

DEPARTMENT OF COMMERCE

CFDA 11.300 INVESTMENTS FOR PUBLIC WORKS AND ECONOMIC DEVELOPMENT FACILITIES

CFDA 11.307 ECONOMIC ADJUSTMENT ASSISTANCE

I. PROGRAM OBJECTIVES

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

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

II. PROGRAM PROCEDURES

In nearly all cases, a recipient of a Public Works or Economic Adjustment Assistance grant is required to provide a matching share. The required matching share varies on a grant-by-grant basis and is set forth in the grant award. Prior to EDA approving the matching share, the recipient must demonstrate to EDA's satisfaction that the matching share is committed to the project, available as needed, and not conditioned or encumbered in any way that would preclude its use consistent with the requirements of the grant award (42 USC 3144-3146; 13 CFR sections 300.3 and 301.5). EDA has greater discretion to award grants under supplemental appropriations for natural disasters at investment rates up to and including one hundred (100) percent.

Section 302 (42 USC 3162) of the Public Works and Economic Development Act of 1965, as amended (PWEDA, 42 USC 3121 *et seq.*), sets forth a CEDS requirement for Public Works and Economic Adjustment Assistance grants, except for planning projects (i.e., strategy grants) under the Economic Adjustment Assistance program. Pursuant to section 214 of PWEDA (42 USC

3154), EDA may waive the CEDS requirements for Economic Adjustment projects located in regions designated as ~~Special Impact Areas.~~ EDA has designated certain areas affected by Hurricane Katrina, the Midwest floods, and other natural disasters as Special Impact Areas. If a project is located in a designated ~~Special Impact Area,~~ such designation will be specified in the grant award documents.

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

Source of Governing Requirements

The programs are authorized by PWEDA, as amended. All section citations contained herein refer to EDA's regulations as codified at 13 CFR Chapter III. EDA published a final rule on January 27, 2010, in the *Federal Register* (75 FR 4529) to amend some of its regulations, namely the Trade Adjustment Assistance for Firms (TAA) regulations and the Revolving Loan Fund (RLF) regulations. The technical revisions to a few of the TAA definitions were made to help better align EDA's responsibilities in implementing the TAA program under the Trade Act. EDA also made a number of changes to the RLF regulations to implement the Department of Commerce's Office of Inspector General's audit recommendations and to improve the administration and effectiveness of the RLF program. All provisions of the final rule went into effect on January 27, 2010, except as otherwise noted in this Compliance Supplement.

Some grants awarded under CFDA 11.300 or 11.307 may have been funded, in whole or in part, by funds appropriated by the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5).

Availability of Other Program Information

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

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Activities Allowed

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

- a. Construction grants can be made for the acquisition or development of land and improvements for use for a public works, public service, or

development facility. Construction grants can also be made for the acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment (42 USC 3141; 42 USC 3149; and 13 CFR sections 305.2(a) and 307.3).

- b. RLF grants may be made for the establishment or recapitalization of an RLF, usually for business development, but RLF grants may also fund public infrastructure or other authorized purposes involving lending if specifically allowed for in the terms and conditions of the recipient's award (42 USC 3149; and 13 CFR section 307.7).
- c. Other activities that can be funded under the Economic Adjustment Assistance program (in addition to grants for construction and RLFs) are grants for CEDS (or other strategy) development and grants for CEDS (or other strategy) implementation, which include market or industry research and analysis, technical assistance, public services, training, and other activities as justified by the strategy which meet applicable statutory and regulatory requirements (42 USC 3149; and 13 CFR section 307.3).
- d. A recipient of a Public Works grant may directly expend the grant funds or, with prior EDA approval, may redistribute such grant assistance in the form of a subgrant to another eligible recipient to fund required components of the scope of work approved for the project (42 USC 3154c; 13 CFR section 309.1).
- e. A recipient of an Economic Adjustment Assistance grant may directly expend the grant funds or, with prior EDA approval, may redistribute such grant assistance in the form of (i) a subgrant to another eligible recipient that qualifies for an Economic Adjustment Assistance award or (ii) a loan or other appropriate assistance to non-profit and private for-profit entities (42 USC 3154c; 13 CFR section 309.2).

2. *Activities Unallowed*

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

- a. Acquire an equity position in a private business (13 CFR section 307.17(b)(1)).
- b. Subsidize interest payments on an existing RLF loan (13 CFR section 307.17(b)(2)).
- c. Provide the equity contribution required of borrowers under other Federal loan programs (13 CFR section 307.17(b)(3)).

