Department of Energy
Washington, DC 20585

EECBG PROGRAM NOTICE 09-002A
EFFECTIVE DATE (Revised): June 29, 2010
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SUBJECT: GUIDANCE FOR ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT GRANTEES ON FINANCING PROGRAMS.

PURPOSE

To provide guidance to the Department of Energy's (Department or DOE) Energy Efficiency and Conservation Block Grant (EECBG) grantees on financing programs. This guidance supersedes EECBG Program Notice 09-002, which was issued on April 20, 2010.

SCOPE

The provisions of this guidance apply to grantees of EECBG funds, pursuant to Formula Grant or American Recovery and Reinvestment Act of 2009 (Recovery Act).

LEGAL AUTHORITY

Title V, Subtitle E of the Energy Independence and Security Act, as amended, authorizes the Department to administer the EECBG program. All grant awards made under this program shall comply with applicable law including the Recovery Act and other procedures applicable to this program.

GUIDANCE

Eligibility of revolving loan funds

A revolving loan fund (RLF) is an eligible use of funds under the EECBG Program to the extent that the activities supported by the loans are eligible activities under the program. EECBG funds grantees must comply with statutory law regarding RLFs. 42 U.S.C. 17155 (b)(3)(B) mandates a limitation on the use of funds for the establishment (*i.e.,* the capitalization) of RLFs by formula-eligible units of local governments and formula-eligible tribes equal to the greater of 20 percent of the grantee's allocation or $250,000. Funds used for administrative costs to set up a RLF are not subject to this restriction, but are subject to the general limitations established by statute on administrative costs.

Leveraging Funds under the EECBG: Purpose and Type of Leveraging under EECBG

Grantee arrangements for leveraging additional public and private sector funds, including rebates, grants, and other incentives, must be arranged to ensure that federal

funds go to support eligible activities listed in 42 USC 17154(3)-(13). The leveraging of funds may be accomplished through mechanisms such as partnerships with third party lenders, co-lending, third-party administration of loans, and loan loss reserves.

Loan Loss Reserves under the EECBG

EECBG funds may be used for a loan loss reserve to support loans made with private and public funds and to support a sale of loans made by a grantee or third-party lenders into a secondary market, subject to the following conditions. In order to ensure that a use of EECBG funds to leverage additional public and private sector funds furthers the stated purposes of the EECBG Program, the activities supported by the leveraged funds are limited to those activities specifically listed as eligible activities in the EECBG statute. Additionally, a grantee must ensure that the following conditions are met:

a) a grantee shall have the right to review and monitor loans provided by third party lenders to ensure that loans are being made to support eligible activities listed in 42 USC 17154(3)-(13);
b) a grantee establishing a loan loss reserve has no legal or financial obligation beyond the funds committed to the reserve and is not subject to further recourse in the event losses exceed the amount of the reserve;
c) any EECBG funds used to establish a loan loss reserve not used in connection with loan losses paid to third party lenders or secondary market investors must be used by or at the direction of the grantee and for an eligible use under the EECBG Program, including capitalization of a RLF; and
d) under no circumstances shall EECBG funds be released to a third party lender or secondary market investor for any purpose not pertaining to loan losses.

A grantee cannot use more than 50% of their EECBG funds for loan loss reserves.

Interest Rate Buy-Downs

EECBG funds may be used for interest rate buy-downs subject to the conditions identified in this section. An interest rate buy-down is when one party (*e.g.*, grantee) provides a lump-sum payment based on the net present value of the difference between a target return to the lender or loan investor and the borrower's interest rate. This has two primary purposes: (1) increase project affordability and demand by reducing monthly payments and (2) maintaining or increasing lender / investor interest in making loans by yielding higher returns.

In order to ensure that a use of EECBG funds for interest rate buy-downs furthers the stated purposes of EECBG, the loans supported by the interest rate buy-downs must be for the purchase and installation of energy efficiency and renewable energy measures consistent with the EECBG regulations.

Third Party Loan Insurance
EECBG funds may be used for the purchase of third party loan insurance subject to the conditions identified in this section. Third party loan insurance is a financial arrangement whereby a third party bears some portion (or all) of a loss on a specific portfolio. This typically takes the form of a lender or investor purchasing an insurance policy from a third party against losses on a portfolio of loans up to a fixed percentage (the stop loss) of the sum of all the original loan amounts. The maximum insurance payout is determined by the value of the portfolio and not the value of individual loans.

In order to ensure that a use of EECBG funds for third party loan insurance furthers the stated purposes of EECBG, the loans supported by the third party loan insurance must be for the purchase and installation of energy efficiency and renewable energy measures consistent with the EECBG regulations.

Obligation & Drawing Down of Funds
Loan capital: Program monies being used for a RLF are considered obligated by the grantee once they have been used to capitalize a RLF. A RLF may be capitalized in any of the following circumstances:

a) Receipt of a loan application from potential borrowers
b) State or local requirements (regulatory, statutory, or constitutional) dictate that funds be available in advance
c) The distribution account is operated by a third party

In addition to obligating funds through capitalization of a RLF, if a grantee is establishing such a RLF that is to be operated by the grantee, funds would be considered obligated by the grantee upon submitting a letter to the Project Officer and receiving a confirmation response from the Project Officer. The letter must: (1) provide the strategy for the RLF and (2) identify the scope and size of the loan program.

