

**Economic Development Administration/Department of Commerce Technical Comments on
H.R. 5897, the Economic Revitalization and Innovation Act of 2010**

1. Innovation and Entrepreneurship

- a. **Program Authority Clarifications.** The Public Works and Economic Development Act (PWEDA) has served the agency well in that it provides the Economic Development Administration (EDA) with broad authority to help distressed communities meet the challenges of the day. Nonetheless, as the Committee knows, it is important to fine tune these authorities to address the need to focus on innovation, entrepreneurship and regional collaboration to advance the Nation's economy. We appreciate that the Committee has included, and in some cases improved, a number of the recommended statutory clarifications regarding innovation and entrepreneurship in the basic findings and declarations of PWEDA (section 2); the economic development partnership authority (section 101); collaboration with Federal partners (section 102); new express authority to work with the Department of Labor on regional innovation clusters and strategies (section 104); partnership planning authority (section 203); the technical assistance authority regarding regional innovation clusters and performance measurements for commercialization and entrepreneurship (section 207); and express authority relating to sustainable economic development (section 218, but see comments below). We also appreciate the addition of challenge grant authority as part of the amendments to section 209 of PWEDA as this authority will prove useful in connection with incentivizing projects related to innovation and entrepreneurship.
- b. **Enhanced Authority in the Public Works Program.** We are disappointed that H.R. 5897 does not adopt a proposal to broaden the Public Works (PW) authority to enable EDA to use it to support other activities in addition to those directly related to construction of public facilities. EDA typically supports "soft" infrastructure activities under the Economic Adjustment Assistance (EAA) Program, such as technical assistance and revolving loan funds that may be useful in, or prerequisites for, the construction of science and research parks and business incubators. Because appropriations for the EAA Program are typically much lower than those for the PW Program, EDA frequently does not have sufficient funds to support the necessary soft infrastructure for research and science parks, or other institutions that support the generation of new jobs through entrepreneurship and innovation. We understand that there may be a perception that the PW Program would lose its traditional focus if the current authority were broadened in this regard. We can assure you that we are not attempting to eliminate traditional infrastructure projects from the EDA portfolio, because such infrastructure projects continue to be a necessary pre-condition to economic development in many distressed regions. We also note that the infrastructure for the innovation economy needs a somewhat greater flexibility to also fund studies, provide technical assistance, and fund entrepreneurial development activities related to their development. Accordingly, we urge the Committee to adopt the Administration's proposal for this section. (H.R. 5897 text in italics; revised Administration proposal set out in new paragraph (a)(3) of section 201):

SEC. 201. GRANTS FOR PUBLIC WORKS AND ECONOMIC DEVELOPMENT.
(42 U.S.C. § 3141)

- (a) IN GENERAL. – On the application of an eligible recipient, the Secretary may make grants for–
- (1) acquisition or development of land and improvements for use for a public works, public service, or development facility (*including a facility of a business incubator or a science and research park (as such terms are defined in section 208(a));* ~~and~~)
 - (2) acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment; *and*

(3) other activities which the Secretary determines would be necessary or useful to support the establishment and operation of such facilities on a sustainable basis, including related planning, technical assistance and business development assistance to enable the recipient to bring together regional assets and encourage entrepreneurial development, and to the extent needed to support entrepreneurial development, funding proof of concept centers and funding revolving loan funds pursuant to the authority under section 209 of this Act.

