

FHWA Supplemental Guidance on the Determination of Economically Distressed Areas Under the Recovery Act

August 24, 2009

The Federal Highway Administration (FHWA) is issuing this guidance to provide additional information on the determination of economically distressed areas under the priority language in the Highway Infrastructure Investment appropriation of the Recovery Act. The FHWA is issuing this guidance after consultation with the Department of Commerce and its Economic Development Administration, which has reviewed the "special need" criteria below.

States shall give priority to projects that are located in an economically distressed area and can be completed within the 3-year timeframe over projects that meet only one of the priorities, provided that such projects also meet the other preferences, conditions, and requirements of the Recovery Act.

States shall exercise due diligence in selecting projects that are to be carried out in and for the benefit of economically distressed areas. In ensuring such due diligence has been carried out, the State should be able to provide information as to how the State identified, vetted, and examined projects located in economically distressed areas and how the State selected projects based on the priorities, preferences, conditions, and requirements of the Recovery Act.

States also shall use this guidance to determine whether any projects that have received Recovery Act funds should be reclassified in order to more accurately reflect the State's investment in economically distressed areas.

Economically Distressed Areas Identified by Unemployment Rate or Per Capita Income

States may continue to use the diagnostic self-assessment tool that FHWA developed to determine if a project is in an economically distressed area in accordance with the criteria set forth in section 301(a)(1) or (2) of the Public Works and Economic Development Act of 1965, as amended (PWEDA) (42 U.S.C. 3161). Section 301(a)(1) of PWEDA (42 U.S.C. 3161) provides that an area is economically distressed if it has a per capita income of 80 percent or less of the national average. Section 301(a)(2) (42 U.S.C. 3161) provides that an area is economically distressed if it has an unemployment rate that is, for the most recent 24-month period for which data are available, at least 1 percent greater than the national average unemployment rate. The FHWA's self-assessment tool utilizes a map that depicts project locations relative to economically distressed counties based on unemployment rate and per capita income. The maps may be accessed at:

- [Example Map with Projects Added](#)
- [HEPGIS General Information Maps](#)

Although the tool is based on a county-level designation, an economically distressed area also may be a region, municipality, smaller area within a larger community, or other geographic area. (See 42 U.S.C. 3161(b).) States may contact FHWA for assistance identifying economically distressed areas under section 301(a)(1) or (2) of PWEDA (42 U.S.C. 3161) for areas other than the county-level designation.

Economically Distressed Areas Identified by a Special Need Circumstance

The following guidance applies to the determination whether an area is economically distressed pursuant to the "special need" provision in section 301(a)(3) of PWEDA (42 U.S.C. 3161). Any such determination made pursuant to this guidance is solely for the purposes of implementing the Highway Infrastructure

Investment appropriation provision, and does not constitute a determination of special need for purposes of programs administered by the Department of Commerce under section 301(a)(3) of PWEDA (42 U.S.C. 3161) or other laws.

If a State believes that an area that does not meet the criteria in section 301(a)(1) or (2) of PWEDA (42 U.S.C. 3161) (relating to the area's unemployment rate or per capita income) is nonetheless economically distressed, the State may consider whether such area meets the special need criteria under PWEDA by determining whether the area satisfies one or more of the criteria described below. An "area" may be a region, county, municipality, a smaller area within a larger community, or other geographic area. (See 42 U.S.C. 3161(b).) If a State intends to rely on any of the criteria listed below, it must provide to the FHWA Division Office documentation demonstrating satisfaction of the criteria.

In selecting additional projects, States shall use the criteria described below as another tool for identifying economically distressed areas based on the "special need" provision.

1. *Actual Business Closure or Restructuring.* An area has experienced an actual closure or restructuring of one or more businesses within the past twelve (12) months, resulting in sudden job losses and
 - a. For areas with population over 100,000, the actual or threatened dislocation is 500 jobs, or one (1) percent of the civilian labor force (CLF), whichever is greater.
 - b. For areas with population up to 100,000, the actual or threatened dislocation is 200 jobs, or one (1) percent of the CLF, whichever is greater.
2. *Threatened Business Closure.* An area has experienced a threat of closure of one or more businesses that results from a public announcement, such as a Worker Adjustment and Retraining Notification Act (WARN) notice under 29 U.S.C. 2101 *et seq.* or other credible source of notification, of an imminent closure or restructuring of a firm(s) and
 - a. For areas with population over 100,000, the actual or threatened dislocation is 500 jobs, or one (1) percent of the civilian labor force (CLF), whichever is greater.
 - b. For areas with population up to 100,000, the actual or threatened dislocation is 200 jobs, or one (1) percent of the CLF, whichever is greater.
3. *Military Base Closures or Realignment, Defense Contractor Reductions-In-Force, or Department of Energy Defense-Related Funding Reductions.* Military base closures or realignments, defense contractor reductions-in-force, or Department of Energy defense-related funding reductions.
 - a. A military base closure refers to a military base that was closed or is scheduled for closure pursuant to the 2005 defense base realignment assessment closure (BRAC) or other BRAC related Department of Defense (DOD) processes. An area or any community located near a military installation being closed or realigned pursuant to BRAC is eligible as a special need circumstance from the date of DOD's recommendation for closure until five (5) years after the actual date of closing of the installation.
 - b. A defense contractor reduction-in-force refers to a defense contractor(s) experiencing defense contract cancellations or reductions resulting directly from a military installation being closed or realigned due to BRAC or other BRAC related Department of Defense (DOD) processes and having aggregate value of at least \$10 million per year. This includes actual dislocations that already have occurred and threatened dislocations that are anticipated to occur no later than February 17, 2011 (two years after the enactment of the Recovery Act). Defense contracts that expire in the normal course of business will not be considered to meet this criterion.
 - c. A Department of Energy defense-related funding reduction refers to an area or community located in proximity to a Department of Energy facility that has experienced or will experience a substantial reduction of employment resulting directly from its defense mission change. The area is eligible from the date of the Department of Energy

announcement of reductions until five (5) years after the actual date of reduced operations at the installation.

4. *Natural or Other Major Disasters or Emergencies.* Natural or other major disasters or emergencies, including terrorist attacks, if the area has received one of the following disaster declarations within 18 months prior to the date of the special need determination:
 - a. A Presidentially Declared Disaster declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*); or
 - b. A Federally Declared Disaster pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1861a(a)); or
 - c. A Federally Declared Disaster pursuant to the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1961); or
 - d. A Federally Declared Disaster pursuant to the Small Business Act, as amended (Pub. L. No. 85-536, 72 Stat. 384 (1958)).

The State also must determine that the natural or other major disaster or emergency has resulted in major negative impacts on economic development in the area expected to prevail for at least one year from the date of the disaster declaration.