

FORM ED-506
(EDA/ADP 03-93)

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

CORRESPONDENCE BRIEF – MEMORANDUM

TO: X John Fernandez, Assistant Secretary of Commerce for Economic Development

ACTION MEMORANDUM Date: 1-21-2010

From: Dennis Alvord, Acting DAS/RA *DA*

Subject: Nonrelocation Policy

Background

In the summer of 2009 EDA received a Recovery Act grant application that resulted in significant negative publicity because of an accusation that funding would have facilitated the relocation of jobs from one community to another. Although the application was not ultimately funded due to technical deficiencies, the issue was none the less elevated to the level of the Vice President. As a result, the Secretary's Office directed EDA to develop an explicit nonrelocation policy.

Discussion

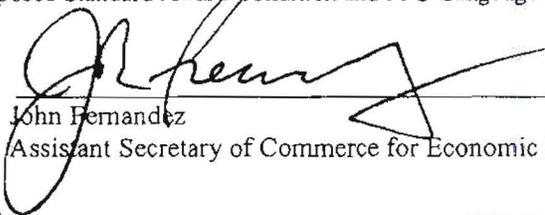
Headquarters staff developed a multi-pronged policy, focusing on steps to be taken during the pre-approval stage. We twice consulted with regional directors, who raised a range of issues related to the policy's implementation. Their comments were consolidated and taken into consideration as part of this final proposed policy.

Recommendations

- In response to the Secretary's request, I recommend the following four-pronged nonrelocation policy:
- 1) Operational Guidance detailing preventative actions at each step of the approval process (see Attachment A);
 - 2) A Standard Award Condition providing for termination if the recipient is found to have used EDA assistance to induce a company to relocate jobs (see Attachment B);
 - 3) A notice of EDA's policy against the relocation of jobs in the Federal Funding Opportunity (FFO) notice (see Attachment B); and
 - 4) At a future date to be determined, the revision of EDA's application to include a certification of nonrelocation

Attachments

- A) Proposed Operational Guidance Language
- B) Proposed Standard Award Condition and FFO Language

Approve: 
 John Fernandez
 Assistant Secretary of Commerce for Economic Development

2/10/2010

 Date

Disapprove: _____
 John Fernandez
 Assistant Secretary of Commerce for Economic Development

 Date

Attachment A: Proposed Operational Guidance Language

Economic Development Administration (EDA) policy *prohibits* investments that facilitate the relocation of large employers (i.e. companies with over 100 employees, or companies with over 50 employees in small communities) from one labor market within the United States to another. EDA policy also prohibits investments that facilitate or contribute to inter-jurisdictional competitions among the states and political subdivisions of this country, wherein such jurisdictions provide special incentives and subsidies to employers in other jurisdictions in an effort to relocate existing jobs and job opportunities to their own and where no offshore site is being seriously considered or is part of the competition. Such investments do not fulfill EDA's mission to promote higher-skill, higher-wage job creation, but instead arbitrarily favor one area over another.

EDA staff shall identify and avert attempts to use EDA funds to facilitate the kinds of relocation described above. In furtherance of this objective, staff in the regional office shall take the following actions during the following stages of the grant application and review process:

- **Initial Consultation.** Economic Development Representatives (EDRs) play a critical role in identifying potentially problematic projects early in the process. As they discuss potential projects with applicants, EDRs shall pay particular attention to recipient job creation and retention estimates, ask specific questions about where those jobs are coming from (or, in the case of retention, where the jobs/activity may be relocated), and conduct additional research on likely project beneficiaries to identify potential relocation concerns. EDRs shall keep their Area Director and Regional Director apprised of conversations with these applicants and advise applicants that EDA does not fund investments that involve the relocation of jobs from one area to another within the United States.
- **Application Review.** Regional office staff reviews of applications prior to meetings convened by the Investment Review Committee (IRC) shall analyze each application's beneficiary list in an attempt to identify early on any potential relocation and incentive issues and shall investigate potential problems.
- **IRC Recommendation.** If a project reaches the IRC with outstanding concerns about relocation issues, the EDR, Economic Development Specialist (EDS), and/or Regional Counsel shall present all evidence regarding the potential relocation issue to the members of the IRC. The IRC will consider the relocation question in its discussion of the project, and, if it determines that the project is likely to promote relocation in violation of EDA policy, then either recommend that the Regional Director (RD) reject the application or recommend that the RD seek a waiver to EDA's nonrelocation policy. The IRC meeting minutes must document in detail the IRC's basis for making its recommendation, including, if applicable, a summary of the reasons the committee recommended a waiver. The RD will then consider the IRC's recommendation and either (a) reject the application or (b) seek a waiver of EDA's nonrelocation policy from the Assistant Secretary.

