



Department of Energy
Washington, DC 20585

**ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM
NOTICE 10-011**

EFFECTIVE DATE: April 21, 2010

**SUBJECT: AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)
ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM —
FORMULA GRANT GUIDANCE**

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PURPOSE

To provide an overview of grant guidance and management information, including allocations and the methodology for their determination, for the Energy Efficiency and Conservation Block Grant (EECBG) Program formula grants for program years (PY) 2009-2013. For many of the topics discussed below, formal guidance documents have been previously issued; this document is intended to consolidate and, in some cases, clarify the information contained in those previous issuances but should not be viewed as a replacement for those documents. Attachment A to this document contains a “Guidance Matrix” that correlates select activities with programmatic and statutory conditions that may affect implementation.

SCOPE

The provisions of this guidance apply to States, Territories, and the District of Columbia (“States”); Cities, Counties, and their equivalents (“units of local government”); and Federally recognized Tribal governments (“Indian tribes”),¹ insofar as they are eligible for formula grant financial assistance under the U.S. Department of Energy’s Energy Efficiency and Conservation Block Grant Program.² This entire group may be referred to collectively as “entities,” “grantees,” or “recipients”.

PROGRAM ADMINISTRATION

The EECBG Program is administered by the Weatherization and Intergovernmental Program (WIP) of the Office of Energy Efficiency and Renewable Energy (EERE) of the U.S. Department of Energy (DOE). Procurement and project management support for the program is provided by DOE’s Golden Field Office, National Energy Technology Laboratory, Office of Civilian Radioactive Waste Management, Oak Ridge Office, and Office of Headquarters Procurement Operations.

FUNDING OPPORTUNITY ANNOUNCEMENT (FOA)

The FOA (Number DE-FOA-0000013) for the EECBG Program is available at http://www1.eere.energy.gov/wip/pdfs/eecbg_foa.pdf and contains specific information for eligible entities in these areas:

- Award information
- Eligibility information

¹ As defined in Sec. 541 of Title V, Subtitle E of the Energy Independence and Security Act (EISA) of 2007, Public Law 110-140.

² As defined in “Energy Efficiency and Conservation Block Grant Program—State, Local and Tribal Allocation Formulas,” 74 FR 17461; available at http://www1.eere.energy.gov/wip/pdfs/eecbg_federal_register_notice_04_15_09.pdf.

- Application and submission information
- Application review information
- Award administration information
- Questions/agency contacts
- EECBG Program allocations as of April 15, 2009
- Other important information
- Appendices/Reference Material

LEGISLATION AND PROGRAM HISTORY

DOE's authorization for this program is set forth in Title V, Subtitle E of the Energy Independence and Security Act (EISA) of 2007, Public Law 110-140. The American Recovery and Reinvestment Act of 2009 (ARRA or "Recovery Act"), Public Law 111-5, appropriated \$3.2 billion in funding for DOE to issue/award formula-based and competitive grants under the program to States, units of local government, and Indian tribes.

PROGRAM PURPOSE

The purpose of the EECBG Program is to assist eligible entities in creating and implementing strategies to:

- Reduce fossil fuel emissions in a manner that is environmentally sustainable and, to the maximum extent practicable, maximize benefits for local and regional communities;
- Reduce the total energy use of the eligible entities; and
- Improve energy efficiency in the building sector, the transportation sector, and other appropriate sectors.

These stated purposes describe the overall intent of the EECBG Program. Eligible entities may develop various initiatives and projects that address one or more of the purposes, and each activity that an entity undertakes is not required to meet all of the stated purposes. However, each entity is required to use the funds in a cost-effective manner that is of maximum benefit to the population of that entity and in a manner that will yield continuous benefits over time in terms of energy and emission reductions. To these ends, DOE encourages entities to develop new and innovative approaches within the framework of the legislation and the guidance.

PROGRAM PRINCIPLES AND RECOVERY ACT PRIORITIES

DOE has developed the following core principles to guide entities during the program and project planning process:

- Prioritize energy efficiency and conservation as the cheapest, cleanest, and fastest ways to meet energy demand;
- To maximize benefits over time, entities should look for ways to link their energy

efficiency efforts to long-term priorities (especially community economic development, community stabilization, and poverty reduction efforts);

- Invest funds in programs and projects that create and/or retain jobs and stimulate the economy while meeting long-term energy goals;
- Give priority to programs and projects that leverage federal funds with other public and private resources, including coordinated efforts involving other Federal programs that target community development and that have been funded through the Recovery Act, such as the Community Development Block Grant program, HOME, and job training programs;
- To the extent possible, develop programs and strategies that will continue beyond the funding period;
- Ensure oversight, transparency, and accountability for all program activities;
- Enact policies that transform markets, increase investments, and support program goals; and
- Develop comprehensive plans that benchmark current performance and set aggressive goals.

