

DEPARTMENT OF COMMERCE

CFDA 11.300 INVESTMENTS FOR PUBLIC WORKS AND ECONOMIC DEVELOPMENT FACILITIES

CFDA 11.307 ECONOMIC ADJUSTMENT ASSISTANCE

I. PROGRAM OBJECTIVES

The Public Works and Economic Development Facilities (Public Works) program assists communities to revitalize and expand their physical and economic infrastructure and also supports the creation and retention of jobs for area residents by helping eligible recipients with their efforts to promote the economic development of their local economies. The objective of the Economic Adjustment Assistance program is to address the needs of communities experiencing actual or threatened severe unemployment or 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.

II. PROGRAM PROCEDURES

Public Works grants may fund construction and related activities, such as design, engineering, and acquisition of related property, machinery, and equipment. Economic Adjustment Assistance grants 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. Economic Adjustment Assistance grants may also fund a project implementing a CEDS or other strategy, including grants for construction and Revolving Loan Funds (RLFs). Like Public Works grants, Economic Adjustment Assistance grants for construction may include related activities, such as design, engineering, and acquisition of related property, machinery, and equipment.

Section 302 of the Public Works and Economic Development Act of 1965 (PWEDA) (42 USC section 3162) requires that Public Works and Economic Adjustment Assistance grants be consistent with a CEDS or equivalent EDA-accepted regional economic development strategy, except for planning projects (i.e., strategy grants) under the Economic Adjustment Assistance program. Pursuant to section 214 of PWEDA (42 USC section 3154), EDA may waive the CEDS requirements for Public Works and Economic Adjustment Assistance projects located in regions designated as “Special Impact Areas.” If a project is located in a designated “Special Impact Area,” such designation will be specified in the grant award documents.

Economic Adjustment Assistance grants to capitalize or recapitalize RLFs are most commonly made for the purpose of business lending but may also fund public infrastructure or other authorized lending purposes if specifically allowed for in the terms of the award. RLF recipients must administer 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 must update the RLF plan, as necessary, in accordance with changing economic conditions in the region; at a minimum, RLF recipients must update their RLF plans at least once

every five years. RLF recipients are responsible for ensuring that borrowers are aware of and comply with applicable federal statutory and regulatory requirements.

RLF awards are federal grants, not federal loans. The RLF program does not qualify as a federal loan program for the purposes of 2 CFR section 200.502(b), 2 CFR section 200.518(b)(3), or related single audit provisions. EDA makes RLF grants through the Economic Adjustment Assistance program to establish self-sustaining lending vehicles which revolve grant funds. As loans are repaid, RLF recipients continue to make loans to eligible borrowers. EDA does not review RLF loan applications, make lending decisions or service loans. For these reasons, RLF awards should be treated as grants, not federal loans, for the purposes of a single audit.

Source of Governing Requirements

The Public Works and Economic Adjustment Assistance programs are authorized by PWEDA (42 USC sections 3121–3234).

EDA's regulations are codified at 13 CFR chapter III, including program regulations for CFDA 11.300 at 13 CFR part 305 and CFDA 11.307 at 13 CFR part 307. EDA published a final rule, effective January 2, 2018, amending the agency's regulations implementing PWEDA (82 Fed. Reg. 57,034 (Dec. 1, 2017)). Among other things, the final rule advanced EDA's efforts to improve performance within the RLF program by establishing the Risk Analysis System, a risk-based management framework, to evaluate and manage RLF awards. EDA also updated other parts of the agency's regulations at 13 CFR chapter III, including revising definitions, replacing references to superseded regulations, and clarifying property management regulations.

Availability of Other Program Information

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

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. **When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.**

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

A. Activities Allowed or Unallowed

1. *Activities Allowed*

The grant award documents, which include the grant budget, specify the purpose, and use of funds, which include the following:

- a. Construction grants made under CFDA 11.300 or CFDA 11.307 can be made for the acquisition or development of land and improvements for use for a public works, public service, or development facility. Construction grants can also be made for the acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment (42 USC section 3141(a); 42 USC section 3149(a); and 13 CFR sections 305.2(a) and 307.3). For awards made under CFDA 11.300 (Public Works), Recipients must seek EDA’s prior written approval to use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). These alternate methods may include design/build, construction management at risk, and force account (13 CFR section 305.6(a)).
- b. Economic Adjustment Assistance grants (CFDA 11.307) to capitalize or recapitalize RLFs most commonly fund business lending but may also fund public infrastructure or other authorized lending activities if specifically allowed for in the terms of an award (42 USC section 3149(a) and 13 CFR section 307.6).
- c. Other activities that can be funded under the Economic Adjustment Assistance program (CFDA 11.307) (in addition to grants for construction and RLFs) are grants for CEDS (or other strategy) development and grants for CEDS (or other strategy) implementation, which may include, among other things, 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 section 3149(a) and 13 CFR section 307.3).

- d. A recipient of a Public Works grant (CFDA 11.300) may directly expend the grant funds or, with prior EDA approval, may redistribute such grant funds 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 section 3154c and 13 CFR section 309.1).
- e. A recipient of an Economic Adjustment Assistance grant (CFDA 11.307) may directly expend the grant funds or, with prior EDA approval, may redistribute such grant assistance in the form of (1) a subgrant to another eligible recipient or (2) a loan or other appropriate assistance to non-profit and private for-profit entities (42 USC section 3154c and 13 CFR section 309.2).

2. *Activities Unallowed*

- a. RLF Cash Available for Lending (as defined at 13 CFR section 307.8) **may not** be used to:
 - (1) Acquire an equity position in a private business (13 CFR section 307.17(c)(1)).
 - (2) Subsidize interest payments on an existing RLF loan (13 CFR section 307.17(c)(2)).
 - (3) Provide a loan to a borrower for the purpose of meeting the requirements of equity contributions under another federal agency's loan programs (13 CFR section 307.17(c)(3)).
 - (4) Enable borrowers to acquire an interest in a business either through the purchase of stock or through the acquisition of assets unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF (13 CFR section 307.17(c)(4)).
 - (5) Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit, or any investment unrelated to the RLF (13 CFR section 307.17(c)(5)).
 - (6) Refinance existing debt, unless (1) the RLF recipient sufficiently

demonstrates in the loan documentation a sound economic justification for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities); for this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification); or (2) RLF cash available for lending 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 funds may be used for this purpose, only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF's costs plus a reasonable portion of the outstanding RLF loan within a reasonable time frame approved by EDA following the date of refinancing (13 CFR section 307.17(c)(6)).