- c. **Science and Research Park Guarantee Authority.** We are gratified that the Committee included new authority to provide loan guarantees to support the establishment of science and research parks. The Committee also broadened the scope of the authority to cover business incubators. However, certain provisions proposed by the Administration that were omitted in H.R. 5897 relate to standard provisions required by OMB Circular No. A-129, and we recommend that the Committee amend its version in order to meet government-wide policies for credit programs (for example, the prohibition on guaranteeing tax-exempt debt as outlined in section 149(b) of the Internal Revenue Code). We have included a revised version of new section 208 of PWEDA to incorporate the necessary changes in section 4 below.
- d. **Sustainable Economic Development.** We appreciate that H.R. 5897 includes a new section 218 to PWEDA as requested to set out a specific provision regarding the need to promote economic development on a sustainable basis. While we believe the Administration's proposal to establish a framework of sustainability throughout all of EDA's programs reflects the urgency with which sustainability must be factored into economic development decisions, establishing separate program authority is one way to recognize its importance. We note, however, that it is important to maintain the requirement of local match in support of investments under the Act. Paragraph (b)(2) of section 218 would authorize EDA to supplement a project also being funded by another Federal grant, loan or guarantee up to 100 percent of cost. It is longstanding Federal policy to require local match to ensure that the recipient has funds at risk, thereby demonstrating its commitment to the project by investing scarce local resources. This is especially important in connection with guarantee programs where the Federal Government liability is contingent and depends on an accurate assessment of risk to ascertain the cost of the subsidy. We recommend that this paragraph be dropped.
2. **Improvements to Program Operations.** The Administration proposed a number of changes to the statute to improve program operations. The Committee has included a number of them including new authority to deal with the revolving loan fund portfolio (new subsection (e) to section 209) and property management under the construction programs (new section 613). Other changes in H.R. 5897 include:
- a. **Economic Development Districts and the Partnership Planning Program.** H.R. 5897 includes an amendment to section 101(c) to require EDA to provide an opportunity for comment on projects to Economic Development Districts (EDDs), as well as to States and local governments. As this provision in the statute is intended to recognize the jurisdiction of the other levels of government in connection with EDA's discretionary grant programs as a matter of comity, the addition of the EDDs is out of place. Moreover, as a creation of EDA's statute, the EDDs are pivotal to the EDA process, but their involvement must be organic. Mandating this kind of review could slow down the processing of grants at a time when we are working to expedite the process to create jobs faster. We also urge the Committee to adopt Administration recommendations to amend the planning authority under section 203 to authorize additional resources provided to the planning program to help address the most economically distressed districts and to incentivize planning on a broader regional scale. Because local match is one important way that ensures local buy-in to grant awards, we do not believe the increase for planning to 100% is necessary as set out in the amendment to

section 204. We also note that, under the current law, EDA retains the discretion to waive the local match when the recipient has exhausted its effective borrowing capacity.

- b. Nonrelocation.** We support the concept behind new section 220 that provides that EDA assistance should not be used as part of an incentive package to lure jobs from another jurisdiction. Indeed, EDA has adopted an explicit “nonrelocation” policy administratively. (See Enclosure 2.) We believe this matter is best handled administratively and recommend that the statutory provision be dropped.
- c. University Center Program.** Section 502 of the bill amends section 506 of PWEDA regarding evaluation of the University Center Program. One change would be to delete a requirement regarding evaluating the centers to see if current grantees are performing well and should continue to receive assistance, with a view to discontinuing assistance if appropriate so that other universities that have not received assistance can participate in the program. In place of this requirement, the bill provides that each center should be reviewed with respect to whether it is performing well and maintaining capacity to carry out the Secretary’s priorities. We have no objection to this change, but request that the report indicate that the change does not reflect a change to the competitive nature of the program. EDA believes that competition for grant awards under the program has served the agency well and has helped carry out the Congressional intent to make sure additional universities can have a chance to participate in the program. We would also note that new section 707 as added by section 705 of the bill would require \$1,125,000 of the annual appropriations be used each year to establish new University Centers in States that currently have none. There are only seven states, including the District of Columbia,¹ that lack University Centers. Based on past awards, the average amount of a University Center award is approximately \$170,000. Thus, this provision would either become unnecessary after two years, or it would set a funding level for University Center awards that far exceeds the average of such awards to date. Given the uncertainty of appropriations over a five-year cycle, we recommend that this mandatory floor for new University Centers be dropped.

The bill also changes the timing of the evaluation from once every three years, to once every five years. We have no objection to that change.