PROGRAM OUTCOMES

There are many possible outcomes that could result from successful implementation of EECBG-eligible programs, projects, and activities at the state and local level. By identifying desired outcomes, DOE aims to clarify the broad purposes stated in the legislation and assist the implementation, overall development, and administration of state and local programs. Desired outcomes may also help in the evaluation of potential activities, programs, and projects, in particular by highlighting the variables that will be used to determine the success of different activities, programs, and projects. Desired outcomes of the EECBG Program include:

- Increased energy efficiency, reduced energy consumption, and reduced energy costs, insofar as they are achieved through efficiency improvements in the building, transportation, and other appropriate sectors;
- New jobs and increased productivity to spur economic growth and community development;
- Accelerated deployment of market-ready distributed renewable energy technologies, including wind, solar, geothermal, hydropower, biomass, and hydrogen technologies;
- Improved air quality and related environmental and health indicators associated with the reduction of fossil fuel emissions;
- Improved coordination of energy-related policies and programs across jurisdictional levels of governance and with other local and community-level programs in order to maximize the impact of this program on long-term local priorities;
- Increased security, resilience, and reliability of energy generation and transmission infrastructure;
- Leveraging of the resources of the Federal government, state and local governments, utilities and utility regulators, the private sector, and non-profit organizations in order to maximize the resulting energy, economic and environmental benefit; and
- Widespread use of innovative financial mechanisms that transform markets.

PROGRAM FUNDING

ARRA allocations for EECBG direct formula grants from the DOE, as adjusted by appeals, are based on the following funding amounts:

- \$1,891,663,600 for eligible cities and counties (“units of local government”);
- \$767,480,000 for states, U.S. territories, and the District of Columbia (“States”); and
- \$54,836,200 for eligible Indian tribes.

ELIGIBILITY, ALLOCATIONS AND FORMULA METHODOLOGY

Prior to adjustments through the appeals process, funding for EECBG direct formula grants to eligible units of local government was allocated in equal amounts to “local government-alternative 1” and “local government-alternative 2”. Under “local government-alternative 1,” eligible entities are cities with populations of at least 35,000 or which are one of the top ten highest populated cities of the state in which they are located, and counties with a population of over 200,000 or which are one of the ten highest-populated counties of the state in which they are located. Under “local government-alternative 2,” eligible entities are cities with populations of at least 50,000 and counties with populations of at least 200,000 (42 USC 17151(3)).

EISA directs that the formula for grants to eligible units of local government be established by the DOE according to the population served by the eligible unit of local government, the daytime population of the eligible unit of local government, and other similar factors determined by DOE (42 USC 17153(b)). For the purposes of the EECBG Program, the definition of “city” includes city-equivalent units of local government such as towns or villages. Consolidated city-county governments are considered as cities. County populations used to determine eligibility for direct formula grants do not include the populations of cities within the counties when the cities themselves are eligible for direct formula grants.

EISA also directs that, of the amount allocated for States, DOE is to provide not less than 1.25 percent to each State, with the remainder to be distributed among the States based on a formula established by the DOE. EISA directs that the State formula take into account the population of each State and any other criteria that DOE determines to be appropriate (42 USC 17153(c)).

EISA further directs that the amounts made available for Indian tribes be distributed based on a formula to be established by DOE, taking into account any factors that DOE determines to be appropriate (42 USC 17153(d)).

City/County Formula

The formula for determining allocations to cities and counties is based on two weighted factors: resident population and daytime (commuter) population. The resident population factor receives a weight of approximately 70 percent, and the daytime population factor receives a weight of approximately 30 percent.

State Formula

The formula for determining allocations to States includes three factors that are

considered with equal weight: (1) the total population of the State; (2) the population of the State after subtracting the populations of all cities and counties in the state that are eligible for direct formula grants; and (3) the total energy consumption in the State, less consumption in the industrial sector.

As required by EISA (42 USC 17155(c)(1)(A)), a state that receives a grant under the EECBG Program shall use not less than 60 percent of the amount received to provide subgrants to units of local government in the state that are not eligible for a formula grant under the program. Hawaii, the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands have no ineligible entities and are, therefore, exempt from the requirement to make subgrants.

Tribal Formula

The formula for Tribal governments is based on two weighted factors: tribal population and the climatic conditions in each tribe's state as derived from heating and cooling degree days. The tribal population factor receives a weight of 75 percent, and the tribal climate factor receives a weight 25 percent.

There are no subgranting requirements for funds received by units of local government or Indian tribes.