- d. Enable an RLF borrower to acquire an interest in a business unless there is a sufficient justification and documentation showing the need for RLF financing (13 CFR section 307.17(b)(4)).
- e. Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts or other investments not related to the RLF (13 CFR section 307.17(b)(5)).
- f. Refinance existing debt unless (i) the RLF recipient sufficiently demonstrates in the loan documentation a “sound economic justification” for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities); for this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a “sound economic justification”; or (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 (13 CFR section 307.17(b)(6)).

C. Cash Management

1. Unless otherwise specified in a special award condition, the method of payment for an award for an infrastructure construction project is generally through reimbursement (using Form ED-113, *Outlay Report and Request for Reimbursement for Construction Programs*) for costs incurred. Prior to disbursing grant funds for an infrastructure construction project, EDA also must receive an invoice from the recipient. EDA may approve the disbursement of funds prior to the tender of all construction contracts if the recipient can demonstrate that a severe hardship will result without such approval (13 CFR section 305.9(b)).
2. Grant funds also are made available to RLF recipients on a reimbursement basis (when an obligation is incurred by the RLF recipient at the time of loan approval and loan announcement). An RLF recipient must request a disbursement only to close a loan or disburse RLF funds to a borrower. The RLF recipient must disburse the grant funds to a borrower within thirty (30) days of receipt of the funds. Any grant funds not disbursed within the thirty (30) day period must be returned to EDA. An RLF recipient is required to submit a written request for continued use of grant funds beyond a missed disbursement deadline. The amount of disbursed grant funds cannot exceed the difference, if any, between the RLF capital and the amount of a new loan, less the amount, if any, of the matching share required to be disbursed concurrent with the grant funds. However, RLF income held to cover eligible administrative expenses need not be disbursed in order to draw additional grant funds (13 CFR section 307.11).

D. Davis-Bacon Act

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

F. Equipment and Real Property Management

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

G. Matching, Level of Effort, Earmarking**1. Matching**

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

2. Level of Effort - Not Applicable**3. Earmarking - Not Applicable****L. Reporting****1. Financial Reporting**

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* - Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* - in lieu of the SF-271, EDA uses an EDA form with the same name (ED-113) (OMB No. 0610-0096), which is substantially the same as the SF-271.

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* - Applicable

To comply with OMB's requirement that all agencies transition financial reporting to the Federal Financial Report (FFR) no later than October 1, 2009, EDA selected a transition date of June 30, 2009. Accordingly, EDA recipients were instructed that, as of June 30, 2009, EDA would no longer

accept Forms SF 269/SF-269A and SF-272/SF-272A and would only accept the FFR (Forms SF-425 and SF-425A).

2. Performance Reporting - Not Applicable

3. Special Reporting

- a. EDA is in the process of transitioning from hardcopy reporting using Form ED-209S, *Semi-Annual Report for EDA-Funded RLF Grants*, to web-based reporting using Form ED-209, *Semi-Annual Report for EDA-Funded RLF Grants (OMB No. 0610-0095)*. EDA expects that, contingent upon a successful deployment of its automated reporting system, all EDA RLF recipients will be required to electronically file Form ED-209 for the period ending March 31, 2010 (13 CFR section 307.14(a)).

Key Line Items - The following line items in the ED-209S contain critical information:

ED-209S

- | | | |
|-----|---------------|-----------------------------------------------------------------------|
| (1) | Line I-A-6 | <i>Total Active Loans</i> |
| (2) | Line III-C-14 | <i>Current Level of RLF Base Capital</i> |
| (3) | Line III-D-20 | <i>Current Balance Available as a Percent of Base Capital</i> |
| (4) | N/A | <i>RLF Capital Utilization Rate</i> |
| (5) | Line V-C-9 | <i>Amount of RLF Income Earned in the most recent 12-month period</i> |
| (6) | Line V-C-11 | <i>Percentage of RLF Income used for Administrative Costs</i> |

Key Line Items - The following line items contain critical information on the ED-209:

ED-209

- | | |
|-----|--------------------------------------------------------------------------------------|
| (1) | <i>Total Active Loans (Section I.A)</i> |
| (2) | <i>Current RLF Capital Base (Section III.C)</i> |
| (3) | <i>Current Balance Available as a Percentage of RLF Capital Base (Section III.D)</i> |
| (5) | <i>Amount of RLF Income Earned during this Reporting Period (Section V.C)</i> |

(6) *Percentage of RLF Income used for Administrative Expenses during this Reporting Period (Section V.C)*

- b. Form ED-209I, *RLF Income and Expense Statement (OMB No. 0610-0095)* –For the period ending March 31, 2010, and all subsequent semi-annual reporting periods ending September 30 and March 31, those RLF recipients electing to use either 50 percent or more (or more than \$100,000) of RLF income to cover all or part of an RLF’s administrative expenses in that same semi-annual period must submit an electronic Form ED-209I, unless EDA has approved submission of the form in hardcopy (13 CFR sections 307.14 (a) and (c)).