- d. Work with Other Agencies.** The Administration recommended that section 604 be revised to streamline work with other agencies such as the Office of Economic Adjustment at the Department of Defense. This proposed change does not have any budget impact as it is simply intended to simplify accounting in connection with joint work. We recommend inclusion in H.R. 5897 of the following text:

(c) TRANSFER OF FUNDS FROM OTHER FEDERAL AGENCIES.—

(1) IN GENERAL.— Subject to paragraph (2), for the purposes of this Act, the Secretary may accept transfers of funds from other Federal agencies if the funds are used for the purposes for which (and in accordance with the terms under which) the funds are specifically authorized and appropriated.

(2) USE OF FUNDS. — The transferred funds—

(A) shall remain available until expended;

¹ Section 3 of the statute defines ‘State’ to mean a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. There are currently 44 States with University Centers, plus an additional one in the Commonwealth of Puerto Rico.

(B) may be used for administrative expenses incident to the projects associated with such transfers to the extent that such expenses do not exceed 3 percent in the case of projects not involving construction and 5 percent in the case of projects involving construction; and

(C) [(B)] may, to the extent necessary to carry out this Act, be transferred to and merged by the Secretary with the appropriations for salaries and expenses.

3. **Other Provisions.** While we understand the intent of several other amendments, we believe on balance that they will not improve EDA's statutory authority, and request that the Committee reconsider them as it prepares the bill for a vote. These are:

a. **Economic Adjustment Program (section 209 of PWEDA).** The bill includes amendments to subsection (c) of section 209 to specify additional types of "particular community assistance," adding the lack of technology infrastructure, lack of alternative energy production, and insufficient access to capital. We believe these additional provisions are unnecessary and will diminish the focus of the Economic Adjustment Assistance authority. These changes may raise expectations that communities with these additional special problems will have a greater likelihood of receiving assistance. There may be funding available for these activities from other Federal programs as well. EDA is not likely to be able to meet these expectations.

The bill also includes an amendment to subsection (d) of section 209, which would provide EDA with authority to use the capital base of a revolving loan fund for equity investments in businesses in need of capital to start up operations. While we do not currently have a position on the provision, we do have concerns about it, and are still in the process of reviewing it. We look forward to working with the Committee on this provision.

b. **Agency Staffing Priorities.** Sections 503 and 504 add new sections 508 and 509 to PWEDA to address the number of agency staff positions for economic development representatives and the number of positions for non-career employees. We believe that fixing this kind of matter in the statute is unduly constraining and should be dropped. As an alternative way to address the Committee's concern, EDA would recommend that the Committee add appropriate report language to that effect. EDA will, as it has in the past, consider any guidance set out in legislative reports with the utmost seriousness.

c. **Authorization Levels.** The bill increases EDA's program funding level to \$500 million annually for the next five years. These amounts are higher than the budget request and we urge the Committee to authorize funds at the requested amount for FY 2011, \$246 million, and such sums as necessary for the out years. In addition, the bill revises section 704 and adds new sections 705, 706 and 707 to specify the amounts for the new loan guarantee program, and to specify new funding floors for the planning program, the sustainable economic development grant program and for the section 207 programs for training and research and the university center program. Given the difficulty of estimating the level of appropriations over a five-year period, we believe it is a mistake to constrain flexibility in this manner. We urge the Committee to retain the provision in current law which generally provides for the single authorization for all of the economic development assistance programs in section 701 (except for section 704 which currently sets the funding floor for the planning program at \$27 million, \$9 million less than the \$36 million in H.R. 5897). With respect to the new \$36 million floor for planning, we note that it is inconsistent with the FY 2011 budget request for the program of \$31 million.

4. **Section 208 Loan Guarantee Program.** H.R. 5897 omits standard provisions required for Federal financial assistance programs and other provisions that would greatly improve program design for efficient and effective use of Federal assistance. As set out below, we have inserted the standard provisions into the text of the bill.

SEC. 205. FINANCIAL ASSISTANCE FOR BUSINESS INCUBATORS AND SCIENCE AND RESEARCH PARKS.

