeout period is included in the 90 days);

ii. For Awards with a two- or three-year period of performance, an audit is required within 90 calendar days after the end of the first year to cover Year 1, which is the period of time when Federal funding is available for obligation by the Recipient, and within 90 calendar days of the end of the period of performance to cover Year 2 and Year 3 (if applicable) (the Project Closeout period is included in the 90 days); or

iii. For Awards with a four- to five-year period of performance, an audit is required within 90 calendar days after the end of the first year to cover Year 1, within 90 calendar days after the end of the third year to cover Year 2 and Year 3, and within 90 calendar days of the end of the period of performance to cover Year 4 and Year 5 (if applicable) (the Project Closeout period is included in the 90 days).

c. EDA’s Public Works and Economic Adjustment Assistance programs generally have specific audit guidelines that will be incorporated into the Award and may be found in the annual Compliance Supplement, which is Appendix XI to 2 CFR part 200 and is available on OMB’s website (https://www.whitehouse.gov/omb/circulars_default). When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in 2 CFR § 200.507
(“Program-specific audits”). The Recipient may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Grants Officer.

d. Recipients are responsible for compliance with the above audit requirements and for informing the Grants Officer of the status of their audit, including when the relevant audit has been completed and submitted in accordance with the requirements of this section. In accordance with 2 CFR § 200.331(d)(3) (“Requirements for pass-through entities”), pass-through entities are responsible for issuing a management decision for any audit findings pertaining to the Federal Award provided to a subrecipient.

2. Requirement to Submit a Copy of the Audit to EDA.

If the Recipient’s currently valid audit required under subpart F of 2 CFR part 200 (“Audit Requirements”) contains material findings, the Recipient must submit a copy of the audit to the Project Officer, who will review it with the Grants Officer. See also section C.19.a.iv “Project Closeout Procedures” of these Construction ST&Cs.

3. Audit Resolution Process.

a. An audit of the Award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due to EDA. For this reason, the Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.

b. In accordance with the Federal Register notice dated January 27, 1989 (54 Fed. Reg. 4053), a Recipient has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt after an audit:

i. The Recipient has 30 business days from the date of the transmittal of the “Draft Audit Report” to submit written comments and documentary evidence.

ii. The Recipient has 30 business days from the date of the transmittal of the “Final Audit Report” to submit written comments and documentary evidence. There will be no extension of this deadline.

iii. EDA shall review the documentary evidence submitted by the Recipient and shall notify the Recipient of the results in an “Audit Resolution Determination Letter.” The Recipient has 30 business days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the Recipient to submit written comments and documentary evidence that dispute the validity of the Audit Resolution Determination Letter.

iv. An appeal of the Audit Resolution Determination Letter does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on such debt. If the Audit Resolution Determination Letter is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.

v. The EDA or DOC, as applicable, shall review the Recipient’s appeal. EDA shall notify the Recipient of the results in an Appeal Determination Letter. After the opportunity to
appeal has expired or after the appeal determination has been rendered, EDA or DOC will not accept any further documentary evidence from the Recipient. No other EDA or DOC administrative appeals are available.

G. DEBTS.

1. Payment of Debts Owed the Federal Government.
   a. The Recipient must promptly pay any debts determined by the Federal Government to be owed by the Recipient. Any funds paid to the Recipient in excess of the amount to which the Recipient is finally determined to be entitled under the terms of the Award constitute a debt to the Federal Government. In accordance with 2 CFR § 200.345 (“Collection of amounts due”), if not paid within 90 calendar days after demand, DOC may reduce a debt owed to the Federal Government by:
      i. Making an administrative offset against other request for reimbursement;
      ii. Withholding advance payments otherwise due to the Recipient; or
      iii. Taking any other action permitted by Federal statute.
   b. DOC debt collection procedures are set out in 15 CFR part 19. In accordance with 2 CFR § 200.345 (“Collection of amounts due”), failure to pay a debt owed to the Federal Government shall result in the assessment of interest, penalties and administrative costs under 31 U.S.C. § 3717 and 31 CFR § 901.9. DOC entities will transfer any DOC debt that is more than 180 calendar days delinquent to the U.S. Department of the Treasury’s Financial Management Service for debt collection services, a process known as “cross-servicing,” pursuant to 31 U.S.C. § 3711(g), 31 CFR § 285.12, and 15 CFR § 19.9, and may take further action as specified in section A.6 “Noncompliance with Award Provisions” of these Construction ST&Cs. Funds for payment of a debt must not come from other Federally sponsored programs, and DOC may conduct on-site visits, audits and other reviews to verify that other Federal funds have not been used to pay a debt.

2. Late Payment Charges.
   a. Interest shall be charged on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act, as amended (31 U.S.C. § 3701 et seq.). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury’s Current Value of Funds Rate (“CVFR”). The CVFR is available online at http://www.fms.treas.gov/cvfr/index.html and also published by the Department of the Treasury in the Federal Register (http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR) and in the Treasury Financial Manual Bulletin. The assessed rate shall remain fixed for the duration of the indebtedness.
   b. Penalties shall accrue at a rate of not more than six percent per year or such other higher rate as authorized by law.
   c. Administrative charges (i.e., the costs of processing and handling a delinquent debt) shall be determined by the DOC entity collecting the debt, as directed by the Office of the Chief Financial Officer and Assistant Secretary for Administration.
3. Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance
Guarantees.

Pursuant to 31 U.S.C. § 3720B and 31 CFR § 901.6, unless waived, DOC is not permitted to
extend financial assistance in the form of a loan, loan guaranty, or loan insurance to any person
delinquent on a non-tax debt owed to a Federal agency. This prohibition does not apply to
disaster loans.

4. Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs.

Pursuant to 28 U.S.C. § 3201(e), unless waived by DOC, a debtor who has a judgment lien
against the debtor’s property for a debt to the United States shall not be eligible to receive any
grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the United
States or to receive funds directly from the Federal Government in any program, except funds to
which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise
satisfied.

H. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT).

The Recipient shall comply with the provisions of 2 CFR part 1326 (“Nonprocurement Debarment
and Suspension”) (published in the Federal Register on December 21, 2006, 71 Fed. Reg. 76573),
which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from
participating in Federal nonprocurement transactions through either primary or lower-tier covered
transactions, and which set forth the responsibilities of Recipients of Federal financial assistance
regarding transactions with other persons, including subrecipients and contractors. In addition, as
provided in section K.4.b “Applicability of Provisions to Subawards, Contracts, and Subcontracts”
of these Construction ST&Cs, in accordance with subpart C of 2 CFR part 1326, the Recipient must
include a term or condition in lower tier transactions (subawards, contracts, and subcontracts)
requiring lower tier participants to comply with subpart C (entitled “Responsibilities of Participants
Regarding Transactions Doing Business With Other Persons”) of the OMB guidance in
2 CFR part 180 “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension
(Nonprocurement)”.

I. DRUG-FREE WORKPLACE.

The Recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988
(41 U.S.C. § 8102), and DOC’s implementing regulations found at 15 CFR part 29
(“Governmentwide Requirements for Drug-Free Workplace (Financial Assistance”) which require
that the Recipient take steps to provide a drug-free workplace.

J. LOBBYING RESTRICTIONS.

(“Lobbying”), which incorporates the provisions of 31 U.S.C. § 1352; the “New Restrictions on
Lobbying” published at 55 Fed. Reg. 6736 (February 26, 1990); and OMB guidance and notices
on lobbying and restrictions. In addition, the Recipient must comply with the DOC’s regulations
published at 15 CFR part 28, which implement the “New Restrictions on Lobbying.” These
provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of
the Federal government in connection with an award, and require disclosure of the use of
non-Federal funds for lobbying. Lobbying includes attempting to improperly influence, meaning any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter, either directly or indirectly. Costs incurred to improperly influence are unallowable. See 2 CFR § 200.450(b) and (c).

2. Disclosure of Lobbying Activities. Any Recipient that receives more than $100,000 in Federal funding shall submit a completed Form SF-LLL, “Disclosure of Lobbying Activities,” regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Recipient must submit any required Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Project Officer.

3. Special Provisions Relating to Indian Tribes. As set out in 31 U.S.C. § 1352, special provisions are applicable to Indian tribes, tribal organizations, and other Indian organizations eligible to receive Federal contracts, grants, loans, or cooperative agreements. In accordance with DOC policy, EDA recognizes Tribal Employment Rights Ordinances (“TEROs”), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Federal awards granted to American Indian and Alaska Native tribal governments generally may provide for preference in contracting, hiring, firing, and the payment of a TERO fee. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is “necessary and reasonable for the performance of the Federal award,” as provided under 2 CFR § 200.403 (“Factors affecting allowability of costs”).

K. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS.

   a. General conflicts-of-interest requirements. The Recipient must comply with EDA’s regulation at 13 CFR § 302.17 (“Conflicts of interest”), which articulates EDA’s requirements to prevent conflicts of interest, which generally exist when an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party’s personal or financial interests or there is an appearance that an Interested Party’s objectivity in performing his or her responsibilities under the Project is impaired. In addition, in accordance with 2 CFR § 200.112 (“Conflict of interest”), the Recipient must disclose to EDA in writing any potential conflict of interest. In addition, pursuant to the certification in Form SF-424D, paragraph 7, the Recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflicts of interest or personal gain in the administration of this Award.
   b. Procurement-related conflicts of interest. In addition, in accordance with 2 CFR § 200.318 (“General procurement standards”), the Recipient must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts.
2. Applicability of Award Provisions to Subrecipients.

a. The Recipient or pass-through entity shall require all subrecipients, including lower tier subrecipients, under the Award to comply with the provisions of this Award, including applicable provisions of the Uniform Guidance (2 CFR part 200), and all associated terms and conditions. See 2 CFR §§ 200.330 ("Subrecipient and contractor determinations") through 200.332 ("Fixed amount subawards") and 2 CFR § 200.101(b)(1) ("Applicability"), which describes the applicability of 2 CFR part 200 to various types of Federal awards.

b. In accordance with 2 CFR § 200.331 ("Requirements for pass-through entities"), all pass-through entities must:

i. **Subaward Identification.** Clearly identify every subaward to the subrecipient at the time of the subaward, including subsequent subaward modification. In accordance with 2 CFR § 200.331(a), required information includes:

   (1) All Award information data elements set out at 2 CFR § 200.331(a)(1);

   (2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal Award is used in accordance with Federal statutes, regulations and the Terms and Conditions of the Award;

   (3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency, including identification of required financial and performance reports;

   (4) Indirect cost rate information in accordance with 2 CFR § 200.331(a)(4);

   (5) Access requirements for the subrecipient’s records and financial statements in accordance with 2 CFR § 200.331(a)(5); and

   (6) Appropriate terms and conditions concerning closeout of the subaward.

ii. **Risk-Based Subrecipient Evaluation.** Evaluate each subrecipient’s risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring in accordance with 2 CFR § 200.331(b).

iii. **Subaward Conditions.** Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in 2 CFR § 200.207 ("Specific conditions").

iv. **Subrecipient Monitoring.** In accordance with 2 CFR § 200.331(d), monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal requirements, and that the subaward performance goals are achieved. Subrecipient monitoring must include:

   (1) Reviewing financial and programmatic reports required by the pass-through entity;

   (2) Following up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means; and
(3) Issuing a management decision for audit findings pertaining to the Award provided to the subrecipient from the pass-through entity as required by 2 CFR § 200.521 ("Management decision").

v. **Utilizing Risk-Based Monitoring Tools.** In accordance with 2 CFR § 200.331(e), depending on the Recipient’s evaluation of each subrecipient’s risk, utilize appropriate monitoring tools, including training and technical assistance, performing on-site reviews, and arranging agreed-upon-procedures engagements as described in 2 CFR § 200.425 ("Audit services").

vi. **Subrecipient Audits.** Verify that every subrecipient is audited as required by subpart F of 2 CFR part 200 ("Audit Requirements") when it is expected that the subrecipient’s Federal awards expended during the fiscal year equaled or exceeded the threshold set forth in 2 CFR § 200.501 ("Audit requirements").

vii. **Necessary Adjustments to the Pass-Through Entity’s Records.** Consider whether the results of the subrecipient’s audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity’s own records.

viii. **Enforcement Action.** Consider taking enforcement action against noncompliant subrecipients as described in 2 CFR § 200.338 ("Remedies for noncompliance") and in applicable program regulations.

*See also* 2 CFR § 200.331 for the full text of requirements for pass-through entities.

3. **Competition and Codes of Conduct for Subawards.**

a. The Recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition.

b. The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he or she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the Recipient shall neither solicit nor accept anything of monetary value from subrecipients. However, the Recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Recipient.

c. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

a. The Recipient shall include the following notice in each request for applications or bids for a subaward, contract, or subcontract, as applicable:

   Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under $25,000 not requiring the consent of a DOC official) are subject to subpart C of 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).” In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than $100,000 of Federal funds at any tier are subject to 15 CFR part 28, “New Restrictions on Lobbying.” Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, Applications for a lower tier covered transaction must include a Form CD-512, “Certification Regarding Lobbying–Lower Tier Covered Transactions,” completed without modification.

b. The Recipient shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts) requiring lower tier participants to comply with subpart C of 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).”

c. Required subaward and contractual provisions:

   i. The Recipient shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding $100,000 in Federal funds that the subaward, contract, or subcontract is subject to 31 U.S.C. § 1352, as implemented at 15 CFR part 28 (“New Restrictions on Lobbying”). The Recipient shall further require the subrecipient, contractor, or subcontractor to submit a completed “Disclosure of Lobbying Activities” (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the Recipient. The Recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Project Officer within 30 days following the end of the calendar quarter.

   ii. In addition to other provisions required by the Federal agency or Recipient, in accordance with 2 CFR § 200.326 (“Contract provisions”), all contracts made by the Recipient under this Award must contain the applicable provisions set out in Appendix II to 2 CFR part 200 (“Contract Provisions for Non-Federal Entity Contracts Under Federal Awards”), which address various contractual requirements including remedies, termination for cause and convenience, Equal Employment Opportunity, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, rights to inventions, environmental quality, energy efficiency, debarment and suspension, the Byrd Anti-Lobbying Amendment, and procurement of recovered materials. See Appendix II to 2 CFR part 200 for a full explanation of these requirements.
5. **Pilot Program for Enhancement of Employee Whistleblower Protections.**


In accordance with 41 U.S.C. § 4712, an employee of a Recipient or contractor under a Federal award or subaward may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award or subaward or contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority related to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award or subaward or contract under a Federal award or subaward. These persons or bodies include:

a. A Member of Congress or a representative of a committee of Congress.
b. An Inspector General.
d. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
e. An authorized official of the Department of Justice or other law enforcement agency.
f. A court or grand jury.
g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Recipients and contractors under Federal awards and subawards shall inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

6. **Small Businesses, Minority Business Enterprises, and Women’s Business Enterprises.**

In accordance with 2 CFR § 200.321 ("Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms"), the Recipient must take all necessary affirmative steps to ensure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. DOC encourages Recipients to utilize small businesses, minority business enterprises, and women’s business enterprises in contracts under financial assistance awards. The Minority Business Development Agency ("MBDA") within DOC will assist Recipients in matching qualified minority business enterprises with contract opportunities. For further information, the Recipient may visit MBDA’s website at [http://www.mbda.gov](http://www.mbda.gov) or contact MBDA via telephone or mail:

U.S. Department of Commerce  
Minority Business Development Agency  
Herbert C. Hoover Building  
14th Street and Constitution Avenue, N.W.
7. **Subaward to or Contract with a Federal Agency.**
   a. The Recipient, contractor and/or subcontractor shall not subgrant or subcontract any part of the approved Project to any agency or employee of DOC or any other Federal department, agency, or instrumentality without the prior written approval of the Grants Officer.
   b. The Recipient must submit requests for approval of such action to the Project Officer, who shall review and make a recommendation to the Grants Officer. The Grants Officer must forward all requests to the Federal Assistance Law Division in the Office of the Department of Commerce Assistant General Counsel for Administration and Transactions for review prior to making the final determination. The Grants Officer will notify the Recipient in writing of the final determination.

8. **EDA Contracting Provisions for Construction Projects.**

   The Recipient shall use the “EDA Contracting Provisions for Construction Projects” as guidance in developing all construction contracts. The “EDA Contracting Provisions for Construction Projects” lists applicable EDA and other Federal requirements for construction contracts.

L. **PROPERTY.**

1. **Standards.**

   With respect to any property acquired or improved in whole or in part with EDA investment assistance under this Award, the Recipient shall comply with the Property Standards set forth at 2 CFR §§ 200.310 (“insurance coverage”) through 200.316 (“Property trust relationship”), and EDA’s regulations at 13 CFR part 314. Property acquired or improved in whole or in part by the Recipient under this Award may consist of real property; personal property, including equipment and supplies; and intangible property, such as money, notes, and security interests. Any property reports required under 2 CFR §§ 200.310 through 200.316, such as periodic inventories and requests for disposition instructions, must be submitted to the Grants Officer through the Project Officer on Form SF-428 and/or SF-429, as applicable. **See also** section C.2 “Reporting on Real Property” of these Construction ST&Cs.

2. **Title.**

   a. Title to equipment, supplies, and intangible property acquired in whole or in part under this Award generally vests upon acquisition in the Recipient. The use, management and disposition of equipment, supplies, and intangible property acquired in whole or in part under this Award shall be in accordance with 2 CFR §§ 200.313 (“Equipment”), 200.314 (“Supplies”), and 200.315 (“Intangible property”), as applicable, and EDA regulations at 13 CFR part 314. **See also** section O.4 “Intellectual Property Rights” of these Construction ST&Cs.

   b. Title to real property acquired in whole or in part under this Award generally vests upon acquisition in the Recipient, subject to the condition that the Recipient uses the real property
for the authorized purpose of the Project. See 2 CFR § 200.311 ("Real property") and EDA regulations at 13 CFR part 314.

3. EDA’s Interest in Award Property.

a. General - Evidence of Title. As stated in section A.4 “Grant Recipient as Trustee” of these Construction ST&Cs, real property, equipment, and intangible property acquired or improved under this Award must be held in trust by the Recipient as trustee for the beneficiaries of the Project for which the property was acquired or improved. This trust relationship exists throughout the duration of the property’s estimated useful life, as determined by the Grants Officer in consultation with the Project Officer, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest).

Before advertising for construction bids or at such other time as EDA requires, the Recipient must furnish evidence, satisfactory in form and substance to the Government, that title to real property required for the Project (other than property of the United States and as provided in 13 CFR § 314.7(c) ("Title")) is vested in the Recipient and that such 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 the Government. All liens, mortgages, other encumbrances, reservations, reversionary interests, or other restrictions on title or the Recipient’s interest in the property must be disclosed to EDA. With limited exceptions set forth at 13 CFR § 314.6(b) ("Encumbrances") or as otherwise authorized by EDA, Recipient-owned property acquired or improved in whole or in part with EDA investment assistance must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered. See 13 CFR § 314.6.

b. Recording EDA’s Interest in Real Property.

i. For all Projects involving the acquisition, construction, or improvement of a building, as determined by EDA, the Recipient shall execute and furnish to the Government, prior to initial Award disbursement, a lien, covenant, or other statement, satisfactory to EDA in form and substance, of EDA’s interest in the property acquired or improved in whole or in part with the funds made available under this Award. EDA may require such statement after initial Award disbursement in the event that grant funds are being used to acquire such property. The statement must specify the estimated useful life of the Project and shall include but not be limited to the disposition, encumbrance, and the Federal Share compensation requirements. See 13 CFR §§ 314.1 ("Definitions") and 314.8(a) ("Recorded statement for real property"). See also 2 CFR § 200.316 ("Property trust relationship").

ii. This lien, covenant, or other statement of the Government’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 applicable law. EDA may require an opinion of counsel for the Recipient to substantiate that the document was validly executed and properly recorded. See 13 CFR § 314.8(b).

iii. Facilities in which the EDA investment is only a small part of a larger project, as determined by EDA, may be exempted from the requirements listed in paragraphs L.3.b.i and ii above. See 13 CFR § 314.8(c).
iv. In extraordinary circumstances and at EDA’s sole discretion, EDA may choose to accept another instrument to protect EDA’s interest in the Project property, such as an escrow agreement or letter of credit, provided that EDA determines such instrument is adequate and a recorded statement in accord with section L.3.b.i above is not reasonably available. The terms and provisions of the relevant instrument shall be satisfactory to EDA in EDA’s sole judgment. The costs and fees for escrow services or letters of credit shall be paid by the Recipient. See 13 CFR § 314.8(d).

c. Recording EDA’s Interest in Personal Property. For all Projects involving 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, covenant, or other statement of EDA’s reversionary 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 (usually accomplished by filing a Uniform Commercial Code Financing Statement (Form UCC-1), as provided by State law), with continuances re-filed as appropriate. EDA may require an opinion of counsel for the Recipient to substantiate that the Form UCC-1 or other filing was validly executed and properly recorded. See 13 CFR § 314.9 (“Recorded statement for personal property”).

d. The Recipient acknowledges that the Government retains an undivided equitable reversionary interest in property acquired or improved in whole or in part with grant funds made available through this Award throughout the estimated useful life (as determined by EDA) of the Project, except in applicable instances set forth at 13 CFR § 314.7(c) (“Title”). See 13 CFR § 314.2(a) (“Federal interest”).

e. The Recipient agrees that if any interest in property acquired or improved in whole or in part with EDA investment assistance is disposed of, encumbered or alienated in any manner, or no longer used for the authorized purposes of the Award during the Project’s estimated useful life without EDA’s written approval, the Government will be entitled to recover the Federal Share, as defined at 13 CFR § 314.5 (“Federal share”). If, during the Project’s estimated useful life, the property is no longer needed for the purposes of the Award, as determined by EDA, EDA may permit its use for other acceptable purposes consistent with those authorized by PWEDA and 13 CFR Chapter III. See 13 CFR § 314.3(b) (“Authorized use of property”).

f. For purposes of any lien or security interest, the amount of the Federal Share shall be the portion of the current fair market value of any property (after deducting any actual and reasonable selling and repair expenses incurred to put the property into marketable condition) attributable to EDA’s participation in the Project. See 13 CFR § 314.5 (“Federal share”).

g. The alienation of Award property includes sale or other conveyance of the Recipient’s interest, leasing or mortgaging the property, or granting an option for any of the foregoing.

h. In accordance with 2 CFR § 200.329 (“Reporting on real property”), the Federal awarding agency or pass through entity must require a non-Federal entity to submit reports (using Form SF-429 “Real Property Status Report” or any successor form) at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal Interest in the real property extends 15 years or longer. In those instances where the Federal Interest attached is for a period of 15 years or more, the Federal awarding agency or
pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or annual reporting for the first three years and thereafter every five years). The Federal awarding agency or pass-through entity may also require a non-Federal entity to periodically submit reports (using Form SF-428 “Tangible Personal Property Report” or any successor form) concerning tangible personal property in which the Federal Government retains an interest. In addition, the Federal awarding agency or pass-through entity may require a non-Federal entity to submit Form SF-429 and/or Form SF-428 in connection with a non-Federal entity’s request to acquire, encumber, dispose of, or take any other action pertaining to real property or tangible personal property acquired or improved, in whole or in part, under this Award or pertaining to Federally owned property under this Award. See also section C.2 “Reporting on Real Property” of these Construction ST&Cs.

4. Insurance and Bonding.

a. **Insurance.** The Recipient shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided for property owned by the Recipient. Federally owned property need not be otherwise insured unless required by the Terms and Conditions of the Award. See 2 CFR § 200.310 (“Insurance coverage”).

b. **Bonding.** If the Award exceeds the simplified acquisition threshold as defined at 2 CFR § 200.88, EDA may accept the Recipient’s or subrecipient’s bonding policy and requirements if EDA or the pass-through entity determines that the Federal Interest is adequately protected. If not, the following minimum requirements shall apply:

i. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

ii. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.

iii. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to ensure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. See 2 CFR § 200.325 (“Bonding requirements”).

5. Leasing Restrictions.

Leasing or renting of facilities or property is prohibited unless specifically authorized by EDA. The Recipient agrees that any leasing or renting of any facilities or property involved in this Project will be subject to the following:

a. That said lease arrangement is consistent with the authorized general and special purpose of the Award;

b. That said lease arrangement is for adequate consideration; and
c. That said lease arrangement is consistent with applicable EDA requirements concerning but not limited to nondiscrimination and environmental compliance.


The Recipient will use funds solely for the authorized purpose of the Project. Pursuant to Executive Order 13406, “Protecting the Property Rights of the American People,” the Recipient agrees:

a. Not to exercise any power of eminent domain available to the Recipient (including the commencement of eminent domain proceedings) for use in connection with the Project for the purpose of advancing the economic interests of private parties; and

b. Not to accept title to land, easements, or other interests in land acquired by the exercise of any power of eminent domain for use in connection with the Project for such purposes.

The Recipient agrees that any use of the power of eminent domain to acquire land, easements, or interests in land, whether by the Recipient or any other entity that has the power of eminent domain, in connection with the Project without the prior written consent of EDA is an unauthorized use of the Project. If the Recipient puts the Project to an unauthorized use, the Recipient shall compensate EDA for its fair share in accordance with 13 CFR §§ 314.4 (“Unauthorized use of property”) and 314.5 (“Federal share”), as the same may be amended from time to time.