For more detailed information on the formula methodology, see the "Energy Efficiency and Conservation Block Grant Program—State, Local and Tribal Allocation Formulas" as published in the *Federal Register* on April 15, 2009 and available at http://eere.energy.gov/wip/pdfs/eecbg_federal_register_notice_04_15_09.pdf.

To see the individual allocations amounts, organized by state, visit the EECBG Program website, which features:

- State and local formula allocations, available at http://eere.energy.gov/wip/eecbg_state_allocations.html.
- Tribal formula allocations, available at http://eere.energy.gov/wip/eecbg_tribal_allocations.html.

USE OF FUNDS

Activities eligible for use of funds include:

- Development of an energy efficiency and conservation strategy by entities, and technical consultant services to assist in the development of such a strategy;
- Residential and commercial building energy audits;

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- Financial incentive programs and mechanisms for energy efficiency improvements, such as energy savings performance contracting, on-bill financing, and revolving loan funds;
- Grants to nonprofit organizations and government agencies for the purpose of performing energy efficiency retrofits;
- Energy efficiency and conservation programs for buildings and facilities;
- Development and implementation of transportation programs to conserve energy;
- Building codes and inspections to promote building energy efficiency;
- Energy distribution technologies that significantly increase energy efficiency, including distributed resources, combined heat and power, and district heating and cooling systems;
- Material conservation programs including source reduction, recycling, and recycled content procurement programs that lead to increases in energy efficiency;
- Reduction and capture of methane and greenhouse gases generated by landfills or similar waste-related sources;
- Energy efficient traffic signals and street lighting;
- Development, implementation, and installation of renewable energy technologies on government buildings; and
- Any other appropriate activity that meets the purposes of the program and is approved by the DOE.

DOE encourages grant recipients to coordinate with each other to leverage funds and resources to maximize benefits.

All funds must be obligated/committed by eligible entities within 18 months of the effective date of the award and expended within 36 months of the effective date of the award. The official effective date of the award is the date that the contracting officer signed the award document. The three-year timeline begins on the award date, not the date of the recipient's acceptance of the award.

Prohibitions on Use of Funds

ARRA prohibits, without exception, the use of funds for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

Limitations on Use of Funds

Administrative expenses — Grantees should use their established definitions of “administrative expenses”. States may not use more than 10 percent of amounts provided under the program for administrative expenses (42 USC 17155 (c)(4)). Units of local government and Indian tribes may not use more than 10 percent or \$75,000, whichever is greater, for administrative expenses (42 USC 17155 (b)(3)(A)). EECBG funds may be used for compensation of employees or contractors. Whether or not the administrative cost cap applies depends on the nature of the responsibilities of the staff hired. Administrative activities are those that cannot be identified with any single program but are necessary to the general conduct of the activities of the entity organization; this could include such items as the overall direction of the organization, record keeping, budgeting, and business management.

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Revolving Loan Funds — Units of local government and Indian tribes may not use more than 20 percent or \$250,000, whichever is greater, for the establishment of revolving loan funds (42 USC 17155 (b)(3)(B)).

Subgrants — Except for the noted exemptions, States may not use less than 60 percent of their allocation to provide subgrants to units of local government in the State that are not eligible for direct grants (42 USC 17155 (c)(1)(A)). The subgrants for ineligible units of local government must be provided within 180 days after the date DOE approves the State's energy efficiency and conservation strategy, i.e., 180 days after the Contracting Officer signs the award. However, DOE interprets this period to exclude any period of time in which DOE is reviewing substantially complete information necessary to remove a DOE condition that applies to the funding for the subgrants. For example, if a State is providing the required subgrants through a request for proposals (RFP) and the Federal funding for the projects under the RFP is subject to a NEPA condition, the period of time during which DOE is reviewing the information provided by the State that is necessary to remove the NEPA condition does not count towards the 180-day period. For more details, please see EECBG Program Notice 10-009, issued on March 9, 2010 and available at http://www1.eere.energy.gov/wip/pdfs/eeecbg_10-009_subgrants_program_guidance.pdf.

Units of local government and Indian tribes may not use more than 20 percent or \$250,000, whichever is greater, for the provision of subgrants to non-governmental organizations for the purpose of assisting in the implementation of the energy efficiency and conservation strategy of the applicant (42 USC 17155 (b)(3)(C)).

