

## § 314.5

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### § 314.5 Federal Share.

For purposes of this part, “*Federal Share*” means that portion of the current fair market value of any Property (after deducting actual and reasonable selling and repair expenses, if any, incurred to put the Property into marketable condition) attributable to EDA’s participation in the Project. The Federal Share excludes that portion of the current fair market value of the Property attributable to acquisition or improvements before or after EDA’s participation in the Project, which are not included in the total Project costs. For example, if the total Project costs are \$100, consisting of \$50 of Investment Assistance and \$50 of Matching Share, the Federal Share is fifty (50) percent. If the Property is disposed of when its current fair market is \$250, the Federal Share is \$125 (*i.e.*, fifty (50) percent of \$250). If \$10 is spent to put the Property into salable condition, the Federal Share is \$120 (*i.e.*, fifty (50) percent of (\$250–\$10)).

### § 314.6 Encumbrances.

(a) *General.* Except as provided in paragraph (b) of this section or as otherwise authorized by EDA, Recipient-owned Property acquired or improved in whole or in part with Investment Assistance must not be used to secure a mortgage or deed of trust or in any way collateralized or otherwise encumbered, except to secure a grant or loan made by a Federal Agency or State agency or other public body participating in the same Project. An encumbrance includes but is not limited to easements, rights-of-way or other restrictions on the use of any Property.

(b) *Exceptions.* Subject to EDA’s approval, which will not be unreasonably withheld or unduly delayed, paragraph (a) of this section does not apply to:

(1) Recipient-owned Property that is subject to an encumbrance at the time EDA approves the Project, where EDA determines that the requirements of § 314.7(b) are met;

(2) Encumbrances arising solely from the requirements of a pre-existing water or sewer facility or other utility encumbrances, which by their terms extend to additional Property connected to such facilities; and

(3) Encumbrances in cases where all of the following are met:

(i) EDA, in its sole discretion, determines that there is good cause for a waiver of paragraph (a) of this section;

(ii) All proceeds secured by the encumbrance on the Property shall be available only to the Recipient and shall be used only for the Project for which the Investment Assistance applies or for related activities of which the Project is an essential part;

(iii) A grantor/lender will not provide funds without the security of a lien on the Property; and

(iv) There is a reasonable expectation, as determined by EDA, that the Recipient will not default on its obligations.

(c) Encumbering Recipient-owned Property, other than as permitted in this section, is an Unauthorized Use of the Property under § 314.4.

## Subpart B—Real Property

### § 314.7 Title.

(a) *General.* The Recipient must hold title to the Real Property required for a Project at the time the Investment Assistance is awarded or as provided by paragraph (c) of this section and must maintain title at all times during the Estimated Useful Life of the Project, except in those limited circumstances as provided in paragraph (c) of this section. The Recipient must also furnish evidence, satisfactory in form and substance to EDA, that title to Real Property required for a Project (other than property of the United States) is vested in the Recipient and that any easements, rights-of-way, State or local government permits, long-term leases or other items required for the Project have been or will be obtained by the Recipient within an acceptable time, as determined by EDA.

(b)(1) The Recipient must disclose to EDA all encumbrances, including but not limited to the following:

(i) Liens;

(ii) Mortgages;

(iii) Reservations;

(iv) Reversionary interests; and

(v) Other restrictions on title or on the Recipient’s interest in the Property.

(2) No encumbrance will be acceptable if, as determined by EDA, the encumbrance interferes with the construction, use, operation or maintenance of the Project during its Estimated Useful Life.

(c) *Exceptions.* The following are exceptions to the requirements of paragraph (a) of this section that the Recipient hold title to the Real Property required for a Project.

(1) Where the acquisition of Real Property required for a Project is contemplated as part of an Investment Assistance award, EDA may determine that an agreement for the Recipient to purchase the Real Property will be acceptable for purposes of paragraph (a) of this section if:

(i) The Recipient provides EDA with reasonable assurances that it will obtain fee title to the Real Property prior to or concurrent with the initial disbursement of the Investment Assistance; and

(ii) EDA, in its sole discretion, determines that the terms and conditions of the purchase agreement adequately safeguard the Federal government's interest in the Real Property.

(2) EDA may determine that a long-term leasehold interest for a period not less than the Estimated Useful Life of the Real Property required for a Project will be acceptable for purposes of paragraph (a) of this section if:

(i) Fee title to the Real Property is not otherwise obtainable; and

(ii) EDA, in its sole discretion, determines that the terms and conditions of the lease adequately safeguard the Federal government's interest in the Real Property.

(3) When a Project includes construction within a railroad's right-of-way or over a railroad crossing, EDA may find it acceptable for the work to be completed by the railroad and for the railroad to continue to own, operate and maintain that portion of the Project, if required by the railroad; and provided that, the construction is a minor but essential component of the Project.