- (7) Serve as collateral to obtain credit or any other type of financing without EDAs prior written approval (13 CFR section 307.17(c)(7)).
- (8) Support operations or administration of the RLF recipient (13 CFR section 307.17(c)(8)).
- (9) Undertake any activity that would violate the requirements found at 13 CFR part 314, including sections 314.3 ("Authorized Use of Property") and 314.4 ("Unauthorized Use of Property") (13 CFR section 307.17(c)(9)).
- (10) Finance gambling activity, performances or products of a prurient sexual nature, or any illegal activity, including the cultivation, distribution, or sale of marijuana that is illegal under federal law (RLF Standard Terms and Conditions, Part II, section D) 4) a) (x)).

b. In addition to the general conflicts of interest provisions at 2 CFR section 200.112, recipients of Public Works and Economic Adjustment Assistance awards must also comply with the conflicts of interest provisions at 13 CFR section 302.17. Special conflicts of interest provisions apply to recipients of RLF awards (13 CFR section 302.17(c)):

- (1) An interested party of an RLF recipient may not receive, directly or indirectly, any personal or financial benefits resulting from the disbursement of RLF loans;
- (2) An RLF recipient may not lend RLF funds to an Interested Party; and
- (3) Former board members of an RLF recipient and members of his or

her immediate family may not receive a loan from the RLF for a period of two years from the date that the board member last served on the board of directors.

3. *Internal Controls*

Pursuant to 2 CFR section 200.303(a), the non-federal entity must establish and maintain effective internal control over the federal award that provides reasonable assurance that the non-federal entity is managing the federal award in compliance with federal statutes, regulations, and the terms and conditions of the federal award.

Suggested Audit Procedures – Internal Control

The auditor is to test that the non-federal entity has adequate internal controls in place, as defined at 2 CFR section 200.61, and adequate internal control over compliance requirements for federal awards, as defined at 2 CFR section 200.62. This must include testing the internal controls documented in the non-federal entity's written procedures governing its federal awards.

B. Allowable Costs/Cost Principles

The Cost Principles at 2 CFR part 200, subpart E, describe selected cost items, allowable and unallowable costs, and standard methodologies for calculating indirect costs rates (e.g., methodologies used to recover facilities and administrative costs (F&A) at institutions of higher education). Federal awards include federal programs and cost-type contracts and may be in the form of grants, contracts, and other agreements.

For RLF awards, costs incurred for ineligible loans, including loans made for one of the unallowed activities described in Section A.2. or made outside of the RLF lending area as discussed in Section N.2., are unallowable. The RLF capital base is always maintained in two forms: as RLF cash available for lending **or** as outstanding loan principal. An RLF recipient is allowed to use RLF income to pay for allowable administrative costs, provided such RLF income is earned and the administrative costs are accrued in the same fiscal year of the RLF recipient. It is unallowable to use RLF funds for administrative costs in excess of the RLF income generated during the same Recipient fiscal year without prior written approval from EDA.

G. Matching, Level of Effort, Earmarking

1. Matching

The amount of required matching share varies on a grant-by-grant basis and is set forth in the grant award. In nearly all cases, a recipient of a Public Works or Economic Adjustment Assistance grant is required to provide a matching share. In some instances, including grants to Indian tribes and to respond to natural disasters, EDA may award grants at investment rates up to and including one

hundred percent (100 percent) (13 CFR section 301.4(b)). Prior to EDA approving the matching share at time of application, 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 (13 CFR section 301.5). The source of a recipient's matching share may change during the term of the grant award if EDA is notified and approves of the change in source.

Matching share may take a variety of forms. It may be in the form of allowable costs incurred by the recipient, but not charged to the federal award, third-party cash contributions, or third-party in-kind (non-cash) contributions. Additionally, with prior EDA approval, unrecovered indirect costs or program income may be used to meet the matching requirements.

For reporting purposes, unrecovered indirect costs allowed by EDA for match are reported with recovered indirect costs using Form SF-425, Lines 11.a-11.e and 11.g, and then are added to other Recipient Share of Expenditures on Line 10.j. Program income allowed for match is entered directly in Recipient Share of Expenditures on Line 10.j, but is **not** included in any of the entries on Lines 10.l, 10.m, and 10.o within the program income section of Form SF-425. The use of unrecovered indirect costs or program income for matching funds does not increase the amount of the federal award (2 CFR sections 200.306(c) and 200.307(e)(3)).

Matching funds must comply with the provisions of 2 CFR section 200.306, 13 CFR section 301.5, and the respective NOFO, which provides detailed criteria for acceptable costs and contributions. The following is a list of the basic criteria for acceptable matching:

- a. Are verifiable from the non-federal entity's records.
- b. Are not included as contributions for any other federal award.
- c. Are necessary, allocable, and reasonable for accomplishment of project objectives.
- d. Are allowed under the applicable cost principles.
- e. Are not paid by the federal government under another federal award, except where the federal statute authorizing a program specifically provides for such use, which may sometimes include a letter from the federal agency authorizing the funds as match in the subject project.
- f. Are provided for in the approved budget when required by the EDA.

- g. Conform to other applicable provisions of 2 CFR section 200.306 and any applicable laws, regulations, and provisions of grant or cooperative agreements.

The following are the items which require a review/test in the area of applying match. Note that these items apply to the disbursement phase of the RLF award, but not RLF awards in the revolving phase (as defined at 13 CFR section 307.8) where all funds have been previously disbursed by EDA:

- a. Perform tests to verify that required matching funds were expended, and that they were expended consistently with what was reported to EDA.
- b. Ascertain the sources of matching contributions and perform tests to verify that they were from an allowable source.
- c. Test records to corroborate that third-party contributions (including third-party in-kind (non-cash contributions) are valued in accordance with 2 CFR section 200.306.
- d. Ensure that the application of match is in compliance with the program regulations and the terms of the award.
- e. Test costs incurred as match for compliance with the allowable costs/cost principles requirement. This test may be performed in conjunction with the testing of the requirements related to allowable costs/cost principles.

2. Level of Effort

Not Applicable

3. Earmarking

Not Applicable

J. Program Income

Program income means gross income earned by the non-federal entity that is directly generated by a supported activity or earned as a result of the federal award during the period of performance except as provided at 2 CFR section 200.307(f). Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under federal awards, the sale of commodities or items fabricated under a federal award, license fees and royalties on patents and copyrights, and interest on loans made with federal award funds. Program income may be earned pursuant to some Public Works and Economic Adjustment Assistance awards, but it is most prevalent in RLF grants.