(a) IN GENERAL.—Title II (42 U.S.C. § 3141 et seq.) is amended by inserting after section 207 the following:

“SEC. 208. FINANCIAL ASSISTANCE FOR BUSINESS INCUBATORS AND SCIENCE AND RESEARCH PARKS.

“(a) Definitions- In this section, the following definitions apply:

“(1) BUSINESS INCUBATOR- The term ‘business incubator’ means a program established to foster the creation of new businesses and accelerate the growth of early-stage businesses by providing entrepreneurs and early-stage businesses with the resources and services to produce viable businesses that can help create jobs in and restore vitality to communities.

“(2) BUSINESS INCUBATOR DEVELOPMENT PROJECT- The term ‘business incubator development project’ means a project to construct or alter facilities for a business incubator, including the acquisition of real property necessary to carry out the construction or alteration.

“(3) SCIENCE AND RESEARCH PARK- The term ‘science and research park’ means a program that--

“(A) includes property and buildings designed primarily for--

“(i) research and development activities conducted by public-private partners;

“(ii) technology- and science-based businesses; or

“(iii) research and development support services;

“(B) includes a contractual relationship with one or more institutions of higher education or government or nonprofit research laboratories;

“(C) has a primary mission of--

“(i) promoting research and development through industry partnerships, assisting the growth of new ventures, and promoting innovation-driven economic development;

“(ii) facilitating the transfer of technology and business skills between researchers and industry teams; and

“(iii) promoting technology-led economic development for the community or region in which the program is located; and

“(D) is owned by a government or nonprofit entity (although the government or nonprofit entity may enter into partnerships or joint ventures with for-profit entities to develop or manage specific components of the program).

“(4) SCIENCE AND RESEARCH PARK DEVELOPMENT PROJECT- The term ‘science and research park development project’ means a project to construct or alter facilities for a science and research park, including the acquisition of real property necessary to carry out the construction or alteration.

“(b) Financial Assistance- On the application of an eligible recipient, the Secretary may provide financial assistance in accordance with this section to assist the development of business incubators and science and research parks.

“(c) Grants for Plans for Science and Research Parks-

“(1) GRANT AUTHORITY- In accordance with this subsection, the Secretary may award a grant to an eligible recipient for the development of a feasibility study or development plan, or both, with respect to a science and research park development project.

“(2) AMOUNT OF A GRANT- A grant awarded under paragraph (1) may not be in an amount that exceeds \$750,000.

“(3) SELECTION PROCESS-

“(A) SELECTION CRITERIA- Not later than 180 days after the date of enactment of the Economic Revitalization and Innovation Act of 2010, the Secretary shall publish the criteria to be utilized for the selection of grant recipients under paragraph (1).

“(B) COMPETITION REQUIRED- The Secretary shall award grants under paragraph (1) pursuant to a full and open competition.

“(C) GEOGRAPHIC DIVERSITY- In awarding grants under paragraph (1), the Secretary shall ensure, to the extent practicable, that grant recipients represent diverse geographic areas of the United States, including rural and urban areas.

“(4) PROGRAM LIMIT- The Secretary may not award, in the aggregate, more than \$7,500,000 in grants under paragraph (1). ***Of the amounts otherwise authorized for economic development assistance programs under section 701 of this Act, there are hereby authorized to be appropriated \$7,500,000 for each of the fiscal years 2011 through 2015 to carry out this subsection.***

“(d) Loan Guarantees for Business Incubators and Science and Research Parks-

“(1) GUARANTEE AUTHORITY- In accordance with this subsection, the Secretary may guarantee a loan of an eligible recipient to assist the carrying out of a business incubator development project or a science and research park development project.

“(2) GUARANTEE PERCENTAGE- In guaranteeing a loan under paragraph (1), the Secretary may guarantee up to 80 percent of the principal amount of the loan.

“(3) SELECTION OF GUARANTEE RECIPIENTS-

“(A) CREDIT WORTHINESS- The Secretary may not guarantee a loan under paragraph (1) unless the Secretary has determined that there is a reasonable assurance of repayment with respect to the loan.