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

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

4. Section 1512 ARRA Reporting – Applicable (for projects with ARRA funding)

N. Special Tests and Provisions

1. Increases to RLF Capital Base and Capital Utilization

Compliance Requirements - RLF income includes all interest earned on outstanding loan principal, interest earned on accounts holding idle RLF funds, loan fees and other loan-related earnings. RLF income does not include repayment of RLF loan principal and any interest remitted to the U.S. Treasury pursuant to a sequestration of excess funds. When an RLF recipient receives proceeds on a defaulted RLF loan, such proceeds shall be applied in the following order of priority: (1) first, towards any costs of collection; (2) second, towards outstanding penalties and fees; (3) third, towards any accrued interest to the extent due and payable; and (4) fourth, towards any outstanding principal balance (13 CFR sections 307.8 and 307.12(c)).

RLF income may fund administrative expenses, provided the following conditions are met: (1) the RLF income and the administrative expense are earned in the same 6-month

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

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

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

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

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

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

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

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

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

EDA also requires the recipient to remit the Federal share of the interest earned on sequestered funds to the U.S. Treasury on a quarterly basis (13 CFR section 307.16(c)). For example, if the recipient is required to sequester \$250,000 in an interest-bearing

account, the quarterly interest accruing on this account is \$2,500, and the Federal share of the RLF award is 50 percent, the recipient would be required to remit \$1,250 to the U.S. Treasury for that quarter.

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

Suggested Audit Procedures

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

2. Loan Requirements

Compliance Requirements - The following requirements apply to RLF loans:

- a. RLFs must be operated in accordance with generally accepted accounting principles (GAAP). Within sixty (60) days prior to the initial disbursement of EDA funds, an independent accountant familiar with the RLF recipient's accounting system must certify to EDA and the RLF recipient that such system is adequate to identify, safeguard and account for all RLF capital, outstanding RLF loans and other RLF operations (certification of the accounting system is separate and apart from the A-133 audit) (13 CFR sections 307.15(a) and (b)).
- b. Prior to the disbursement of any EDA funds, the RLF recipient must certify to EDA 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 grant and applicable State and local law. The standard loan documentation must include, at a minimum, the (1) loan application, (2) loan agreement, (3) board of directors' meeting minutes approving the RLF loan, (4) promissory note, (5) security agreement(s), (6) deed of trust or mortgage (if applicable), (7) agreement of prior lien holder (if applicable), and (8) signed bank turn-down

letter demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. EDA will permit the RLF recipient to accept alternate documentation only if such documentation is allowed in the recipient's EDA-approved RLF Plan (13 CFR section 307.15(b)(2)).

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

Audit Objective - Determine whether (1) the required standard loan documents are complete for the RLF loans; (2) an independent accountant has certified to EDA and to the RLF recipient that the RLF recipient's accounting system is adequate to identify, safeguard and account for all RLF operations; (3) the RLF recipient's financed activity is located in an EDA-approved lending area; and (4) there is loan documentation to support that credit was not otherwise available to the borrower.

Suggested Audit Procedures

Test a sample of RLF loan files to ascertain if:

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

3. Addition of Lending Areas; Merger of RLFs

- a. An RLF 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 (42 USC 3149 and 13 CFR section 307.18(a)).
- b. EDA may provide written approval for an RLF recipient with more than one EDA RLF grant to merge its RLFs into a single RLF. If EDA approves this merger, EDA will determine a new grant rate for the resulting RLF (42 USC 3149 and 13 CFR section 307.18(b)(1)).
- c. EDA may provide written approval for multiple RLF recipients to merge their EDA RLFs into a single RLF. If EDA approves this merger, EDA will determine a new grant rate for the resulting RLF, all applicable RLF grant assets of the discharging RLF recipient(s) will transfer to the surviving RLF recipient as of the merger's effective date, and the surviving RLF recipient will become fully responsible for administration of the RLF grant assets transferred and fulfill all surviving RLF grant requirements and any other conditions reasonably requested by EDA (42 USC 3149 and 13 CFR section 307.18(b)(2)).