Program income is a key feature of RLF awards. Known as “RLF income,” it is used to increase the RLF capital base and to pay eligible and reasonable administrative costs.

RLF income (as defined at 13 CFR section 307.8) includes interest earned on loan principal and accounts holding RLF funds, all fees received by the RLF, and other income generated from RLF operations.

RLF income excludes repayments of loan principal and any interest earned on accounts holding RLF funds that is remitted to the U.S. Treasury pursuant to generally accepted accounting principles (GAAP) and/or 13 CFR section 307.20(h).

During the revolving phase, RLF income must either be used to pay allowable administrative costs or added to the RLF capital base. RLF income may be used to pay administrative costs only if the RLF income is accrued and the administrative costs are incurred in the same fiscal year of recipient. If the RLF income is not used for such costs, it must be added to the RLF capital base (13 CFR section 307.12(a)). A recipient may not withdraw funds from the RLF capital base in a subsequent fiscal year to pay administrative costs without the prior written consent of EDA (13 CFR section 307.12(a)(3)). RLF recipients must keep administrative costs to a minimum to maintain the RLF capital base (13 CFR section 307.12(a)(4)). When charging costs against RLF income, RLF recipients must comply with the cost principles at 2 CFR part 200, subpart E.

Suggested Audit Procedures – Compliance

1. Identify Program Income:
Inquire of management and review accounting records to ascertain the amount of program income earned.
2. Determining or Assessing Program Income:
Perform tests to verify that program income was properly identified, calculated, and collected only from allowable sources.
3. Recording and Reporting of Program Income:
Perform tests to verify that all program income was properly recorded in the accounting records.
4. Use and Reporting of Program Income:
Perform tests to ascertain whether program income was used in accordance with the program requirements and 2 CFR section 200.307. Ensure that Forms SF-425 and ED-209 (for RLF awards) reflect the proper management of the program income.

RLF income received before disbursement phase closeout is retained by the RLF recipient, added to the RLF capital base, and reported as unexpended in the final Financial Report (Form SF-425) and continues to be reported in the RLF Financial

Report (Form ED-209). The RLF recipient shall use program income only as an “addition” to the federal award; the recipient shall not use program income as a “deduction” to the federal award.

L. Reporting

1. Financial Reporting

- a. *Form SF-425, Federal Financial Report* – Applicable (required on a quarterly or bi-annual basis, until the end of the period of performance (i.e., disbursement phase) when a final closeout Form SF-425 is submitted).
- b. *Form SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Applicable (required for construction awards until the award is fully disbursed)
- c. *Form SF-270, Request for Advance or Reimbursement for Non-Construction Programs* – Applicable (required for non-construction awards until the award is fully disbursed)
- d. *Form ED-209, RLF Financial Report* – Applicable only for RLF awards (required to be submitted at a frequency determined by EDA for the duration of the RLF’s operation). See also special reporting section below for further explanation of the Form ED-209 reporting requirements.

2. Performance Reporting

EDA collects and reports on performance measures in compliance with Government Performance and Results Act of 1993, as amended by the GPRA Modernization Act of 2010.

These reports may include, but are not limited to:

GPRA Data Collection Form (Form ED-915)
Periodic performance reports, as determined by award
Form SF-PPR (Performance Progress Report)
Performance Technical Reports as prescribed in 2 CFR section 200.328
Form SF-429 (Real Property Status Report)

Source of Governing Requirements

Program legislation; federal awarding agency regulations; the applicable NOFO; and the Government Performance and Results Act of 1993 (GPRA) (Pub. L. 103–

62), which is one of a series of laws designed to improve government performance management.

Audit Objectives

The auditor is to test for compliance with the requirements for the accurate, correctly developed, and timely submittal and reliability of the subject reports as required by the award's terms and conditions and 2 CFR sections 200.328 and 200.329, and then determine the auditee's compliance with the subject performance reporting requirements.

Suggested Audit Procedures – Performance Reporting Compliance

The auditor shall perform review and analysis of subject performance reports to obtain an understanding of whether the auditee's performance report practices is sufficient to meet the requirements of their performance reporting to successfully fulfill the governing requirements. The auditor shall consider the results of the testing of their performance reporting in assessing the risk of noncompliance.

3. Special Reporting

Special reporting includes any reports required by an award's terms and conditions, special award conditions, or as otherwise detailed in the grant award.

a. Subaward Reporting under the Transparency Act

Prime Grant Recipients awarded a new federal grant, under CFDA 11.300 and CFDA 11.307 greater than or equal to \$25,000 as of October 1, 2010 are subject to FFATA sub-award reporting requirements as outlined in the Office of Management and Budgets guidance issued August 27, 2010. The prime awardee is required to file a FFATA sub-award 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. (P.L. 109-282 (FFATA) and P.L. 113-101 (DATA Act).)

b. The following reporting requirement pertains to RLF recipients only:

Form ED-209, *Revolving Loan Fund Financial Report (OMB No. 0610-0095)* – All EDA RLF recipients must submit in electronic format Form ED-209 at a frequency as directed by EDA (13 CFR section 307.14(a)). The frequency is based on the results of the rating each RLF receives under the Risk Analysis System. Generally, Form ED-209 must be submitted corresponding to the RLF recipient's fiscal year on an annual basis for RLF awards that are highly rated under the Risk Analysis System, while it must be submitted on a semi-annual basis for RLF awards that are not highly rated under the Risk Analysis System.

Key Line Items – The following line items contain critical information, which should reconcile with the RLF recipient’s financial documents and account balances:

1. *Current RLF capital base (Line II.C.6.)*
2. *RLF Cash Available for Lending, Net of Committed RLF \$ (Line II.D.4.)*
3. *Total Active Loans (Line III.A.4., Number, RLF \$ Loaned, and RLF Principal Outstanding)*
4. *Written Off Loans (Line III.A.5., Number, RLF \$ Loaned, and Loan Losses)*
5. *Total Loans (Line III.A.7., Number, RLF \$ Loaned, RLF Principal Outstanding, and Loan Losses)*
6. *RLF income used for Admin. Expenses, Fiscal Year (Line IV.C.2.)*
7. *RLF income earned during Fiscal Year (Line IV.C.3.)*
8. *Administrative Expenses % of Income, Fiscal Year (Line IV.C.2.)*
9. *Total \$ Leveraged (Line IV.E.1., Active Loans and Total Loans)*
10. *Loan Leverage Ratio (Line IV.E.2., Active Loans and Total Loans)*

M. Subrecipient Monitoring

Note: Transfers of federal awards to another component of the same auditee do not constitute a subrecipient or contractor relationship for purposes of 2 CFR part 200, subpart F. Each subaward must be pre-approved by EDA, as further described in Section A.1.d-e.