7. Disposal of Real Property.

a. During the estimated useful life of the Project, if EDA and the Recipient determine that property acquired or improved in whole or in part with EDA investment assistance is no longer needed for the original purposes of this Award, EDA may, in its sole discretion, approve use of the property in other Federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and 13 CFR Chapter III. See 13 CFR § 314.3(b) (“Authorized use of property”).

b. When property is not disposed of as provided in section L.7.a above, the Government shall determine final disposition and must be compensated by the Recipient for the Federal Share of the value of the property, plus costs and interest, as provided in 13 CFR § 314.4 (“Unauthorized use of property”).

M. FEDERAL ENVIRONMENTAL REQUIREMENTS.

Environmental impacts must be considered by Federal decision-makers in their decisions whether or not to approve: (i) a proposal for Federal assistance; (ii) the proposal with mitigation; or (iii) a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts of the projects funded with Federal assistance on the environment. Each Recipient must comply with all environmental standards, to include those prescribed under the following statutes and executive orders, and shall identify to the awarding agency any impact a proposed project may have on the environment. In some cases, Award funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit additional environmental compliance information.
sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.


The National Environmental Policy Act ("NEPA") and the Council on Environmental Quality ("CEQ") implementing regulations (40 CFR parts 1500–1508) require that an environmental analysis be completed for all major Federal actions significantly affecting the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency’s decision to fund non-Federal projects under grants and cooperative agreements when the Award activities remain subject to Federal authority and control. Recipients are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency in complying with NEPA. Recipients may also be requested to assist EDA in drafting an environmental assessment if EDA determines an assessment is required. Until the appropriate NEPA documentation is complete, and if any additional information is required during the period of performance to assess Project environmental impacts, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit the appropriate NEPA documentation sufficient to enable EDA to make an assessment on any environmental impacts of a Project.

2. **National Historic Preservation Act (54 U.S.C. § 300101 et seq.).**

Section 106 of the National Historic Preservation Act ("NHPA") (54 U.S.C. § 300101 et seq. (formerly codified at 16 U.S.C. § 470f)) and the Advisory Council on Historic Preservation implementing regulations (36 CFR part 800) require that Federal agencies take into account the effects of their undertakings on historic properties. Recipients are required to identify to the awarding agency any effects the Award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Recipients may also be requested to assist EDA in consulting with State or Tribal Historic Preservation Officers or other applicable interested parties necessary to identify, assess and resolve adverse effects on historic properties. Until the appropriate NHPA consultations and documentation are complete and if any additional information is required during the period of performance in order to assess Project impacts on historic properties, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit any information sufficient to enable EDA to make the requisite assessment under the NHPA.


Federally supported public works facilities and activities that affect the environment shall be implemented in compliance with policies established under existing law.

4. **Clean Air Act (42 U.S.C. § 7401 et seq.), Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) (Clean Water Act), and Executive Order 11738 (“Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans”).**

The Recipient must comply with the provisions of the Clean Air Act (42 U.S.C. § 7401 et seq.), Clean Water Act (33 U.S.C. § 1251 et seq.), and Executive Order 11738 (38 Fed. Reg. 25161, 1973), and shall not use a facility on the Environmental Protection Agency’s ("EPA’s") List of
Violating Facilities (this list is incorporated into the Excluded Parties List System located at https://www.sam.gov/portal/public/SAM/) in undertaking work that is nonexempt under 2 CFR § 1532, and shall notify the Project Officer in writing if it intends to use a facility that is on the EPA’s List of Violating Facilities or knows that the facility has been recommended to be placed on the list.

   This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.

   Recipients must identify proposed actions in Federally defined floodplains and wetlands to enable the agency to make a determination whether there is an alternative to minimize any potential harm.

7. The Flood Disaster Protection Act (42 U.S.C. § 4002 et seq.), and regulations and guidelines issued thereunder by the U.S. Federal Emergency Management Administration (“FEMA”) or by EDA.
   Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas.

8. The Coastal Zone Management Act (16 U.S.C. § 1451 et seq.).
   Funded projects must be consistent with a coastal State’s approved management plan for the coastal zone.

   Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

    This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

    This Act requires the evaluation of impacts to fish and wildlife from Federally assisted proposed water resource development projects.

    The Recipient must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions with Federal financial assistance and to conduct the required reviews under the Endangered Species Act, as applicable.

These requirements address responsibilities related to hazardous substance releases, threatened releases, and environmental cleanup. They also impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to State and local emergency responders.


This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that Recipients give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

15. Executive Order 12898 ("Environmental Justice in Minority Populations and Low-Income Populations").

Federal agencies are required to identify and address any disproportionately high adverse human health or environmental effects of Federal programs, policies, and activities on low-income and minority populations.

16. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4821 et seq.).

Use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government or with Federal assistance is prohibited.


Projects are subject to review under this Act if they may irreversibly directly or indirectly convert farmland, including forest land, pastureland, cropland, or other land, to nonagricultural use.


Federally supported facilities and activities shall comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements.


This Act provides a process for returning certain Native American cultural items to lineal descendants, culturally affiliated Indian tribes, and Native Hawaiian organizations.

N. NOTICE AND EVIDENCE OF COMPLIANCE WITH ALL APPLICABLE ENVIRONMENTAL REQUIREMENTS.

The Recipient agrees to promptly notify the Grants Officer in writing of any environmental requirement or restriction, regulatory or otherwise, with which it must comply. Before Project Closeout and final disbursement of Award funds, the Recipient further agrees to provide evidence satisfactory to the Grants Officer that any required environmental remediation has been completed: (1) in compliance with all applicable Federal, State and local regulations; and (2) as set forth in the
applicable lease, finding of suitability to lease ("FOSL"), lease in furtherance of conveyance, quitclaim deed, or other conveyance instrument and any amendments, supplements, or succeeding documents. Compliance with said laws or restrictions shall be included in any contract documents for Project construction. The Recipient must certify compliance before final disbursement of grant funds.

O. MISCELLANEOUS REQUIREMENTS.

1. Criminal and Prohibited Activities.
   a. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 et seq.) provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).
   b. The False Claims Amendment Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively) provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.
   c. The Civil False Claims Act (31 U.S.C. §§ 3729–3733) provides that suits can be brought by the Government, or a person on behalf of the Government, for false claims under Federal assistance programs.
   d. The Copeland "Anti-Kickback" Act (18 U.S.C. § 874) prohibits a person or organization engaged in a Federally supported Project from enticing an employee working on the Project from giving up a part of his or her compensation under an employment contract. The Copeland "Anti-Kickback" Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

2. Foreign Travel.
   a. The Recipient shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 CFR §§ 301-10.131 through 301-10.143.
   b. The Fly America Act requires Federal travelers and others performing U.S. Government financed air travel to use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable or when use of U.S. flag air carrier service will not accomplish the agency's mission.
   c. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral and multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow Federally funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple Open Skies Agreements currently
in effect. For more information about the current bilateral and multilateral agreements, visit the General Services Administration ("GSA") website at http://www.gsa.gov/portal/content/103191. Information on the Open Skies Agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State's website at http://www.state.gov/e/eeb/tral/.

d. If a foreign air carrier is anticipated to be used for any portion of travel under this Award, the Recipient must receive prior approval from the Grants Officer. When requesting such approval, the Recipient must provide a justification in accordance with the guidance provided by 41 CFR § 301-10.142, which requires the Recipient to provide the Grants Officer with the following: (i) his or her name; (ii) dates of travel; (iii) the origin and destination of travel; (iv) a detailed itinerary of travel; (v) the name of the air carrier and flight number for each leg of the trip; and (vi) a statement explaining why the Recipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the Recipient must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer shall make the final determination and notify the Recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in disallowance of any transportation costs for which any Recipient improperly used a foreign air carrier.


Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this Award.


a. General. The rights to any work produced or purchased under this Award are determined by 2 CFR § 200.315 ("Intangible property"). The Recipient owns any work produced or purchased under a Federal award subject to the DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or use the work or authorize others to receive, reproduce, publish, or otherwise use the work for Government purposes. In accordance with 2 CFR § 200.315(d), the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award and authorize others to receive, reproduce, publish or otherwise use such data for Federal purposes.

b. Inventions. Unless otherwise provided by law, the rights to any invention made by a Recipient under this Award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified at 35 U.S.C. § 200 et seq., except as otherwise required by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail at 37 CFR part 401 and, in particular, in the standard patent rights clause at 37 CFR § 401.14, which is hereby incorporated by reference into this Award.

i. Ownership.

(1) Recipient. The Recipient has the right to elect to retain title to any invention it makes (conceived or first actually reduced to practice) or that is made by its employees. A Recipient that is a nonprofit organization, which includes a university or other institution of higher learning, may not assign to a third party its rights to such an
invention without the permission of DOC unless that assignment is to a patent management organization (e.g., a university’s Research Foundation). The Recipient’s ownership rights are subject to the Government’s nonexclusive, nontransferrable, irrevocable, paid-up license and other rights.

(2) **Department.** If the Recipient elects not to retain title, fails to disclose the invention to the agency within the required time limits, or does not file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty-free, nonexclusive, revocable license for the Recipient. DOC owns any invention made solely by its employees, but may license to the Recipient in accordance with the procedures in 37 CFR part 404.

(3) **Inventor/Employee.** If neither the Recipient nor DOC is interested in owning an invention by a Recipient employee, the Recipient, with the written concurrence of the DOC, may allow the inventor/employee to retain ownership of the invention subject to certain restrictions as described at 37 CFR § 401.9.

(4) **Joint Inventions.** Inventions made jointly by a Recipient and a DOC employee will be owned jointly by the Recipient and DOC. However, DOC may transfer or license its rights to the Recipient as authorized by 35 U.S.C. § 202(e) and 37 CFR § 401.10 if the Recipient is willing to patent and license the invention, usually in exchange for a share of “net” royalties based on the number of inventors (e.g., 50-50 if there is one Recipient inventor and one DOC employee inventor). The agreement will be prepared by DOC and may include other provisions, such as a royalty-free license to the Government and certain other entities. The provision at 35 U.S.C. § 202(e) also authorizes the Recipient to transfer its rights to the Government, which can agree to share royalties similarly as described above.

ii. **Responsibilities – iEdison.** The Recipient has responsibilities and duties set forth in the standard patent rights clause, which are described below. The Recipient is expected to comply with all requirements of the standard patent rights clause and 37 CFR part 401 and is required to submit its disclosures, elections, and requests for waivers from any requirement for substantial U.S. manufacture electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.i Edison.gov. The Recipient may obtain a waiver of this electronic submission requirement by providing DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.

c. **Patent Notification Procedures.** Pursuant to Executive Order 12889 (58 Fed. Reg. 69681, 1993), DOC is required to notify the owner of any valid patent covering technology whenever DOC or a Recipient, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the Recipient uses or has used patented technology under this Award without a license or permission from the owner, the Recipient must notify the Grants Officer. This notice does not constitute authorization or consent by the Government to any copyright or patent infringement occurring under the Award.

d. **Copyright.** A Recipient may copyright any work produced under this Award subject to DOC’s royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish or
otherwise use the work or authorize others to do so for Government purposes. Works jointly authored by DOC and Recipient employees may be copyrighted, but only the part of such works authored by the Recipient is protectable in the United States because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. On occasion and as permitted under 17 U.S.C. § 105, DOC may require the Recipient to transfer to DOC a copyright in a particular work for Government purposes or when DOC is undertaking the primary dissemination of the work.

5. Increasing Seat Belt Use in the United States.

Pursuant to Executive Order 13043, Recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally-owned vehicles.


a. All proposed research involving human subjects must be conducted in accordance with 15 CFR part 27 (“Protection of Human Subjects”). No research involving human subjects is permitted under this Award unless expressly authorized by special award condition or otherwise authorized in writing by the Grants Officer.

b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

c. DOC regulations at 15 CFR part 27 require that the Recipient maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this Project, the Recipient shall submit appropriate documentation to the Project Officer for approval. This documentation may include:

i. Documentation establishing approval of the Project by an institutional review board (“IRB”) approved for Federal-wide use under Department of Health and Human Services guidelines (see 15 CFR § 27.103);

ii. Documentation to support an exemption for the Project under 15 CFR § 27.101(b);

iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.

d. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research until the appropriate documentation is approved in writing by the Grants Officer. In accordance with 15 CFR § 27.118, if research involving human subjects is proposed after an award is made, the Recipient must contact the Grants Officer and provide required documentation. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the Project for protocol or instrument development related to human subjects research.
Federal agencies are generally barred from accepting funds from a Recipient to pay transportation, travel, or other expenses for any Federal employee. Use of Award funds (Federal or non-Federal) or the Recipient’s provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for Federal employees, from Recipients or applicants regardless of the source.

8. Minority Serving Institutions Initiative.

DOC’s goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the nation’s capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website at https://www2.ed.gov/about/offices/list/ocr/edlite-minorityinst.html.

The DOC adopts, and applies to financial assistance for research, the Federal Policy on Research Misconduct (“Federal Policy”) issued by the Executive Office of the President’s Office of Science and Technology Policy on December 6, 2000 (65 Fed. Reg. 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipient organizations that conduct extramural research funded by the DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipient organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Recipients must notify the Grants Officer of any allegation that meets the definition of research misconduct and detail the entity’s inquiry to determine whether there is sufficient evidence to proceed with an investigation, as well as the result of any investigation. DOC may take appropriate administrative or enforcement action at any time under the Award, up to and including Award termination and possible suspension or debarment, and referral to the DOC Office of the Inspector General (“OIG”), the U.S. Department of Justice, or other appropriate investigative body.

a. Publication of results or findings in appropriate professional journals and production of video or other media are encouraged as important methods of recording and reporting results of Federally funded projects, such as scientific research, and expanding access to Federally funded projects.

b. Recipients must submit a copy of any publication materials, including but not limited to print, recorded or Internet materials, to their EDA Project Officer.

c. When releasing information related to a funded Project, Recipients must include a statement that the Project or effort undertaken was or is sponsored by DOC.

d. Recipients are responsible for ensuring that every publication of material based on, developed under, or produced under this Award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer:

This [report/video] was prepared by [Recipient name] using Federal funds under award [number] from the Economic Development Administration, U.S. Department of Commerce.

The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the Economic Development Administration or the U.S. Department of Commerce.

11. Care and Use of Live Vertebrate Animals.

Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. No. 89-544), as amended (7 U.S.C. § 2131 et seq.) (“Animal acquisition, transport, care, handling, and use in projects”), and the implementing regulations at 9 CFR parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. § 1531 et seq.); the Marine Mammal Protection Act (16 U.S.C. § 1361 et seq.) (“Taking possession, transport, purchase, sale, export or import of wildlife and plants”); the Non-indigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. § 4701 et seq.) (“Ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release”); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC award unless authorized by the Grants Officer.


If performance under the Award requires Recipient personnel to have routine access to Federally controlled facilities and/or Federally controlled information systems (for purposes of this condition, “routine access” is defined as more than 180 business days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with the U.S. Citizenship and Immigration Services (“USCIS”) Verification Division, a component of the Department of Homeland Security (“DHS”), to ensure that the individual is in a lawful immigration status and that he or she is eligible for employment within the U.S. Any items or services delivered under this Award shall comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12, “Policy for a Common Identification Standard for Federal Employees and
Contractors,” Federal Information Processing Standards Publication (“FIPS PUB”) Number 201, and OMB Memorandum M-05-24. The Recipient shall ensure that its subrecipients and contractors (at all tiers) performing work under this Award comply with the requirements contained in this term. The Grants Officer may delay final payment under this Award if a subrecipient or contractor fails to comply with the requirements listed below. The Recipient shall insert the following term in all subawards and contracts when the subrecipient or contractor is required to have routine physical access to a Federally controlled facility or routine access to a Federally controlled information system:

The subrecipient or contractor shall comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally controlled facility or routine access to a Federally controlled information system.

The subrecipient or contractor shall account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee’s employment; (3) Upon subaward or contract completion or termination.

13. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.

a. This term applies to the extent that this Award involves access to export-controlled items.

b. In performing under this Award, the Recipient may gain access to export-controlled information or technology. The Recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including the deemed exports and reexports provisions of the Export Administration Regulations (“EAR”). The Recipient shall establish and maintain throughout performance of this Award effective export compliance procedures at non-DOC facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.

c. Definitions.

i. Export-controlled items. Items (commodities, software, or technology) that are subject to the EAR (15 CFR §§ 730–774), implemented by the DOC’s Bureau of Industry and Security. These are generally known as “dual-use” items—that is, items with a military and commercial application.

ii. Deemed export/reexport. The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is “deemed” to be an export to the home country of the foreign national. 15 CFR § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange
of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national’s home country. Licenses from DOC may be required for deemed exports or reexports.

d. The Recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this Award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, executive orders, or regulations, including the EAR.

e. As applicable, Recipient personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items.

f. Nothing in the Terms and Conditions of this Award is intended to change, supersede or waive the requirements of applicable Federal laws, executive orders, or regulations.

g. The Recipient shall include this subsection entitled “Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations,” including this subparagraph g, in all lower-tier transactions (subawards, contracts, and subcontracts) under this Award that may involve access to export-controlled information technology.


a. Provisions applicable to a Recipient that is a private entity.

   i. The Recipient, its employees, subrecipients under this Award, and subrecipients’ employees may not:

      (1) Engage in severe forms of trafficking in persons during the period of time that the Award is in effect;

      (2) Procure a commercial sex act during the period of time that the Award is in effect; or

      (3) Use forced labor in the performance of the Award or subawards under the Award.

   ii. EDA, as the Federal awarding agency, may unilaterally terminate this Award, without penalty, if the Recipient or a subrecipient that is a private entity:

      (1) Is determined to have violated a prohibition in paragraph a.i of this Award term; or

      (2) Has an employee who is determined by the Grants Officer to have violated a prohibition in paragraph a.i of this Award term through conduct that is either:

         (A) associated with performance under this Award; or (B) imputed to the Recipient or a subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided at 2 CFR part 180 ("OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)") as
implemented by DOC at 2 CFR part 1326 ("Nonprocurement Debarment and Suspension").

b. Provision applicable to a Recipient other than a private entity. EDA, as the Federal awarding agency, may unilaterally terminate this Award, without penalty, if a subrecipient that is a private entity:
   i. Is determined to have violated an applicable prohibition in paragraph a.i of this Award term; or
   ii. Has an employee who is determined by the Grants Officer to have violated an applicable prohibition in paragraph a.i of this Award term through conduct that is either:
       (1) Associated with performance under this Award; or
       (2) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided at 2 CFR part 180 ("OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)"), as implemented by DOC at 2 CFR part 1326 ("Nonprocurement Debarment and Suspension").

c. Provisions applicable to any Recipient.
   i. The Recipient must inform EDA immediately of any information it receives from any source alleging a violation of a prohibition in paragraph a.i of this Award term.
   ii. EDA’s right to terminate this Award unilaterally, as described in paragraph a.ii or b of this section:
       (1) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 ("TVPA"), as amended (22 U.S.C. § 7104(g)), and
       (2) Is in addition to all other remedies for noncompliance that are available to EDA under this Award.
   iii. The Recipient must include the requirements of paragraph a.i of this Award term in any subaward made to a private entity.

d. Definitions. For purposes of this Award term:
   i. "Employee" means either:
       (1) An individual employed by the Recipient or a subrecipient who is engaged in the performance of the Project under this Award; or
       (2) Another person engaged in the performance of the Project under this Award and not compensated by the Recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward Matching Share requirements.
   ii. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
   iii. "Private entity":

55
(1) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined at 2 CFR § 175.25;

(2) Includes: (A) a nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of “Indian tribe” at 2 CFR § 175.25(b); and (B) a for-profit organization.

iv. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given in section 103 of the TVPA, as amended (22 U.S.C. § 7102).


a. Searchable Website Requirements. The Federal Funding Accountability and Transparency Act of 2006 (“FFATA” or “Transparency Act”) requires that information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at www.USASpending.gov. To meet these requirements, Recipients and subrecipients must include the following data elements in their Application:

i. Name of entity receiving Award;

ii. Award amount;

iii. Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive Award title;

iv. Location of entity and primary location of performance (city, State, Congressional District, and country); and

v. Unique identifier of entity.

See also 2 CFR § 200.211 (“Public access to Federal award information”).

b. Subaward and Executive Compensation Data Reporting Requirements. A Recipient awarded a new Federal grant greater than or equal to $25,000 on or after October 1, 2010, other than those funded by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (“Recovery Act”), are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The Recipient is required to file a FFATA subaward report by the end of the month following the month in which the Recipient awards any subgrant greater than or equal to $25,000.


i. Reporting of first-tier subawards.

(1) Applicability. Unless exempt as provided in paragraph b.iv of this Award term, the Recipient must report each action that obligates $25,000 or more in Federal funds that does not include Recovery Act funds (as defined in section 1512(a)(2) of the
Recovery Act, Pub. L. No. 111-5) for a subaward to an entity (see definitions in paragraph b.v of this Award term).

(2) Where and when to report.

(a) The Recipient must report each obligating action described in paragraph b.i(1) of this Award term to http://www.fsrs.gov.

(b) For subaward information, the Recipient must report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2015, the obligation must be reported by no later than December 31, 2015.)

(3) What to report. The Recipient must report information about each obligating action that the submission instructions posted at http://www.fsrs.gov specify.

ii. Reporting total compensation of Recipient executives.

(1) Applicability and what to report. The Recipient must report total compensation for each of its five most highly compensated executives for the preceding completed fiscal year, if:

(a) The total Federal funding authorized to date under this Award is $25,000 or more;

(b) In the preceding fiscal year, the Recipient received:

(i) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and

(ii) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and

(c) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

(2) Where and when to report. The Recipient must report executive total compensation described in paragraph b.ii of this Award term:

(a) As part of its registration profile at http://www.ccr.gov.

(b) By the end of the month following the month in which this Award is made, and annually thereafter.

iii. Reporting total compensation of subrecipient executives.

(1) Applicability and what to report. Unless the subrecipient is exempt as provided in paragraph b.iv of this Award term, each first-tier subrecipient under this Award shall report the names and total compensation of each of the subrecipient’s five most highly compensated executives for the subrecipient’s preceding completed fiscal year, if:
(a) In the subrecipient’s preceding fiscal year, the subrecipient received:

(i) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and

(ii) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

(b) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

See also 2 CFR § 200.300(b) (“Statutory and national policy requirements”).

(2) Where and when to report. The subrecipient must report its executive total compensation described in paragraph b.iii of this Award term:

(a) To the Recipient.

(b) By the end of the month following the month during which the subaward is made. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), the required compensation information of the subrecipient must be reported by November 30 of that year.

iv. Exemptions. If, in the previous tax year, the Recipient had gross income, from all sources, under $300,000, it is exempt from the requirements to report:

(1) Subawards, and

(2) The total compensation of the five most highly compensated executives of any subrecipient.

v. Definitions. For purposes of this Award term:

(1) “Entity” means all of the following, as defined at 2 CFR part 25:

(a) A Governmental organization, which is a State, local government, or Indian tribe;

(b) A foreign public entity;

(c) A domestic or foreign nonprofit organization;

(d) A domestic or foreign for-profit organization; and

(e) A Federal agency, but only as a subrecipient under an award or subaward to a Recipient.

(2) “Executive” means officers, managing partners, or any other employees in management positions.

(3) “Subaward”:
(a) This term means a legal instrument to provide support for the performance of any portion of the substantive Project or program for which the Recipient received this Award and that the Recipient awards to an eligible subrecipient.

(b) The term does not include the Recipient's procurement of property and services needed to carry out the Project or program (for further explanation, see 2 CFR § 200.330).

(c) A subaward may be provided through any legal agreement, including an agreement that the Recipient or a subrecipient considers a contract.

(4) "Subrecipient" means an entity that:

(a) Receives a subaward from the Recipient under this Award; and

(b) Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

(5) "Total compensation" means the cash and noncash dollar value earned by the executive during the Recipient's or subrecipient's preceding fiscal year and includes the following (for more information, see 17 CFR § 229.402(c)(2)):

(a) Salary and bonus.

(b) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Share Based Payments.

(c) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.

(d) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

(e) Above-market earnings on deferred compensation which is not tax-qualified.

(f) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

c. **Central Contractor Registration ("CCR") and Universal Identifier Requirements.**


   i. Requirement for CCR. Unless exempted from this requirement under 2 CFR § 25.110, the Recipient must maintain the currency of its information in the
CCR until it submits the final financial report required under this Award or receives the final payment, whichever is later. This requires that the Recipient review and update the information at least annually after the initial registration, and more frequently if required by changes in its information or another Award term.

ii. Requirement for DUNS Numbers. If authorized to make subawards under this Award, the Recipient:

(1) Must notify potential subrecipients that no entity (see definition in paragraph b.v of this Award term) may receive a subaward from the Recipient unless the entity has provided its DUNS number to the Recipient.