The RD shall notify the Director of Public Affairs and the Director of Legislative Affairs immediately upon receiving an application with potential relocation problems.

To request a waiver, the RD shall prepare a Form ED-506 Decision Memorandum. In this memorandum, the RD must include a statement that, in the RD's opinion, the proposed project's economic development and public policy benefits sufficiently outweigh the impact on the negatively

affected communities to justify EDA funding and participation. The ED-506 Decision Memorandum should contain supporting rationale for the determination, substantiating the justification with independent, third-party data. For example, a newspaper article about the company scouting locations in South Carolina and China is far more persuasive than a memo from the company president that, absent EDA's assistance, the firm will move to China. If applicable, the RD should attach copies of supporting documentation.

The routing for the ED-506 Decision Memorandum is as follows:

1. Regional Counsel (legal sufficiency)
2. Regional Director
3. Chief Counsel
4. Director of Performance and National Programs (who will conduct research and analysis on the potential economic impact of the waiver, as necessary)
5. Deputy Assistant Secretary for Regional Affairs (who will consult with the Director of Legislative Affairs, Director of Public Affairs, and the RD of the region from which the firm is relocating, as necessary)
6. Deputy Assistant Secretary for Economic Development/COO
7. Assistant Secretary

Final authority to grant waivers in connection with EDA's nonrelocation policy rests with the Assistant Secretary. The presumptive position of EDA is that relocations are not permitted. Only in very rare occasions shall an exception be granted.

Due to the sensitive nature of relocation issues, it is essential that regional office staff carefully document information gathered and decisions made at every step in the application process. Regardless of whether the application is approved or rejected, regional office staff must keep copies of all documents related to the relocation issue in the official project file (including but not limited to correspondence with the applicant or beneficiaries and any news stories or other information about the potential relocation of project beneficiaries).

Attachment B: Proposed SAC and FFO Language

Special Award Condition for EDA Construction Projects:

In signing this award of financial assistance, Recipient(s) attests that EDA funding is not intended by the Recipient to assist its efforts to induce the relocation of existing jobs that are located outside of its jurisdiction to within its jurisdiction in competition with other jurisdictions for those same jobs. In the event that EDA determines that its assistance was used for those purposes, EDA retains the right to pursue appropriate enforcement action in accord with the Standard Terms and Conditions of the Award, including suspension of disbursements and termination of the award for convenience or cause.

New Provision in FFO:

Nonrelocation. Applicants are advised that should an application be selected for award, the recipient will be required to sign a special award condition relating to EDA's nonrelocation policy as follows:

In signing this award of financial assistance, Recipient(s) attests that EDA funding is not intended by the Recipient to assist its efforts to induce the relocation of existing jobs that are located outside of its jurisdiction to within its jurisdiction in competition with other jurisdictions for those same jobs. In the event that EDA determines that its assistance was used for those purposes, EDA retains the right to pursue appropriate enforcement action in accord with the Standard Terms and Conditions of the Award, including suspension of disbursements and termination of the award for convenience or cause.

For purposes of ensuring that EDA assistance will not be used to merely transfer jobs from one location in the United States to another, each applicant must inform EDA of all employers which constitute primary beneficiaries of the project assisted by EDA. EDA will consider an employer to be a "primary beneficiary" if the applicant estimates that such employer will create or save 100 or more permanent jobs as a result of the investment assistance, provided that such employer is also specifically named in the application as benefiting from the project, or is or will be located in an EDA-assisted building, port, facility, or industrial, commercial or business park constructed or improved in whole or in part with Investment Assistance prior to EDA's final disbursement of funds. In smaller communities, EDA may extend this policy to the relocation of 50 or more jobs.