Funds are considered expended when the RLF has loaned to specific borrowers for an amount equal to or greater than the EECBG funds that initially capitalized the fund.

Funds may be drawn down at the time the fund is obligated. If a grantee requires a draw down under requirements “b” or “c” listed above, the grantee should document the relevant requirement and provide that documentation to their Project Officer.

Loan loss reserves: Funds are considered obligated when they are committed as a credit enhancement to support a loan or portfolio of qualifying loans under the EECBG guidelines.

For loan loss reserves supporting a new or existing Recovery Act or non-Recovery Act funded financing program operated by the grantee, loan loss reserve funds are

considered obligated by sending a letter to the Project Officer indicating the establishment of the loan loss reserve. Once loan loss reserve funds have been obligated the funds may be drawn down from the Department of the Treasury's Automated Standard Application for Payments (ASAP) system to fund the loan loss reserve account. ASAP is the system by which grantees receiving financial assistance from DOE can draw down the funds that have been pre-authorized by the agency for payment.

For loan loss reserves supporting third party loans, loan loss reserve funds are considered obligated when the grantee enters into a signed agreement with the third party.

Loan loss reserve funds are considered expended after they have met the above requirements for obligation and the grantee has drawn funds down from the ASAP system to fund the loan loss reserve account.

Interest rate buy-downs and third-party loan insurance: Funds are considered obligated by the grantee once they have been committed to support a loan or loan program. These funds may be committed in any of the following circumstances:

a) Receipt of a loan application from potential borrowers
b) Where state or local requirements (regulatory, statutory or constitutional) dictate that funds be available in advance
c) When the grantee enters into a signed agreement with the third party to support an ongoing loan program with interest rate buy-downs or third-party loan insurance.
d) The distribution account is operated by a third party and the grantee enters into an agreement with the third party.

Funds may be drawn down at the time they are committed to an interest rate buy-down program or third-party loan insurance. If a grantee requires a draw down under requirements "a" through "c" listed above, they should document the relevant requirement and provide that documentation to their Project Officer.

Interest rate buy-downs and third party loan insurance are considered expended after they have met the above requirements for obligation and the grantee has drawn funds down from the ASAP system to fund the buy-down or loan insurance account.

Loan Defaults

Grantees are not required by DOE to replenish or replace any amounts which were lost to loan default. Loans involve risk by their very nature, so loss due to default of a borrower is an anticipated and allowable cost under an EECBG grant.

"Close Out" of Financing Programs

Grantees may end or reduce funding for a RLF program, loan loss reserve program, or other eligible financing program at any time as long as any remaining funds are used by the grantee for an eligible purpose after submitting and finalizing an amendment through the Project Officer. Alternatively, the funds may be returned to DOE.

Program Income

All program income (including interest earned) paid to grantees is subject to the terms and conditions of the original grant.

Federal Requirements Applicable to Revolving Loan Funds

Generally, federal funds used to capitalize a RLF maintain their federal character in perpetuity. As a result, federal requirements that apply to the funds such as the National Environmental Protection Act (NEPA) and the National Historic Preservation Act (NHPA) would be applicable at each revolution of the RLF. Federal requirements that apply to Recovery Act funds, such as the Davis-Bacon Act (DBA) requirements, Buy-American provision requirements, and Recovery Act reporting requirements would be applicable at each revolution of a RLF that was funded through the Recovery Act.

The grantees who administer RLFs can expedite compliance with these statutory requirements.

NEPA

If the grantee uses the EECBG NEPA Template that DOE has provided to grantees to obtain categorical exclusions under NEPA, then DOE can complete a NEPA review for entire RLF programs without having to later conduct a NEPA review of individual projects. **Grantees should consider restricting their financing programs to activities categorically excluded from NEPA review (*e.g.*, including this restriction in any third-party loan loss reserve contracts).**

For further information about the EECBG NEPA Template, please review guidance that DOE has previously issued on streamlining compliance with NEPA. That guidance and the EECBG NEPA Template itself can be found at http://www1.eere.energy.gov/wip/pdfs/nepa_program_guidance_notice_10-003.pdf and http://www1.eere.energy.gov/wip/pdfs/eecbg_recovery_act_program_guidance_10-011.pdf (Attachment B), respectively. Further, assuming that DOE exercises no control over projects that receive loans from a RLF, DOE *may* not have to prepare a NEPA determination for a project if the total amount of Federal funding for the project is less than 10 percent of project costs.

Historic Preservation, DBA, and Buy American

DOE has worked with the Advisory Council on Historic Preservation to provide States with programmatic agreements in order to streamline compliance with the NHPA requirements.

Individual homeowners receiving loans under a RLF program (including one financed with third-party capital and supported by a Recovery Act-funded credit enhancement) would not be required to comply with the DBA. **Grantees should consider restricting their financing programs to activities for which compliance is not required under DBA (*e.g.*, including this restriction in any third-party loan loss reserve contracts)**

Similarly, the Buy American provision requirements apply to "public buildings" and "public works" and thus would not be applicable to projects performed on homes owned by individuals.