“(B) GRANT RECIPIENTS- A recipient of a grant under subsection (c) for the development of a feasibility study or development plan, or both, is not eligible for a loan guarantee under paragraph (1) until the recipient has completed the study or plan, or both, for which the grant was provided (as determined by the Secretary).

“(4) TERM OF LOAN- The term of a loan guaranteed under paragraph (1) may not exceed the lesser of--

“(A) 30 years; or

“(B) 90 percent of the useful life of any physical asset to be financed by such loan.

“(5) SUBORDINATION- An obligation relating to a loan guarantee under paragraph (1) may not be subordinated to another debt contracted by the borrower or to any other claims against the borrower in the case of default.

“(6) ***A loan may not be guaranteed under this subsection unless the Secretary determines that the lender is responsible and that provision is made for servicing the loan on reasonable terms and in a manner that adequately protects the financial interest of the United States;***

“(7) A loan may not be guaranteed under this subsection if--

“(A) the income from such loan is excluded from gross income for purposes of chapter 1 of the Internal Revenue Code of 1986; or

“(B) the guarantee provides significant collateral or security, as determined by the Secretary in coordination with the Secretary of the Treasury, for other obligations the income from which is so excluded;

“(8) Any guarantee provided under this subsection shall be conclusive evidence

that--

“(A) the guarantee has been properly obtained;

“(B) the underlying loan qualified for such guarantee; and

“(C) absent fraud or material misrepresentation by the holder, the guarantee is presumed to be valid, legal, and enforceable;

“(9) New loan guarantees may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required under section 504 of the Federal Credit Reform Act of 1990 (2 U.S.C. § 661c).

“(10) PAYMENT ON LOSSES.--

“(A) IN GENERAL.-- If, as a result of a default by a borrower under a loan guaranteed under this subsection, after the holder has made such further collection efforts and instituted such enforcement proceedings as the Secretary may require, the Secretary determines that the holder has suffered a loss, the Secretary shall pay to such holder the percentage of such loss specified in the guarantee contract. Upon making any such payment, the Secretary shall be subrogated to all the rights of the recipient of the payment. The Secretary shall be entitled to recover from the borrower the amount of any payments made pursuant to any guarantee entered into under this section.

“(B) ENFORCEMENT OF RIGHTS.-- The Attorney General shall take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this section.

“(C) FORBEARANCE.-- Nothing in this section may be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the guaranteed loan and approved by the Secretary, if budget authority for any resulting subsidy costs (as defined in section 502(5) of the Federal Credit Reform Act of 1990) is available.

“(11) [(6)] OTHER TERMS AND CONDITIONS- Except as otherwise specified in this subsection, a loan guarantee under paragraph (1) shall be subject to such terms and conditions as the Secretary may prescribe.

“(12) [(7)] REVIEW-

“(A) IN GENERAL- The Secretary shall periodically assess the risks associated with loans guaranteed under paragraph (1).

“(B) COMPTROLLER GENERAL REPORT- Not later than 2 years after the date of enactment of the Economic Revitalization and Innovation Act of 2010, the Comptroller General shall--

“(i) conduct a comprehensive review of the program under this subsection; and

“(ii) submit to Congress a report on the results of the review.

“(13) [(8)] PROGRAM LEVELS- In carrying out paragraph (1) during fiscal years 2011 through 2015, the Secretary may not guarantee loans in an amount that exceeds--

“(A) \$50,000,000 for a single project;

“(B) \$235,000,000 in a single fiscal year; and

“(C) \$500,000,000 in the aggregate.

“(14) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts otherwise authorized to be appropriated for economic development assistance programs under section 701 of this Act, there are hereby authorized to be appropriated—

“(A) such sums as are necessary annually for the cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990) of guaranteeing up to \$235,000,000 in loans under this subsection; and

“(B) such sums as may be necessary for administrative expenses in fiscal year 2011 and thereafter, such sums to remain available until expended.”.

(b) Clerical Amendment- The table of contents in section 1(b), as amended by this Act, is further amended by inserting after the item relating to section 207 the following:

“Sec. 208. Financial assistance for business incubators and science and research parks.”.