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

Suggested Audit Procedures

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

4. RLF Loan Portfolio Sales and Securitizations

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

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

Suggested Audit Procedures

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

IV. OTHER INFORMATION

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

1. Balance of RLF loans outstanding at the end of the recipient’s fiscal year, *plus*
2. Cash and investment balance in the RLF at the end of the recipient’s fiscal year, *plus*
3. Administrative expenses paid out of RLF income during the recipient’s fiscal year; *plus*
4. The unpaid principal of all loans written off during the recipient’s fiscal year; *and then multiply this sum (1+ 2 +3+4) by*

5. The Federal share of the RLF. The Federal share is defined as the Federal participation rate (or the Federal grant rate), as specified in the grant award. Note that some RLFs have received EDA's permission to co-mingle funds from one or more EDA RLF grants. If this is the case, the Federal share will be the weighted average of the Federal grant rates of the EDA RLF grants used to capitalize the fund. The Federal grant rates for each EDA RLF can be found in the respective grant awards.

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

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

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

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

DEPARTMENT OF COMMERCE

CFDA 11.555 PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS GRANT PROGRAM

I. PROGRAM OBJECTIVES

The Public Safety Interoperable Communications (PSIC) Grant Program is a one-time formula-based, 5-year matching grant program intended to enhance interoperable communications for voice, data, and/or video signals. This program provides public safety agencies with the opportunity to achieve meaningful and measurable improvements to the state of public safety communications interoperability through the full and efficient use of all telecommunications resources.

II. PROGRAM PROCEDURES

Section 3006 of the Deficit Reduction Act of 2005 (Pub. L. No. 109-171), as amended by Section 2201 of Pub. L. No. 110-53 and Section 4 of the Call Home Act of 2006, Pub. L. No. 109-459, directed the National Telecommunications and Information Administration (NTIA), in consultation with the Department of Homeland Security (DHS), to establish and implement a grant program to assist public safety agencies in the planning and coordination associated with, the acquisition of, deployment of, or training for the use of interoperable communications systems that:

- utilize reallocated public safety spectrum for radio communications;
- enable interoperability with communications systems that can utilize reallocated public safety spectrum for radio communication; or
- otherwise improve or advance the interoperability of public safety communications systems that utilize other public safety spectrum bands.

States and Territories are required to submit an Investment Justification (IJ) for each proposed PSIC Investment (project). Up to 10 Investment Justifications will be accepted per State or Territory. A portfolio review of each State's or Territory's Investment Justifications will include a statewide Investment summary, which will include the following:

- Summary of PSIC Investments;
- Summary of how the Investments collectively relate to the statewide strategy/plan—the Statewide Communications Interoperability Plan (SCIP);
- Description of the process used to identify, prioritize, and select Investments included in the Investment Justification; and
- Description of the stakeholders involved in the evaluation and selection of proposals.

These Investments should strongly align with the goals and gaps set forth in the SCIP and the PSIC criteria. The statewide Investment summary of a State's or Territory's IJs must cumulatively account for the total amount of PSIC funding allocated to the State or Territory, not including any funds (up to 5 percent) already dedicated to statewide planning efforts. Each IJ must be a separate and unique project from any efforts currently under way. For example, a State may use its funding to support an existing statewide communications system; however, this funding must be a unique component of this system that does not receive funding from another federal grant program.

The Department of Commerce, through the NTIA, is authorized to make grants only through the end of fiscal year 2012. The PSIC grant has been awarded to the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands. The Governor of each State and Territory has designated a State Administrative Agency (SAA), which applied for and administers the funds under the PSIC Grant Program. A recipient must be a public safety agency that is a State, local, or tribal government entity or nongovernmental organization authorized by such entity, whose sole or principal purpose is to protect safety of life, health, or property (Pub. L. No. 109-171, Section 3006(d)(1), 120 Stat. at 24).

The PSIC Grant Program period of performance began on October 1, 2007 and continues until September 30, 2011, unless specifically granted an additional 1-year extension until September 30, 2012 by the Assistant Secretary of Commerce for Communications and Information.

A special condition has been placed on each grant award indicating that the applicant cannot drawdown, obligate, or expend Federal funds until approval of the SCIP and IJs. From the period between October 1, 2007 and the approval in early 2008, applicants can (at their own risk) incur matching costs associated with the acquisition, deployment, and management and administration (M&A) of the interoperability project. As of early 2009, all PSIC grantees have received approval for their SCIPs and IJs.

The PSIC Grant Program encourages the development and implementation of voluntary consensus standards for interoperable communications to the greatest extent possible. Public safety agencies may also use PSIC funds for interim- or long term Internet Protocol-based interoperable solutions.