Change in Subgranting and Subcontracting procurement policy announced in April 7, 2010 letter to Grantees — All subgrantees or subcontractors receiving less than \$10 million from a grantee are no longer required to have a technical review conducted by the Office of Acquisition and Financial Assistance (OAFA), DOE's procurement division. Instead, grantees and their subgrantees and subcontractors receiving less than \$10 million may use awarded funds without any further technical review. Money can be given to a subgrantee or subcontractor before DOE receives information on that entity. DOE will, however, need the names and DUNS numbers of subgrantees or subcontractors by June 25, 2010. To be clear, although money may be spent before June 25th, DOE will eventually need the names and DUNS numbers of subgrantees and subcontractors by the June 25th deadline in order to allow for (a) monitoring and reporting, (b) tracking actual against original budgets, and (c) documenting official award records.

Please note: Subcontractors must be reported in FederalReporting.gov, the reporting site for the Office of Management and Budget (OMB). For more on Reporting, see the dedicated section later in this document.

Summary of Limitations on Use of Funds

	State	Formula-eligible unit of local government and Formula-eligible Indian tribe	Formula-ineligible unit of local government and Formula-ineligible Indian tribe
Limit on administrative expenses including the cost of the reporting requirements	Not more than 10% of the amounts provided to the State	Not more than the greater of a. 10% of the amount provided to the eligible unit of local gov't (or eligible Tribe); or b. \$75,000	None
Limit on the amount for establishing a revolving loan fund	None	Not more than the greater of a. 20% of the amount provided to the eligible unit of local gov't (or eligible Tribe); or b. \$250,000	None
Amount required to be provided as subgrants to formula-ineligible units of local government	Not less than 60% of the amount provided to the State (subgrantees must be within the jurisdiction of the State)	None	None

APPEALS

The Department of Energy established an EECBG appeals process. Any unit of local government determined to be ineligible to receive a direct formula grant under the EECBG Program based upon eligibility criteria established by DOE (74 FR 17461) was eligible to file an appeal where it had been denied eligibility based upon

- (1) a determination that it [was] incapable of carrying out activities set forth in Title V, Subtitle E of EISA;
- (2) an adjustment to its population as the result of a determination that another entity that is located within its borders is capable of carrying out activities set forth in Title V, Subtitle E of EISA; or
- (3) 2007 Census data that was corrected by the U.S. Census Bureau, but in which case the correction was not reflected in the Department's determination of eligibility.

Except as specified above, a denial of eligibility for the EECBG Program for failure to meet required population thresholds as based upon 2007 U.S. Census estimate data was not appealable.

The deadline for filing appeals regarding eligibility determinations for direct formula grants for units of local government under the EECBG Program was July 24, 2009. These appeals were reviewed and adjudicated by DOE's Office of Hearings and Appeals (OHA), and decisions were issued from July 23, 2009 through September 15, 2009. The issues that could be appealed, the process for filing an appeal, and the applicable procedures were set forth in notices published on June 24, 2009 in the *Federal Register* (74 FR 30061). All case decisions (granted and denied) can be downloaded at <http://www.oha.doe.gov/EECBG/report.asp>.

TECHNICAL ASSISTANCE

To provide grantees the tools, resources, and assistance needed to implement successful and sustainable clean energy programs, DOE has established the EECBG and State Energy Program (SEP) Recovery Act Technical Assistance Program. This effort will be critical to accelerating costing and improving the performance and sustainability of EECBG and SEP projects and programs. Grantees can access project resources and request direct technical assistance through WIP's online portal, the Solution Center, at <http://wip.energy.gov/solutioncenter>.

This site hosts a wide range of best practices, project resources, and webinars, as well as a project map and events calendar. Grantees can also use this site to submit a request to receive direct technical assistance, or call 1-877-EERE-TAP (1-877-337-3827) to speak with a customer service representative who can assist them in submitting a request and answer questions regarding the resources available. A network of technical experts will respond to requests and work with grantees to facilitate peer matching, workshops, and trainings. These technical assistance providers include representatives from the National Laboratories and teams of specialists in the fields of financing, performance contracting, program design and implementation, and state and local capacity building. For more information on the types of assistance available, please visit the [Technical Assistance Services](#) page of the Solution Center.

REPORTING

All EECBG grantees are required to report certain metrics describing execution of their project activities to the Office of Management and Budget (OMB) and DOE.

Quarterly Reporting to OMB

Prime recipients of Recovery Act funds under the EECBG Program are responsible for reporting the information required by Section 1512 of the Recovery Act to DOE through the OMB website FederalReporting.gov. Prime recipients may delegate certain reporting requirements to sub-recipients. Section 1512 of the Recovery Act establishes reporting requirements for all recipients. Section 1512(c) requires, in part, that recipients of Recovery Act funding submit quarterly reports that address (1) the total amount of Recovery Act funds received from DOE; (2) the amount of Recovery Act funds expended or obligated to projects

or activities; (3) a detailed list of all projects or activities for which Recovery Act funds were expended or obligated; and (4) information on any subcontracts or subgrants awarded by the recipient. Further information regarding reporting of information required by Section 1512 can be found in OMB memoranda M-09-21, M-10-08, M-10-14; and EECBG Program Notices 10-07A and 10-08, the latter of which provides guidance for calculating Jobs Reporting numbers.