Compliance Requirements

Responsibilities of a Pass-Through Agency – A comprehensive description of the requirements applicable to pass-through entities can be found at 2 CFR section 200.331; this section highlights some key requirements. At the time of the subaward, identify that the subrecipient is aware of the federal award information and possesses a current registration in the System for Award Management (SAM). Monitor the subrecipient’s use of federal awards to provide reasonable assurance of full compliance. Ensure that subrecipients expending \$750,000 or more in federal awards during the subrecipient’s fiscal year met the audit requirements of 2 CFR part 200, subpart F, including the issuance of a management decision on audit findings within 6 months, and ensure that the

subrecipient takes timely and appropriate corrective action on all audit findings. Evaluate factors that affect the nature, timing, and extent of during-the-award monitoring, which includes the program complexity, the percentage of the total award passed through to subrecipient, the funding level of subawards, and the risk posed by the subrecipients. Assess monitoring activities occurring throughout the year, include reporting, site visits, and regular contact. A pass-through entity must arrange for agreed-upon procedures engagements for certain aspects of subrecipient activities.

Source of Governing Requirements

The requirements for subrecipient monitoring are at 31 USC section 7502(f)(2)(B) (Single Audit Act Amendments of 1996 (Pub. L. No. 104-156)); 2 CFR sections 200.505, 200.521, and 200.331 (2 CFR section 215.51(a)); program legislation; federal awarding agency regulations; and the terms and conditions of the award.

Audit Objectives

The auditor is to test for compliance with 2 CFR 200.331. This includes but is not limited to: obtaining an understanding of internal controls and risk assessment a required by 2 CFR section 200.425(c); affirming any first-tier subawards have a valid DUNS number and current SAM registration before entity issues the subaward; ascertaining that the pass-through entity monitors subrecipient activities; determining whether the pass-through entity ensured required audits are performed and managed by the subrecipient per 2 CFR 200 subpart F; determining whether the pass-through entity evaluated the impact of subrecipient activities on the pass-through entity; and determining whether the pass-through entity identified in the SEFA the total amount provided to subrecipients from each federal program.

Suggested Audit Procedures – Internal Control

The auditor shall perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program; plan the testing of internal control to support a low assessed level of control risk for subrecipient monitoring and perform the testing of internal control as planned (see alternative procedures in 2 CFR section 200.514(c)(4)); and consider the results of the testing of internal control in assessing the risk of noncompliance.

Suggested Audit Procedures – Compliance

(Note: The auditor may consider coordinating the tests related to subrecipients performed during testing of cash reporting submitted by subrecipients, with the testing of “Subrecipient Monitoring”)

After gaining an understanding of the pass-through entity’s subrecipient procedures through a review of the pass-through entity’s subrecipient monitoring policies and procedures, the auditor then performs tests, reviews, and verifications as follows:

1. Test the pass-through entity's subaward review and approval documents, such as a possessing a valid DUNS number; test subaward documents and agreements to ascertain if at the time of subaward the pass-through entity made subrecipients aware of the award information, is registered in SAM, and that the activities approved in the subaward documents were allowable.
2. Review the pass-through entity's documentation of subaward monitoring to ascertain if the monitoring provided reasonable assurance that the subaward was for authorized purposes, complied with all legal and grant requirements, while achieving performance goals, including that corrective action was implemented to correct any deficiencies.
3. Verify that required audits were completed, applicable management decisions (when necessary) were issued and ensure corrective action was taken on any findings. Verify if, for any reason, required audits did not occur, the pass-through entity took appropriate action using sanctions and such non-compliance has been recorded. Finally, to determine that there are procedures that allow the pass-through entity to identify the total amount provided to subrecipients from each federal program.

N. Special Tests and Provisions

1. Priority of Payments on Defaulted and Written Off RLF Loans

Compliance Requirements When an RLF recipient receives proceeds on a defaulted RLF loan or written off RLF loan, such proceeds shall be applied in the following order of priority: (1) towards any costs of collection; (2) towards outstanding penalties and fees; (3) towards any accrued interest to the extent due and payable; and (4) towards any outstanding principal balance (13 CFR section 307.12(c)).

Audit Objectives Determine whether proceeds from defaulted RLF loans were correctly applied in the order of priority.

2. RLF Loan Requirements

Compliance Requirements The following requirements apply to RLF loans:

- a. The standard loan documentation must include, at a minimum, the: (1) loan application, (2) loan agreement, (3) board of directors' meeting minutes approving the RLF loan, (4) promissory note, (5) security agreement(s), (6) deed of trust or mortgage (if applicable), (7) agreement of prior lien holder (if applicable), and (8) evidence demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed (13 CFR section 307.11(a)(1)(ii)).

- b. An RLF recipient must make loans to implement and assist economic activity only within its EDA-approved lending area, as defined in the terms and conditions of the award (as amended) and the EDA-approved RLF Plan (13 CFR section 307.18(a)(1)).
- c. RLFs shall operate in accordance with generally accepted accounting principles (“GAAP”) as in effect in the United States and the provisions outlined in the audit requirements set out as subpart F to 2 CFR part 200 and this Compliance Supplement, which is Appendix XI to 2 CFR part 200, as applicable.
- d. In accordance with GAAP, a loan loss reserve may be recorded in the RLF recipient’s financial statements to show the adjusted current value of an RLF’s loan portfolio, provided this loan loss reserve is non-funded and is represented by a non-cash entry. However, loan loss reserves shall not be used to reduce the value of the RLF in the Schedule of Expenditures of Federal Awards (“SEFA”) required as part of the RLF recipient’s audit requirements under 2 CFR part 200 (13 CFR section 307.15(a)(2)).

Audit Objectives Determine whether: (1) the required documentation is complete for all RLF loans, including evidence that credit was not otherwise available to the borrower; (2) the RLF recipient’s financed activity is located in the EDA-approved lending area; (3) the recipient is accounting for its operations in accordance with GAAP; and (4) properly recording a loan loss reserve in accordance with GAAP and with section 307.15(a)(2).