(2) May not make a subaward to an entity unless the entity has provided its DUNS number to the Recipient.

iii. Definitions for purposes of this Award term:

(1) “Central Contractor Registration (“CCR”)” means the Federal repository into which an entity must provide information required for the conduct of business as a Recipient. Additional information about registration procedures may be found at the System for Award Management website (currently at https://www.sam.gov/portal/public/SAML).

(2) “Data Universal Numbering System (“DUNS”)” number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at http://fedgov.dnb.com/webform).

(3) “Entity,” as it is used in this Award term, means all of the following, as defined at 2 CFR part 25, subpart C:

(a) A Governmental organization, which is a State, local government, or Indian Tribe;

(b) A foreign public entity;

(c) A domestic or foreign nonprofit organization;

(d) A domestic or foreign for-profit organization; and

(e) A Federal agency, but only as a subrecipient under an award or subaward to a Recipient.

(4) “Subaward”:

(a) This term means a legal instrument to provide support for the performance of any portion of the substantive Project or program for which the Recipient received this Award and that the Recipient awards to an eligible subrecipient.

(b) The term does not include the Recipient’s procurement of property and services needed to carry out the Project or program (for further explanation, see 2 CFR § 200.330).

(c) A subaward may be provided through any legal agreement, including an agreement that the Recipient considers a contract.
(5) “Subrecipient” means an entity that:

(a) Receives a subaward from the Recipient under this Award; and

(b) Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

See also 2 CFR § 200.300(b) (“Statutory and national policy requirements”).


This term sets forth initial guidance that will be implemented for Federal financial assistance awards in the event of a lapse in appropriations, or a Government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

a. Unless there is an actual rescission of funds for specific grant obligations, Recipients under Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the Award during a funding hiatus. Recipients are advised that ongoing activities by Federal employees involved in grant administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.

b. All Award actions will be delayed during a Government shutdown; if it appears that a Recipient’s performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible Government shutdown, the Project Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise the Recipient that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, Recipients whose ability to withdraw funds is subject to prior agency approval, which in general are Recipients that have been designated high risk, Recipients under construction awards, and other Recipients limited to reimbursements or subject to agency review, will be able draw funds down from the relevant Automatic Standard Application for Payment (“ASAP”) account only if agency approval is given and coded into ASAP prior to any Government shutdown or closure. This limitation may not be lifted during a Government shutdown. Recipients should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Recipients whose authority to draw down award funds is restricted may decide to suspend work until the Government reopens.

c. The ASAP system should remain operational during a Government shutdown. Recipients that do not require any Grants Officer or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a Government shutdown and advanced funds held for more than 30 days will have to be returned with interest.
APPENDIX

The following reference materials and forms are available online:

1. 2 CFR part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 2 CFR part 1326, "Nonprocurement Debarment and Suspension"
3. 13 CFR Chapter III (EDA’s regulations)
4. 15 CFR part 4, "Disclosure of Government Information"
5. 15 CFR part 27, "Protection of Human Subjects"
6. 15 CFR part 28, "New Restrictions on Lobbying"
7. 15 CFR part 29, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)"
8. 48 CFR part 31, "Contract Cost Principles and Procedures"
10. EDA’s regulations: http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR; search for Title 13, Chapter III after selecting the relevant year
11. OMB Circulars: www.whitehouse.gov/omb/circulars/index.html

Governmentwide and DOC-Specific Forms:

1. Form CD-281, "Report of Government Property in Possession of Contractor"
2. Form CD-450, "Financial Assistance Award"
3. Form CD-451, "Amendment to Financial Assistance Award"
5. Form SF-428, "Tangible Personal Property"
6. Form SF-429, "Real Property Status Report"
7. Form SF-271, "Outlay Report and Request for Reimbursement for Construction Programs"
8. Form SF-272, "Federal Cash Transaction Report"
9. Form SF-LLL, "Disclosure of Lobbying Activities"

Commerce Department ("CD") forms:
http://ocio.os.doc.gov/ITPolicyandPrograms/Electronic_Forms/index.htm

Governmentwide Standard Forms ("SF"): https://www.whitehouse.gov/omb/grants_forms
U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

REVOLVING LOAN FUND
FINANCIAL ASSISTANCE AWARD
STANDARD TERMS AND CONDITIONS

May 1, 2013
4. Clean Air Act, (42 U.S.C. § 7401 et seq.), Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) (Clean Water Act) and Executive Order 11738 ("Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans").


7. The Coastal Zone Management Act, as amended (16 U.S.C. § 1451 et seq.).

8. The Coastal Barriers Resources Act (16 U.S.C. § 3501 et seq.).


13. Executive Order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations").

P. Miscellaneous Requirements.

1. Criminal and Prohibited Activities.

2. Foreign Travel.


5. Increasing Seat Belt Use in the United States.


8. Minority-Serving Institutions (MSIs) Initiative.


11. Care and Use of Live Vertebrate Animals.


13. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.


<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>16. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown</td>
<td>44</td>
</tr>
<tr>
<td>RLF RECIPIENTS' MANAGEMENT AND ADMINISTRATIVE REQUIREMENTS</td>
<td>45</td>
</tr>
<tr>
<td>A. Revolving Loan Fund (RLF) Plan Requirements</td>
<td>45</td>
</tr>
<tr>
<td>1. Format and Content</td>
<td>45</td>
</tr>
<tr>
<td>2. Evaluation of RLF Plans</td>
<td>45</td>
</tr>
<tr>
<td>3. RLF Plan Modifications</td>
<td>46</td>
</tr>
<tr>
<td>B. Modifications of Lending Areas and Consolidation of RLF Awards</td>
<td>46</td>
</tr>
<tr>
<td>C. Prudent Lending Practices</td>
<td>46</td>
</tr>
<tr>
<td>1. Accounting Principles</td>
<td>47</td>
</tr>
<tr>
<td>2. Pre-Disbursement and Loan and Accounting System Requirements</td>
<td>47</td>
</tr>
<tr>
<td>3. Interest Rates</td>
<td>48</td>
</tr>
<tr>
<td>4. Private Leveraging</td>
<td>48</td>
</tr>
<tr>
<td>D. Conflicts-of-Interest Rules</td>
<td>48</td>
</tr>
<tr>
<td>E. Effective Utilization of Revolving Loan Funds</td>
<td>50</td>
</tr>
<tr>
<td>1. Capital Utilization Standard</td>
<td>50</td>
</tr>
<tr>
<td>2. Sequestration of Excess Funds</td>
<td>50</td>
</tr>
<tr>
<td>3. Remittance of Interest on Sequestered Funds</td>
<td>51</td>
</tr>
<tr>
<td>4. Persistent Noncompliance</td>
<td>52</td>
</tr>
<tr>
<td>F. Financial Accountability in the Administration of an RLF</td>
<td>52</td>
</tr>
<tr>
<td>1. General Requirements for RLF Income</td>
<td>52</td>
</tr>
<tr>
<td>2. Compliance Guidance</td>
<td>52</td>
</tr>
<tr>
<td>3. Priority of Payments on Defaulted RLF Loans</td>
<td>53</td>
</tr>
<tr>
<td>4. Default Rates</td>
<td>53</td>
</tr>
<tr>
<td>G. Records and Retention</td>
<td>54</td>
</tr>
<tr>
<td>1. Closed Loan Files and Related Documents</td>
<td>54</td>
</tr>
<tr>
<td>2. Administrative Records</td>
<td>54</td>
</tr>
<tr>
<td>H. RLF Semi-Annual Report and Income and Expense Statement</td>
<td>55</td>
</tr>
<tr>
<td>1. Frequency of Reports</td>
<td>55</td>
</tr>
<tr>
<td>2. RLF Plan Certification</td>
<td>55</td>
</tr>
<tr>
<td>3. RLF Income and Expense Statement</td>
<td>55</td>
</tr>
<tr>
<td>4. Government Performance and Results Act Reporting</td>
<td>55</td>
</tr>
<tr>
<td>LENDING RESTRICTIONS AND BORROWER REQUIREMENTS</td>
<td>56</td>
</tr>
<tr>
<td>A. Uses of Capital</td>
<td>56</td>
</tr>
<tr>
<td>1. Restrictions on Use of RLF Capital</td>
<td>56</td>
</tr>
</tbody>
</table>
2. Credit Not Otherwise Available. ................................................................. 56

B. Pre-Loan Requirements for RLF Recipients and RLF Borrowers. ............... 57
   1. Environmental Impact. ........................................................................ 57
   2. Protection of RLF Assets. ..................................................................... 57
   3. Hold Harmless Provision. ..................................................................... 57
   4. Non-Discrimination Requirements .................................................... 57
   5. Wage Rate Requirements of the Davis-Bacon Act. ............................ 59

APPENDIX ............................................................................................................. 60
This financial assistance award (Award), executed by the Economic Development Administration (EDA) and the recipient (Recipient), and any properly executed amendment hereto together with the EDA-approved project budget and scope of work, these revolving loan fund (RLF) standard terms and conditions, special award conditions, and all applicable Federal statutory and regulatory requirements as incorporated by reference (e.g., all applicable statutes, regulations, Executive Orders, Office of Management and Budget (OMB) Circulars), constitute the complete requirements, hereinafter referred to as the “Terms and Conditions,” applicable to this EDA investment.

The Recipient and any sub-recipient must, in addition to the assurances made as part of the application for investment assistance, comply and require each of its borrowers, contractors and subcontractors employed in the completion of the project to comply with the applicable Terms and Conditions of this Award.

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in the Terms and Conditions specified in this award will be resolved according to the following order of precedence: public laws, regulations and applicable notices published in the Federal Register, Executive Orders, OMB Circulars, EDA’s RLF standard terms and conditions, and special award conditions. A special award condition may take precedence on a case-by-case basis over a standard term or condition when warranted by specific project circumstances. Generally, these RLF standard terms and conditions provide the basic requirements for RLF awards; however, the specific facts of the grant award may allow for variances.

Some of the terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes or regulations published in the Federal Register or the Code of Federal Regulations (C.F.R.), Executive Orders, OMB Circulars or the assurances (Forms SF-424B and SF-424D). To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, Executive Order or OMB Circular.
PART I

GENERAL REQUIREMENTS AND RESPONSIBILITIES

A. Purpose.
The Economic Development Administration’s (EDA) grants to capitalize or recapitalize revolving loan funds (RLFs) are most commonly used for business lending, but also may be established for public infrastructure lending or other authorized purposes involving lending. Generally, under EDA’s RLF program, an RLF is capitalized with a combination of EDA grant funds and non-Federal matching funds. The requirements set forth in these RLF Standard Terms and Conditions are applicable to RLFs that provide business lending to private borrowers. If the Recipient intends to use the RLF funds to make loans to public entities, EDA will include a special award condition in the Award to accommodate non-business lending activity.

B. Authority.
EDA was established under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 et seq.) (PWEDA). The regulations implementing PWEDA are published at 13 C.F.R. chapter III. The Department or EDA may issue changes from time to time to the regulations and other requirements and policies that apply to the Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering the Award. The implementation of any such regulatory, administrative or programmatic change in administering the Award must have prior EDA written approval. See also part I, sections B.3. and B.4. of these RLF Standard Terms and Conditions.

These RLF Standard Terms and Conditions apply to new RLFs and to the future actions of all RLFs funded prior to the effective date of this document.

1. Definitions.
 Whenever used in these RLF Standard Terms and Conditions, the following words and phrases shall have the following meanings:

   a. “Award” or “DOC Award” refers to the grant (awarded on Form CD-450 or other predecessor or successor form) of EDA funds to an eligible Recipient;
   b. “Closed Loan” is any loan for which all required documentation has been received, reviewed and executed by an RLF Recipient.
   c. “Department” or “DOC” refers to the U.S. Department of Commerce;
   d. “Government” or “Federal government” refers to EDA;
   e. “Grants Officer,” unless otherwise indicated by a special award condition in this Award, refers to the Regional Director in the appropriate Regional Office who is responsible for all administrative aspects of this Award and is authorized to award, amend, suspend, and terminate EDA investment assistance;
   f. “Project Officer” refers to the EDA staff in the appropriate Regional Office who is responsible for programmatic and technical aspects of this Award;
   g. “Project” refers to the activity for which an EDA grant is awarded;
   h. “Recipient” refers to a grantee awarded an RLF Award;
   i. “Regional Office” refers to an EDA regional office;
   j. “RLF” refers to a revolving loan fund; and
k. "RLF Standard Terms and Conditions" refers to this document, as may be amended from time to time, and which is made part of an Award.

Capitalized terms used but not otherwise defined in these RLF Standard Terms and Conditions have the meanings ascribed to them in EDA’s regulations at 13 C.F.R. §§ 300.3, 302.20, 307.8 and 314.1.

2. **Recipient as Trustee.**
The Recipient (or RLF operator) holds the grant funds in trust to serve the purpose of the Economic Adjustment Assistance Program (pursuant to 42 U.S.C. § 3149) for which this Award was made. The Recipient’s obligation to the Federal government continues as long as the Federal assets continue to exist. The Federal assets may include cash, receivables, Personal Property, and Real Property (each as defined in 13 C.F.R. § 314.1) and notes or other financial instruments developed through the use of the grant funds. If EDA determines that the Recipient fails to meet its obligation under this Award, the agency may assert its equitable reversionary interest, or the Federal Interest (defined in 13 C.F.R. § 314.2), in the RLF assets. However, EDA’s non-assertion of its Federal Interest does not constitute a waiver thereof. See part I, section 0.1. of these RLF Standard Terms and Conditions.

3. **Grantor Authority to Change Policies.**
EDA, as the Federal agency charged with implementing the Economic Adjustment Assistance Program under PWEDA (42 U.S.C. § 3149), is obligated to promulgate policies and procedures to ensure that the Recipient:

a. Complies with Federal requirements;
b. Safeguards the public’s interest in the grant assets; and
c. Promotes effective use of the funds in accomplishing the purpose(s) for which they were granted.

Pursuant to this obligation, EDA requires the Recipient to comply with any changes that may occur to EDA’s regulations, policies, or the Terms and Conditions of this Award. Such changes apply to actions taken by any Recipient, existing and prospective, after the effective date of the change. Loans made by the Recipient prior to the effective date of the change are not affected unless so required by law.

4. **Variances.**
EDA’s policy is to administer RLF grants uniformly, but there may be situations that warrant a variance. To accommodate these situations and to encourage innovative and creative ways of addressing economic adjustment problems, EDA may approve variances to the requirements contained in 13 C.F.R. part 307, subpart B, (Special Requirements for Revolving Loan Funds and Use of Grant Funds), provided they:

a. Are consistent with the goals of the Economic Adjustment Assistance Program under PWEDA (42 U.S.C. § 3149) and with an EDA-approved RLF Plan;
b. Are necessary and reasonable for the effective implementation of the RLF;
c. Are economically and financially sound; and

d. Do not conflict with applicable legal requirements, including Federal, State and local law.

(See 13 C.F.R. § 307.22.)

C. Financial Requirements.

1. Financial Reports.

Unless otherwise authorized by a special award condition, all financial reports shall be submitted electronically to the Project Officer, who will review this information with the Grants Officer. The Grants Officer will approve as appropriate. In cases where electronic reports are unable to be submitted, EDA may authorize paper submissions. See 15 C.F.R. §§ 14.52(a)(2) or 24.41(a)(4), as applicable.

**Federal Financial Report.** The Recipient must submit a “Federal Financial Report” (Form SF-425) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period and are required until the grant is fully disbursed (this is defined as the grant award period outlined on the Form CD-450 or CD-451). The Recipient must submit a final Form SF 425 within 90 calendar days after the grant has been fully disbursed. Instructions for completing and submitting Form SF-425 will be discussed during the project kick-off meeting. Recipients may contact the EDA Project Officer with questions on how to complete or submit the report; however, recipients must pose such questions sufficiently in advance of a deadline to allow for timely submission of required reports.

2. Award Payments.

a. Method of Payment. The Grants Officer determines the appropriate method of payment, retaining the right to determine whether Recipients are authorized to receive advance or reimbursement payments as outlined in the applicable special award conditions governing the Award. Payments will be made through electronic funds transfers directly to the Recipient’s bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996, as amended. The Award number must be included on all payment-related correspondence, information and forms.

b. EDA’s Right to Change Method of Payment. In cases where Advance payments are authorized, they shall be limited to the minimum amounts necessary to meet immediate disbursement needs. Advanced funds not disbursed in a timely manner and any applicable interest must be promptly returned to EDA. If a recipient demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between the transfer of funds and disbursement or if the recipient otherwise fails to continue to qualify for the advance method of
payment, the Grants Officer may change the method of payment to reimbursement only.

c. **Department of Treasury’s Automated Standard Application for Payment System.** Unless otherwise provided for in the Terms and Conditions, payments under this Award will be made using the Department of Treasury’s Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers, in accordance with the requirements of the Debt Collection Improvement Act of 1996, as amended. In order to receive payments under ASAP, the Recipient is required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows it to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP: (i) ASAP account number – the award number found on the cover sheet of the Award; (ii) Agency Location Code (ALC) – 13200001; and (iii) Region Code. Additionally, all Recipients will be required to submit an ASAP Enrollment Form to the applicable Project Officer prior to accessing funds via ASAP. All Awards paid under the ASAP system will contain a special award condition, clause, or provision describing additional enrollment requirements and any controls or withdrawal limits set in the ASAP system.

d. **Interest-bearing Account.** All grant funds disbursed by EDA to reimburse the Recipient for loan obligations already incurred must be held in an interest-bearing account (EDA funds account) by the Recipient until disbursed to the borrower. (See 13 C.F.R. § 307.11(d).) This applies to funds received through disbursement (whether an advance or a reimbursement) and all RLF Capital. Interest from this account should be treated as RLF Income in accordance with the definition of RLF Income at 13 C.F.R. § 307.8 and the requirements of 13 C.F.R. § 307.12.

e. **Initial Disbursement Request.** For the initial disbursement only, the Recipient must complete and submit Form SF-3881, “ACH Vendor/Miscellaneous Payment Enrollment Form,” and the ASAP Enrollment Form, along with Form SF 270 “Request for Advance or Reimbursement,” to the Project Officer, who will review these forms with the Grants Officer and approve as appropriate.

f. **Timing of Request for Disbursements.** The Recipient must request disbursements from EDA only at the time and in the amount immediately needed to close a loan or disburse RLF funds to a borrower. The Recipient must disburse RLF funds to the borrower within 30 days of receipt of the grant funds. Any grant funds not disbursed within the 30 day period shall be refunded to EDA pursuant to 13 C.F.R. § 307.11(e).

g. **Amount of Disbursement.** As each new loan is made, the Recipient may request a disbursement of grant funds only for the difference, if any, between the RLF Capital (defined in 13 C.F.R. § 307.8) and the amount of the new RLF loan, less
an amount, if any, of the Local Share required to be disbursed concurrent with the grant funds. However, RLF Income held to reimburse eligible administrative expenses need not be disbursed in order to draw additional grant funds. (See 13 C.F.R. § 307.11(e).)

h. Interim Payment Requests. All requests for interim disbursement shall be submitted using Form SF-270. When authorized, advances shall be approved for periods to cover only expenses anticipated over the next 30 days.

3. Loan Closings and Disbursements.

a. RLF loan activity must be sufficient to draw down grant funds in accordance with the schedule prescribed in this Award for loan closings and disbursements to eligible RLF borrowers. The schedule usually requires the Recipient to lend the entire initial amount of the RLF Capital base within 3 years of the Award. (See 13 C.F.R. § 307.16(a)(1).)

b. If the Recipient fails to meet the prescribed lending schedule for loan closings and disbursements, EDA may de-obligate the non-disbursed balance of the Award. EDA may allow an exception to the extent the Recipient has Closed Loans:

(i) That were approved prior to the scheduled deadline and will commence and complete disbursements within 45 days of the deadline; or
(ii) For which disbursement obligations have commenced (but are not yet completed) prior to the deadline.

EDA also may allow an exception where it has approved a lending schedule extension, or allow a no-cost time amendment extension if authorized in writing by the Grants Officer to ensure key program goals are met and funds are disbursed before the grant is closed. (See 13 C.F.R. §§ 307.8 and 307.16(a)(2).)

c. If grant funds are requested and the RLF loan disbursement is subsequently delayed beyond 30 days, the Recipient must notify the Grants Officer and return such non-disbursed funds to EDA. The non-disbursed grant funds must be returned to the Government for credit to the Recipient’s account. Returned grant funds will be available to the Recipient for future draw downs. When returning prematurely drawn grant funds, the Recipient must clearly identify on the face of the check or in the written notification to the Grants Officer “EDA,” the grant award number, the words “Premature Draw,” and a brief description of the reason for returning the grant funds. (See 13 C.F.R. § 307.11(e).)

For the purposes of this Award, the Federal share is the EDA portion of the project, while the non-Federal share is the Matching Share of the approved project. The Recipient must show that the non-Federal Matching Share is committed to the Project, available as
needed and not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. See 13 C.F.R. § 301.5.

Awards that include a Federal and non-Federal share incorporate an estimated budget consisting of shared allowable costs. If actual allowable costs are less than the total approved estimated budget, the Federal share and Matching Share shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved estimated budget, the Federal share shall not exceed the total Federal dollar amount authorized by this Award.

As approved in the Award, the Matching Share may be used only for lending purposes or for eligible and reasonable administrative costs. The Matching Share must be paid out either in proportion to the grant funds or at a faster rate than the grant funds. See 13 C.F.R. § 307.11(f)(1). The Matching Share must be available when needed for lending and must be under the control of the Recipient for use in accordance with the terms of the Award.

a. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the Recipient must meet its cost share commitment over the Award period. The Recipient must create and maintain sufficient records justifying all non-Federal sharing requirements to facilitate questions and audits.

b. Upon repayment of loans, cash Matching Share is treated the same as EDA funds. Repayments of principal must be placed in the RLF for re-lending, and interest earned on outstanding loan principal and accounts holding RLF funds must be used either for re-lending or for eligible and reasonable administrative costs associated with the RLF’s operations. See 13 C.F.R. § 307.12 and the definition of “RLF Income” in 13 C.F.R. § 307.8.

c. As approved in the RLF Award, In-Kind Contributions may satisfy Matching Share requirements when specifically authorized in the Terms and Conditions of the Award, and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs. (See 13 C.F.R. § 307.17(d).)

When an RLF has a combination of In-Kind Contributions and cash Matching Share, the non-Federal cash together with the Federal cash constitute the funds available for making loans and will be disbursed proportionately as needed for loan closing, provided that the last 20 percent of the Federal Share may not be disbursed until all cash Local Share has been expended. The full amount of the cash Matching Share shall remain for use in the RLF. (See 13 C.F.R. § 307.11(f)(2).)
5. **Budget Changes and Transfer of Funds among Categories.**

a. Requests for budget changes to the approved budget in accordance with the provision provided below must be submitted through the Project Officer, who will review the requests and submit them to the Grants Officer. The Grants Officer will make the final determination on such requests and notify the Recipient in writing.

Transfers of funds by the Recipient among direct cost categories are permitted for an Award in which the Federal share of the Project is $100,000 or less. For an Award in which the Federal share of the Project exceeds $100,000, transfers of funds must be approved in writing by the Grants Officer when the cumulative amount of such transfers exceeds 10 percent of the current total Federal and non-Federal funds authorized by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same criterion applies to the cumulative amount of transfer of funds among projects, functions, joint ventures, consortia, activities, and annual costs when budgeted separately within an Award. Transfers will not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the Recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior approval. In addition, this does not prohibit the Recipient from requesting the Grants Officer's approval for revisions to the budget. (See 15 C.F.R. §§ 14.25(f) or 24.30(c), as applicable for specific requirements concerning budget revisions and transfer of funds between budget categories.)

b. The Recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.