Quarterly and Monthly Reporting to DOE

EECBG prime recipients are responsible for meeting program specific quarterly reporting requirements in addition to those required to be entered via the OMB FederalReporting.gov website. Additionally, prime recipients with formula allocations greater than \$2 million are responsible for reporting a subset of the quarterly information on a monthly basis. These reports are to be filed directly to DOE via the Performance and Accountability for Grants in Energy (PAGE) system described below and on this [webpage](#). Prime recipients may, at their discretion, delegate the authority for reporting to sub-recipients. Guidance describing the required EECBG specific reporting can be found in EECBG Program Notice 10-07A.

Quarterly reporting — The following information is required quarterly from all recipients for each project activity:

- a. Hours worked (funded by both Recovery Act and non-Federal funds attracted in by the Recovery Act)
- b. Programmatic metrics: Outlay and obligation of Recovery Act funds, outlay of non-Federal funds attracted in by the Recovery Act, amount of relevant activity completed (e.g., for a solar photovoltaic (PV) project, the number of units installed, and kilowatt (kW) capacity)
- c. Critical metrics (as applicable): Energy savings, energy cost savings, renewable energy generation, emissions reductions

Monthly reporting — The following information will be required monthly, and for each activity, from recipients with formula allocations greater than \$2 million, beginning with performance data occurring in April 2010 (for which a May 30, 2010 reporting deadline is in effect):

- a. Programmatic metrics: Outlay (funds expended) and obligation (funds committed) of Recovery Act funds, amount of relevant activity completed, and additional information as required per activity (e.g., for a solar PV project, the number of units installed, and kW capacity)

Draft reporting guidance for the EECBG Program was published in the *Federal Register* on January 21 (75 FR 3454). DOE invited the public to comment on this draft reporting guidance, with comments due no later than February 4, 2010. DOE evaluated the public comment and revised the reporting requirements as necessary. OMB approved the EECBG guidance requirements on March 4, 2010; this OMB approval expires September 30, 2010.

Formal EECBG guidance on reporting was issued on March 19, 2010. This guidance, EECBG Program Notice 10-07A, is available at

http://www1.eere.energy.gov/wip/pdfs/eecbg_arra_reporting_requirements.pdf.

Additional guidance covering the methodology for calculating and then reporting estimates for job creation associated with EECBG funding was issued on March 11, 2010. This guidance, EECBG Program Notice 10-08, is available at

http://eere.energy.gov/wip/pdfs/wap10-14_sep10-07_eecbg10-08.pdf.

Performance and Accountability for Grants in Energy (PAGE)

Performance and Accountability for Grants in Energy (PAGE) is the online system (www.page.energy.gov) that provides all EECBG recipients with the ability to electronically submit and manage grant performance and financial information as required by DOE for EECBG specific quarterly and monthly reporting. Training tools to familiarize users with PAGE are readily accessible from the front page of the site, including a weekly webinar series and a number of training videos created to guide recipients through each of the necessary reporting steps.

DOE has developed a “calculator” tool to help recipients estimate critical metrics from a simple list of user-defined inputs. Recipients are not required to utilize the tool to determine critical metrics; the tool is meant only to facilitate determination of critical metrics as necessary. Since January 29, 2010, an updated calculator covering all metric activities has been available for download on the EECBG guidance webpage at this location:

http://eere.energy.gov/wip/docs/arra_benefits_reporting_calculator.xls.

The calculator will also be available online as a link from the “metrics wizard” functionality on PAGE.

MONITORING

The Grant Reporting and Analysis Software System (GRASS) is a web-based tool that EECBG Project Officers use to input compliance and monitoring data about grantees. GRASS inputs by Project Officers will be based on information that grantees submit into PAGE and on findings made during onsite monitoring visits.

GRASS was developed to provide standardized, quantifiable reports of monitoring progress and, thus, to enable senior management to better understand grantee performance.