Suggested Audit Procedures

Test a sample of RLF loan files to ascertain if:

- a. All required standard loan documents are complete for each loan, including documentation that credit was not otherwise available to the borrower.
- b. The financed activity is located in the EDA-approved lending area.

3. RLF Loan Portfolio Sales and Securitizations

Compliance Requirements With prior written approval from EDA, an RLF recipient may enter into a sale or a securitization of all or a portion of its RLF loan portfolio, provided it: (1) uses all the proceeds of any sale or a securitization to make additional RLF loans, and (2) requests EDA to subordinate its interest in all or a portion of any RLF loan portfolio sold or securitized (42 USC section 3149(d) 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. Determine whether RLF recipient has entered into sale or securitization of all or a portion of its RLF loan portfolio.
- b. Verify that the RLF recipient has evidence of EDA's prior written approval to sell or securitize all or a portion of its RLF loan portfolio.
- c. Ascertain that all the proceeds from the sale or securitization (net of reasonable transactions costs) were used to make additional RLF loans.

4. Wage Rate Requirements

See Part 4, 20.00 Wage Rate Requirements of the Department of Transportation Cross-Cutting Section of this Compliance Supplement.

Compliance Requirements All laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of \$2,000 financed by federal assistance funds must be paid wages not less than those established for the locality of the project (prevailing wage rates) by the Department of Labor (DOL) (40 USC sections 3141-3144, 3146, and 3147).

Non-federal entities shall include in their construction contracts subject to the Wage Rate Requirements (which still may be referenced as the Davis-Bacon Act) a provision that the contractor or subcontractor comply with those requirements and the DOL regulations (29 CFR part 5, Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction). This includes a requirement for the contractor or subcontractor to submit to the non-federal entity weekly, for each week in which any contract work is performed, a copy of the payroll and a statement of compliance (certified payrolls) (29 CFR sections 5.5 and 5.6; the A-102 Common Rule (section.36(i)(5)); OMB Circular A-110 (2 CFR part 215, Appendix A, Contract Provisions); 2 CFR part 176, subpart C; and 2 CFR section 200.326).

This reporting is often done using Optional Form WH-347, which includes the required statement of compliance (*OMB No. 1235-0008*). The U.S. Department of Labor, Employment Standards Administration, maintains a Davis-Bacon and Related Acts web page

<https://www.dol.gov/agencies/whd/government-contracts/construction/forms>.
Optional Form WH-347 and instructions are available on this web page.

Audit Objectives Determine whether the non-federal entity notified contractors and subcontractors of the requirements to comply with the Wage

Rate Requirements and obtained copies of certified payrolls.

Suggested Audit Procedures

Select a sample of construction contracts and subcontracts greater than \$2,000 that are covered by the Wage Rate Requirements and perform the following procedures:

- a. Verify that the required prevailing wage rate clauses were included in the contract or subcontract.
- b. For each week in which work was performed under the contract or subcontract, verify that the contractor or subcontractor submitted the required certified payrolls.

(**Note:** Auditors are not expected to determine whether prevailing wage rates were paid.)

IV. OTHER INFORMATION

Suggested Audit Procedures

Review the procedures for preparing the audit report and evaluate for completeness and accuracy to reconcile with financial statements and account balances. Review the RLF income used for administrative expenses according to terms of the award and cost principles.

Schedule of Expenditures of Federal Awards

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

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

Note: Consolidated or merged RLFs grants must be shown as a single line item on the SEFA (see III.N.3, "Special Tests and Provisions - Addition of Lending Areas and Consolidation and Merger of RLFs"). In this case, the federal share will be the

weighted average of the federal grant rates of the EDA RLF grants used to capitalize the fund.

The federal grant rates for each EDA RLF can be found in the grant award documents; specifically, Form CD-450 or Form CD-451.

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 accompany the SEFA.

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

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)). For all projects involving the acquisition, construction, or improvement of a building, as determined by EDA, the recipient shall execute a lien, covenant, or other statement of the federal interest in such project real property. The statement shall specify the estimated useful life of the project and shall include, but not be limited to, the disposition, encumbrance, and federal share requirements. The statement must be satisfactory in form and substance to EDA (13 CFR section 314.8). In extraordinary circumstances and at EDA's sole discretion, EDA may choose to accept another instrument to protect the federal interest in project real property, such as an escrow agreement or letter of credit, provided that EDA determines such instrument is adequate and a recorded statement in accord 13 CFR 314.8(a) is not reasonably available. The terms and provisions of the relevant instrument must be satisfactory to EDA in EDA's sole judgment. The costs and fees for escrow services and letters of credit shall be paid by the recipient (13 CFR section 314.8(d)).

DEPARTMENT OF COMMERCE

CFDA 11.557 BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM

I. PROGRAM OBJECTIVES

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

II. PROGRAM PROCEDURES

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

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

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

The PCC category funded projects that provide broadband access to the general public or a specific vulnerable population, such as low-income, unemployed, aged, children, minorities, and

people with disabilities. PCC projects create, upgrade, or expand public computer centers, including those at community colleges that meet a specific public need for broadband service, including, but not limited to, education, employment, economic development, and enhanced service for health-care delivery, children, and vulnerable populations.

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

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

Source of Governing Requirements

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

Availability of Other Program Information

1. NTIA has published a program-specific audit guide to assist auditors with for-profit audits of the BTOP program. The BTOP Program-Specific Audit Guide is available at <http://www2.ntia.doc.gov/compliance>.
2. The Round 1 NOFA is available at http://www.ntia.doc.gov/files/ntia/publications/fr_bbnofa_090709.pdf
3. The Round 2 NOFA is available at http://www.ntia.doc.gov/frnotices/2010/FR_BTOPNOFA_100115.pdf
4. The 700 MHz Reopening NOFA is available at http://www.ntia.doc.gov/frnotices/2010/FR_BTOPApplicationReopening_05132010.pdf
5. DOC Pre-Award Notification Requirements for Grants and Cooperative Agreements, 66 FR 49917 (Feb. 11, 2008) (DOC Pre-Award Notification) are available at http://www2.ntia.doc.gov/files/DOC_pre-award_notification_requirements_73_FR_7696.pdf
6. Recipient Guidance, including fact sheets with specific guidance (e.g., Davis-Bacon, federal interest), is available at http://www2.ntia.doc.gov/files/Recipient_Handbook_v1.1_122110.pdf#page=1
7. DOC Financial Assistance Standard Terms & Conditions (DOC Standard Terms) http://www2.ntia.doc.gov/files/award_docs/DOC-STCsMAR08Rev.pdf

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

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

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. **When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.”** See the Safe Harbor Status discussion in Part 1 for additional information.