6. **Indirect Costs and Facilities and Administrative Costs.**

a. Indirect costs, or facilities and administrative (F&A) costs for educational institutions, are only allowable charges under this Award as permitted under the line item approved budget.

b. Indirect costs are not allowed in the disbursement phase of the Project; however, such Indirect costs may be allowed after full disbursement of EDA grant funds, during the revolving phase of the RLF Award as an eligible administrative expense as outlined in the applicable Special Award Conditions. Recipients are encouraged to review part I, section C.5.c. for details about prohibition of transferring direct costs to the indirect cost line item or vice versa.
c. Excess indirect costs may not be used to offset unallowable direct costs.

d. OMB established the cognizant agency concept, under which a single agency represents all others in dealing with Recipients in common areas. The cognizant agency reviews and approves Recipients' indirect cost rates. Approved rates must be accepted by other agencies, unless specific program regulations restrict the recovery of indirect costs. If indirect costs are permitted and the Recipient would like indirect costs in its budget, but the Recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate is subject to the procedures in the applicable cost principles and the following subparagraphs:

   (i) State and Local Governments: Department of Health and Human Services (HHS) serves as the cognizant agency for all States and most cities. For certain State agencies, cities and counties, OMB published a list of cognizant Federal agency assignments on January 6, 1986 (51 FR 552). The cognizant agency for governmental units or agencies not specifically identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. See Subsection D.1.b. of Appendix E to 2 C.F.R. Part 225 (OMB Circular A-87);

   (ii) Indian Tribes: Department of the Interior serves as the cognizant agency for all Indian tribal governments. See Subsection D.1.c. of Appendix E to 2 C.F.R. Part 225 (OMB Circular A-87);

   (iii) Educational Institutions: Department of Health and Human Services or the Department of Defense's Office of Naval Research serves as the cognizant agency for educational institutions as determined in accordance with Subsection G.11. of Appendix A to 2 C.F.R. Part 220 (OMB Circular A-21);

   (iv) Non-Profit Organizations: Cognizant agency is determined by calculating which Federal agency provides the largest dollar amount of awards to the non-profit organization in accordance with Subsection E.2. of Appendix A to 2 C.F.R. Part 230 (OMB Circular A-122); and

For those organizations for which DOC is cognizant or has oversight, DOC or its designee will either negotiate a fixed rate with carry-forward provisions for the Recipient or, in some instances, will limit its review to evaluating the procedures described in the Recipient's cost allocation plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.

e. Within 90 days of the award start date, the Recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The Recipient shall provide the Grants Officer with a copy of the transmittal letter:
Office of Acquisition Management
U.S. Department of Commerce
1401 Constitution Avenue, NW, HCHB Room 6054
Washington, D.C. 20230

f. The Recipient can use the fixed rate proposed in the indirect cost plan until such time as the Department provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carry-forward provision used in calculating next year’s rate. This calculation of actual indirect costs and the carry-forward provision is subject to audit. Indirect cost rate proposals must be submitted annually. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant Federal agency within 6 months after the close of each of the Recipients’ fiscal years.

g. When the Department is not the oversight or cognizant Federal agency, the Recipient shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.

h. If the Recipient fails to submit the required documentation to the Department within 90 days of the award start date, the Grants Officer may amend the Award to preclude the recovery of any indirect costs under the Award. If the Department, oversight or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the Recipient’s delay in submitting the documentation, an extension of the 90 day due date may be approved by the Grants Officer.

i. The maximum dollar amount of allocable indirect costs for which the Department will reimburse the Recipient shall be the lesser of:

   (i) The line item amount for the Federal Share of indirect costs contained in the approved budget of the Award; or

   (ii) The Federal Share of the total allocable indirect costs of the Award based on the indirect cost rate approved by an oversight or cognizant Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date.

7. **Incurring Costs or Obligating Federal Funds beyond the Award and Date.**

RLF Awards have a specified period of performance with a specified grant end date, as outlined on the Award document (Form CD-450 or CD-451) and applicable RLF Special Award Conditions. While the RLF Capital base will continue in existence as long as loans are outstanding and repayments to the RLF are made available to make new loans, obligations or further expenses of Federal funds may not occur beyond the grant end date. In all cases, an extension of the grant end date requires written approval of the Grants
Officer and the execution of an Award amendment (Form CD-451). See also 15 C.F.R. §§ 14.25(e)(2) or 24.30(d)(2), as applicable.

8. **Tax Refunds.**
Refunds of Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes received by the Recipient during or after the Project period must be refunded or credited to Department where the benefits were financed with Federal funds under the Award. The Recipient agrees to notify the Grants Officer immediately upon receipt of these refunds. The Recipient further agrees to refund portions of FICA and FUTA taxes determined to belong to the Federal Government, including refunds received after the expiration of this Award.

9. **Additional Funding.**
The Department has no obligation to provide any additional prospective funding in connection with an Award. Any amendment of this Award to increase funding or to extend the period of performance is at the sole discretion of the Department.

D. **Programmatic Requirements.**

1. **Project Progress Reports.**
See part I, section C and section D, and part II, section H. of these RLF Standard Terms and Conditions for specific RLF reporting requirements.

2. **Unsatisfactory Performance.**
Failure to perform the work in accordance with the Terms and Conditions of this Award may result in designation of the Recipient as a “high-risk” grantee and assignment of special award conditions or other further action as specified in part I, section D.6. of these RLF Standard Terms and Conditions. (See 15 C.F.R. §§ 14.14 or 24.12, as applicable.)

3. **Reporting Programmatic Changes.**
   a. The Recipient must request prior approval for all programmatic changes from the Grants Officer in accordance with 15 C.F.R. §§ 14.25 or 24.30, as applicable. Requests should be submitted to the Project Officer, who will review requests and submit them to the Grants Officer for final determination, as applicable.
   b. Any changes made to the Project without EDA’s approval are made at the Recipient’s risk of non-payment of costs, suspension, termination or other EDA action with respect to the Award. (See 13 C.F.R. § 302.7(b).)

4. **Time-Schedule Extensions.**
   a. Unless otherwise authorized in 15 C.F.R. §§ 14.25(e)(2) or 24.30, as applicable, or in a special award condition, any extension of the Project period must be authorized in writing by the Grants Officer. A verbal or written assurance of funding from other than the Grants Officer, including Regional Office staff other
than the Grants Officer, does not constitute authority to obligate funds for programmatic activities beyond the expiration date.

b. The Recipient is responsible for contacting EDA as soon as conditions become known that may materially affect its ability to meet the prescribed lending schedule. The Recipient must submit a written request to the Grants Officer for continued use of grant funds beyond a missed deadline for disbursement of RLF funds. The Recipient must provide good reason for the delay by demonstrating that:

(i) The delay was unforeseen or beyond the control of the Recipient;
(ii) The financial need for the RLF still exists;
(iii) The current and planned use and the anticipated benefits of the RLF will remain consistent with the current CEDS and the RLF Plan; and
(iv) The achievement of a new proposed lending schedule is reasonable.

The Recipient also must provide an explanation as to why further delays may or may not be anticipated. (See 13 C.F.R. § 307.16(b)(1).)

c. EDA reserves the right to withhold disbursements while the Recipient is not in compliance with the time schedule. EDA reserves the right to suspend or terminate an Award if the Recipient fails to exercise reasonable diligence to accomplish the Project as intended.

d. EDA is under no obligation to grant a time extension, and in the event an extension is denied, EDA may de-obligate all or part of the unused grant funds and may terminate the grant. (See 13 C.F.R. § 307.16(b)(2).)

5. Other Federal Awards with Similar Programmatic Activities.
The Recipient shall immediately provide written notification to the Project Officer and the Grants Officer in the event that, subsequent to receipt of the Award, other Federal financial assistance is received to support or fund any portion of the project scope of work in the Award. The Department will not pay for costs that are funded by other Federal sources.

Failure to comply with any or all of the Terms and Conditions of this Award may have a negative impact on the Recipient’s ability to receive future funding from the Department and may be considered grounds for any or all of the following actions: (a) changing the method of payment from advance to reimbursement only; (b) establishment of an account receivable; (c) withholding payments under any Department Award(s) to the Recipient; (d) the imposition of additional special award conditions; (e) suspension of any active Department Awards; or (f) termination of any active Department Awards.

a. Unauthorized Use. Except as provided in 13 C.F.R. §§ 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 Recipient must compensate the Federal government for the Federal Share whenever any property acquired or improved in whole or in part with EDA investment assistance is disposed of, encumbered, or no longer used for the purpose of the Project. The requirements set forth in 15 C.F.R. parts 14 or 24, as applicable, including any supplements or amendments thereto, shall apply. (See 13 C.F.R. § 314.4.)

b. **Suspension and Termination.** EDA may suspend or terminate this Award for cause, including but not limited to failure to:

   (i) Operate the RLF in accordance with the RLF Plan, the RLF Award or EDA’s statutory and regulatory requirements;
   
   (ii) Obtain prior EDA approval for material changes to the RLF Plan, including provisions for administering the RLF;
   
   (iii) Submit timely progress, financial and audit reports as required by the Terms and Conditions of the Award and 13 C.F.R. § 307.14; and
   
   (iv) Comply with the conflicts-of-interest provisions set forth in 13 C.F.R. § 302.17.

   (See 13 C.F.R. § 307.21(a).)

   (See 13 C.F.R. § 307.21(a).)

   (i) Operate the RLF in accordance with the RLF Plan, the RLF Award or EDA’s statutory and regulatory requirements;
   
   (ii) Obtain prior EDA approval for material changes to the RLF Plan, including provisions for administering the RLF;
   
   (iii) Submit timely progress, financial and audit reports as required by the Terms and Conditions of the Award and 13 C.F.R. § 307.14; and
   
   (iv) Comply with the conflicts-of-interest provisions set forth in 13 C.F.R. § 302.17.

   (See 13 C.F.R. § 307.21(a).)

c. **Suspension of Award.** The Grants Officer may suspend an RLF Award when he or she determines that circumstances warrant temporarily stopping all activities under the Award, including making payments to the Recipient, pending the Recipient taking corrective actions as specified by the Grants Officer. Upon suspension, the Recipient will be prohibited from engaging in new lending activity, although normal loan servicing and collection efforts will continue. In addition, the Recipient may be subject to restrictions on the use of RLF Income and specific actions to protect the RLF assets as may be required. The Grants Officer will promptly notify the Recipient in writing via certified mail of the determination to suspend the Award, the reason(s) for the suspension and what the Recipient can do to remedy the situation. If immediate action is not necessary to protect EDA’s interest, the Grants Officer may notify the Recipient that unless the Recipient submits information within 30 days of that notice establishing compliance with the requested remedial actions, EDA will proceed with the suspension of the Award. However, the Grants Officer has the discretion to suspend the grant immediately if he or she determines that the Recipient has not taken or will not take corrective action, or that continued operation of the Award would place the RLF assets at risk. Additionally, in the event that the Recipient fails to take specified corrective actions, the Grants Officer may, after considering the best interests of the Federal government, take more severe enforcement action, including termination of the Award. When applicable, suspension of an Award may result in a no-cost extension of the project period to compensate for work that was not done on the Project during the suspension.
d. **Termination for Cause Action.** The Grants Officer may terminate an RLF Award for material non-compliance. Material non-compliance includes but is not limited to violation of the Terms and Conditions of the Award; failure to perform Award activities in a satisfactory manner; improper management or use of award funds; or fraud, waste, abuse, mismanagement or criminal activity. The Recipient will be notified of the termination action in writing using the same requirements provided for suspension of an Award in paragraph (c) above if the suspension did not precede the termination action. (See also 15 C.F.R. §§ 14.61 or 24.43, as applicable.)

e. **Termination for Convenience Action.** The Recipient may request at any time termination for convenience of this Award in whole or in part. Termination is undertaken without prejudice to the Recipient when it is agreed upon by both parties that the purpose of this Award would not be served by further expenditure of grant funds. The Grants Officer and the Recipient must agree in writing to the conditions of the termination for convenience. If EDA has disallowed a portion of the Award, EDA will allow the Recipient to continue RLF operations only if the RLF has sufficient funds to permit effective operation. Any unused portion of the Federal Share of the RLF Capital base must be returned to EDA. (See also 15 C.F.R. §§ 14.61 or 24.44, as applicable, and part I, section O.4. of these RLF Standard Terms and Conditions.)

f. **Right to Recover.** Whenever EDA terminates an Award for cause or disallows a portion of the Award, it has the right to recover residual funds and assets of the RLF Award in accordance with 13 C.F.R. § 307.20(d). Upon termination, distribution of proceeds will be distributed in the following order of priority:

(i) First, for any third party liquidation costs;
(ii) Second, for the payment of EDA’s Federal Share; and
(iii) Third, if any proceeds remain, to the Recipient.

7. **Prohibition against Assignment by the Recipient.**

The Recipient shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express prior written approval of the Grants Officer.

8. **Disclaimer Provisions.**

a. The United States expressly disclaims any and all responsibility or liability to the Recipient or third persons for the actions of the Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this Award or any other losses resulting in any way from the performance of this Award or any sub-award or subcontract under this Award.
b. The Recipient’s acceptance of this Award does not in any way constitute an agency relationship between the United States and the Recipient.

9. Payment of Attorneys’ and Consultants’ Fees.
Grant funds must not be used directly or indirectly to reimburse any attorneys’ or consultants’ fees incurred in connection with obtaining investment assistance under PWEDA. (See 13 C.F.R. § 302.10.)

E. Non-Discrimination Requirements.
No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Recipient must act in accordance with EDA’s requirements set out in 13 C.F.R. § 302.20 and in part III, section B.4. of these RLF Standard Terms and Conditions.

F. OMB Circular A-133 Audit Requirements.

1. Requirement to have an A-133 Audit Performed.
A Recipient that expends Federal awards of $500,000 or more in a fiscal year (see section F.3. below) must have a program-specific or single audit performed for that year in accordance with the provisions of OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” issued pursuant to the Single Audit Act of 1984 (Pub. L. No. 98-502), as amended by the Single Audit Act Amendments of 1996 (Pub. L. No. 104-156). A Recipient that has expended Federal awards through only EDA’s RLF program may elect to have a program-specific audit performed. All other Recipients must have a single audit performed. The Circular can be accessed at http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf.

On Form SF-SAC (OMB Control No. 0348-0057, or any successor form), the Recipient must indicate whether it is submitting data for a single audit or a program-specific audit.

2. Requirement to Instruct Auditor.
RLF Recipients must direct auditors to use the applicable Compliance Supplement (Appendix B to OMB Circular A-133) when conducting audits of an RLF. The Compliance Supplement is available from the Government Printing Office, Superintendent of Documents, Washington, D.C. 20402-9325 or online at http://www.whitehouse.gov/omb/circulars_default (note that a new Compliance Supplement is released annually). To ensure that an audit is properly performed, the Recipient is obligated under OMB Circular A-133 to prepare appropriate financial statements, including the schedule of expenditures of Federal awards (SEFA), in accordance with § 310 of the Circular.

The Recipient must instruct the auditor to consider the following when determining Project dollars expended in the fiscal year:

a. Balance of RLF principal loans outstanding at the end of the fiscal year, plus
b. Cash and investment balance in the RLF at the end of the fiscal year, plus

c. Administrative expenses paid out of RLF Income during the fiscal year.

The calculation of Federal award dollars expended is as follows:

[(Balance of RLF loans outstanding at the end of the fiscal year) plus (total cash on hand at the end of the fiscal year, including any sequestered funds) plus (administrative expenses paid out of RLF Income during the fiscal year)] multiplied by [sum of all EDA dollars/total project dollars from all of Recipient’s RLF Awards].

3. **Classification as a Major Program.**

For purposes of this Award, the Recipient must instruct its auditor to consider the Federal Share of the RLF Capital base when making a determination regarding the RLF’s classification as a major program. Therefore, the RLF Capital base must be listed correctly on the Recipient’s SEFA. If EDA subsequently determines that the RLF program was erroneously excluded from the Recipient’s list of major programs, the Recipient shall have six months to submit a corrected audit to the Federal Audit Clearinghouse. Failure to do so may result in termination of the RLF Award.

4. **Requirement to Submit Audit to Federal Audit Clearinghouse.**

A Recipient expending Federal awards of $500,000 or more in a fiscal year and therefore, having a single or program-specific audit for that year conducted in accordance with OMB Circular A-133, must submit a copy of the single or program-specific audit (including Form SF-SAC) to the Bureau of the Census, designated by OMB as a central clearinghouse, at the following address:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 E. 10th Street  
Jeffersonville, IN 47132

The Federal Audit Clearinghouse operates on behalf of OMB to disseminate audit information to Federal Agencies and to the public, and to help auditors and auditees minimize the reporting burden of complying with Circular A-133 requirements. For more information, access the website at [http://harvester.census.gov/fac/](http://harvester.census.gov/fac/).

The audit will be considered “on time” if it is received by the Federal Audit Clearinghouse no later than 30 days after the Recipient receives the auditor’s report or nine months after the end of the Recipient’s fiscal year. The Federal Audit Clearinghouse also offers an online entry system for submission of Form SF-SAC at [http://harvester.census.gov/fac/collect/ddeindex.html](http://harvester.census.gov/fac/collect/ddeindex.html).

Some DOC programs have specific audit guidelines that will be incorporated into the award. When DOC does not have a program-specific audit guide available for the
program, the auditor will follow the requirements for a program-specific audit as described in OMB Circular A-133 § .235. The recipient may include a line item in the budget for the cost of the audit. A copy of the program-specific audit shall be submitted to the Grants Officer as specified in the award terms, and to the OIG at the following address:

Office of Inspector General  
U.S. Department of Commerce  
Atlanta Regional Office of Audits  
401 West Peachtree Street, N.W., Suite 2742  
Atlanta, GA 30308

5. Findings Related to the RLF Program.  
A Recipient that files a program-specific or single audit with findings related to the RLF program will be required to develop a corrective action plan in cooperation with EDA. Failure to achieve corrective action milestones may result in termination of the RLF Award.

G. Audit Resolution Process.

1. An audit of the Award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due to EDA. For this reason, the Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.

2. In accordance with the Federal Register notice dated January 27, 1989 (54 Fed. Reg. 4053), a Recipient whose Award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

   a. Unless the OIG determines otherwise, the Recipient has 30 days from the date of the transmittal of the “Draft Audit Report” to submit written comments and documentary evidence.

   b. The Recipient has 30 days from the date of the transmittal of the “Final Audit Report” to submit written comments and documentary evidence. There shall be no extension of this deadline.

   c. EDA shall review the documentary evidence submitted by the Recipient and shall notify the Recipient of the results in an “Audit Resolution Determination Letter.” The Recipient has 30 days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There shall be no extension of this deadline. The appeal is the last opportunity for the Recipient to submit written comments and documentary evidence that dispute the validity of the Audit Resolution Determination Letter.
d. An appeal of the Audit Resolution Determination Letter does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on such debt. If the Audit Resolution Determination Letter is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.

e. The Department shall review the Recipient’s appeal and notify the Recipient of the results in an “Appeal Determination Letter.” After the opportunity to appeal has expired or after the appeal determination has been rendered, the Department will not accept any further documentary evidence from the Recipient. No other administrative appeals are available in the Department.

H. Payment of Debts.

1. Payment of Debts Owed the Federal Government.
   The Recipient shall promptly pay any debts determined to be owed the Federal government. In accordance with 15 C.F.R. § 19.1, delinquent debt is a debt that has not been paid by the date specified in the agency’s initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. In accordance with 15 C.F.R. § 19.5 and 31 U.S.C. § 3717, failure to pay a debt by the due date, or if there is no due date, within 30 days of the billing date, shall result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. Commerce entities will transfer any Commerce debt that is more than 180 days delinquent to the Financial Management Service for debt collection services, a process known as “cross-servicing,” pursuant 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12 and 15 C.F.R. § 19.9, and may result in DOC taking further action as specified in the standard term and condition entitled “Non-Compliance With Award Provisions.” Funds for payment of a debt must not come from other Federally-sponsored programs. Verification that other Federal funds have not been used for payment of a debt will be made, e.g., during on-site visits and audits.

2. Late Payment Charges.

a. Interest shall be charged on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act (see 31 U.S.C. § 3701 et seq. for the entire Debt Collection Act), as amended. The minimum annual interest rate to be assessed is the Department of the Treasury’s Current Value of Funds Rate (CVFR). The CVFR is available online at http://www.fms.treas.gov/cvfr/index.html. The CVFR is published by the Department of the Treasury in the Federal Register (http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR) and in the Treasury Financial Manual Bulletin. The assessed rate shall remain fixed for the duration of the indebtedness.
b. Penalties shall accrue at a rate of not more than 6 percent per year or such other higher rate as authorized by law.

c. Administrative charges, that is, the costs of processing and handling a delinquent debt, shall be determined by the Commerce entity collecting the debt, as directed by the Office of the Deputy Chief Financial Officer.

3. **Barring Delinquent Federal Debtors from Obtaining Federal Loans, Loan Guarantees or Loan Insurance.**
Pursuant to 31 U.S.C. § 3720B and 31 C.F.R. § 901.6, unless waived, the Department is not permitted to extend financial assistance in the form of a loan, loan guaranty, or loan insurance to any person delinquent on a non-tax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

4. **Effect of Judgment Lien on Eligibility for Federal Grants, Loans or Programs.**
Pursuant to 28 U.S.C. § 3201(e), unless waived by the Department, a debtor who has a judgment lien against the debtor's property for a debt to the United States shall be ineligible to receive any grant or loan which is made, insured, guaranteed or financed directly or indirectly by the United States, or to receive funds directly from the Federal government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

I. **Government-wide Debarment and Suspension (Non-Procurement).**
The Recipient shall comply with the provisions of subpart C of 2 C.F.R. part 1326, “Non-Procurement Debarment and Suspension” (71 FR 76573, December 21, 2006), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal non-procurement transactions either through primary or lower-tier covered transactions, and which set forth the responsibilities of Recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

J. **Drug-Free Workplace.**

K. **Lobbying Restrictions.**

1. **Statutory Provisions.**
The Recipient shall comply with the provisions of 31 U.S.C. § 1352, and the Department's implementing regulations found at 15 C.F.R. part 28, “New Restrictions on Lobbying.” These provisions prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the U.S. government in connection with an Award, and require the disclosure of the use of non-Federal funds for lobbying.
Any Recipient receiving in excess of $100,000 in Federal funding shall submit a completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously submitted. The Recipient must submit the Form SF-LLL, including any received from sub-recipients, contractors, and subcontractors, to the Grants Officer.

As set out in 31 U.S.C. § 1352, there are special provisions applicable to Indian Tribes, tribal organizations, or other Indian organizations eligible to receive Federal contracts, grants, loans, or cooperative agreements. In accordance with Departmental policy, EDA recognizes Tribal Employment Rights Ordinances ("TEROs"), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, firing, and the payment of a TERO fee generally are allowable provisions under Federal awards granted to American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for proper and efficient performance and administration" of an Award, as provided under the applicable cost principles set out in 2 C.F.R. part 225.

L. Freedom of Information Act (FOIA) and Privacy Act Requests.
The rules and procedures regarding public access to records or documents held by EDA are set out at 15 C.F.R. part 4.

M. Codes of Conduct and Sub-Award, Contract and Subcontract Provisions.

Pursuant to the certification in Form SF-424B, "Assurances – Non-Construction Programs," paragraph 3, the Recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict-of-interest, or personal gain in the administration of this Award. See also part I, section N of these RLF Standard Terms and Conditions.

2. Applicability of Award Provisions to Sub-recipients.

a. The Recipient shall require all sub-recipients, including lower-tier sub-recipients, to comply with the provisions of this Award, including applicable cost principles, and administrative and audit requirements, and all associated terms and conditions. Different cost principles apply to for-profit contractors, non-profit organizations, educational institutions and units of government. Care must be
exercised, therefore, in applying the correct cost principles depending on what type of entity the sub-recipient or contractor may be.

b. The Recipient is responsible for sub-recipient monitoring, including the following:

(i) Award Identification - At the time of the award, identifying to the sub-recipient the Federal award information (e.g., Catalog of Federal Domestic Assistance (CFDA) title and number, grant award number, name of the granting Federal agency) and applicable compliance requirements.

(ii) During-the-Award Monitoring - Monitoring the sub-recipient’s use of Federal awards through reporting, on-site visits, regular contact, or other means to provide reasonable assurance that the sub-recipient administers the Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(iii) Sub-recipient Audits - Ensuring that any sub-recipient expending Federal awards of $500,000 or more during the sub-recipient’s fiscal year has met the audit requirements of OMB Circular A-133, and that the required single or program-specific audit is completed within nine months of the end of the sub-recipient’s audit period. In addition, the Recipient is required to issue a management decision on audit findings within six months after receipt of the sub-recipient’s audit report, and ensure that the sub-recipient takes timely and appropriate corrective action on all audit findings. In cases of continued inability or unwillingness of a sub-recipient to complete and submit the required OMB Circular A 133 audit, the Recipient shall take appropriate action using sanctions. (See part I, section F. of these RLF Standard Terms and Conditions.)

3. Competition and Codes of Conduct for Sub-Awards.

a. Competition. All sub-awards will be made in a manner to provide, to the maximum extent practicable, open and free competition. The Recipient must be alert to organizational conflicts-of-interest as well as other practices among sub-recipients that may restrict or eliminate competition. In order to ensure objective sub-recipient performance and eliminate unfair competitive advantage, sub-recipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such sub-awards.

b. Written Standards of Conduct. The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of sub-awards. The written standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by any Interested Party (as defined in 13 C.F.R. § 300.3). No Interested Party shall participate in the selection, award, or administration of a sub-award supported by Federal funds if a real or apparent conflict of interest would be involved. A
conflict-of-interest generally exists when an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party’s personal or financial interests. A conflict-of-interest also may exist where there is an appearance that an Interested Party’s objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an Interested Party is unable to render impartial assistance, services or advice to the Recipient, a participant in the Project or to the Federal government. (See 13 C.F.R. § 302.17(a) and part II, section D. of these RLF Standard Terms and Conditions.)


a. The Recipient shall include the following notice in any request for applications or bids:

Applicants/bidders for a lower-tier covered transaction (except for goods and services under $25,000 not requiring the consent of a DOC official) are subject to 2 C.F.R. part 1326, subpart C, “Non-procurement Debarment and Suspension.” In addition, applicants/bidders for a lower-tier covered transaction (for a sub-award, contract, or subcontract) greater than $100,000 of Federal funds at any tier are subject to 15 C.F.R. part 28, “New Restrictions on Lobbying.” Applicants/bidders should familiarize themselves with these provisions, including the certification requirements. Therefore, applications for a lower-tier covered transaction must include and complete without modification Form CD-512, “Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying.”

b. The Recipient shall include a statement in all lower-tier covered transactions (for a sub-award, contract or subcontract), that the award is subject to subpart C of 2 C.F.R. part 1326, “Non-procurement Debarment and Suspension.”

c. The Recipient shall include a statement in all lower-tier covered transactions (for a sub-award, contract or subcontract) exceeding $100,000 in Federal funds, that the sub-award, contract or subcontract is subject to 31 U.S.C. § 1352 and to the Department’s implementing regulations found at 15 C.F.R. part 28, “New Restrictions on Lobbying.” The Recipient shall further require the sub-recipient, contractor or subcontractor to submit a completed Form SF-LLL, “Disclosure of Lobbying Activities,” regarding the use of non-Federal funds for lobbying. Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Form SF-LLL shall be submitted from tier to tier until received by the Recipient. The Recipient must submit all disclosure forms received, including those that report lobbying
activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.

