



**U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION**

**REVOLVING LOAN FUND
FINANCIAL ASSISTANCE AWARD
STANDARD TERMS AND CONDITIONS**

May 1, 2013

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PREFACE

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 O.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(c).)

- 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).)

4. Cost Sharing Requirement.

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 Obligor 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.

6. Non-Compliance with Award Provisions.

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).)

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/>.

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>.

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 Guaranties 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.

The Recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (Pub. L. No. 100-690, Title V, sec. 5153, as amended by Pub. L. No. 105-85, Div. A, Title VIII, sec. 809, as codified at 41 U.S.C. § 8102), and the Department's implementing regulations at 15 C.F.R. part 29, "*Government-wide Requirements for Drug-Free Workplace (Financial Assistance)*," which require the Recipient to take steps to provide a 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.

2. Disclosure of Lobbying Activities.

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.

3. Special Provisions relating to Indian Tribes.

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.

1. Code of Conduct for Recipients.

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.)

4. Applicability of Provisions to Sub-Awards, Contracts and Subcontracts.

- 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.

5. Small Business, Minority Business Enterprises and Women's Business Enterprises.

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.

1. The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4327).

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 (33 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/>) 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.

5. The Flood Disaster Protection Act of 1973 (42 U.S.C. § 4002 *et seq.*).

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 disproportionately 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.

- 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 C.F.R. §§ 301-10.131 –10.143.
- 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.

3. American-Made Equipment and Products.

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.

4. Intellectual Property Rights.

- 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.

9. Research Misconduct.

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.

10. Publications, Videos and Acknowledgment of Sponsorship.

- 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:

This [report/video] was prepared by [Recipient name] 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.

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.

12. Homeland Security Presidential Directive 12.

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-awards, contracts, and subcontracts) under this Award that may involve access to export-controlled information technology.

14. 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

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. The Department of Commerce hereby incorporates the following award term required by 2 C.F.R. § 175.15(b). See <http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf>.

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).

15. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, 31 USC § 6101 Note)

- 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.

- b. *Subaward and Executive Compensation Data Reporting Requirements.* 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 GPO's FDsys website: <http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vol1/pdf/CFR-2011-title2-vol1-part170-appA.pdf>.

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.fsrc.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.fsrc.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/excomp.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 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/>).
 - (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;
- (iv) Promissory note;
- (v) Security agreement(s);
- (vi) Deed of trust or mortgage (as applicable);
- (vii) Agreement of prior lien holder (as applicable); and
- (viii) Signed bank turn-down letter demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. EDA will permit the RLF Recipient to accept alternate documentation only if such documentation is allowed in the Recipient's EDA-approved RLF Plan.

(See 13 C.F.R. § 307.15(b)(2).)

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.

1. Capital Utilization Standard.

- 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))

2. Administrative Records.

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))

H. RLF Semi-Annual Report and Income and Expense Statement.

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.

4. Government Performance and Results Act Reporting.

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).)

4. Non-Discrimination Requirements.

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 alternations 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.

- f. Parts II and III of Executive Order (E.O.) 11246, “Equal Employment Opportunity,” (30 FR 12319, 1965), as amended by E.O. 11375 (32 FR 14303, 1967) and E.O. 12086 (43 FR 46501, 1978), requiring Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that E.O. and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b), 1991).
- 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-209I - RLF Income and Expense Statement (with Instructions)