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

A. Activities Allowed or Unallowed

1. *Activities Allowed – BI/CCI Projects*
 - a. Constructing or improving facilities required to provide broadband services; and:
 - (1) Long-term leasing (for terms greater than one year) of facilities required to provide broadband services, including infeasible right-of-use (IRU) agreements. Operating lease costs are allowable to the extent that they are incurred during the award

period and are consistent with the relevant accounting principles;
and

- (2) Indirect costs associated with the construction, deployment, or installation of facilities and equipment used to provide broadband service, provided that they are included as a line item in the recipient's approved budget (ARRA, Section 6001(g); Round 1 NOFA, Section V.D.2.a; Round 2 NOFA, Section V.E.2.a).

- b. For 700 MHz recipients, in addition to the above, the following activities are allowed:

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

2. *Activities Allowed – PCC Projects*

- a. Acquiring broadband-related equipment, instrumentation, networking capability, hardware and software, and digital network technology for broadband services, including the purchasing of word processing software, computer peripherals such as mice and printers, and computer maintenance services and virus-protection software.
- b. Developing and providing training, education, support, and awareness programs or web-based resources, including compensation for qualified instructors, technicians, managers, and other employees essential for these types of programs.
- c. Facilitating access to broadband services, including, but not limited to, making public computer centers accessible to the disabled.
- d. Installing or upgrading broadband facilities on a one-time, capital improvement basis in order to increase broadband capacity.
- e. Constructing, acquiring, or leasing a new facility, provided that the recipient explains why it is necessary to construct, acquire, or lease a new

facility to facilitate public access to broadband services or expand computer center capacity.

- f. Indirect costs associated with eligible project activities, provided that they are included as a line item in the recipient's budget (ARRA, Section 6001(g); Round 1 NOFA, Section V.D.3.b; Round 2 NOFA, Section V.E.3.a).

3. *Activities Allowed – SBA Projects*

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

4. *Activities Allowed – All BTOP Projects*

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

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

Round 1 recipients prior to the date on which the application was submitted or for Round 2 recipients prior to the date of issuance of the grant award from NTIA. Lobbying costs and contingency fees are not reimbursable (ARRA, Section 6001(g); Round 1 NOFA, Section V.D.2.a; Round 2 NOFA, Sections V.E.2.a, V.E.3.a, and V.E.4.a).

5. *Activities Unallowed – Infrastructure Projects*

a. For Round 1 and Round 2 Recipients:

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

6. *Activities Unallowed – SBA Projects*

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

F. Equipment and Real Property Management

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

although the federal interest nevertheless applies to the BTOP Property under these programs.

The recipient shall execute a security interest or other statement of NTIA's interest in real property, including broadband facilities and equipment acquired or improved with federal funds acceptable to NTIA, which must be perfected and placed on record in accordance with local law. Documentation of the federal interest is to be perfected and recorded/filed in accordance with state and/or local law concurrent with or as soon as possible following any purchase, lease or other acquisition of BTOP Property and, unless otherwise approved in writing by the grants officer, not later than the date on which the BTOP financial assistance award is officially closed out.

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

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

DEPARTMENT OF COMMERCE

CFDA 11.611 HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP

I. PROGRAM OBJECTIVES

Under the Hollings Manufacturing Extension Partnership (MEP) program, the National Institute of Standards and Technology (NIST) awards cooperative agreements to eligible entities—which include U.S. states and territories, local/tribal governments, institutions of higher education, and nonprofit organizations or consortia of nonprofit organizations—for the purpose of creating and supporting manufacturing extension centers for the transfer of manufacturing technology and best business practices (hereafter referred to as “Centers”). The objective of the MEP program is to enhance competitiveness, productivity, and technological performance in U.S. manufacturing. *See* 15 USC 278k(c). Centers accomplish this objective through activities that include: (1) the establishment of automated manufacturing systems and other advanced production technologies, based on institute-supported research, for the purpose of demonstrations and technology transfer; (2) the active transfer and dissemination of research findings and center expertise to a wide range of companies and enterprises, particularly small and medium-sized manufacturers; and (3) the facilitation of collaborations and partnerships between small and medium-sized manufacturing companies, community colleges, and area career and technical education schools, to help those entities better understand the specific needs of manufacturers and to help manufacturers better understand the skill sets that students learn in the programs offered by such colleges and schools (15 USC 278k(d)).

While the majority of program funds are used to create and support these centers (referenced hereafter as “base cooperative agreements”), NIST also disburses additional program funds to existing centers, or consortia of centers, in the form of cooperative agreements for projects to solve new or emerging manufacturing problems (referred to in the authorizing statute as “competitive awards”). The problems to be addressed under competitive awards will be determined by the NIST Director, in consultation with the Director of the MEP program (hereafter “Director”), the MEP Advisory Board, other federal agencies, and small and medium-sized manufacturers, and specified in the applicable Notice of Funding Opportunity (NOFO) or funding from the Competitive Awards Program (CAP) established under 15 USC 278k-1.

II. PROGRAM PROCEDURES

A. Cooperative Agreements to Create and Support Centers

Base cooperative agreements to create and support centers are subject to, and administered in accordance with, 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; the Department of Commerce Standard Financial Assistance Terms and Conditions (dated April 30, 2019, as may be periodically amended); the Hollings Manufacturing Extension Partnership General Terms and Conditions (dated August 2017 as may be periodically amended) (“MEP General Terms and Conditions”)

(https://www.nist.gov/system/files/documents/2018/05/08/fy17-18_nist_mep_general_terms_conditions_final_july2017.pdf); any specific award

conditions imposed by NIST on a case-by-case basis; and the center's required plans (approved funding proposal/scope of work and multi-year budgets for the audit period). These documents are incorporated by reference into the non-federal entity's Financial Assistance Form CD-450 (*U.S. Department of Commerce Financial Assistance Award*), which functions as the cooperative agreement. If NIST approves any amendments to the award, including any changes to these documents incorporated by reference, NIST will document this amendment with a CD-451 form (*U.S. Department of Commerce Amendment to Financial Assistance Award*) or an administrative change letter. It is important to note that a non-federal entity may be involved in manufacturing extension services beyond the scope of its cooperative agreement with NIST. These base cooperative agreements are typically for a five-year period, with the possibility of a non-competitive renewal for another five-year award. However, these multi-year awards are funded in yearly allotments, with annual funding contingent upon the continued availability of funds, satisfactory performance, and the continued relevance of the base cooperative agreement to program objectives, and is at the sole discretion of the Department of Commerce. At the time that NIST approves a non-federal entity for a noncompetitive annual renewal of funding, NIST will approve any revisions to the non-federal entity's required plans, and budget for the upcoming annual funding period. This approved budget, subject to any budget modifications approved by NIST, is binding on the non-federal entity, and should be used in conjunction with this compliance supplement to determine the allowability of costs, as documented in the Center's Single-Year Budget Workbook and Five-Year Budget Summary Table for the audit period.