Source of Governing Requirements

The PSIC Grant Program is authorized by Section 3006 of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, as amended by Section 2201 of Pub. L. No. 110-53; Section 4 of the Call Home Act of 2006, Pub. L. No. 109-459; and Pub. L. No. 111-96, 123 Stat. 3005 (2009).

Availability of Other Program Information

Other program information is available on the Internet at <http://www.ntia.doc.gov/psic>.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Funds may be used for the following activities:

1. Planning and coordination associated with the use of interoperable communications equipment, software and systems.
2. Acquisition of interoperable communications equipment, software and systems. Acquisition activities may also include technical and financial planning, as well as procurement and system design activities.
3. Deployment costs of interoperable communications equipment, software and systems. Deployment activities may also include the development of deployment procedures for use and the establishment of service level agreements for its use.
4. Training for the use of interoperable communications equipment, software, and systems, both technical and operational (Pub. L. No. 109-171, Section 3006(a)(1), as amended by Section 2201 of Pub. L. No. 110-53, 121 Stat. 537).

G. Matching, Level of Effort, Earmarking

1. Matching

SAAs must provide, from non-federal sources, not less than 20 percent of the costs of acquiring and deploying the interoperable communications systems funded under the grant program (Pub. L. No. 109-171, Section 3006(c), 120 Stat. at 24). The SAA is required to track and report the 20 percent matching requirement for acquisition, deployment, and management and administrative costs.

- a. A match is not required for each Investment, as long as the aggregated State-level costs associated with the overall acquisition, deployment, and management and administrative cost categories have met the minimum 20 percent matching requirement.
- b. Costs for planning and coordination and training activities do not require a match.
- c. As provided in 48 USC 1469a, the requirement for local matching funds under \$200,000 (including in-kind contributions) is waived for the

Territorial governments in Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

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

H. Period of Availability of Federal Funds

All PSIC grant funds that are not expended by September 30, 2011 must be returned to the U.S. Treasury (Section 3006 of the Deficit Reduction Act of 2005, Public Law No. 109-171, Section 3006(a)(2), 120 Stat. at 24 (2006)) unless specifically granted an additional 1-year extension until September 30, 2012 by the Assistant Secretary of Commerce for Communications and Information (Pub. L. No. 111-96, 123 Stat. 3005 (2009)).

L. Reporting

1. **Financial Reporting**
 - a. SF-269, *Financial Status Report* – Applicable
 - b. SF-270, *Request for Advance or Reimbursement* – Not Applicable
 - c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
 - d. SF-272, *Federal Cash Transactions Report* – Not Applicable
 - e. SF-425, *Federal Financial Report* – Applicable
2. **Performance Reporting** – Not Applicable
3. **Special Reporting** – Not Applicable
4. **Section 1512 ARRA Reporting** – Not Applicable

IV. OTHER INFORMATION

The PSIC Grant Program is closely related to the DHS Homeland Security Grant Program (CFDA 97.067). The auditor should be certain that the allowable expenditures under the awards for each of these grant programs are properly allocated and that the specific requirements of each program are followed.

DEPARTMENT OF COMMERCE

CFDA 11.557 BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM

I. PROGRAM OBJECTIVES

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

II. PROGRAM PROCEDURES

Section 6001 of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5, 123 Stat. 115, February 17, 2009) directed the National Telecommunications and Information Administration (NTIA), within the Department of Commerce, in consultation with the Federal Communications Commission (FCC), to establish a grant program to assist eligible entities to implement broadband initiatives that spur job creation, stimulate long-term economic growth and opportunity, and narrow gaps in broadband deployment and adoption.

BTOP funds are available through three categories of eligible projects: Broadband Infrastructure, Public Computer Centers, and Sustainable Broadband Adoption. The Broadband Infrastructure category consists of two components – Last Mile and Middle Mile. Last Mile projects must target unserved or underserved areas and have the predominant purpose of providing broadband to end users (including homes, businesses, schools, libraries, medical and health care providers, community support organizations, public safety entities, vulnerable populations, and other institutions and individuals) or end-user devices. Middle Mile projects must be for unserved or underserved areas and have a predominant purpose other than providing broadband service to end users or to end-user devices and may include interoffice transport, backhaul, Internet connectivity, or special access.

Eligible applicants for BTOP funds include: States, local governments, or any agency, subdivision, instrumentality, or political subdivision thereof; the District of Columbia; U.S. territories and possessions; Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 USC 450(b))); native Hawaiian organizations; non-profit organizations; for-profit organizations; limited liability companies; and cooperative or mutual organizations.