Desktop monitoring is performed by the DOE Project Officer using checklists and materials submitted by the grantee to PAGE for required reporting. During onsite monitoring, DOE staff will meet with grantee personnel. Worksite monitoring occurs in the field at sites of activity implementation. The matrix below contains information regarding the frequency of monitoring organized by grantee award size and type of monitoring:

Type of Monitoring	EECBG	EECBG	EECBG	EECBG
	> \$2M	\$1M - \$2M	\$250K - \$1M	<\$250K
Desktop	monthly	quarterly	quarterly	quarterly
Onsite	1-2/year	1/grant life	1/grant life for 25% of the grants	1/grant life for 10% of the grants
Worksite	As needed	As needed	As needed	As needed

SPECIAL ARRA PROVISIONS AND THEIR APPLICATION TO EECBG

Buy American

Important information about section 1605 of Title XVI of the Recovery Act (the Buy American provision) is available on a dedicated section of the website of DOE’s Office of Energy Efficiency and Renewable Energy (EERE):

http://www1.eere.energy.gov/recovery/buy_american_provision.html. This section will be updated regularly with new documents pertaining to the Buy American provision (e.g., Frequently Asked Questions (FAQs), formal guidance, and waivers).

The Recovery Act Buy American provision provides that, subject to three listed exceptions, none of the funds appropriated or otherwise made available by the Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all the iron, steel, and manufactured goods used are produced in the United States. There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in a project, as long as the final manufacturing occurs in the United States (see 2 CFR 176.70(a)(2)(ii)).

Grantees are accountable for ensuring that the Buy American requirements are met, and thus should include the requirements in all Requests for Proposals (RFPs) and contracts. Grantees are encouraged to ask contractors to verify their compliance with the Recovery Act Buy American provision, and contractors can solicit evidence of compliance from domestic manufacturers in cases of uncertainty. Additional guidance on documenting compliance with the Buy American provision is forthcoming, and will be available on the EERE Buy American website.

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Grantees may request a waiver of the Buy American provision for a specific product or project if they feel that one of the three listed exemptions applies.

The three exceptions are:

1. That applying the Buy American Recovery Act provision would be inconsistent with the public interest (“Public Interest”);
2. That the iron, steel and relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality (“Nonavailability”);
3. That the inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent (“Unreasonable Cost”).

Requests for waivers should be submitted to the DOE award official, who is the Project Officer assigned to the award in the Award Assistance Agreement. The Project Officer or Contracting Officer will work with the Buy American coordinator at DOE Headquarters to determine whether to recommend approval of a waiver request to the Assistant Secretary of Energy for Energy Efficiency and Renewable Energy.

EERE recognizes that some grantees have encountered difficulties in procuring certain compliant manufactured goods. Therefore, EERE is conducting a thorough, transparent, and expedited process to issue additional guidance to grantees and to identify manufactured goods that may qualify for a determination of inapplicability (a “waiver”) of the Buy American provision, based on the nonavailability criterion outlined in 2 CFR 176.80.

EERE is collaborating with a diversity of domestic manufacturing stakeholders in implementing our plan to scour the domestic manufacturing landscape in search of producers before making any nonavailability determinations. EERE has developed a process to catalogue and disseminate the technical specifications for the manufactured goods being submitted for nonavailability waiver considerations, in order to quickly and systematically ascertain whether or not there is domestic manufacturing capacity for these items.

Waiver request instructions are outlined in Section 1605 of the Recovery Act and 2 CFR 176.140(c) and 176.160(c), and summarized beginning on page three of the document entitled “Guidance on the Buy American Provisions as Applied to EERE Projects funded by ARRA,” available at http://www1.eere.energy.gov/recovery/pdfs/eere_program_guidance_buy_american.pdf. Please submit waiver requests through the Project Officer to the EERE Buy American coordinator.

Please be advised that fillable templates for waiver requests are currently being developed and will be available soon on the EERE Buy American webpage.

All waivers of the Recovery Act Buy American provision will be published in the *Federal Register* within two weeks of issuance and posted on the EERE Buy American webpage. EERE has thus far issued two waivers, which can be accessed at http://www1.eere.energy.gov/recovery/buy_american_provision.html.

International Agreements — The obligation to ensure consistency with international agreements applies only to projects with an estimated value of \$7,804,000 or above. In addition, many States and Sub-Federal Entities have specific exclusions from certain Agreements (see Appendix Subpart B of 2 CFR 176; <http://edocket.access.gpo.gov/2009/pdf/E9-9073.pdf>).

For cities, municipalities, counties, and Indian tribes, Canada is the only country with access to EECBG projects above the \$7.8 million threshold, the ARRA Buy American provision notwithstanding; this is the result of a recent negotiation between Canada and the Office of the U.S. Trade Representative that went into effect on February 16, 2010. No other international trade agreements (including NAFTA and CAFTA) cover local government procurement.

DOE cannot interpret obligations under international trade agreements for sub-federal entities.