Federal Requirements Applicable to Loan Loss Reserves, Interest Rate Buy Down Programs and Third Party Loan Insurance Programs

NEPA, DBA, and the Buy American provision requirements apply similarly to loan loss reserves as to other individual projects funded by Recovery Act awards, including sub-grant programs, interest rate buy down programs, third party loan insurance programs, and RLFs under the EECBG Program. There are steps that grantees can take to minimize delays associated with these requirements when the grantees seek to use Recovery Act-funded credit enhancement vehicles to support third-party financing of privately-funded projects. For example, if grantees use the EECBG NEPA Template, then DOE can complete a NEPA review prior to the grantee creating the credit enhancement vehicle; DOE will not have to conduct a NEPA review of each project that benefits from the credit enhancement vehicle. **Grantees should consider restricting their financing programs to activities categorically excluded from NEPA review (*e.g.*, including this restriction in any third-party loan loss reserve contracts).**

Recovery Act-funded loan loss reserves can occur in three phases:

(1) DOE expends Recovery Act funds that are used to establish and capitalize a grantee's loan loss reserve account;
(2) a grantee approves an application from a third-party lender requesting coverage from a loan loss reserve to support a loan or a portfolio of qualifying loans (in this case, commitment of a loan loss reserve); and
(3) a grantee draws funds from the loan loss reserve account to pay third parties for the financing of privately-funded projects, in the event of a loan default.

DOE does not need to complete a NEPA review in advance of phase (1) above. However, DOE must complete a NEPA review for this loan loss reserve activity prior to phase (2) above, at the latest. To that end, DOE must complete a NEPA review before EECBG grantees commit funds to cover a third-party's loans. While the requirements of DBA and the Buy American provision do not apply during phase (1), such requirements apply prior to phase (2) above. **Grantees should consider restricting their financing programs to activities for which compliance is not required under DBA (*e.g.*, including this restriction in any third-party loan loss reserve contracts).**

NEPA

As mentioned above, DOE has provided guidance on streamlining compliance with NEPA.

DOE encourages grantees to consider limiting the scope of their loan loss reserve programs in a manner that allows DOE to quickly complete a NEPA review. Grantees should consider whether to restrict a loan loss reserve program to covering loans for eligible projects and activities that would be eligible for categorical exclusion (CX) determinations under DOE's NEPA regulations. One way to do this is for grantees to use DOE's NEPA Template in the same manner that grantees use the Template for sub-grant and RLF programs. Examples of projects that fall within the Template are certain building retrofits and energy audits; please see the Template at http://www1.eere.energy.gov/wip/pdfs/eecbg_recovery_act_program_guidance_10-011.pdf (Attachment B) to identify the full range of projects that fall within the Template. By limiting a program to such projects, a grantee can increase the likelihood that DOE will expeditiously make a CX determination for the entire loan loss reserve program, in which case DOE will not have to conduct further NEPA review for individual projects that benefit from the loan loss reserve program.

For instances in which grantees intend to use EECBG funding for loan loss reserves supporting underlying projects that do *not* qualify for a CX determination (*e.g.*, large, commercial-scale geothermal or wind projects), DOE will typically have to complete a NEPA review for the individual proposed projects. At the time that a third-party lender applies to the grantee for coverage from a loan loss reserve, the grantee must identify the project(s) that will receive the loan. DOE will then commence a NEPA review of such project(s), which will most likely result in an Environmental Assessment or Environmental Impact Statement. A grantee cannot approve third-party loans for coverage under the loan loss reserve program until DOE completes a NEPA review for particular projects that benefit from the loan loss reserve.

Even in those instances in which DOE must complete a NEPA review for individual projects that do not qualify for a CX determination, DOE may be able to expedite the

NEPA review process by using a single NEPA document for multiple, similar projects. Also, if the total amount of Federal financial assistance (including federal funding reserved for the loss on the loan) for a project is less than 10 percent of project costs then the grantee should consult with DOE about whether DOE will have to prepare a NEPA determination for the project.

For grantees that anticipate seeking approval for loan loss reserves that support projects which cannot obtain a CX determination, DOE encourages such grantees to submit a complete project description simultaneously with the third-party lender application for a credit enhancement. Otherwise, DOE may condition its approval of the loan loss reserve on a NEPA review and that conditional approval may serve as an insufficient guarantee to the lender.

Grantee Reporting of Financial Programs

Following close of the Recovery Act award period, DOE intends to require basic reporting to confirm the funds are being used in accordance with their federal character. After the close of the Recovery Act award period, grantees with funds remaining in financing programs would prospectively be required to report basic information on the program on an annual basis until the funds are either: (1) rolled into another eligible activity and expended; or (2) fully expended through default.

Pursuant to Section 210(c) of OMB Circular A-133, third-party lenders should generally be characterized as vendors providing financial services. As such, third-party lenders (*e.g.*, commercial banks) would not be required to report any information directly to DOE. Prime grantees would retain reporting authority and would not delegate any reporting responsibility to the third-party lenders.

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