The Department encourages Recipients to utilize small businesses, minority business enterprises, and women’s business enterprises in contracts under financial assistance awards. The Minority Business Development Agency will assist Recipients in matching qualified minority owned enterprises with contract opportunities. For further information visit MBDA’s website at http://www.mbda.gov. If you do not have access to the Internet, you may contact MBDA via mail at the following address:

U.S. Department of Commerce
Minority Business Development Agency
Office of Business Development
1401 Constitution Avenue, NW
Washington, D.C., 20230

6. Sub-award and/or Contract to a Federal Agency.

a. The Recipient, sub-recipient, contractor or subcontractor shall not sub-grant or sub-contract any part of the approved Project to any agency or employee of the Department or other Federal bureau, agency or instrumentality, without the prior written approval of the Grants Officer.

b. Requests for approval of such action must be submitted to the Federal Program Officer who shall review and make a recommendation to the Grants Officer. The Grants Officer must forward all requests to the Federal Assistance Law Division in the Office of the Department of Commerce Assistant General Counsel for Finance and Litigation for review prior to making the final determination. The Grants Officer will notify the Recipient in writing of the final determination.

7. Other Federal Requirements Applicable to Sub-awards, Contracts or Subcontracts.
Recipients are responsible for ensuring, prior to awarding sub-awards, contracts or subcontracts, that prospective borrowers, consultants or contractors are aware of and comply with EDA’s statutory and regulatory requirements regarding activities carried out with RLF loans. Recipients must develop loan agreements that include applicable Federal requirements and adopt procedures diligently to correct instances of non-compliance, including the calling of loans if necessary. Loan documents and sub-award, contract or subcontract documents and procedures must protect and hold the Federal government harmless from and against all liabilities that may arise as a result of providing an award to assist (directly or indirectly) in site preparation or construction as well as the renovation or repair of any facility or site. This applies to the extent that such liabilities are incurred because of ground water, surface, soil or other conditions caused by operations of the Recipient or any of its predecessors on the property.
In administering the RLF, the Recipient must adopt procedures to comply and ensure that potential borrowers, consultants, or contractors comply with all laws and regulations applicable under this Award. (See also 13 C.F.R. §§ 302.6 and 302.13.)

**N. Property Management.**

With respect to any property acquired or improved in whole or in part with EDA investment assistance under an Award, the Recipient shall comply with the uniform administrative requirements set forth in 15 C.F.R. §§ 14.30 – 14.37 and 15 C.F.R. §§ 24.31-24.34, and EDA’s requirements at 13 C.F.R. part 314. Property acquired or improved in whole or in part by the Recipient under an Award may consist of real property or personal property, including intangible property such as money, notes and security interests. Any inventory listings stipulated under the applicable uniform administrative requirements must be submitted to the Project Officer, who will review and submit them to the Grants Officer for approval on Form CD-281, “Report of Government Property in Possession of Contractor.”

1. **Recipient as Trustee and Successor Recipients.**

When the Recipient fails in its fiduciary responsibilities or is unable or unwilling to perform as trustee of the grant funds, EDA may suspend or terminate this Award. In addition, EDA may transfer this Award to an eligible successor with jurisdiction over the Project area to administer it. If EDA transfers this Award, the Recipient remains responsible for complying with the Terms and Conditions of this Award for the period in which it is the Recipient, and any Successor Recipient holds the Project property with the same responsibilities as the Recipient under this Award. (See 13 C.F.R. § 314.2(a) and 314.3(d).)

2. **Use of Proceeds upon Sale, Collection or Liquidation of RLF Loans.**

In the event of a sale, collection, or liquidation of any RLF loan, any proceeds (minus late payment penalties, accrued interest and reasonable amounts associated with the cost of collection), up to the amount of the outstanding loan principal, must be returned to the RLF for re-lending. Any net proceeds from a loan sale, collection or liquidation 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 and reasonable costs for administering the RLF in accordance with the rules for use of RLF Income. The net transaction proceeds must be used to make additional loans as part of the RLF grant. (See 13 C.F.R. § 307.12(a).)

3. **Sale or Securitization of Loans to Raise New Funds.**

With EDA’s consent, a Recipient may enter into a Sale or a Securitization of all or a portion of its RLF loan portfolio, provided the requirements set out in 13 C.F.R. § 307.19 are satisfied. The Recipient must use all proceeds from any Sale or Securitization (net of reasonable transaction costs) to make additional RLF loans.

4. **Termination of RLF Award.**

EDA may approve a request from the Recipient to terminate this Award. The Recipient must compensate the Government for the Federal Share of the RLF property, including
the current value of all outstanding RLF loans. However, with EDA's prior approval, upon a showing of compelling circumstances, the Recipient may use for other economic development activities a portion of RLF property that EDA determines is attributable to RLF Income, provided that the amount of such RLF Income (or program income) does not exceed the Federal Share. (See 13 C.F.R. § 307.21(b).)

When EDA approves the termination of an RLF grant, EDA may assign or transfer assets of the RLF to an RLF Third Party (defined in 13 C.F.R. § 307.8) for liquidation. The RLF Third Party may be an Eligible Applicant (as defined in 13 C.F.R. § 300.3) or a for-profit organization not otherwise eligible for EDA investment assistance. EDA will have sole discretion in choosing the RLF Third Party, may enter into an agreement with the RLF Third Party to liquidate the assets of one or more RLFS or Recipients, and may allow the RLF Third Party to retain a portion of the RLF assets as reasonable compensation for services rendered in the liquidation. (See 13 C.F.R. § 307.20(c).) The proceeds resulting from any liquidation upon termination shall be distributed in accordance with 13 C.F.R. § 307.20(d). See also part I, section D.6 and part I, section O.4 of these RLF Standard Terms and Conditions.

O. Environmental Requirements.
Environmental impacts must be considered by Federal decision-makers in their decisions whether or not to (1) approve a proposal for Federal assistance; (2) approve the proposal with mitigation; or (3) approve a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate a planning process with an early consideration of potential environmental impacts that Project(s) funded with Federal assistance may have on the environment. The Recipient and any sub-recipients must comply with all environmental standards, to include those proscribed under the following statutes and Executive Orders, and shall identify to the awarding agency any impact the Award may have on the environment. In some cases, the Grants Officer can withhold award funds under a special award condition requiring the Recipient to submit additional environmental compliance information sufficient to enable the Department to make an assessment on any impacts that a Project may have on the environment. See also part III, section B.1. of these RLF Standard Terms and Conditions.

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality's (CEQ) implementing regulations (40 C.F.R. parts 1500-1508) require that an environmental analysis be completed for all major Federal actions significantly affecting the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements. Recipients of Federal assistance are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency to comply with NEPA. Recipients also may be requested to assist the Department in drafting an environmental assessment, if the Department determines an assessment is required. In the event that any additional information is required during the project period in order to assess any impacts that a project may have on the environment, funds can be withheld by the Grants Officer under a special award condition requiring the
Recipient to submit such additional environmental compliance information sufficient to enable the Department to make the requisite assessment.

2. **National Historic Preservation Act (16 U.S.C. § 470 et seq.)**

Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f) and the Advisory Council on Historic Preservation implementing regulations (36 C.F.R. Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties. Recipients of Federal funding are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Recipients may also be requested to assist the Department in consulting with State or Tribal Historic Preservation Officers or other applicable interested parties necessary to identify, assess and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation is complete, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to fully comply with the requirement of the NHPA. In the event that any additional information is required during the project period in order to assess any impacts that a project may have on historic properties, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit such additional information sufficient to enable the Department to make the requisite assessment.

3. **Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands, May 24, 1977).**

Recipients must identify proposed actions in federally defined floodplains and wetlands to enable the agency to make a determination whether there is an alternative to minimize any potential harm.

4. **Clean Air Act, (42 U.S.C. § 7401 et seq.), Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) (Clean Water Act) and Executive Order 11738 (“Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans”).**

Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. § 7401 et seq.), Clean Water Act (42 U.S.C. § 1251 et seq.) and Executive Order 11738, and shall not use a facility on the Environmental Protection Agency’s (EPA) List of Violating Facilities (this list is incorporated into the Excluded Parties List System located at [https://www.sam.gov/portal/public/SAM/](https://www.sam.gov/portal/public/SAM/)) in performing any Award that is nonexempt under 2 C.F.R. § 1532, and shall notify the Federal Project Officer in writing if it intends to use a facility that is on EPA’s List of Violating Facilities or knows that the facility has been recommended to be placed on the List.


Flood insurance, when available, is required for federally-assisted construction or acquisition in flood-prone areas.
6. The Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 et seq.). Recipients must identify any impact or activities which may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to the protected species or habitat occur from actions under Federal assistance awards and conduct the required reviews under the Endangered Species Act, as applicable.

7. The Coastal Zone Management Act, as amended (16 U.S.C. § 1451 et seq.). Funded Projects must be consistent with a coastal State’s approved management program for the coastal zone.

8. The Coastal Barriers Resources Act (16 U.S.C. § 3501 et seq.). Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

9. The Wild and Scenic Rivers Act, as amended (16 U.S.C. § 1271 et seq.). This Act applies to Awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

10. The Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f et seq.). This Act precludes Federal assistance for any project that EPA determines may contaminate a sole source aquifer so as to threaten public health.

11. The Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. § 6901 et seq.). This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that Recipients of Federal funds give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

12. The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 et seq.) and the Community Environmental Response Facilitation Act (41 U.S.C. § 11001 et seq.). These requirements address responsibilities of hazardous substance releases, threatened releases and environmental cleanup. There is also a requirement to impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

13. Executive Order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations")—This Order requires Federal agencies to identify and address the disproportionally high and adverse human health or environmental effects of Federal programs, policies and activities on low income and minority populations.
P. Miscellaneous Requirements.

1. Criminal and Prohibited Activities.

   a. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812) provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal government for money (including grants, loans or other benefits).

   b. The False Claims Amendment Act and the False Statements Act (18 U.S.C. §§ 287 and 1001) provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.

   c. The Civil False Claims Act (31 U.S.C. § 3729 et seq.) provides that suits under this Act can be brought by the Government, or a person on behalf of the Federal government, for false claims under Federal assistance programs.

   d. The Copeland “Anti-Kickback” Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally-supported Project from enticing an employee working on the Project from giving up a part of his compensation under an employment contract. The Copeland “Anti-Kickback” Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

2. Foreign Travel.


   b. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency’s mission.

   c. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral “Open Skies Agreements” (U.S. Government Procured Transportation) that allow Federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple “Open Skies
Agreements" currently in effect. For more information about the current bilateral
and multilateral agreements, visit the GSA website
http://www.gsa.gov/portal/content/103191. Information on the three Open Skies
agreements (U.S. Government Procured Transportation) and other specific
country agreements may be accessed via the Department of State’s website
http://www.state.gov/e/eeb/tra/.

d. If a foreign air carrier is anticipated to be used, the Recipient must receive prior
approval from the Grants Officer. When requesting such approval, the Recipient
must provide a justification in accordance with the guidance provided in 41
C.F.R. § 301-10.142, which requires the Recipient to provide a “certification” to
the Grants Officer with the following: name; dates of travel; the origin and
destination of travel; a detailed itinerary of travel, the name of the air carrier and
flight number for each leg of the trip; and a statement explaining why the
Recipient meets one of the exceptions to the applicable regulations. If the use of a
foreign air carrier is pursuant to a bilateral agreement, the Recipient must provide
the Grants Officer with a copy of the agreement. The Grants Officer shall make
the final determination and notify the Recipient in writing. Failure to adhere to
the provisions of the Fly America Act will result in the Recipient not being
reimbursed for any transportation costs for which the Recipient improperly used a
foreign air carrier.

Recipients are hereby notified that they are encouraged, to the greatest extent practicable,
to purchase American-made equipment and products with funding provided under this
Award.

a. Inventions. The rights to any invention made by a Recipient under a DOC
Award are determined by the Bayh-Dole Act, as amended (Pub. L. No. 96-517), and codified in 35 U.S.C. § 200 et seq., except as otherwise required by
law. The specific rights and responsibilities are described in more detail in 37
C.F.R. part 401, and in the particular, in the standard patent rights clause in 37
C.F.R. § 401.14, which is hereby incorporated by reference into this Award.

(i) Ownership.

(a) Recipient. The Recipient has the right to elect to retain title to
any invention it or its employees make (conceived or first
reduced to practice). A Recipient that is a non-profit
organization, which includes a university or other institution of
higher learning, may not assign to a third party its rights to
such an invention without the permission of DOC unless that
assignment is to a patent management organization (i.e., a
university’s Research Foundation). The Recipient’s
ownership rights are subject to the Federal government’s nonexclusive, nontransferable, irrevocable, paid-up license and other rights.

(b) *Department.* If the Recipient elects not to retain title, fails to disclose the invention to the agency within the required time limits, or does not file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive revocable license for the Recipient. DOC owns any invention made solely by its employees, but may license the Recipient in accordance with the procedures in 37 C.F.R. part 404.

(c) *Inventor/Employee.* If neither the Recipient nor the Department is interested in owning an invention by a Recipient employee, the Recipient, with the written concurrence of the Department’s Patent Counsel, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 C.F.R. § 401.9.

(d) *Joint Inventions.* Inventions made jointly by a Recipient and a Department employee will be owned jointly by the Recipient and DOC. However, the Department may transfer its rights to the Recipient as authorized by 35 U.S.C. § 202(e) and 37 C.F.R. § 401.10 if the Recipient is willing to patent and license the invention in exchange for a share of “net” royalties based on the number of inventors (e.g., 50-50 if there is one Recipient and Department employee). The agreement will be prepared by DOC and may include other provisions, such as a royalty free license to the Federal government and certain other entities. The provision at 35 U.S.C. § 202(e) also authorizes the Recipient to transfer its rights to the Government, which can agree to share royalties similarly as described above.

(ii) *Responsibilities --iEdison.* The Recipient has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The Recipient is expected to comply with all the requirements of the standard patent rights clause and 37 C.F.R. part 401. Recipients of DOC Awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Recipients may obtain a waiver of this electronic submission requirement by providing DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.
b. *Patent Notification Procedures.* Pursuant to Executive Order 12889, the Department is required to notify the owner of any valid patent covering technology whenever the Department or its Recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the Recipient uses or has used patented technology under this Award without a license or permission from the owner, the Recipient must notify the Grants Officer.

This notice does not necessarily mean that the Government authorizes and consents to any copyright or patent infringement occurring under the financial assistance.

c. *Data, Databases and Software.* The rights to any work produced or purchased under a DOC Award are determined by 15 C.F.R. § 24.34 for State and Local Governments, and 15 C.F.R. § 14.36, for Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations. Such works may include data, databases or software. The Recipient owns any work produced or purchased under a DOC Award subject to the Department’s right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Government purposes.

d. *Copyright.* The Recipient may copyright any work produced under a DOC Award subject to the Department’s royalty-free non-exclusive and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Federal government purposes. Works jointly authored by the Department and Recipient employees may be copyrighted but only the part authored by the Recipient is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. If the contributions of the authors cannot be separated, the copyright status of the joint work is questionable. On occasion, DOC may require the Recipient to transfer to DOC its copyright in a particular work for government purposes or when DOC is undertaking the primary dissemination of the work. Ownership of copyright by the Government through assignment is permitted by 17 U.S.C. § 105.

5. **Increasing Seat Belt Use in the United States.**
   Pursuant to Executive Order 13043, Recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented or personally-owned vehicles.

6. **Research Involving Human Subjects.**
   a. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. part 27, Protection of Human Subjects. No research involving
human subjects is permitted under this Award unless expressly authorized by special award condition, or otherwise authorized in writing by the Grants Officer.

b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

c. The Department’s regulations at 15 C.F.R. part 27 require that Recipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in carrying out the purpose(s) of this Award, the Recipient shall submit appropriate documentation to the Program Officer for approval. This documentation may include:

(i) Documentation establishing approval of the Project by an institutional review board (IRB) approved for government-wide use under Department of Health and Human Services guidelines (See 15 C.F.R. § 27.103);
(ii) Documentation to support an exemption for the Project under 15 C.F.R. § 27.101(b);
(iii) Documentation to support deferral for an exemption or IRB review under 15 C.F.R. § 27.118;
(iv) Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.

d. No work involving human subjects may be undertaken, conducted, or costs incurred or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred or charged to the Project for protocol or instrument development related to human subjects research.

7. **Federal Employee Expenses.**
Federal agencies are generally barred from accepting funds from a Recipient to pay transportation, travel, or other expenses for any Federal employee. Use of Award funds (Federal or non-Federal) or the Recipient’s provision of in-kind goods or services, for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for Federal employees, from Recipients or applicants regardless of the source.

8. **Minority-Serving Institutions (MSIs) Initiative.**
Pursuant to Executive Order 13555 (“White House Initiative on Educational Excellence for Hispanics”), 13270 (“Tribal Colleges and Universities”), and 13532 (“Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities”), the Department is strongly committed to broadening the participation of
minority-serving institutions (MSIs) in its financial assistance programs. The Department's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. The Department encourages all applicants and Recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

The Department of Commerce adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 Fed. Reg. 76260 (2000)). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipient organizations that conduct extramural research funded by the Department must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipient organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Federal award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the award, up to and including award termination and possible suspension or debarment. The Department requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the OIG of such allegation. Once the Recipient organization has investigated the allegation, it will submit its findings to the Grants Officer. The DOC may accept the Recipient's findings or proceed with its own investigation. The Grants Officer shall inform the Recipient of the Department's final determination.


a. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording and reporting results of Federally funded projects, e.g. scientific research, and expanding access to Federally funded projects.

b. Recipients must submit a copy of any publication materials, including but not limited to print, recorded or Internet materials, to the EDA Project Officer.

c. When releasing information related to a funded project, Recipients must include a statement that the project or effort undertaken was or is sponsored by DOC.

d. Recipients are responsible for assuring that every publication of material based on, developed under, or produced under a DOC financial assistance award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer:
11. **Care and Use of Live Vertebrate Animals.**

Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. No. 89-544), as amended (7 U.S.C. § 2131 et seq.) (animal acquisition, transport, care, handling, and use in projects), and the implementing regulations at 9 C.F.R. parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. § 1531 et seq.); Marine Mammal Protection Act (16 U.S.C. § 1361 et seq.) (taking possession, transport, purchase, sale, export or import of wildlife and plants); Non-indigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. § 4701 et seq.) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling and treatment of warm blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC Award unless authorized by the Grants Officer.


If the performance of a grant award requires recipient organization personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term "routine access" is defined as more than 180 days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services’ (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual has lawful immigration status and is eligible for employment within the US. Any items or services delivered under a financial assistance award shall comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12, “Policy for a Common Identification Standard for Federal Employees and Contractors”, FIPS PUB 201, and OMB Memorandum M-05-24. The Recipient shall ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The Recipient shall insert the following term in all subawards and contracts when the subaward Recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

a. **The subrecipient or contractor shall comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all...**
employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.

b. The subrecipient or contractor shall account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee’s employment; (3) Upon subaward or contract completion or termination.

13. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.

a. This clause applies to the extent that this Award involves access to export-controlled items.

b. In performing this Award, the Recipient may gain access to items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The Recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR’s deemed exports and reexports provisions. The Recipient shall establish and maintain effective export compliance procedures at DOC and non-DOC facilities throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual and electronic access to export-controlled items, including by foreign nationals.

c. Definitions.

(i) Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the DOC’s Bureau of Industry and Security. These are generally known as “dual-use” items, items with a military and commercial application.

(ii) Deemed Export/Reexport. The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is “deemed” to be an export to the home country of the foreign national. 15 C.F.R. § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national’s home country. Licenses from the Department may be required for deemed exports or reexports.
d. The Recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this Award, to ensure that access to, or release of, such items are restricted, or licensed, as required by applicable Federal laws, Executive Orders or regulations, including the EAR.

e. As applicable, Recipient personnel and associates at Department sites will be informed of any procedures to identify and protect export-controlled items.

f. To the extent the recipient wishes to provide foreign nationals with access to export-controlled items, the recipient shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed reexports.

g. Nothing in the terms of this Award is intended to change, supersede or waive the requirements of applicable Federal laws, Executive Orders or regulations.

h. The Recipient shall include this clause, including this paragraph (f), in all lower-tier transactions (sub-award, contracts, and subcontracts) under this Award that may involve access to export-controlled information technology.


The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the Recipient or subrecipient engages in certain activities related to trafficking in persons.


Award Term from 2 C.F.R. § 175.15(b): Trafficking in persons.

a. Provisions applicable to a Recipient that is a private entity.

1. You as the Recipient, your employees, subrecipients under this award, and subrecipients’ employees may not—
   (i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
   (ii) Procure a commercial sex act during the period of time that the award is in effect; or
   (iii) Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity
(i) Is determined to have violated a prohibition in paragraph a.1 of this award term; or

(ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—(A) Associated with performance under this award; or (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by DOC at 2 C.F.R. part 1326, “Nonprocurement Debarment and Suspension.”

b. Provision applicable to a Recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term, or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

   (i) Associated with performance under this award; or

   (ii) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by DOC at 2 C.F.R. part 1326, “Nonprocurement Debarment and Suspension.”

c. Provisions applicable to any Recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

   (i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and

   (ii) Is in addition to all other remedies for noncompliance that are available to us under this award.
3 You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1 Employee means either:
   (i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
   (ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2 Forced labor means: labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3 Private entity:
   (i) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 § CFR 175.25;
   (ii) Includes: (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR §§ 175.25(b); and (B) A for-profit organization.

4 “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).


a. Searchable Website Requirements. The Federal Funding Accountability and Transparency Act of 2006 (FFATA) requires information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at www.USASpending.gov. Recipients and subrecipients must include the following required data elements in their application:
   (i) Name of entity receiving award;
   (ii) Award amount;
(iii) Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;
(iv) Location of entity, primary location of performance (City/State/Congressional District/Country); and
(v) Unique identifier of entity.


Award Term from Appendix A of 2 C.F.R. Part 170:

a. Reporting of first-tier subawards.

1. **Applicability.** Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. **Where and when to report.**
   (i) You must report each obligating action described in paragraph a.1. of this award term to [http://www.fsrs.gov](http://www.fsrs.gov).
   (ii) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. **What to report.** You must report the information about each obligating action that the submission instructions posted at [http://www.fsrs.gov](http://www.fsrs.gov) specify.

b. Reporting Total Compensation of Recipient Executives.
1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
   (i) the total Federal funding authorized to date under this award is $25,000 or more;
   (ii) in the preceding fiscal year, you received—
       (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
       (B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
   (iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:
   (i) As part of your registration profile at http://www.ccr.gov.
   (ii) By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient’s five most highly compensated executives for the subrecipient’s preceding completed fiscal year, if—
   (i) in the subrecipient’s preceding fiscal year, the subrecipient received—
       (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
       (B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
   (i) To the recipient.
   (ii) By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions. If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report: i. Subawards, and ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:
   (i) A Governmental organization, which is a State, local government, or Indian tribe;
   (ii) A foreign public entity;
   (iii) A domestic or foreign nonprofit organization;
   (iv) A domestic or foreign for-profit organization;
   (v) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:
   (i) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
   (ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __210 of the attachment to OMB
Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations").

(iii) A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:
   (i) Receives a subaward from you (the recipient) under this award; and
   (ii) Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient’s or subrecipient’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
   (i) Salary and bonus.
   (ii) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
   (iii) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
   (iv) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
   (v) Above-market earnings on deferred compensation which is not tax-qualified.
   (vi) Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

   c. Central Contractor Registration (CCR) and Universal Identifier requirements.

   1. Requirement for Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the Recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.
2. Requirement for Data Universal Numbering System (DUNS) Numbers. If you are authorized to make subawards under this award, you:
   (i) Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
   (ii) May not make a subaward to an entity unless the entity has provided its DUNS number to you.