Supply Items — In late April and early May 2009, a series of DOE responses posted on the EECBG formula FOA FedConnect Q&A database interpreted three categories of manufactured goods (fluorescent lighting ballasts, LED lighting, and HVAC units) to be “supply items,” and thus not subject to the ARRA Buy American provision. DOE has subsequently concluded that the use of the “supply item” analysis is not determinative of whether or not the Recovery Act Buy American provision applies.

To clarify the Buy American regulatory landscape and resolve the confusion surrounding the “supply item” interpretation, on May 19, 2010 EERE issued a nationwide limited public interest waiver of the Buy American requirements for the purchase of LED lighting (lamps, fixtures, and any supporting components) and heating, ventilation and air conditioning (HVAC) units. This limited waiver applies only in circumstances where the grantee has taken substantial steps to commit funds for the purchase of LED lights or HVAC units between February 17, 2009 and March 31, 2010.

On March 31, 2010, this nationwide limited waiver of the Recovery Act Buy American provision expired, with the exception of LED traffic lights, arrows, and crosswalk signals, which are covered by a nationwide categorical waiver based on domestic nonavailability. Hence, after March 31, 2010, EERE grantees are once again required to procure LED lighting and HVAC units from domestic manufacturers in accordance with the Recovery Act Buy American provision.

For further information on the Buy American provision, please contact the project officer responsible for the project, who will then communicate with the EERE Buy American coordinator. Also, please check the EERE Buy American webpage frequently.

Davis-Bacon Act (DBA)

“Guidance on Implementation of the Davis-Bacon Act Prevailing Wage Requirements for Energy Efficiency Conservation Block Grant Recipients Under the American Recovery and Reinvestment Act of 2009” was issued on December 17, 2009, and amended on April 12, 2010. EECBG Program Notice 10-004A is available at

http://eere.energy.gov/wip/pdfs/eeecbg_program_guidance_dba_121709_10-004_revised_april_2010.pdf.

The Davis-Bacon Act (DBA) is applicable to contracts of the United States in excess of \$2,000 for the construction, alteration, and/or repair (including painting and decorating) of public buildings or public works, but not routine maintenance.

The DBA requires all contractors and subcontractors to pay laborers and mechanics employed on a covered contract wages and fringe benefits determined by the Secretary of Labor to be prevailing for corresponding classes of employees engaged on similar projects in the locality. In numerous additional laws, Congress has specifically required adherence to DBA prevailing wage requirements where they might not otherwise be applicable — such as it did under the Recovery Act.

The DBA applies to all contractors and subcontractors that employ laborers and/or mechanics performing work under an EECBG Grant Award. Section 1606 of the Recovery Act specifically requires that all laborers and mechanics employed by contractors and subcontractors on any project “funded directly by or assisted in whole or in part by” Recovery Act funds be paid prevailing wages as determined by the Secretary of Labor. Thus, contractors and subcontractors must ensure that any laborers and mechanics employed on projects funded or assisted in whole or in part by Recovery Act funds are paid prevailing wages as determined by the Secretary of Labor for construction, alteration, and/or repair (including painting and decorating).

All recipients (who directly receive a grant), grantees, and subgrantees, with the exception of State and local governments that use their own employees to perform this work, must also pay their own employees performing the work of laborers and mechanics the DBA prevailing wage rate. If the entity receiving Recovery Act assistance for such projects contracts out the work, it must ensure that the DBA requirements flow down to the entities that employ the laborers and mechanics to do the work. DBA requirements do not apply to U.S. Territories. Tribal governments are exempt from DBA requirements only when the Tribal government performs work using its employees.

Grantees/subgrantees and contractors/subcontractors must attach the applicable wage determinations to the solicitation, assistance agreement, and resulting contract or grant. A grantee or subgrantee and contractors/subcontractors contracting out work on a covered project must also attach the applicable wage determination(s) to the solicitation and resulting contract or grant.³

If an ongoing construction project that was awarded prior to the Recovery Act or that was not assisted or funded in whole or part by Recovery Act funds later receives Recovery Act funding, the Contracting Officer will insert the appropriate wage determination(s) in relevant contracts and federal assistance agreements effective as of the date the Recovery Act funding is approved for use on the project.

If county grantees in any State do not have published Department of Labor (DOL) wage rates, then the county must submit a request for conformance to the DOL. The conformance

³ This paragraph reflects the amendment to the 2010 EECBG Program Guidance (10-004A).

process often takes up to six weeks to be completed, so entities should plan its project activities accordingly.

Wage rates are minimum requirements; employers may pay higher wages and benefits.