All base cooperative agreements to create and support Centers require non-federal matching funds. The center's approved Single-Year Budget Workbook and Five-Year Budget Summary Table indicate the total amount of non-federal cost share required for the funding period, as well as the source, amount, and nature of each contribution. Typically, non-federal cost share contributions are comprised of a mix of cash and in-kind contributions from the non-federal entity, subawardees and third parties such as state agencies and municipalities, as well as program income. Program income is primarily generated from fees collected from manufacturers to partially offset the cost of providing manufacturing extension services under the program. Program income may also include revenue, such as but not limited to, registration fees for training programs offered by the center, fees for equipment rentals, and licensing fees or royalties on patents.

These base cooperative agreements permit the non-federal entity to make subawards to accomplish all or part of the approved required plans. Any permissible subawards will be shown in the center's approved Single-Year Budget Workbook. The terms and conditions of each base cooperative agreement flow down to subawards as well unless a particular section of 2 CFR Part 200 or the terms and conditions of the base cooperative agreement specifically indicate otherwise. Each center that issues subawards must ensure that every subaward is clearly identified to the subrecipient as a subaward and includes all the required information at the time of the subaward per 2 CFR 200.331(a). In addition, each center that issues subawards must comply with the subrecipient monitoring and management standards for pass-through entities as described in 2 CFR 200.330 – 200.332 (*see also* MEP General Terms and Conditions, #11).

B. Cooperative Agreements to Solve New or Emerging Manufacturing Problems

In addition to base cooperative agreements to create and support centers, NIST disburses additional program funds or funding from the CAP, per 15 USC 278k-1, to existing centers, or consortia of centers, in the form of cooperative agreements for projects to solve new or emerging manufacturing problems as determined by the NIST director, in consultation with the director, the MEP Advisory Board, other federal agencies, and small and medium-sized manufacturers (“competitive awards”) and specified in the applicable NOFO. These cooperative agreements are subject to, and administered in accordance with, 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, the Department of Commerce Financial Assistance Terms and Conditions, any specific award conditions imposed by NIST on a case-by-case basis, and all requirements listed in the NOFO that governs the project for which the center or consortium of centers was selected. These cooperative agreements are *not* subject to the MEP General Terms and Conditions; there is no expectation that program income will be generated under these awards. However, if program income is generated, it is subject to all the provisions of 2 CFR Part 200 and must be used to further the purposes of the project from which it was generated. There is also no requirement to provide matching contributions. The period of performance varies for each award, but may not exceed three years. Any permissible subawards will be shown in the approved project budget, which shall be attached to, or incorporated by reference in, the CD-450 (*U.S. Department of Commerce Financial Assistance Award*), which functions as the cooperative agreement. The terms and conditions of each cooperative agreement apply (i.e., flow down) to subawards as well, unless a particular section of 2 CFR Part 200 or the terms and conditions of the cooperative agreement specifically indicate otherwise.

Source of Governing Requirements

The Hollings Manufacturing Extension Partnership Program is authorized by 15 USC 278k. Implementing regulations are set forth in 15 CFR Part 290. The MEP CAP to solve new or emerging manufacturing problems is authorized by 15 USC 278k-1.

Availability of Other Program Information

Other program information is available on NIST’s MEP webpage at <https://www.nist.gov/mep>.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than

Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

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

A. Activities Allowed or Unallowed

1. *Activities Allowed*

a. Base Cooperative Agreements to Create and Support Centers

For base cooperative agreements to create and support centers, the center’s approved required plans will specify the type of activities permitted under the award. Each subaward will specify the types of activities permitted under the subaward, which must be consistent with the center’s required plans, but may be only a subset of those activities outlined in the center’s required plans. In any case, all activities will fit broadly into the following types of activities:

- (1) The establishment of automated manufacturing systems and other advanced production technologies, based on NIST-supported research, for the purpose of demonstrations and technology transfer (15 USC 278k(d)(1));
- (2) The active transfer and dissemination of research findings and center expertise to a wide range of companies and enterprises (15 USC 278k(d)(2)), particularly small and medium-sized manufacturers; and
- (3) The facilitation of collaborations and partnerships between small and medium-sized manufacturing companies, community colleges, and area career and technical education schools, to help those entities better understand the specific needs of manufacturers and

to help manufacturers better understand the skill sets that students learn in the programs offered by such colleges and schools (15 USC 278k(d)(3)).

b. **Cooperative Agreements to Solve New or Emerging Manufacturing Problems**

The types of activities permitted under the award will be specified in the applicable NOFO and in the terms and conditions of each cooperative agreement.

B. Allowable Costs/Cost Principles

1. For base and cooperative agreements to create and support centers, allowable costs, including prior approval requirements for certain costs, are determined in accordance with 2 CFR Part 200, the Department of Commerce Standard Financial Assistance Terms and Conditions; the MEP General Terms and Conditions; and any specific award conditions imposed by NIST on a case-by-case basis and must be consistent with the approved project budget.
2. For cooperative agreements to solve new or emerging manufacturing problems, allowable costs, including prior approval requirements for certain costs, are determined in accordance with 2 CFR Part 200, the Department of Commerce Standard Financial Assistance Terms and Conditions; any specific award conditions imposed by NIST on a case-by-case basis and must be consistent with the approved project budget.

C. Cash Management

1. Grants and Cooperative Agreements to States

Applicable

2. Grants and Cooperative Agreements to non-Federal Entities Other Than States

Applicable

3. Cost-reimbursement Contracts under the Federal Acquisition Regulation

Applicable

4. Loans, Loans Guarantees, Interest Subsidies, and Insurance

Not applicable

5. All Pass-Through Entities

Applicable

G. Matching, Level of Effort, Earmarking

1. Matching

a. Base Cooperative Agreements to Create and Support Centers

The center and, if applicable, its partnering organizations (i.e., sub-non-federal entities and/or third-party contributors) will obtain funding for not less than 50 percent of the capital and annual operating and maintenance funds required to establish and support the center from sources other than NIST. The MEP authorizing statute requires that minimum cost share requirements must be met annually; there can be no carryover of excess cost share from one year to the next (15 USC 278k(f)(3)). “[A]n applicant shall provide adequate assurances that the applicant and if applicable, the applicant’s partnering organizations, will obtain funding for not less than 50 percent of the capital and *annual* operating and maintenance funds required to establish and support the Center from sources other than the financial assistance provided under subsection (e)” 15 USC 278k(f)(3) (emphasis added).