3. Definitions for purposes of this award term:
   (i) Central Contractor Registration (CCR) means the Federal repository into which an entity must provice information required for the conduct of business as a Recipient. Additional information about registration procedures may be found at the System for Award Management Internet site (currently at https://www.sam.gov/portal/public/SAM/).
   (ii) Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at http://fedgov.dnb.com/webform).
   (iii) Entity, as it is used in this award term, means all of the following, as defined at 2 C.F.R. part 25, subpart C:
      (1) A Governmental organization, which is a State, local government, or Indian Tribe;
      (2) A foreign public entity;
      (3) A domestic or foreign nonprofit organization;
      (4) A domestic or foreign for-profit organization; and
      (5) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
   (iv) Subaward:
      (1) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the Recipient award to an eligible subrecipient.
      (2) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. 210 of the attachment to OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations”).
      (3) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
   (v) Subrecipient means an entity that:
      (1) Receives a subaward from you under this award; and
(2) Is accountable to you for the use of the Federal funds provided by the subaward.

16. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown

This term sets forth initial guidance that will be implemented for Federal assistance awards in the event of a lapse in appropriations, or a government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

a. Unless there is an actual rescission of funds for specific grant obligations, Recipients of Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Recipients are advised that ongoing activities by Federal employees involved in grant administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.

b. All award actions will be delayed during a government shutdown; if it appears that a Recipient’s performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible government shutdown, the Program Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise Recipients that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, Recipients whose ability to withdraw funds is subject to prior agency approval, which in general are Recipients that have been designated high risk, Recipients of construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Recipients should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Recipients whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.

c. The ASAP system should remain operational during a government shutdown. Recipients that do not require any grant office or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a government shutdown and advanced funds held for more than 30 days will have to be returned with interest.
PART II

RLF RECIPIENTS' MANAGEMENT AND ADMINISTRATIVE REQUIREMENTS

Part II of these RLF Standard Terms and Conditions sets out the Recipient’s duties to administer and manage this Award.

A. Revolving Loan Fund (RLF) Plan Requirements.
The Recipient must develop and manage its RLF in accordance with a RLF Plan as described in this section and in 13 C.F.R. § 307.9, and submit the RLF Plan (or Plan) to EDA for approval. The RLF Plan must serve as the Recipient’s internal operating tool and set out administrative procedures for operating the RLF consistent with “Prudent Lending Practices,” as defined in 13 C.F.R. § 307.8.

1. Format and Content.
The required content and recommended format for the RLF Plan is as follows:

a. The title page of the Plan should show the Recipient organization’s name and the date the Plan was adopted.

b. Part I of the Plan titled Revolving Loan Fund Strategy must summarize (i) the Comprehensive Economic Development Strategy (CEDS) for the region in which the RLF Project is located and (ii) business development objectives, and describe the RLF’s financing strategy, policy and portfolio standards. Organization of the material and the level of detail provided in Part I may be varied to improve the narrative flow, provided the substantive content is adequately covered.

c. Part II of the Plan titled Operational Procedures must serve as the internal operating manual for the Recipient. In administering the RLF, the Recipient must adopt procedures to comply, and ensure that potential borrowers comply, with applicable laws and regulations including but not limited to 13 C.F.R. part 307.

2. Evaluation of RLF Plans.
EDA will use the following criteria to evaluate RLF Plans. The Plan must:

a. Be consistent with the CEDS or EDA-approved strategy for the Region;

b. Be consistent with EDA’s conflict of interest rules;

c. Identify the strategic purpose of the RLF and the considerations influencing the selection of its financing strategy and lending criteria, including:

   (i) An analysis of the local capital market and the financing needs of the targeted businesses; and

   (ii) Financing policies and portfolio standards which are consistent with EDA’s policies and requirements;
d. Demonstrate an adequate understanding of commercial loan portfolio management procedures, including loan processing, underwriting, closing, disbursement, collection, monitoring, and foreclosure. It also must provide sufficient administrative procedures to prevent conflicts-of-interest and to ensure accountability, safeguarding of RLF assets and compliance with Federal and local laws. (See 13 C.F.R. § 307.9(b).)

3. **RLF Plan Modifications.**
RLF Operators must develop an RLF Plan, and this Plan must be updated once every 5 years thereafter. Economic development often requires the implementation of new approaches to help stimulate stagnant economies. EDA reserves the right to request changes to a RLF Plan at any time to incorporate new approaches or areas of focus. Such changes may be required for the RLF to remain supportive of updates made to a Regional CEDS. Modification of the RLF Plan also may be necessary to ensure effective use of the RLF as a strategic financing tool. A Recipient must request and obtain EDA approval prior to any modifications of the Plan. (See 13 C.F.R. § 307.9(c).)

**B. Modifications of Lending Areas and Consolidation of RLF Awards.**
The Recipient must make loans to implement and assist economic activity only within its EDA-approved lending area, as set forth and defined in the RLF Award and the RLF Plan. The Recipient may request permission from EDA to consolidate (or merge) eligible RLF Awards in accordance with required documentation and procedures. Any request to add an additional lending area or to consolidate two or more EDA-funded RLF Awards must satisfy the following requirements:

1. A Recipient may add an additional lending area to its existing lending area to create a new lending area only with EDA’s prior written approval and subject to the conditions set out in 13 C.F.R. § 307.18(a).

2. A Recipient with more than one EDA-funded RLF Award may consolidate two or more EDA-funded RLFs into one surviving RLF with EDA’s prior written approval, provided the conditions set out in 13 C.F.R. § 307.18(b)(1) are satisfied.

3. Two or more Recipients may consolidate their EDA-funded RLFs into one surviving RLF with EDA’s prior written approval, provided the conditions set out in 13 C.F.R. § 307.18(b)(2) are satisfied.

**C. Prudent Lending Practices.**
The Recipient is expected to administer the RLF in accordance with “Prudent Lending Practices,” defined in 13 C.F.R. § 307.8 as “generally accepted underwriting and lending practices for public loan programs, based on sound judgment to protect Federal and lender interests.” Prudent Lending Practices cover loan processing, documentation, loan approval, servicing, administrative procedures, collateral protection, collections, and recovery actions. Prudent lending practices include compliance with local laws and filing requirements to perfect and maintain a security interest in RLF collateral.
1. **Accounting Principles.**

a. RLFs must operate in accordance with generally accepted accounting principles ("GAAP"), as outlined in OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, and the related Compliance Supplement.

b. In accordance with GAAP, a loan loss reserve may be recorded in the RLF Recipient’s financial statements to show the fair market value of an RLF’s loan portfolio, provided this loan loss reserve is non-funded and represents non-cash entries. *(See 13 C.F.R. § 307.15(a)(2)*

2. **Pre-Disbursement and Loan and Accounting System Requirements.**

a. Prior to any disbursement of EDA funds, the Recipient must provide to EDA:

   (i) Evidence of fidelity bond coverage for persons authorized to handle funds under this Award in an amount sufficient to protect the interests of EDA and the RLF. EDA has determined the amount of cash at risk for which fidelity insurance should be obtained is the amount of cash readily available to the RLF Recipient, which is generally the greater of 25 percent of the RLF Capital base, or the maximum loan amount identified in the Recipient’s EDA approved RLF Plan. Note that such insurance coverage must exist at all times during the duration of the RLF’s operation; and

   (ii) Certification in accordance with 13 C.F.R. § 307.15(b)(1) that the Recipient’s accounting system is adequate to identify, safeguard and account for all RLF Capital (as defined as Prudent Lending Practices in 13 C.F.R. § 307.8), outstanding RLF loans and other RLF operations. This certification must occur within 60 days prior to the initial disbursement of EDA funds under this Award. *(See 13 C.F.R. §§ 307.15(b)(1) and 307.11(a).)*

b. Prior to the disbursement of any EDA grant funds, the RLF Recipient shall certify that standard RLF loan documents reasonably necessary or advisable for lending are in place and that these documents have been reviewed by its legal counsel for adequacy and compliance with the terms and conditions of the Award, applicable State and local laws, and the approved RLF Plan. The standard loan documents must include, and be retained and available to EDA and/or an auditor, and at a minimum must include the following:

   (i) Loan application;
   (ii) Loan agreement;
   (iii) Board of Directors’ meeting minutes approving the RLF loan;
3. **Interest Rates.**
An RLF Recipient can make loans to eligible borrowers at interest rates and under conditions determined by the RLF Recipient to be appropriate in achieving the goals of the RLF. The minimum interest rate an RLF Recipient may charge is four (4) percentage points below the lesser of the current money center prime rate quoted in the Wall Street Journal, or the maximum interest rate allowed under State law. In no event shall the interest rate be less than the lower of four (4) percent or 75 percent of the prime interest rate listed in the Wall Street Journal. However, should the prime interest rate listed in the Wall Street Journal exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of the RLF Recipient to implement its financing strategy. (See 13 C.F.R. § 307.15(c).)

4. **Private Leveraging.**
RLF loans must leverage private investment of at least two dollars for every one dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF’s operation. To be classified as leveraged, private investment must be made within 12 months prior to or after approval of an RLF loan closing, as part of the same business development project, and may include:

(i) Capital invested by the borrower or others;
(ii) Financing from private entities; or
(iii) The non-guaranteed portion and ninety (90) percent of the guaranteed portions of U.S. Small Business Administration’s 7(A) loans and 504 debenture loans.

Private investments shall not include accrued equity in a borrower’s assets. (See 13 C.F.R. § 307.15(d).)

**D. Conflicts-of-Interest Rules.**

1. An “Interested Party” is defined in 13 C.F.R. § 300.3 as “any officer, employee or member of the board of directors or other governing board of the Recipient, including any other parties that advise, approve, recommend or otherwise participate in the business decisions of the Recipient, such as agents, advisors, consultants, attorneys,
accountants or shareholders.” An Interested Party also includes the Interested Party’s “Immediate Family” (defined in 13 C.F.R. § 300.3 as a person’s spouse, parents, grandparents, siblings, children and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person) and other persons directly connected to the Interested Party by law or through a business organization. In addition, “Immediate Family” includes a person’s “significant other” or partner in a domestic relationship with an “Interested Party.”

The Recipient must establish safeguards to prohibit an Interested Party from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflicts-of-interest or of personal gain. (See 13 C.F.R. § 302.17(a) and (b), 15 C.F.R. §§ 14.42 and 24.36(b)(3), and Forms SF-424B (Assurances – Non-Construction Projects) and SF-424D (Assurances – Construction Projects).) The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.

2. An Interested Party must not receive any direct or indirect, financial or personal benefits in connection with this Award or its use for payment or reimbursement of costs by or to the Recipient. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a sub-award. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It also could result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field. (See 13 C.F.R. § 302.17(b).)

3. In addition to the rules set forth in 13 C.F.R. § 302.17(a) and (b), the Recipient must adhere to these special conflicts-of-interest rules set out in 13 C.F.R. § 302.17(c):

a. An Interested Party of a Recipient of an RLF Award shall not receive, directly or indirectly, any personal or financial benefits resulting from the disbursement of RLF loans.

b. A Recipient shall not lend RLF funds to an Interested Party.

c. Former board members of a Recipient and members of his or her Immediate Family shall not receive a loan from the RLF for a period of 2 years from the date that the board member last served on the RLF’s board of directors.

(See also part I, section N of these RLF Standard Terms and Conditions.)
E. Effective Utilization of Revolving Loan Funds.


   a. During the “Revolving Phase” (defined at 13 C.F.R. § 307.8 as the stage of the RLF’s business lending activities that commences immediately after all grant funds have been disbursed to the Recipient), the RLF Recipient must manage their repayment and lending schedules to provide that at all times at least 75 percent of the RLF Capital is loaned or committed. The following exceptions apply:

      (i) A Recipient that anticipates making large loans relative to the size of its RLF Capital base may propose a RLF Plan that provides for maintaining a capital utilization standard greater than twenty-five percent; and

      (ii) EDA may require a Recipient with an RLF Capital base in excess of $4 million to adopt a Plan that maintains a proportionately higher percentage of its funds loaned.

   In the event that EDA sets a higher capital utilization rate, the Recipient shall have 90 calendar days to submit the RLF Plan to EDA for approval.

   b. When the percentage of loaned RLF Capital falls below the applicable capital utilization standard, the dollar amount of the RLF funds equivalent to the difference between the actual percentage of RLF Capital loaned out and the applicable capital utilization standard is referred to as “excess funds.” (See 13 C.F.R. § 307.16(c)(2)).

2. Sequestration of Excess Funds.

   a. Sequestration Required. If the RLF Recipient fails to satisfy the applicable capital utilization standard for 2 consecutive Reporting Periods, EDA may require the Recipient to deposit excess funds in an interest-bearing account. The portion of interest earned on the account holding excess funds attributable to the Federal Share (as defined in 13 C.F.R. § 314.5) of the RLF grant shall be remitted to the U.S. Treasury. If EDA requires sequestration, the Recipient must submit to EDA:

      (i) A letter certifying that an account has been set up for the purposes of sequestering excess funds; specifying the applicable EDA award number(s), the amount deposited, the account number, and the name, address and telephone number of the bank; and certifying that the Recipient will remit quarterly any interest payments to EDA; and

      (ii) A copy of the deposit receipt evidencing that a separate, interest-bearing account was set up for the amount certified in the letter.
This documentation is required regardless of whether the Recipient is establishing the account for the first time or depositing additional grant funds. The RLF Recipient must obtain EDA’s written authorization to withdraw any sequestered funds. EDA will permit the release of sequestered funds only on an as-needed basis, provided that the RLF’s cash on hand is insufficient to cover a loan. To expedite the release of sequestered funds, EDA may approve this release via electronic mail received from an RLF Recipient officer or agent, (See 13 C.F.R. § 307.16(c)(2)(i).)

b. **Sequestration Not Required.** EDA will not require sequestration of excess funds if:

(i) The amount to be sequestered is less than $5,000.00; or

(ii) The Recipient requests an extension up to six months by providing written documentation of the extenuating circumstances precipitating the excess cash situation, as well as a written plan, signed by the Recipient’s authorized representative, describing specific actions the Recipient will take to achieve compliance within the next six months, and the Grants Officer signs and approves this plan. Six-month compliance extensions are solely at the Grant Officer’s discretion.

3. **Remittance of Interest on Sequestered Funds.**

The portion of the interest earned on the account holding sequestered funds that is attributable to the EDA share of the Award must be remitted semi-annually to EDA within 30 days of the end of each semi-annual Reporting Period to the following address:

U.S. Department of Commerce  
National Oceanic and Atmospheric Administration  
Finance Office, AOD  
EDA Grants  
20020 Century Boulevard  
Germantown, MD 20874

Remitted funds must be submitted in accordance with the directions outlined in the Special Award Conditions. Checks must be made out to the “Economic Development Administration” and must contain the applicable Grant Award number in a prominent location. Additionally, a brief memorandum accompanying the check must include:

a. A statement that the payment being remitted to EDA represents interest earned on EDA’s portion of sequestered funds; and

b. A calculation showing how EDA’s share of the interest was determined.

c. The Recipient must submit a copy of this memorandum and evidence of interest payment remittance (a copy of the check, wire transfer or direct deposit of funds) to their Project Officer, who will share this information with the Grants Officer.
4. **Persistent Noncompliance.**

Generally, EDA will allow the Recipient a reasonable period of time to lend excess funds and achieve the applicable capital utilization standard. However, if the RLF Recipient fails to achieve the applicable capital utilization standard after a reasonable period of time, as determined by EDA, it may be subject to sanctions such as suspension or termination. (See 13 C.F.R. § 307.16(c)(2)(ii).)

**F. Financial Accountability in the Administration of an RLF.**

The Recipient is responsible for the administrative costs associated with operating the RLF. Any future funding to recapitalize an RLF is dependent upon the successful management of the RLF from both a program and financial perspective, as well as future Congressional appropriations to support the program. As grant funds are disbursed for loans and the RLF begins to generate income from lending activities, such income (referred to as “RLF Income” and defined in 13 C.F.R. § 307.8), as distinguished from interest payments remitted to EDA pursuant to 13 C.F.R. § 307.16(c)(2)(i), may be used to cover eligible, reasonable and documented administrative costs necessary to administer the RLF, unless otherwise provided for in the Award or approved in writing by EDA. A Recipient may use RLF Income only to capitalize the RLF for financing activities and to cover eligible and reasonable administrative expenses.

1. **General Requirements for RLF Income.**

RLF Income must be placed into the RLF Capital base for the purpose of making loans or paying for eligible and reasonable administrative costs associated with the RLF’s operations. RLF Income may fund reasonable administrative costs, provided:

a. The RLF Income and the administrative costs are incurred in the same six-month Reporting Period;

b. RLF Income that is not used for administrative costs during the six-month Reporting Period is made available for lending activities;

c. RLF Income shall not be withdrawn from the RLF Capital base in a subsequent reporting period for any purpose other than lending without the prior written consent of EDA; and

d. The RLF Recipient completes an RLF Income and Expense Statement as required under 13 C.F.R. § 307.14(c).

(See 13 C.F.R. § 307.12(a).)

2. **Compliance Guidance.**

When charging costs against RLF Income, the Recipient must comply with applicable Federal costs principles and audit requirements as found in:
a. 2 C.F.R. part 225 ( "Cost principles for state, local and Indian tribal governments (OMB Circular A-87)" );

b. C.F.R. part 230 ( "Cost principles for non-profit organizations (OMB Circular A-122)" - institutions of higher education, hospitals or organizations, named in OMB Circular A-122, are not subject to this Circular);

c. 2 C.F.R. part 220 ( "Cost principles for educational institutions (OMB Circular A-21)" ); and

d. OMB Circular A-133 ( and the related Compliance Supplement ) for Single Audit Act requirements for States, local Governments and Non-Profit Organizations.

(See 13 C.F.R. § 307.12(b).)

3. **Priority of Payments on Defaulted RLF Loans.**

When a Recipient receives proceeds on a defaulted RLF loan that is not subject to liquidation pursuant to 13 C.F.R. § 307.20, such proceeds shall be applied in the following order of priority:

a. First, towards any costs of collection;

b. Second, towards outstanding penalties and fees;

c. Third, towards any accrued interest to the extent due and payable; and

d. Fourth, towards any outstanding principal balance.

(See 13 C.F.R. § 307.12(c).)

The Recipient is expected to add RLF Income to the RLF Capital base where practicable. To determine the appropriate amount of RLF Income to return to the RLF Capital base, RLF operators must consider the costs necessary to operate the RLF program, the availability of other monetary resources, the portfolio risk level and projected capital erosions from loan losses and inflation, the community’s (or region’s) commitment to the RLF and the anticipated demand for RLF loans.

4. **Default Rates.**

If an RLF loan’s default rate exceeds 20 percent, EDA may request additional information from the Recipient, including but not limited to:

a. A narrative, signed by the Chair of the RLF administrative board, outlining actions taken to address the non-performing portion of the RLF loan portfolio;
b. Detailed information for each non-performing loan (e.g., borrower's name, loan closing date, outstanding loan balance, number of days delinquent, collateral, actions taken to collect loan payments, the percentage of the loan likely to be collected, dollar amount expected to be collected, expected date of collection, current status);

c. An EDA-approved corrective action plan; and

d. An amended RLF Plan consistent with the EDA-approved corrective action plan.

Failure to submit an acceptable corrective action plan within 120 days of receiving EDA’s request, failure to comply with an EDA-approved corrective action plan, or failure to allow EDA to conduct an on-site visit upon request may result in termination of the Award.

G. Records and Retention.

1. Closed Loan Files and Related Documents.
The Recipient must maintain Closed Loan files and all related documents, books of account, computer data files and other records over the term of the Closed Loan and for a three-year period from the date of final disposition of the Closed Loan. The date of final disposition of a Closed Loan is the date:

   a. Principal, interest, fees, penalties, and all other costs associated with the Closed Loan have been paid in full; or

   b. Final settlement or discharge and cessation of collection efforts of any unpaid amounts associated with the Closed Loan have occurred.

(See 13 C.F.R. § 307.13(a))

The Recipient must at all times:

   a. Maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs.

   b. Retain records of administrative costs incurred for activities and equipment relating to the operation of the RLF for three years from the actual submission date of the last semi-annual or annual report that covers the period that such costs were claimed, or for five years from the date the costs were claimed, whichever is more.
c. Make available for inspection any retained records, including those retained for longer than the required period. See record retention and access requirements set out at 15 C.F.R. §§ 14.53 or 24.42, as applicable.

(See 13 C.F.R. § 307.13(b))


1. Frequency of Reports.
All Recipients, including those receiving Recapitalization Grants (defined in 13 C.F.R. § 307.8) for existing RLFs, must submit semi-annual reports on Form ED-209 (or any successor form).

2. RLF Plan Certification.
The Recipient must certify as part of its semi-annual report to EDA that the RLF is operating in accordance with the applicable RLF Plan. The Recipient also must describe (and propose pursuant to 13 C.F.R. § 307.9) any modifications to the RLF Plan to ensure effective use of the RLF as a strategic financing tool. (See 13 C.F.R. § 307.14(b).)

3. RLF Income and Expense Statement.
A Recipient using either 50 percent or more (or more than $100,000) of RLF Income for administrative costs in the twelve-month reporting period must submit a completed Income and Expense Statement on Form ED-209I (or any successor form) annually to the appropriate Regional Office within 90 days of the end of the fiscal year. A Recipient using less than 50 percent and less than $100,000 of RLF Income for administrative costs in the twelve-month reporting period must prepare and retain for four years a completed Income and Expense Statement for the applicable fiscal year, which shall be made available to EDA upon request. (See 13 C.F.R. § 307.14(c).)

Failure to submit semi-annual reports or the Income and Expense Statement in a timely manner may result in termination of the Award.

In addition, EDA may require the Recipient to report on Project performance beyond the Project Closeout date for Government Performance and Results Act (GPRA) purposes. Required data shall be provided on a standardized form provided by EDA. Data used by the Recipient in preparing reports shall be accurate and from independent sources whenever possible. See 13 C.F.R. § 302.16.
PART III
LENDING RESTRICTIONS AND BORROWER REQUIREMENTS

A. Uses of Capital.
The Recipient must use RLF Capital for the purpose of making loans that are consistent with an approved RLF Plan or such other purposes approved by EDA. To ensure that grant funds are used as intended, each loan agreement must clearly state the purpose of each loan. (See 13 C.F.R. § 307.17(a).)

1. Restrictions on Use of RLF Capital.
RLF Capital shall not be used to:

a. Acquire an equity position in a private business;
b. Subsidize interest payments on an existing loan;
c. Provide for borrowers' required equity contributions under other Federal Agencies' loan programs;
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;
e. Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit or any investments unrelated to the RLF;
f. Refinance existing debt, unless:

   (i) The Recipient sufficiently documents 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 will not, without other indicia, constitute a sound economic justification; or
   (ii) RLF Capital will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. 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 18 months following the date of refinancing. (See 13 C.F.R. § 307.17(b).)

2. Credit Not Otherwise Available.
The Recipient must determine and clearly demonstrate in the loan documentation for each RLF loan that credit is not otherwise available on terms and conditions that permit
the completion or successful operation of the activity to be financed. (See 13 C.F.R. § 307.17(c).)

B. Pre-Loan Requirements for RLF Recipients and RLF Borrowers.

1. Environmental Impact.
The Recipient must adopt procedures to review the impacts of prospective loan proposals on the physical environment. The RLF Plan must provide for compliance with applicable environmental laws and regulations, including but not limited to 13 C.F.R. parts 302 and 314. The Recipient also must adopt procedures to comply, and ensure that potential borrowers comply, with applicable environmental laws and regulations. (See 13 C.F.R. § 307.10(a) and part I, section P. of these RLF Standard Terms and Conditions.)

2. Protection of RLF Assets.
The Recipient must ensure that prospective borrowers, consultants or contractors are aware of and comply with the Federal statutory and regulatory requirements that apply to activities carried out with RLF loans. RLF loan agreements must include applicable Federal requirements to ensure compliance, and the Recipient must adopt procedures to diligently correct instances of non-compliance, including loan call stipulations. (See 13 C.F.R. § 307.10(b).)

3. Hold Harmless Provision.
All RLF loan documents and procedures must protect and hold the Federal government harmless from and against all liabilities that the Federal government may incur as a result of providing an Award to assist (directly or indirectly) in site preparation or construction, as well as the direct or indirect renovation or repair of any facility or site. These protections apply to the extent that the Federal government may become potentially liable as a result of ground water, surface, soil or other natural or man-made conditions on the property caused by operations of the Recipient or any of its borrowers, predecessors or successors. (See 13 C.F.R. § 307.10(c).)

The Recipient agrees to comply with the following statutory provisions:

   a. Section 601 of title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d et seq.) (proscribing discrimination on the basis of race, color, or national origin under programs receiving Federal financial assistance), and the Department’s implementing regulations found at 15 C.F.R. part 8;

   b. 42 U.S.C. § 3123 (proscribing discrimination on the basis of sex in investment assistance provided under PWEDA) and 42 U.S.C. § 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program), and the Department’s implementing regulations found at 15 C.F.R. §§ 8.7 - 8.15;
c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) (proscribing discrimination on the basis of disabilities), and the Department’s implementing regulations found at 15 C.F.R. part 8b;

Revised ADA Standards for Accessible Design for Construction Awards: The U.S. Department of Justice has issued revised regulations implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286). The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design” (2010 Standards). The 2010 Standards are an acceptable alternative to the Uniform Federal Accessibility Standards (UFAS). DOC deems compliance with the 2010 Standards to be an acceptable means of complying with the Section 504 accessibility requirements for new construction and alteration projects under 15 C.F.R. § 8b.18(c), as follows:

1. Public Recipients subject to Title II of the ADA may use either the 2010 Standards or UFAS where the physical construction or alterations commence on or after September 15, 2010 and before March 15, 2012 (see 28 C.F.R. § 35.151(c)(2)); and

2. Private Recipients subject to Title III of the ADA may use either the 2010 Standards or UFAS if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after September 15, 2010 and before March 15, 2012, or if no permit is required, if the start of physical construction or alterations occurs on or after September 15, 2010 and before March 15, 2012 (see 28 C.F.R. § 36.406(a)(2)).