Applications to fund Broadband Infrastructure projects in areas which are at least 75 percent rural are required to be submitted to the Rural Utilities Service (RUS), within the U.S. Department of Agriculture, for consideration under the Broadband Initiatives Program (BIP) (CFDA 10.787). Such applicants may also be considered for BTOP funding if they complete the additional elements required of BTOP infrastructure applicants. NTIA may make awards to such applicants whose projects it determines to be meritorious only after RUS has reviewed the application and determined not to fund the project.

The Public Computer Center category will fund projects that provide broadband access to the general public or a specific vulnerable population, such as low-income, unemployed, aged, children, minorities, and people with disabilities. Public Computer Center projects must create or expand a public computer center meeting a specific public need for broadband service, including, but not limited to, education, employment, economic development, and enhanced service for health-care delivery, children, and vulnerable populations.

The Sustainable Broadband Adoption category will fund innovative projects that promote broadband demand, including projects focused on providing broadband education, awareness, training, access, equipment, or support, particularly among vulnerable population groups where broadband technology has traditionally been underutilized. Sustainable Broadband Adoption projects must meet a specific public need for broadband service, including, but not limited to, education, employment, economic development, and enhanced service for health-care delivery, children, and vulnerable populations.

Source of Governing Requirements

This program is authorized by Section 6001 of ARRA. The program and its compliance requirements are described in the Notice of Funding Availability (NOFA) (74 FR 33104, July 9, 2009).

Availability of Other Program Information

The NOFA is available on the Internet at http://www.ntia.doc.gov/fnotices/2009/FR_BBNOFA_090709.pdf. Other program information is available on the Internet at <http://www.broadbandusa.gov>.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed – Broadband Infrastructure Projects*
 - a. Constructing or improving facilities required to provide broadband services;
 - b. Leasing facilities required to provide broadband services, if such lease qualifies as a capital lease under GAAP, for no more than the first 5 years after the date of the first advance of project funds; and

- c. Pre-application expenses in an amount not to exceed five percent of the award, if the expenses are incurred after publication of the NOFA (July 9, 2009) and prior to the date on which the application was submitted to NTIA (ARRA, Section 6001(g); NOFA, Section V.D.2).

2. *Activities Allowed – Public Computer Centers Projects*

- a. Acquiring broadband-related equipment, instrumentation, networking capability, hardware and software, and digital network technology for broadband services;
- b. Developing and providing training, education, support, and awareness programs or web-based resources; and
- c. Facilitating access to broadband services, including, but not limited to, making public computer centers accessible to the disabled (ARRA, Section 6001(g); NOFA, Section V.D.3).

3. *Activities Allowed – Sustainable Broadband Adoption Projects*

- a. Acquiring broadband-related equipment, hardware and software, and digital network technology for broadband services;
- b. Developing and providing training, education, support, and awareness programs or web-based content;
- c. Conducting broadband-related public education, outreach, support, and awareness campaigns; and
- d. Implementing innovative programs to facilitate greater access to broadband service, devices, and equipment (ARRA, Section 6001(g); NOFA, Section V.D.3).

4. *Activities Allowed – All BTOP Projects*

In addition to the activities cited in paragraphs A.1, A.2, and A.3, a recipient may undertake such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the program is established, as reflected in the approved application (ARRA, Section 6001(g); NOFA, Section V.D.2 and Section V.D.3).

5. *Activities Unallowed – Broadband Infrastructure Projects*

- a. Operating expenses of the project, including fixed and recurring costs;

- b. Acquisition of an affiliate, including the acquisition of the stock of an affiliate, or the purchase or acquisition of any facilities or equipment of an affiliate;
- c. Purchasing or leasing any vehicle other than those used primarily in construction or system improvements;
- d. Merger or consolidation of entities; or
- e. Acquiring spectrum as part of an FCC auction or in a secondary market acquisition (NOFA, Section V.D.2).

D. Davis-Bacon Act

Contractors and subcontractors are required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act (Section 1606 of ARRA).

F. Equipment and Real Property Management

Recipients may not sell or lease any portion of the award-funded broadband facilities during their life, except as otherwise approved by NTIA. NTIA may (1) approve a sale or lease as part of the approved application or (2) waive this provision for any sale or lease occurring after the tenth year from the date of issuance of the award if it is (a) for adequate consideration and (b) the purchaser or lessee agrees to fulfill the terms and conditions relating to the project after such sale or lease. Recipients must notify NTIA in the event of a proposed transfer of award-funded facilities. This requirement is not meant to limit Broadband Infrastructure recipients from leasing facilities to another service provider for the provision of broadband services (NOFA, Section IX.C.2).