(4) When a Project includes construction on a State-owned or local government-owned highway (*i.e.*, where the Recipient is not the State or local government owner), EDA may find it acceptable for the State or local govern-

ment to own, operate and maintain that portion of the Project, if required by the State or local government; provided that, construction is a minor but essential component of the Project, the construction is completed in accordance with EDA requirements, and the State or local government provides assurances to EDA that the:

(i) State or local government will operate and maintain the improvements for the Estimated Useful Life of the Project;

(ii) State or local government will not sell the improvements for the Estimated Useful Life of the Project; and

(iii) Use of the Property will be consistent with the authorized purposes of the Project.

(5)(i) When an authorized purpose of the Project is to construct facilities to serve Real Property owned by the Recipient, including but not limited to industrial or commercial parks, for sale or lease to private parties, such sale or lease is permitted so long as:

(A) In cases where an authorized purpose of the Project is to sell Real Property, the Recipient provides evidence sufficient to EDA that it holds title to the Real Property required for such Project prior to the disbursement of any portion of the Investment Assistance and will retain title until the sale of the Property;

(B) In cases where an authorized purpose of the Project is to lease Real Property, the Recipient provides evidence sufficient to EDA that it holds title to the Real Property required for such Project prior to the EDA disbursement of any portion of the Investment Assistance and will retain title for the entire Estimated Useful Life of the Project;

(C) The Recipient completes the Project according to the terms of the Investment Assistance;

(D) The sale or lease of any portion of the Project during its Estimated Useful Life must be for Adequate Consideration and the terms and conditions of the Investment Assistance and the purpose(s) of the Project must continue to be fulfilled after such sale or lease; provided, however, that EDA may waive

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this provision for any sale or lease occurring after the ten (10) year anniversary of the award date of the Investment Assistance;

(E) The Recipient agrees that the termination, cessation, abandonment or other failure on behalf of the Recipient, purchaser or lessee to complete the Project by the five (5) year anniversary of the award date of the Investment Assistance constitutes a failure on behalf of the Recipient to use the Real Property for the economic purposes justifying the Project; and

(F) The Recipient agrees that a violation of this paragraph by the Recipient, purchaser or lessee constitutes an Unauthorized Use of the Real Property and the Recipient must further agree to compensate EDA for the Federal government's Federal Share of the Project in the case of such Unauthorized Use.

(ii) EDA may also condition the sale or lease on the satisfaction by the Recipient, purchaser or lessee (as the case may be) of any additional requirements that EDA may impose, including but not limited to EDA's pre-approval of the sale or lease.

(6)(i) When an authorized purpose of the Project is to construct facilities to serve privately-owned Real Property, including but not limited to industrial or commercial parks, the ownership, sale or lease of such Real Property is permitted so long as:

(A) The Owner provides evidence sufficient to EDA that it holds title to the Real Property improved or benefited by the EDA Investment Assistance prior to the disbursement of any portion of the Investment Assistance and will retain title to the Real Property for the entire Estimated Useful Life of the Property or until the sale of such Real Property;

(B) The Recipient and the Owner agree to use Real Property improved or benefited by the EDA Investment Assistance only for the authorized purposes of the Project and in manner consistent with the terms and conditions of the EDA Investment Assistance for the Estimated Useful Life of the Project;

(C) The Recipient must provide adequate assurances that the Owner will

complete the Project according to the terms of the Investment Assistance;

(D) The sale or lease of any portion of the Project during its Estimated Useful Life must be for Adequate Consideration and the terms and conditions of the Investment Assistance and the purpose(s) of the Project must continue to be fulfilled after such sale or lease; provided, however, that EDA may waive this provision for any sale or lease occurring after the ten (10) year anniversary of the award date of the Investment Assistance;

(E) The Recipient agrees that the termination, cessation, abandonment or other failure on behalf of the Recipient, Owner, purchaser or lessee to complete the Project by the five (5) year anniversary of the award date of the Investment Assistance constitutes a failure on behalf of the Recipient to use the Real Property for the economic purposes justifying the Project; and

(F) The Recipient further agrees that a violation of this paragraph by the Owner, purchaser or lessee constitutes an Unauthorized Use of the Real Property and the Recipient must further agree to compensate EDA for the Federal government's Federal Share of the Project in the case of such Unauthorized Use.

(ii) EDA may also condition its Investment Assistance on the satisfaction by the Recipient, Owner or by the purchaser or lessee (as the case may be) of any additional requirements that EDA may impose, including but not limited to EDA's pre-approval of a sale or lease.

**§ 314.8 Recorded statement.**

(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 EDA's interest in the Property acquired or improved in whole or in part with the EDA Investment Assistance. 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 shall be satisfactory in form and substance to EDA.