In all cases, once a recipient selects an applicable ADA accessibility standard (i.e., the 2010 Standards or UFAS), that standard must be applied to the entire facility.

As of March 15, 2012, all new construction and alteration projects must comply with the 2010 Standards.

d. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (proscribing discrimination on the basis of age), and the Department’s implementing regulations found at 15 C.F.R. part 20; and

e. Other Federal statutes, regulations and Executive Orders, as applicable. See also part I, section E. of these RLF Standard Terms and Conditions.

g. Executive Order 13166 (August 11, 2000), “Improving Access to Services for Persons With Limited English Proficiency,” requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them, and DOC policy guidance issued on March 24, 2003 (68 FR 14180) to Federal financial assistance recipients on the Title VI prohibition against national origin discrimination affecting LEP persons.

5. **Wage Rate Requirements of the Davis-Bacon Act.**
In accordance with section 602 of PWEDA (42 U.S.C. § 3212), all laborers and mechanics employed by contractors or subcontractors on construction-related Projects receiving investment assistance under PWEDA shall be paid wages not less than those prevailing on similar construction in the locality, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. (See 13 C.F.R. § 302.13.) Therefore, the Recipient and any borrower, contractor or subcontractor must comply with Davis-Bacon prevailing wage rates where RLF funds under this Award are used for construction work financed in whole or in part with such RLF funds.
APPENDIX

THE FOLLOWING REFERENCE MATERIALS ARE AVAILABLE FROM EDA:

13 C.F.R. chapter III (EDA's regulations)

15 C.F.R. part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit and Commercial Organizations

15 C.F.R. part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations, and the related Compliance Supplement

OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments

2 C.F.R. part 220 (codifying OMB Circular A-21, Cost Principles for Educational Institutions)

2 C.F.R. part 225 (codifying OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments)

2 C.F.R. part 230 (codifying OMB Circular A-122, Cost Principles for Nonprofit Organizations)

2 C.F.R. part 1326, Non-Procurement Debarment and Suspension

15 C.F.R. part 4, Disclosure of Government Information

15 C.F.R. part 27, Protection of Human Subjects

15 C.F.R. part 28, New Restrictions on Lobbying

15 C.F.R. part 29, Government-wide Requirements for Drug-Free Workplace (Financial Assistance)

48 C.F.R. part 31, Contract Cost Principles and Procedures

THE FOLLOWING FORMS ARE AVAILABLE FROM EDA:

Form SF-425 – Federal Financial Report

Form SF-270 - Request for Advance or Reimbursement (with Instructions)

Form ED-2091 - RLF Income and Expense Statement (with Instructions)
SPECIAL AWARD CONDITIONS
U.S. DEPARTMENT OF COMMERCE
Economic Development Administration (EDA) (the "Government")


1. AWARD
This award number <AWARD NUMBER> (the "Award"), to <RECIPIENT NAME> (together with those co-recipients, if any, named on the Form CD-450), (the "Recipient"), supports the work described in the approved final scope of work, which is incorporated by reference into this Award, as the Authorize Scope of Work. All work on <PROJECT TITLE> (the "Project") must be consistent with the Authorized Scope of Work as detailed in Appendix A, the Authorized Budget as detailed in Appendix B, and the Staffing Plan as detailed in Appendix C, unless the Grants Officer has authorized a modification of the scope of work, the budget, or the staffing plan in writing through an amendment memorialized through execution of a Form CD-451. The Authorized Scope of Work for this project is included in Appendix A, the Authorized Budget is included in Appendix B, and the Staffing Plan is included in Appendix C.

The application, including any attachments, project descriptions, and subsequently submitted supplemental documentation are hereby incorporated by reference into this Award. Where the terms of the application materials and the Award differ, the terms of the Award shall prevail.

2. UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL ASSISTANCE AWARDS
Along with other controlling law, this Award is governed by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements (Uniform Guidance) as set forth in 2 C.F.R. part 200, which streamlines the language from eight existing OMB circulars, including Cost Principles (OMB Circulars A-21, A-87, A-122) and Uniform Administrative Requirements (OMB Circulars A-102 and A-110), into one consolidated set of guidance applicable to federal assistance awards. Please note that the Uniform Guidance supersedes DOC's Uniform Administrative Requirements, which were found at 15 C.F.R. parts 14 and 24.

3. LEAD RECIPIENT DESIGNATION AND OBLIGATIONS [IF APPLICABLE]
This Award is made to multiple Recipients as identified in the Financial Assistance Award Form CD-450. The Government has requested that one of the Recipients be designated as the Lead Recipient to facilitate the administration of this Award. The Recipient named first in the Recipient name block on the Form CD-450 has agreed to be designated as Lead Recipient. The Co-Recipients acknowledge, agree with and consent to this designation. The Recipients agree that all funds available pursuant to this Award shall be solely disbursed by the Government to the Lead Recipient. The Lead Recipient agrees to be solely responsible for the further disbursement of all such funds received from the Government pursuant to this Award strictly in accordance with the Authorized Budget that is part of this Award and all applicable requirements of the Government as identified and set forth on the Financial Assistance Award Form CD-450. The Lead Recipient further agrees to be solely responsible for accumulating all necessary information for and the submission of all reports required to be submitted to the Government pursuant to this Award.
4. **PROJECT DEVELOPMENT TIME SCHEDULE**

The Recipient agrees to the following Project development time schedule:

<table>
<thead>
<tr>
<th>Action Item</th>
<th>Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>Return of Executed Financial Assistance Award (Form CD-450) or Amendment (Form CD-451)</td>
<td>No later than (NLT) 30 calendar days after receipt of Form CD-450/CD-451</td>
</tr>
<tr>
<td>Scheduling of Kick-Off Meeting</td>
<td>NLT 30 calendar days after receipt of Form CD-450/CD-451</td>
</tr>
<tr>
<td>Finalization of Work Schedule</td>
<td>NLT the date of the Kick-Off Meeting</td>
</tr>
<tr>
<td>Submission of Final Project Progress Report</td>
<td>NLT 90 calendar days from the Award End Date</td>
</tr>
<tr>
<td>Submission of Final Financial Documents (SF-425)</td>
<td>NLT 90 calendar days from the Award End Date</td>
</tr>
</tbody>
</table>

The Recipient shall diligently pursue the development and implementation of the Project upon receipt of an EDA Award so as to ensure completion within this time schedule. Moreover, the Recipient shall promptly notify EDA in writing of any event which could substantially delay meeting any of the milestones or deadlines for the Project as set forth above. The Recipient further acknowledges that failure to meet the development time schedule may result in EDA's imposing remedies for noncompliance, including termination of the Award, in accordance with the regulations set forth at 2 C.F.R. §§ 200.338 through 200.342, as applicable.

5. **PROJECT REPORTING AND FINANCIAL DISBURSEMENTS INSTRUCTIONS**

a. **Award Disbursements**

EDA will make Award payments using the Department of Treasury's Automated Standard Application for Payments (ASAP) system. The Recipient is required to furnish documentation as required by ASAP including but not limited to Recipient and Requestor Identification Numbers. Complete information concerning the ASAP system may be obtained by visiting [www.fms.treasury.gov/asap](http://www.fms.treasury.gov/asap).

In order to receive payments, Recipients must submit a Form SF-270 "Request for Advance or Reimbursement" for the applicable period electronically to the Project Officer, who will review and process the request.

Please note that prior to the initial disbursement, Recipients must complete the attached Form SF-3881, "ACH Vendor/Miscellaneous Payment Enrollment Form" and submit it to NOAA’s Accounting Office BY FACSIMILE (FAX) to (301) 528-3675 (fax is required to secure confidentiality of sensitive information). The form must be completed by the respective parties (EDA, Recipient Bank, and Recipient) at the start of each new award.

b. **Reports**

i. **Performance Progress Reports**

The Recipient agrees to provide EDA with Performance Progress Reports, which will communicate the important activities and accomplishments of the Project, on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof. Required metrics will be mutually agreed upon with the Recipient at the Project kick-off meeting, and must include the metrics outlined in the attachment entitled "i6 2016 metrics.pdf" or "SFS 2016 metrics.pdf" in addition to those identified in the Recipient’s proposal. Per the required metrics tables, certain metrics will require the Recipient to report for up to three years following the close-out of the Award on outcomes obtained as a result of this Award. In order to track the required metrics, the Recipient must employ a data management system/client management system which includes keeping a log to capture major activities. When a Performance Progress Report is due, EDA strongly
encourages the Recipient to submit the required metrics in a machine-readable format (e.g., in an Excel spreadsheet).

Reports are due no later than one month following the end of the reporting period. All reports should be submitted via the Grants Online grants management portal and comply with the following guidance:

Performance Progress Reports should be submitted to EDA in an electronic format no later than the dates outlined above in a concise, clear format, which outlines the following information in no more than three to six pages:

a. Provide a clear, concise overview of the activities undertaken during the reporting period;
b. Document accomplishments, benefits, and impacts of the Project and activities. Recipients should note specific outcomes where activities have led to job creation/retention, private investment, increased regional collaboration, engagement with historically excluded groups or regions, enhanced regional capacity, and other positive economic benefits;
c. Highlight any upcoming or potential press events or opportunities for collaborative press events to highlight Project activities and benefits;
d. Compare progress with the Project timeline, explaining any departures from the targeted schedule, identifying how these departures will be remedied, and projecting the course of work for the next period;
e. Outline challenges that currently impact or could impact progress on the Project over the next reporting period and identify ways to mitigate this risk; and
f. Outline any areas where EDA assistance is needed to support the Project or any other key information that would be helpful to your EDA project officer to know.

ii. Final Project Performance Reports

Final Project Performance Reports must be submitted no more than 90 calendar days after the expiration of the period of performance (i.e., the Award end date specified on the Form CD-450 or Form CD-451) and may be posted on EDA’s website, used for promotional materials or policy reviews, or may be otherwise shared. Recipients should clearly identify any information that may constitute a trade secret or may be commercial or financial information that is confidential or privileged in these reports. There is no minimum or maximum page requirement for Final Project Reports; however, such reports should concisely yet completely communicate key Project information as follows:

a. Outline the specific regional need that the Project was designed to address and progress made during the award period of performance that will mitigate that need and advance economic development;
b. Provide a high-level overview of the activities undertaken;
c. Detail lessons learned during the period of performance that may be of assistance to EDA or other communities undertaking similar efforts;
d. Outline the expected and actual economic benefits of the Project at the time that the report is written;
e. A report that aggregates all required metrics from the previously submitted performance reports (note - EDA strongly encourages the Recipient to submit the aggregate report in a machine-readable format, such as an Excel spreadsheet); and
f. Any other key information from the period of performance.
iii. Financial Reports

The Recipient shall submit a “Financial Status Report” (Form SF-425) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, for the entire project period. Form SF-425 (and instructions for completing this form) is available at: http://www.whitehouse.gov/omb/grants/grants_forms.html. Reports are due no later than one month following the end of the period.

A final Form SF-425 must be submitted no more than 90 calendar days after the expiration of the period of performance (i.e., the Award end date specified on the Form CD-450 or Form CD-451). Final financial reports should follow the guidance outlined by the form instructions for submitting mid-term financial reports, but should ensure that all fields accurately reflect the total outlays for the entire period of performance, and that all matching funds and program income (if applicable) are fully reported. Final grant rate and determinations of final balances owed to the Government will be determined by the information on the final Form SF-425, so it is imperative that this final financial form is submitted in a timely and accurate manner.

6. ALLOWABLE COSTS AND AUTHORIZED BUDGET

The Authorized Budget for this award is set forth in Appendix B. Total allowable costs will be determined at the conclusion of the period of performance in accordance with the administrative authorities applicable pursuant to the “Financial Assistance Award” (Form CD-450), including the applicable requirements as set forth in the Uniform Guidance, after the final financial forms, including any required documentation, are submitted. Note that use of funds for venture capital or equity investments are not allowable costs and neither EDA funds nor Matching Share funds may be used for such purposes. Furthermore, neither EDA funds nor Matching Share funds may be used as an award, prize, or loan to any individual.

7. FEDERAL SHARE

For the purposes of this Award, the Federal share is the amount of EDA funds invested under the Award, while the non-federal share, or “Matching Share,” means non-EDA funds and any in-kind contributions that are approved by EDA and provided by the Recipient or parties as a condition of the Award. Awards that include the Federal and non-Federal share incorporate an estimated budget consisting of shared allowable costs. If actual allowable costs are less than the total approved estimated budget, the Federal share and Matching Share shall be calculated by applying the approved federal and non-federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved estimated budget, the Federal share shall not exceed the total Federal dollar amount authorized by this Award.

8. MATCHING SHARE

The Recipient agrees to provide the Recipient's non-Federal Matching Share contribution for eligible Project costs in proportion to the Federal share requested for such Project costs. The Recipient also certifies that, in accepting the Financial Assistance Award, the Recipient's Matching Share of Project costs is committed and unencumbered, from authorized sources, and shall be available as needed for the Project.

9. REFUND CHECKS, INTEREST, OR UNUSED FUNDS

Treasury has given the EDA two options for having payments deposited to EDA’s account:
a. **Option 1: Pay.Gov**

This option allows the payee to pay EDA through the Internet. The payee will have the option to make a one-time payment or to set up an account to make regular payments.

b. **Option 2: Paper Check Conversion**

All checks must identify on their face the name of the Department of Commerce (DOC) agency funding the award, award number, and no more than a two-word description to identify the reason for the refund or check. A copy of the check should be provided to the EDA Project Officer. This option allows the payee to send a check to NOAA’s Accounting Office, who processes EDA’s accounting functions at the following address:

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Finance Office, AOD, EDA Grants
20020 Century Boulevard
Germantown, MD 20874

The accounting staff will scan the checks into an encrypted file and transfer to the Federal Reserve Bank, where the funds will be deposited in EDA’s account. While this process will not be an issue with most payees, there are occasionally issues for entities remitting funds to EDA via check. If you are remitting funds to EDA via check, please make note of the following:

- If a check is sent to EDA, it will be converted into an electronic funds transfer by copying the check and using the account information to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will appear on your regular account statement.
- EDA will not return your original check; the original will be destroyed and a copy will be maintained in our office. If the Electronic Funds Transfer (EFT) cannot be processed for technical reasons, the copy will be processed in place of the original check. If the EFT cannot be completed because of insufficient funds, EDA will charge you a one-time fee of $25.00, which will be collected by EFT.

10. **PROCUREMENT**

The Recipient agrees that all procurement transactions shall be in accordance with the Procurement Standards of the Uniform Guidance set out at 2 C.F.R. §§ 200.317 through 200.326, as applicable. Furthermore, in accordance with 2 C.F.R. § 200.318(a), the Recipient must have written procurement procedures that conform to federal, state, and local law.

11. **NONRELOCATION**

In signing this Award of financial assistance, the Recipient(s) attests that EDA funding is not intended by the Recipient to assist its efforts to induce the relocation, or the movement of existing jobs from one region to another region in competition for those jobs. In the event that EDA determines that its assistance was used for such purposes, EDA retains the right to pursue appropriate enforcement action in accord with the DOC Financial Assistance Standard Terms and Conditions of the Award, including suspension of disbursements and termination of the award, which may include the establishment of a debt requiring the Recipient to reimburse EDA.
12. PERFORMANCE MEASURES

The Recipient agrees to report on program performance measures and program outcomes in such form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993, and the Government Performance and Results Modernization Act of 2010. Recipients are to retain sufficient documentation so that they can submit these required reports. Failure to submit this required report can adversely impact the ability of the Recipient to secure future funding from EDA. Recipients must retain records for 9 years in accordance with EDA’s general GPRA requirements.

Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document, if applicable. EDA staff will contact Recipients in writing within a reasonable period prior to the time of submission of the reports with information on how this data should be submitted.

As part of validating performance information and as a general method of monitoring the Award, EDA reserves the right to make site visits as EDA sees necessary. EDA will provide at least two weeks of notice for any such site visits, except for in exigent circumstances. Such site visits could include interviews or visits with project beneficiaries, defined as those receiving services by the Recipient.

As part of evaluating the RIS program, EDA may conduct a survey and/or evaluation(s) during or after the program. Such evaluations may be conducted by outside parties hired by EDA or by EDA staff. Recipients agree to participate in the evaluation by answering evaluator’s questions and furnishing information. Evaluators will respect the confidentiality of business information as appropriate. Recipients agree to provide client management system information to facilitate evaluations as necessary. If EDA chooses to conduct a survey, EDA may require Recipient client email addresses to permit such a survey in order to identify program impact across the program’s beneficiaries.

13. USE OF INFORMATION

EDA reserves the right to use information contained in the Recipient’s proposal as well as all reports and performance data submitted by the Recipient to undertake an evaluation of its program, either through its staff or by hiring a third party. The Recipient agrees to cooperate with such evaluations, including by sharing performance information that they have collected or will collect as part of their grant activities, including performance information on any beneficiaries of the grantee’s activities funded in whole or in part by the EDA grant award(s).

14. REAFFIRMATION OF APPLICATION/ACCEPTANCE OF AWARD

Recipient(s) acknowledges that Recipient’s Application for this Award may have been submitted to the Government and signed by Recipient(s), or by an authorized representative of Recipient(s), electronically without providing an original “wet” signature. In addition, the Recipient(s) or an authorized representative of Recipient(s) may have accepted the Award electronically, which includes drawing down any funds under this Award. Regardless of who submitted the Application to the Government or the means by which Recipient(s) submitted the Application or accepted the Award, Recipient(s) hereby reaffirms and states that:

i. All data in the applicable Application were true and correct when the Application was submitted and remain true and correct as of the date of this Award;

ii. The Application was, as of the date submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient(s); and
iii. Recipient(s) has read, understood, and will comply with all terms of this Award, including the Assurances and Certifications submitted with, or attached to, the Application.

The Recipient agrees to immediately notify the Grants Officer of any material changes to the Application within 30 calendar days of the date the Recipient becomes of aware of such changes. For purposes of this provision, the term “Application” includes all documentation and any information provided to the Government as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by the Government after submission of the initial Application.

15. CONFLICTS OF INTEREST

The Recipient must maintain a written and enforced conflict of interest policy. The policy should at a minimum address actual or potential personal (e.g., employees, agents, members of their immediate family) or organizational conflicts of interest in the performance or administration of the award. Conflicts of interest may include, but are not limited to, any past, present or planned contractual, financial, or other relationships, obligations, commitments or responsibilities, which may bias the Recipient or affect the Recipient’s ability to perform or administer the award in an impartial and objective manner. The Recipient shall ensure that all subrecipients and contractors under the award (1) have their own conflict of interest policy in place that meets the requirements of this special award condition or (2) adopt the Recipient’s conflict of interest policy.

The Recipient’s policy should provide procedures to disclose, mitigate, and resolve any such conflicts of interest. In accordance with 2 C.F.R. § 200.112, the Recipient must disclose in writing any potential or actual conflict of interest to EDA in a timely manner. EDA will evaluate the disclosure and inform the Recipient of any required remedial action beyond what the Recipient may have already implemented. Failure to comply with this condition, or the Recipient’s own conflict of interest policy, may result in appropriate enforcement action pursuant to 2 C.F.R. § 200.338.

16. INTELLECTUAL PROPERTY RIGHTS

The Recipient (including any subrecipients and contractors) is subject to the intellectual property requirements of all applicable Federal statutes and regulations (e.g., Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified in 35 U.S.C. § 200 et seq.; 37 C.F.R. Part 401; 2 C.F.R. § 200.315). The rights of the Federal Government in any inventions, data and other intellectual property created, developed, first reduced to practice or purchased under this Award (e.g., a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world), are defined by applicable Federal law. The standard patent rights clause in 37 C.F.R. § 401.14 is hereby incorporated by reference into this award.

17. DUTY TO REFRAIN FROM EMPLOYING CERTAIN GOVERNMENT EMPLOYEES

For the two-year period beginning on the date the Government executes this Award, the Recipient agrees that it will not employ, offer any office or employment to, or retain for professional services any person who, on the date the Government executes this Award or within the one-year period ending on that date: (a) Served as an officer, attorney, agent, or employee of the Government; and (b) Occupied a position or engaged in activities that the Assistant Secretary determines involved discretion with respect to the Award of Investment Assistance.

The two-year period and associated restrictions referenced above also shall apply beginning on the date the Government executes any cost amendment to this Award that provides additional funds to the Recipient.
18. FREEDOM OF INFORMATION ACT (FOIA)

EDA is responsible for meeting its Freedom of Information Act (FOIA) (5 U.S.C. § 552) responsibilities for its records. DOC regulations at 15 C.F.R. Part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and other information submitted by applicants may be released in response to a FOIA request. Applicants should be aware that EDA may make certain application information publicly available. Accordingly, the applicant should notify EDA if it believes any application information to be confidential.
Appendix A: Authorized Scope of Work.
Appendix B: Authorized Budget.

Form SF-424A (Budget Information-Non-Construction Programs) dated [insert date] and Budget Narrative dated [insert date] are incorporated by reference as the Authorized Budget.
Appendix C: Staffing Plan.
EXHIBIT “A”

U.S. DEPARTMENT OF COMMERCE
Economic Development Administration (EDA)

Public Works and Development Facilities

Investment No.: 

Recipient:

SPECIAL AWARD CONDITIONS

1. PROJECT DEVELOPMENT TIME SCHEDULE: The Recipient agrees to the following Project development time schedule:

Time allowed after Receipt of Financial Assistance Award for:

Return of Executed Financial Assistance Award ........................................ 30 days
Start of Construction .................................................. Months from Date of Grant Award
Construction Period .................................................. Months

Project Closeout – All Project closeout documents including final financial information and any required program reports shall be submitted to the Government not more than 90 days after the date the Recipient accepts the completed project from the contractor(s).

The Recipient shall pursue diligently the development of the Project so as to ensure completion within this time schedule. Moreover, the Recipient shall notify the Government in writing of any event, which could delay substantially the achievement of the Project within the prescribed time limits. The Recipient further acknowledges that failure to meet the development time schedule may result in the Government’s taking action to terminate the Award in accordance with the regulations set forth at 15 CFR 24.43 (53 Fed. Reg. 8048-9, 8102, March 11, 1988).

2. GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION: Department of Labor regulations set forth in in 41 CFR 60-4 establish goals and timetables for participation of minorities and women in the construction industry. These regulations apply to all Federally assisted construction contracts in excess of $10,000. The Recipient shall comply with these regulations and shall obtain compliance with 41 CFR 60-4 from contractors and subcontractors employed in the completion of the Project by including such notices, clauses and provisions in the Solicitations for Offers or Bids as required by 41 CFR 60-4. The goal for the participation of women in each trade area shall be as follows:

From April 1, 1981, until further notice: 6.9 percent
All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 CFR 60-4.6, or any successor regulations, shall hereafter be incorporated by reference into these Special Award Conditions.

Goals for minority participation shall be as prescribed by Appendix B-80, Federal Register, Volume 45, No. 194, October 3, 1980, or subsequent publications. The Recipient shall include the “Standard Federal Equal Employment Opportunity Construction Contract Specifications” (or cause them to be included, if appropriate) in all Federally assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 CFR 60-4.6.

3. REPORT ON UNLIQUIDATED OBLIGATIONS: All Recipients of an EDA grant award of more than $100,000 whose Award has not been fully disbursed is required to submit Form SF-425, “Financial Status Report” to EDA semi-annually to report on the status of unreimbursed obligations. This report will provide information on the amount of allowable Project expenses that have been incurred, but not claimed for reimbursement by the Recipient. The first report shall be as of March 30 of each year and shall be submitted to EDA no later than April 30 of each year, and the second report shall be as of September 30 of each year and shall be submitted to EDA no later than October 30 of each year. The Recipient must submit a final financial report using Form SF-425 within 90 days of the expiration date of the Award (or from the date the Recipient accepts the Project from the contractor, whichever occurs earlier). Noncompliance with these requirements will result in the suspension of disbursements under this Award. Financial reports are to be submitted to the Project Officer.

4. PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS GOVERNMENT CONTRACTORS LABOR RELATIONS ON FEDERAL AND FEDERALLY FUNDED CONSTRUCTION PROJECTS: Pursuant to E.O. 13202, “Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federal Funded Construction Projects,” unless the Project is exempted under section 5(c) of the order, bid specifications, project agreements, or other controlling documents for construction contracts awarded by Recipients of grants or cooperative agreements, or those of any construction manager acting on their behalf, shall not: a) include any requirement or prohibition on Bidders, Offerors, Contractors, or Subcontractors about entering into or adhering to agreements with one or more labor organizations on the same or related construction Project(s); or b) otherwise discriminate against Bidders, Offerors, Contractors, or Subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction Project(s).
5. ENGINEERING CERTIFICATE/CERTIFICATE OF TITLE: The Recipient, prior to Solicitation of bids for construction of this Project, shall furnish to the Government an acceptable Engineering Certificate showing all lands, rights-of-way and easements necessary for construction of this Project along with an acceptable Certificate of Title on said lands, rights-of-way and easements showing good and merchantable title free of mortgages or other foreclosable liens.