However, any non-federal matching share in excess of these mandatory minimums that is shown in the center’s approved budget for the audit period supersedes these mandatory minimums and is binding on the non-federal entity (*see* MEP General Terms and Conditions, #10).

Contractors and MEP Center clients may not provide any form of the Center’s cost share without the prior written approval of the NIST grants officer (*see* MEP General Terms and Conditions, #10A).

The time spent by the center’s manufacturing clients on technical assistance projects may not be considered in-kind cost share without the prior written approval of the NIST grants officer (*see* MEP General Terms and Conditions, #10A).

Non-federal cost share contributions by subrecipients must comply with the allowability and documentation requirements set forth in 2 CFR Section 200.306 and with the record access and record retention requirements set forth in 2 CFR sections 200.331(a)(5) and 200.333. At a minimum, the following documents should be maintained by the center and made available in the event of an audit: Subaward Agreement with detailed budget; documentation to support valuation of non-federal cost share being contributed by the subrecipient; and Subrecipient Financial Reporting to the Non-Federal Entity (*see* MEP General Terms and Conditions, #10D).

- b. Cooperative Agreements to Solve New or Emerging Manufacturing Problems

Non-federal entities are not required to provide matching contributions – unless otherwise required by the terms and conditions of a specific award.

2. Level of Effort

Not Applicable

3. Earmarking

Not Applicable

J. Program Income

1. Base Cooperative Agreements to Create and Support Centers

- a. In accordance with 2 CFR 200.307 and the below referenced MEP general terms and conditions. Program income earned by the non-federal entity during the project period shall be retained by the non-federal entity and shall be used by the non-federal entity in the following order of priority during the funding period:

- (1) First, to finance the non-federal share of the project (MEP General Terms and Conditions, #12.B.1). This amount is not included on the Schedule of Expenditures for Federal Awards (SEFA);
- (2) Second, all program income earned in excess of that required to meet the minimum non-federal share shall be added to the funds committed to the project by MEP and the non-federal entity and must be used for the purposes and under the conditions of the MEP award (commonly referred to as the “additive approach”). Program income to be expended under the additive approach must be explained in detail in the center’s required plans or in a separate written communication to the NIST grants officer, and is subject to the prior written approval of the NIST grants officer (MEP General Terms and Conditions, #12.B.2). This amount is included on the SEFA; and
- (3) Third, any remaining unexpended program income shall be deducted from the total allowable project costs to determine the net allowable program costs upon which the federal share of project costs is based, in accordance with written instructions from the NIST grants officer (commonly referred to as the “deductive approach”) (MEP General Terms and Conditions, #12.B.3). This amount is not included on the SEFA.

- b. Program income earned by a subrecipient during the project period shall be retained by the subrecipient and shall be used by the subrecipient in the following order of priority during the funding period:
- (1) First, to finance the non-federal share of the subaward (MEP General Terms and Conditions, #12.C.1). This amount is not included on the SEFA;
 - (2) Second, all program income earned in excess of that required to meet the minimum non-federal share shall be added to the federal and non-federal funds committed to the subaward, and must be used for the purposes and under the conditions of the MEP award as set forth in the terms of the subaward (commonly referred to as the “additive approach”) (MEP General Terms and Conditions, #12.C.2). This amount is included on the SEFA; and
 - (3) Third, any remaining program income generated by a subrecipient must be remitted to the non-federal entity by the subrecipient and shall be deducted from the total allowable project costs to determine the net allowable program costs upon which the federal share of project costs is based, in accordance with written instructions from the NIST grants officer (commonly referred to as the “deductive approach”) (*see* MEP General Terms and Conditions, #12.C.3). This amount is not included on the SEFA.
- c. Program income in excess of what is required annually to meet the non-federal portion of the annual operating budget, and that cannot be expended during the operating period using either the additive and/or deductive approaches during the operating period, may be carried over by the Center to the subsequent funding period if approved in writing by the NIST grants officer. Upon close-out of an MEP award, the NIST grants officer will provide the non-federal entity with closeout instructions, including instructions regarding the disposition of program income (*see* MEP General Terms and Conditions, #12.H).
- d. Costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award (MEP General Terms and Conditions, #12.E).

2. Cooperative Agreements to Solve New or Emerging Manufacturing Problems

There is no expectation that program income will be generated under these awards. If program income is generated, in accordance with 2 CFR 200.307, it must be expended for the purposes and under the conditions of the subject award (commonly referred to as the “additive approach”), with any remaining

unexpended program income being deducted from the total allowable project costs to determine the net allowable program costs upon which the federal share of project costs is based.

L. Reporting

The following reporting requirements described in Section A.01 Reporting Requirements of the Department of Commerce Financial Assistance Standard Terms and Conditions, apply to awards in this program.

1. Base Cooperative Agreements to Create and Support Centers

a. Financial Reporting

SF-425, Federal Financial Report – Applicable

The recipient shall submit an SF-425, Federal Financial Report, into the MEP's Enterprise Information System (MEIS) on a semi-annual basis after the sixth and twelfth month of each operating year, unless other reporting intervals and/or due dates are identified by the NIST grants officer pursuant to a specific award condition. Reports will be due within 30 days after the end of each semi-annual reporting period. The recipient shall submit a final SF-425 within 90 days after the expiration date of the award.

b. Performance Reporting

Not Applicable

2. Cooperative Agreements to Solve New or Emerging Manufacturing Problems

a. Financial Reporting

SF-425, Federal Financial Report – Applicable

The recipient shall submit an SF-425, Federal Financial Report, into the MEP's Enterprise Information System (MEIS) on a semi-annual basis after the sixth and twelfth month of each operating year, unless other reporting intervals and/or due dates are identified by the NIST grants officer pursuant to a specific award condition. Reports will be due within 30 days after the end of each semi-annual reporting period. The recipient shall submit a final SF-425 within 90 days after the expiration date of the award.

3. Special Reporting

Not Applicable; unless otherwise specified in the terms and conditions of an award.