G. Matching, Level of Effort, Earmarking

1. Matching

Recipients must provide a non-federal contribution of at least 20 percent of the total allowable project cost, unless the Assistant Secretary waives the requirement or requires a lesser percentage. In-kind contributions may count toward satisfying the non-federal matching requirement (ARRA, Section 6001(f); NOFA, Section V.C.4.b).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

Recipients must complete their projects no later than 3 years following the date of the issuance of the award (NOFA, Section IX.D.1.c).

L. Reporting**1. Financial Reporting**

- a. SF-269, *Financial Status Report* – Not Applicable
- b. SF-270, *Request for Advance or Reimbursement* – Applicable
- c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program* – Not Applicable
- d. SF-272, *Federal Cash Transactions Report* – Not Applicable
- e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable**3. Special Reporting** – Not Applicable**4. Section 1512 ARRA Reporting** – Applicable**N. Special Tests and Provisions****1. Broadband Data Collection**

Compliance Requirements – All BTOP Broadband Infrastructure recipients that offer Internet access service to the public for a fee must agree to participate in the State Broadband Data and Development Grant (SBDD) Program pursuant to Section 6001(l) of the ARRA and the Broadband Data Improvement Act (47 USC 1301 *et seq.*) by submitting broadband data, as requested, to the State SBDD Program recipient (NOFA, Section IX.C.4).

Audit Objective – Determine whether the recipient offers Internet access service to the public for a fee and, if so, whether it is participating in the SBDD Grant Program by submitting broadband-related data to the State SBDD Program recipient.

Suggested Audit Procedures

- a. Review the recipient's policies for providing Internet access to the public and determine if a fee is charged.
- b. If a fee is charged, verify that the recipient is submitting requested data to the State SBDD Program recipient upon request by the State SBDD Program recipient.

2. Nondiscrimination and Interconnection Obligations

Compliance Requirements – Applicants for Broadband Infrastructure projects must commit to nondiscrimination and interconnection obligations that include: (1) adherence to principles contained in the FCC’s Internet Policy Statement (FCC 05-151, adopted August 5, 2005), and which can be found at http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-05-151A1.pdf; (2) not favoring any lawful Internet application or content over others; (3) displaying network management policies in a prominent location on the service provider’s web page and providing notice to customers of changes to these policies; (4) connecting to the public Internet directly or indirectly; and (5) offering interconnection, where technically feasible, on reasonable rates and terms to be negotiated with requesting parties (NOFA, Section V.C.2.c).

These conditions apply for the life of the recipient’s facilities used in the project and not to any existing network arrangements at the time of the award. The conditions apply to any contractors or subcontractors of recipients employed to deploy or operate the network facilities for the infrastructure project (NOFA, Section V.C.2.c).

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

Suggested Audit Procedure

- a. Verify that the recipient has adhered to its written interconnection, nondiscrimination, and network management practices (submitted to NTIA at the time of application).
- b. Verify that the recipient displays its network management policies in a prominent location on its web page and has provided notice to customers of changes to these policies.
- c. Determine whether the recipient has included in any contracts under the award to deploy or operate the network facilities for the infrastructure project the required flowdown information and requires it to be flowed down to subsequent tiers, when applicable. .
- d. Request a representative sample of recipient’s interconnection agreements, any forms submitted to the FCC regarding interconnection terms, and any complaints received by the recipient regarding its interconnection rates and terms to verify that the recipient is advertising the availability of, and providing, a public Internet connection rather than just a connection to its own services

DEPARTMENT OF COMMERCE

CFDA 11.558 STATE BROADBAND DATA AND DEVELOPMENT GRANT PROGRAM

I. PROGRAM OBJECTIVES

The State Broadband Data and Development Grant (SBDD) Program is intended to collect, verify, display and update State-level broadband availability information, and to fund Statewide initiatives directed at broadband planning.

II. PROGRAM PROCEDURES

Section 6001(l) of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5, 123 Stat. 115, February 17, 2009) authorizes the National Telecommunications and Information Administration (NTIA), within the Department of Commerce, to expend up to \$350 million pursuant to the Broadband Data Services Improvement Act (BDIA) (47 USC 1301 *et seq.*) to (1) develop and maintain a comprehensive, interactive, and searchable nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available throughout each State and (2) fund State-wide initiatives for broadband planning. Section 106 of the BDIA directed the Secretary of Commerce to establish the SBDD Program and to award grants to eligible entities to develop and implement State-wide initiatives to map the adoption and availability of broadband services within each State.