6. CONSTRUCTION START: If significant construction (as determined by EDA) is not commenced within two years of approval of the project or by the date estimated for start of construction in the grant award (or the expiration of any extension granted in writing by EDA), whichever is later, the EDA grant will be automatically suspended and may be terminated if EDA determines, after consultation with the grant recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously.

7. NONRELOCATION: In signing this award of financial assistance, Recipient(s) attests that EDA funding is not intended by the Recipient to assist its efforts to induce the relocation of existing jobs that are located outside of its jurisdiction to within its jurisdiction in competition with other jurisdictions for those same jobs. In the event that EDA determines that its assistance was used for those purposes, EDA retains the right to pursue appropriate enforcement action in accord with the Standard Terms and Conditions of the Award, including suspension of disbursements and termination of the award for convenience or cause.

8. REFUND CHECKS, INTEREST OR UNUSED FUNDS: Treasury has given the EDA two options for handling payments deposited to our account with it:

The first one is Pay.Gov. This option allows the payee to pay EDA through the Internet. The payee will have the option to make a one-time payment or to set up an account to make regular payments.

The second option is Paper Check conversion. All checks must identify on their face the name of the DoC agency funding the award, award number, and no more than a two-word description to identify the reason for the refund or check. A copy of the check should be provided to the Federal Project Officer. This option allows the payee to send a check to NOAA’s accounting office, who processes EDA’s accounting functions at the following address: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Finance Office, AOD, EDA Grants, 20020 Century Boulevard, Germantown, MD 20874. The accounting staff will scan the checks in encrypted file to the Federal Reserve Bank, and the funds will be deposited in EDA’s account. While this process will not be an issue with most payees who are corporations, it could be an issue for individuals sending EDA funds. Please make note of the following.

Notice to Customers Making Payment by Check
If you send EDA a check, it will be converted into an electronic funds transfer by copying your check and using the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will appear on your regular account statement.

You will not receive your original check back. Your original check will be destroyed, but a copy of it will be maintained in our office. If the EFT cannot be processed for technical reasons, the copy will be processed in place of the original check. If the EFT cannot be completed because of insufficient funds, we will charge you a one-time fee of $25.00, which will be collected by EFT.

9. SCOPE OF WORK: Recipient(s) agrees to undertake, prosecute and complete the Scope of Work (SOW) for this Project funded by this Award which SOW is approved and agreed to by the Government as subsequently amended in mutually agreed upon written change order(s) and/or SOW amendment(s), if any. The SOW shall be as set forth and described in a.) the application submitted by Recipient(s) and/or Recipient's authorized representative(s) to the Government for this Award together with b.) all enclosures, materials, documents and other submittals accompanying and supporting the application, c.) all additional materials, documents and/or correspondence requested by the Government and submitted by Recipient(s) and/or Recipient's authorized representative(s) in support and furtherance of the application and d.) such change(s) and/or SOW amendments, if any, requested in writing by the Recipient(s) and/or Recipient’s authorized representative subsequent to the date of this Award and approved and agreed to in writing by the Government. To the extent such additional materials, documents and/or correspondence amends and/or clarifies the application, such amendment or clarification shall be controlling. It is agreed that the Recipient(s) and Government intend that the SOW describes a discrete, detailed and specific project that is funded and authorized by this Award and to that end the application and the above described additional information shall be fairly construed to and shall describe the SOW. The scope of work for this project is further described below: or in Attachment C.

10. CONSTRUCTION PERMITS: Prior to the first disbursement of funds under this Award, the Recipient shall obtain the permits described in item 3 of the Certificate of Engineer, Part One of the above referenced CERTIFICATE AS TO PROJECT SITE, RIGHTS-OF-WAY, AND EASEMENTS.

11. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE

A. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in
Special Conditions
EXHIBIT “A”
Page 5

paragraph B of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

B. Proceedings About Which You Must Report

Submit the information required about each proceeding that:
Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

Reached its final disposition during the most recent five-year period; and

Is one of the following:

(a) A criminal proceeding that resulted in a conviction, as defined in paragraph E of this award term and condition;

(b) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

(c) An administrative proceeding, as defined in paragraph E of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or

(d) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph B.3.(a), (b), or (c) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

C. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph B of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

D. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph A of this award term and condition, you must report proceedings information through SAM for the
most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

E. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

2. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

3. Total value of currently active grants, cooperative agreements, and procurement contracts includes:

   (a) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

   (b) The value of all expected funding increments under a Federal award and options, even if not yet exercised.
Economic Development Administration (EDA)
REVOLVING LOAN FUND PROGRAM

Overview

Authorized under section 209 of the Public Works and Economic Development Act of 1965 ("PWEDA") (42 U.S.C. 3149) the RLF program has served as an important pillar of EDA’s investment programs since the program’s establishment in 1975. The goal of the RLF program is to help communities and regions transform their economies and propel them towards economic prosperity through innovation, entrepreneurship, and public-private partnerships. Through the RLF program, EDA provides grants to eligible Recipients, which include State and local governments, political subdivisions, and nonprofit organizations to operate a lending program that offers low-interest loans and flexible repayment terms to businesses that cannot obtain traditional bank financing and to governmental entities for public infrastructure. These loans enable small businesses to expand and lead to new employment opportunities that pay competitive wages and benefits. They also help retain jobs that might otherwise be lost, create wealth, and support minority and women-owned businesses.

Each RLF Recipient contributes matching funds in accordance with EDA’s statutory requirements to capitalize an RLF. As loans made from this original pool of EDA and Recipient funds are repaid, the fund is replenished and new loans are extended to qualified businesses. They can also be provided to governmental entities for eligible public infrastructure. Each RLF Recipient must develop and maintain an RLF Plan to demonstrate how the fund fits specific economic development goals and how it will adequately administer the RLF throughout its lifecycle. Because RLF funds currently retain their Federal character in perpetuity, the RLF Recipient’s obligation to manage the RLF continues as long as the Federal Interest in the RLF exists.

RLF Statistics

Since the program’s inception, EDA has funded approximately 800 RLFs nationwide, investing $550 million in RLFs that have a combined capital base of about $813.5 million as of September 30, 2015. These funds currently have a total of $250 million available for lending. EDA-funded RLFs have made more than 36,000 loans to American small businesses and have leveraged more than $16 billion non-RLF dollars. RLF Recipients report that the program has contributed to creating or retaining more than 650,000 jobs.

The program is self-renewing, creates additional access points to capital for businesses, and is a low-cost way to provide credit assistance to otherwise challenged borrowers. As of September 2015, the RLF program encompassed 541 RLFs, with a combined capital base greater than $813 million. The majority of these RLFs reported concentrating on making loans in the range of...
$25,000 to $175,000, although a number of RLF operators made much smaller (as little as $1,000) or much larger ($1 million+) loans.

**Key Program Changes**

Since February 1, 2011, EDA has taken a critical and comprehensive look-back at its regulations to reduce burdens by removing outmoded provisions and streamlining and clarifying requirements. On December 19, 2014, EDA published a Final Rule (79 FR 76108) (“2014 Final Rule”) revising the agency’s regulations and reflecting the agency’s practices and policies in administering its economic development assistance programs.

On June 5, 2015, the Department of Commerce’s Office of Inspector General issued a report entitled, “EDA Faces Challenges in Effectively Monitoring its Revolving Loan Funds.” That report concluded that EDA should identify ways to reform the RLF program’s management by aggressively responding to issues with noncompliance and high loan default rates, ensuring compliance with reporting requirements, requiring grantees to submit updated RLF Plans, using single audit report results to monitor RLF performance, and addressing inflexibility in current RLF regulations and limited resources.

Spurred by these findings, public comments received on the 2014 rule, and the desire for a more effective program, EDA formed a task force to review the program and find ways to improve its performance and oversight. In line with the recommendations of its task force, EDA is engaging in an overhaul of the RLF program by taking the following steps:

- Revising its regulations to clarify and streamline them, while adopting industry best practices by incorporating risk-based program management. A Notice of Proposed Rulemaking (NPRM) was published October 3, 2016, with a 60-day public comment period concluding December 2, 2016. The NPRM described EDA’s proposal to adopt a tailored form of the Uniform Financial Institutions Rating System (the “CAMELS” rating system), used by regulators to assess financial institutions and to identify those in need of extra assistance or attention.

- Developing and publishing guidance on the new risk-based system, as well as on the metrics that will be used to assess RLF operators’ performance.

- Working to acquire a more robust, user-friendly automated reporting and data management system that will facilitate compliance for RLF grantees and support the agency’s oversight efforts by providing timely, accurate, and easily accessible
Economic Development Administration (EDA)
REVOLVING LOAN FUND PROGRAM

information regarding individual loan data as well as other tools designed to enhance EDA’s ability to monitor its RLF portfolio. EDA is preparing to solicit proposals from qualified vendors.

- Revising the ED-209, the form used for RLF semi-annual financial reporting, to reflect the proposed regulatory changes.

- Expanding public outreach and training for staff and RLF operators. In conjunction with publication of the October 2016 NPRM, EDA held a webinar for all interested stakeholders to discuss the proposed changes to the program. EDA will be holding other webinars and meetings as it publishes information regarding the risk analysis system and metrics and will provided training, information, and technical assistance through its website and other outreach tools.
Revolving Loan Fund

Beachy Cream Organic Ice Cream, Santa Monica, California

Beachy Cream Ice Cream is a Santa Monica, California-based organic ice cream brand with a retro vibe. The founders started off in farmer’s markets and a small store front. When the demand exploded, they needed to up their production capacity. In 2014, they received a $95,000 Revolving Loan Fund (RLF) loan to help them secure a new 13,000 square foot manufacturing facility in Long Beach.

“The RLF loan we received is providing valuable capital for Beachy Cream's move into our new leased space in Long Beach so that we can expand our ice cream production capabilities,” said Ann Ryan, Founder and CEO of Beachy Cream. “We sell to over 55 stores and can't make or store enough in our existing freezers to meet the demand. We appreciate the support we've received from the City of Long Beach, including the RLF loan, and are happy to have our new headquarters there.” With this expansion, they hope to take their Southern California brand to stores nationally.

Geonetric, Cedar Rapids, Iowa

Geonetric began in 1999 in Cedar Rapids, Iowa by providing web application development generally, but it quickly recognized the potential of - and coalesced around - the healthcare market. Currently, they build and support VitalSite CMS, a healthcare specific content management system. They received $150,000 in ECICOG Revolving Loan Fund (RLF) money to help purchase computers and other working capital. At the time of their application in 2010, they had 9 employees and estimated they would expand to 35-54 within three years. Currently, they have 63 employees.

“The RLF through ECICOG helped us grow the company more quickly, especially at a time when credit markets were more turbulent than usual,” said Eric Engelmann, Geonetric President and CEO. “The attractive terms were wonderful for a business like ours; it has been a fantastic resource and key part of our growth.”

For several years in a row, they have been recognized by the Corridor Business Journal as one of the fastest growing companies in the area. It was also named to the “Coolest Places to Work” list by Corridor in 2013. In the spring of 2014, Geonetric moved into a new building and, in partnership with the non-profit Vault Coworking, dedicated the second floor as a business incubator space.
In September 2010, two registered nurses, Eshonda Blue and Jessica Wright, approached the River Valley Area Development Corporation for financing of an Adult Day Care Home (ADCH) to be located in Cordele, Georgia. Innovative Senior Solutions (ISS) received an $18,750.00 loan through the EDA Revolving Loan Fund (RLF) and the company injected $6,250.00. The funds were used to lease and renovate a vacant house and for furniture and fixtures in Cordele, Georgia for the ADCH. “The loan that Innovative Senior Solutions received in 2010 from the EDA funded RLF program allowed us to expand our services by opening the first of three Adult Day Health Centers (ADCH),” said co-owners Eshonda Blue and Jessica Wright. “The ADH Centers are a community service that provides seniors, individuals with disabilities, and those at risk of being placed in a nursing home a safe and secure environment that they can attend during the day and remain in the comforts of their home and community. River Valley Regional Commission’s role in our growth is invaluable; the financial assistance and support of the agency will be forever woven into the success story that is Innovative Senior Solutions (ISS).”

By 2013, ISS had reached 100 clients and their service area had grown to include providing services in a total of 19 counties. The company that started with Blue and Wright as the sole two employees has grown to employ over 100 people. ISS has gained an impeccable reputation as providing the best home health care in the area, and Blue and Wright have been recognized with several awards.

Public Works

Minnesota’s Highway 169

When U.S. Highway 169 in Minnesota kept flooding, resulting in disruptions to transportation, commerce, and daily life, it posed a major problem. Highway 169 serves the major transportation corridor for funneling freight within the region, but its proximity to the Minnesota River makes it prone to flooding in the spring as snow melts and river water rises. When these highways were originally constructed in the early 1960’s, water elevation assumptions for the area proved to be inaccurate. In late September and October of 2010, the river flooded and nearly 140 feet of highway collapsed, requiring that additional detours be created and emergency repairs be made.
In May 2011, the road flooded again. In fact, there have been seven road closures due to flooding since 1993.

The Minnesota Department of Transportation and Region Nine Development Council were awarded a $9.8 million grant from EDA in 2012 to help fund the raising of the highway. The construction project, which will start in 2016, runs from Mankato to St. Peter and includes three main elements: nine miles of the four-lane highway will be resurfaced from north of Highway 14 to St. Peter’s south side; a center barrier will be added for the whole section to prevent head-on collisions; and four low-lying sections of the highway will be raised several feet so that the highway can stay open despite rising water levels during floods.

It’s estimated that the project will create 500 new jobs and help retain 500 existing jobs over the next nine years as well as generate $10 million in private investment. “This project is vital to sustaining and growing the economic prosperity of southern Minnesota,” said Nicole Griensewic Mickelson, Executive Director of RNDC. “We are grateful to EDA’s support and proud to be a part of a lasting solution to what has been an ongoing problem.”

Wilcox County, Alabama

Devastating tornadoes that struck rural Wilcox County, Alabama in 2011 resulted in the loss of lives and permanent jobs when production in the region’s critical timber and paper production sectors was forced to cease for a number of weeks. To help advance the region’s economic recovery and resiliency efforts, EDA, in 2013, invested $1.9 million in the town of Pine Hill to make water and sewer improvements needed to bring GD Copper (USA), Inc.’s specialized tubing and copper products operations to the county. GD Copper is a Chinese firm that is adding to a growing metals cluster in southwest Alabama, which also includes such firms as Thyssen Krupp, SET Enterprises, Metals USA and JMC Steel.

Critically, the Alabama-Tombigbee Regional Commission, which covers ten counties and 47 municipalities in Alabama, helped to bring eighteen funding partners together to make this rural Alabama project a reality. Today, this five hundred thousand square foot $100 million facility employs over 300 people in rural Wilcox County.

This project continues to show EDA’s commitment to job creation and economic development in rural America. Economic Development and job creation in rural America is not an easy task.
Economic Development Administration (EDA)
SUCCESS STORIES

Preparation, partnerships and combining resources is not only a desirable task, but a necessary one to compete in today’s global economy.

Expansion of Food Industry Cluster in New York State

For nearly a decade, officials in western New York’s Genesee County have been nurturing a food processing cluster, with a special focus on dairy products, at the Genesee Valley Agri-Business Park (GVAP) in Batavia, New York. The announcement last year of an EDA investment of $1 million for infrastructure upgrades is a perfect example of how a locally-led, cluster-focused development project can be catalyzed by EDA financial assistance at a crucial point in its expansion.

The business park is a one-of-a-kind, 200-acre site that is focused on the agribusiness and food processing industries. It is run by a public-private partnership, the Genesee Gateway Local Development Corporation (GGLDC). Amenities include access to a ready water supply via the local aquifer, a pretreatment facility, and excellent transportation links—qualities that have already attracted major international food processors, such as Alpina, as well as smaller producers.

The business park was recently designated as a Foreign Trade Zone, which will allow the region to expand its reach into growing markets. In addition, the recent EDA grant funds infrastructure that will permit the business park to accommodate additional corporate tenants in the food-processing industry. The infrastructure includes connections to a municipal wellhead, 3,400 feet of water lines, and 1,800 feet of roadway. The EDA investment was matched by $1 million from GGLDC, which estimates that the expansion of the business park will create 186 new jobs and attract capital investment of $206 million.

Economic Adjustment Assistance

Finding Solutions to Water Challenges in Louisiana

The Louisiana coast faces the highest rate of sea-level rise worldwide. At this rate, it is estimated that New Orleans will be underwater by the year 2100. Over the next 50 years, inaction will cost the Greater New Orleans community nearly $8 billion in storm water flood damage, $2.2 billion in subsidence damage, and $600 million in avoidable insurance costs. Louisiana comprises only 40% of our nation’s wetlands, but it accounts for 90% of its losses, losing a football field of land every hour.
Economic Development Administration (EDA)
SUCCESS STORIES

With assistance from EDA, one New Orleans-based nonprofit is meeting this challenge head on. Founded in 2009, Social Entrepreneurs of New Orleans ("Propeller") helps launch social and environmental ventures to address local challenges. On August 29, 2015, 10 years to the day that Hurricane Katrina made landfall in the city, EDA awarded $300,000 to support the Water Accelerator program, a regional entrepreneurship initiative dedicated to building the city’s water industry cluster. The EDA-funded program will provide business consulting services, technical assistance, mentoring, and other resources as needed to facilitate the growth of an estimated 10 to 20 businesses looking to address regional coastal and urban water issues, especially as it relates to coastal restoration, urban water retention and quality, maritime industries and ports, and fisheries. The accelerator program will culminate in a Water Challenge Day that will highlight regional companies in the water cluster for potential investors. Additionally, Propeller will use this grant to convene 10-15 workshops, panels, or events to connect regional members of the water clusters with key stakeholders, perform outreach with cluster firms and industry associations to determine best practices to ensure cluster growth, and undertake data collection and analysis to guide future initiatives designed to increase the region’s competitiveness.

Fostering Entrepreneurship in Maryland

When rioting spread through the streets of Baltimore in April 2015, the city’s small businesses were on the front line. The estimated $9 million of damage to more than 285 local businesses would measure only a fraction of the riot’s devastating economic impact. For many, the riots exposed the socio-economic roots of the unrest. Many people in underserved communities have big dreams and talent, but lack the opportunities to put them into action. Small businesses in underserved neighborhoods like West Baltimore often have difficulty getting start-up funding due to limited resources. Long term, Baltimore needed new capital investment and job-driven skills development and access to capital for small and ethnically diverse enterprises.

To address the need for significant employment opportunities for unemployed, underemployed or low-income residents in Baltimore, EDA awarded $300,000 to the National Urban League (NUL) to develop a new Entrepreneurship Center Program targeting the West Baltimore April 2015 unrest area. Specifically, EDA’s investment will help to support seminars for startups and small/micro-enterprises, including a series of weekly workshops that will provide in-depth education and training in business-related topics, including: how to draft a business plan, marketing and promotion, and business management. Additionally, the center will provide individualized consultation for entrepreneurs enrolled in the program and will provide access to workspace, infrastructure, and equipment to owners of Micro Business Enterprises to
support their ventures. Perhaps most importantly, the Entrepreneurship Center will be mobile and accessible to the local community. There will be training and resources in the main office at the Greater Baltimore Urban League headquarters, but also at various mobile locations, schools, churches, community centers and other public locations within the neighborhood.

Baltimore will be the 13th city to host a NUL Entrepreneurship Center Program. According to the NUL, services from workshops and seminars to one-on-one counseling and mentoring will save or create 36 jobs in the first 12 months, and generate $1 million in contracting and bonding opportunities.

**Investing in Manufacturing Communities Partnerships (IMCP)**

**Advanced Manufacturing Partnership of Southern California (AMP SoCal)**

Led by the University of Southern California Center for Economic Development within the Sol Price School of Public Policy, in partnership with the City of Los Angeles and over 100 organizations, AMP SoCal is focused on supporting aerospace and defense (A&D) manufacturing throughout the southern 10 counties of California. The partnership was originally awarded the IMCP Manufacturing Community designation in 2014 and was re-designated in 2016. In the first two years of its initial designation, the AMP SoCal network created 4,347 jobs and retained 1,953 jobs within Southern California’s A&D sector. The educational partners have trained nearly 1,500 workers in A&D skills, and several AMP SoCal led programs are underway or in development to further advance a pipeline of trained workers to businesses in need of a skilled workforce. AMP SoCal is part of the recently announced Smart Manufacturing Leadership Coalition (SMLC) and its winning proposal that will bring the Clean Energy Smart Manufacturing Innovation Institute to Los Angeles, a manufacturing hub award with more than $140 million in public-private funding.

**Tennessee DRIVE!**

The DRIVE! for the Future initiative was designated a Manufacturing Community as part of the IMCP in 2014 and re-designated in 2016. Since that time, it has helped draw $3.9 billion in new automotive capital investment to the 69-county Tennessee Valley region. DRIVE! for the Future, led by the University of Tennessee Institute for Public Service (IPS), was formed in 2014 to accelerate the development of a strong and growing automotive cluster in the Tennessee Valley, the fifth-largest region in the country for automotive industry employment. The initial and most recent designations elevate the region’s consideration for $1.3 billion in future Federal funding and technical assistance. In addition to the automotive capital investments in the region, the
Economic Development Administration (EDA)
SUCCESS STORIES

DRIVE! initiative spurred $87 million in economic impact from direct technical assistance to automotive and advanced industry firms. More than 13,008 automotive and advanced industry jobs were created as a result of new investments. In addition to UT IPS, the DRIVE! consortium partners are: Alabama Automotive Manufacturers Association, Chattanooga Enterprise Center, Georgia Automotive Manufacturers Association, the Tennessee Automotive Manufacturers Association, Tennessee Department of Economic and Community Development, Oak Ridge National Laboratory, Southeast Tennessee Development District, Tennessee Board of Regents, Pathway Lending, Southern Middle Tennessee Entrepreneur Centers, Tennessee Chamber of Commerce and Industry, Technology 20/20, Tennessee Tech University and Tennessee Valley Authority.

Regional Innovation Strategies (RIS)

New Orleans BioInnovation Center Inc.

The New Orleans BioInnovation Center (NOBIC) is a business incubator dedicated to fostering entrepreneurship and supporting innovators throughout Louisiana as they develop life-saving new technologies. Leveraging EDA RIS program investment of $500,000 (plus $725,745 in matching funds) in 2014, NOBIC has increased the capacity of life science commercialization services to support a larger number of entrepreneurs in the Greater New Orleans area and throughout the state. These services include educational and networking events, business assistance, and access to state-of-the-art incubator lab and office facilities. EDA’s investment in 2014 helped NOBIC build on its past successes: in fewer than 10 years, NOBIC has helped entrepreneurs create more than 125 new companies and more than 350 high-wage jobs; helped startups raise $93 million in funding; provided free consulting support to more than 175 innovators; invested $3 million in 15 local small businesses; and hosted more than 90 educational events reaching more than 2,750 attendees. NOBIC continues to support the creation of high-growth life science entrepreneurial ventures that are contributing to the regional economic growth.

New Mexico State University (NMSU)

The Next Generation Entrepreneurship (Next Gen) program, awarded an EDA grant of $368,760 (plus $504,868 in matching funds) in 2015, is focused on student entrepreneurship as a strategy to enhance commercialization of research, regional connectivity, and innovation and will take student entrepreneurship programming developed on NMSU's main campus to the university’s community college system of four campuses, three of which are located in rural communities and serve underrepresented populations. Next Gen's efforts will help to train a new generation of
regional entrepreneurs, connect them with technologies ripe for commercialization, and provide technical assistance and mentoring to facilitate commercialization of these technologies. Next Gen will continue to impact the region and service area through jobs created and retained, new businesses registered, private investment in businesses, increased technology commercialization, events held, and new products launched by participants.

Curators of the University of Missouri

Created through the 2012 i6 Challenge, the Digital Sandbox KC proof-of-concept center was established to fill two gaps: the need for better capital access for early-stage concepts and better large corporate engagement in the entrepreneurial community. During its first two years the Sandbox reviewed 250 projects, provided direct proof-of-concept support to 37, and ultimately helped to create 23 new companies that in turn created 154 new jobs and garnered $10.2 million in follow-on funding. Under its 2012 i6 Challenge grant, Digital Sandbox KC largely supported the development of concepts into minimal viable products. Digital Sandbox KC received a 2014 grant of $500,000 (plus matching funds of $650,000) that will enable the Digital Sandbox KC to extend its services to provide hardware testing resources and customer validation, and to create a community-wide network of product development and testing resources, as well as continuing support for early-stage proof-of-concept projects. Since receiving the EDA investment, Digital Sandbox KC has created 34 new Kansas City-based companies that have created 339 new jobs and secured $28.3 million in follow-on investment. This is a testament to the strength of Kansas City’s entrepreneurial spirit and the magnetic appeal of their entrepreneur’s ideas.