Under the SBDD program, which implements both the BDIA and ARRA provisions, each of the 50 States, the District of Columbia, and the U.S. Territories of Guam, Puerto Rico, Virgin Islands, American Samoa, and the Northern Mariana Islands (States) may designate one eligible entity from that State to apply for funding. The designated entity may be (1) an agency or instrumentality of the State, a municipality or other subdivision (or agency or instrumentality of a municipality or other subdivision) of a State; (2) a nonprofit organization (pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986); or (3) an independent agency or commission in which an office of a State is a member on behalf of the State.

In addition to collecting and verifying data, as required by NTIA, recipients must agree to make the data publicly accessible, clearly presented, and easily understood by the public, governmental entities, and the research community. Recipients also agree to cooperate with NTIA and the Federal Communications Commission's (FCC) national broadband mapping efforts and to submit all of their collected data to NTIA for use by NTIA in developing and maintaining the national broadband map.

Applications that meet the broadband mapping purposes will also be considered for funding to assist with projects that relate to a broadband planning use enumerated in BDIA, such as identifying barriers to the adoption of broadband, the creation of local technology planning teams, and the establishment of computer ownership and Internet access programs. The budget for a broadband planning component under any grant application may not exceed \$500,000. No funds awarded for mapping may be used for broadband planning-related uses.

Source of Governing Requirements

This program is authorized by ARRA and the BDIA. The program and its compliance requirements are described in the Notice of Funding Availability (NOFA) (74 FR 24545, July 8, 2009).

Availability of Other Program Information

The NOFA is available on the Internet at http://www.ntia.doc.gov/frnotices/2009/FR_BroadbandMappingNOFA_090708.pdf. Other program information is available on the Internet at <http://www.broadbandusa.gov>.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed - Mapping Activities.*
 - a. Collecting and verifying broadband-related data within the State, including data at the address-level on broadband availability, technology, speed, infrastructure, Average Revenue Per User (ARPU), and, in the case of wireless broadband, the spectrum used, across the State;
 - b. Developing, maintaining, and updating a State-wide broadband map; and
 - c. Presenting and updating collected broadband-related data to NTIA for national broadband map (NOFA, Section II. B.).
2. *Activities Allowed - Broadband Planning.*
 - a. Assessing and tracking broadband service deployment in the State;
 - b. Collaborating with State-level agencies, local authorities and other constituencies to identify and address broadband challenges in the State;
 - c. Creating and facilitating a local technology planning team in each county or designated region in a State;
 - d. Developing a tactical business plan for achieving stated project goals, with specific recommendations for online application development and demand creation;

- e. Collaborating with broadband service providers and information technology companies to encourage deployment and use, through the use of local demand aggregation, mapping analysis, and the creation of market intelligence to improve the business case for providers;
 - f. Establishing programs to improve computer ownership and Internet access for unserved areas and areas in which broadband penetration is significantly below the national average;
 - g. Collecting and analyzing detailed market data concerning the use and demand for broadband service and related information technology services; and
 - h. Facilitating information exchange regarding the use and demand for broadband services between public and private sectors (47 USC 1304(e); NOFA, Section II. B).
3. *Activities Unallowed*

Award funds may not be used for any construction purposes (NOFA, Section V.E.1).

G. Matching, Level of Effort, Earmarking

1. Matching

Awardees must provide a non-federal contribution of at least 20 percent toward the total allowable project cost. Cash and in-kind contributions may both count toward satisfying the non-federal matching requirement. In-kind contributions may include the ascertainable fair market value of data previously collected and related to the BDIA-eligible uses under this program. Applicants must provide a basis for estimating fair market value of the previously collected data. In addition, certain pre-award costs, as specified in the notice of award, may be credited towards the matching requirement (47 USC 1304(c)(2); NOFA, Section V.A).

The requirement for local matching funds under \$200,000 is waived for the Territorial governments in Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands (48 USC 1469a).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

The initial period of availability for funds allocated to Broadband Mapping purposes will be 2 years from the date of award. The period for Broadband Planning purposes will be up to 5 years from the date of award (74 FR 46574, Sept. 10, 2009).

L. Reporting**1. Financial Reporting**

- a. SF-269, *Financial Status Report* – Not Applicable
- b. SF-270, *Request for Advance or Reimbursement* – Applicable
- c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program* – Not Applicable
- d. SF-272, *Federal Cash Transactions Report* – Not Applicable
- e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable**3. Special Reporting** – Not Applicable**4. Section 1512 ARRA Reporting** – Applicable