Contractors/subcontractors and grantees/subgrantees of a Recovery Act-funded EECBG program grant must maintain payrolls and basic records during the course of the work and for a period of at least 3 years following the completion of a project. Even though DOL regulations state the records are to be kept for 3 years from the end of the contract/subgrant, EECBG grant award terms tell the recipient to follow 10 CFR 600.242 (by reference), which requires the recipient to maintain all supporting documentation for 3 years after the submission of the final cost report, which is usually 90 days after the end of the grant project period. If a contract/subgrant falls within the overall grant agreement project period, the recipient would need to maintain the payroll records for the potentially longer period of the Grant award and not just 3 years after the contract/subgrant ended.

Contractors/subcontractors and grantees/subgrantees of a Recovery Act-funded EECBG program grant must also ensure that all laborers and mechanics on such a project are paid on a weekly basis and must submit weekly certified payroll records to the contracting and administering agency, beginning with the first week of the project. In addition, they must post DOL's DBA wage determination and poster at the jobsite. For EECBG project records, the recipient maintains the records on behalf of DOE.

Payroll records are subject to audit by the DOL and the DOE. Failure to prove compliance may subject the contractor to debarment from all government contracts for up to three years.

DOE retains the authority to investigate, monitor, and enforce DBA requirements. DOE must report semi-annually to DOL regarding dollar value of awards/contracts, number of investigations, number of complaints, results of the investigations, and any back pay owed to laborers and mechanics.

DOL General Wage Determinations can be found at www.dol.gov.

For Project Wage Determinations, DOE will utilize DOL Form SF-308.

A copy of the DBA Poster is available at <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>.

Responses to Frequently Asked Questions related to DBA requirements are in the WIP FAQ database and may be search for at http://www1.eere.energy.gov/eere_faq/default.aspx?pid=10&spid=1.

Guidance on Davis-Bacon Act for Individual Homeowners

DOL has determined that DBA requirements do not apply to individual homeowners who participate in or benefit from the following Recovery Act-funded programs: (1) the Appliance Rebate Program which is separate from EECBG and under which participating homeowners receive rebates for the purchase of residential Energy Star products; (2) EECBG consumer rebate programs under which States or units of local government (ULG)

provide rebates directly to individual homeowners who have expended funds for qualifying construction activities associated with energy efficiency improvements to their own homes; (3) EECBG grant programs under which States and ULG establish ARRA-funded small grants that serve as “up front” funding for energy efficiency and renewable energy projects by individual homeowners for their homes; and (4) EECBG energy improvement financing programs that consist of providing direct loans to individual homeowners for energy efficiency and renewable energy projects for their homes.

EECBG Consumer Rebates — EECBG-funded programs established by States or ULG for energy efficiency and/or renewable energy improvements may include consumer rebate programs that directly benefit individual homeowners. Under these programs, DOE provides grants to States or ULG that in turn provide rebates directly to individual homeowners who may have expended funds for qualifying construction activities associated with energy efficiency and/or renewable energy improvements to their homes. Based upon DOL guidance, DBA requirements do not apply to individual homeowners who receive rebates through such EECBG-funded programs.

EECBG Grant Programs for Individual Homeowners — EECBG grant programs provide “up-front” funding for energy efficiency and/or renewable energy projects by individual homeowners for their homes. As part of a project, an individual homeowner may hire a contractor to perform any necessary construction work to complete the project. No repayment to the entity providing the grant would be required under these programs. Based upon DOL guidance, DBA requirements do not apply to individual homeowners who receive grants under such EECBG programs.

EECBG Financing Programs for Individual Homeowners — EECBG energy improvement financing programs involve States and ULG providing ARRA funds for funding in the form of loans to individual homeowners for energy efficiency and renewable energy projects. As part of a project, an individual homeowner may hire a contractor to perform any necessary construction work to complete the project. Based upon DOL guidance, DBA requirements do not apply to individual homeowners who receive loans under such EECBG financing programs.

ADDITIONAL PROGRAM GUIDANCE FOR EECBG

Revolving Loan Funds under EECBG

Formal EECBG guidance on this and related topics, with attention to the use of EECBG funds for loan loss reserves, was issued in revised form on April 20, 2010 as EECBG Program Notice 09-002.

Eligibility of revolving loan funds — A revolving loan fund 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 recipients must comply with statutory law regarding revolving loan funds. 42 U.S.C. 17155 (b)(3)(B) mandates a limitation on the use of funds for the establishment (i.e., the capitalization) of revolving loan funds by formula-eligible units of local governments and formula-eligible tribes equal to the greater of 20 percent of the recipient’s allocation or \$250,000. Funds used for administrative costs to set up

Energy Efficiency and Conservation Block Grant Program Notice 10-011

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 — State 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 — Energy Efficiency and Conservation Block Grant Program funds can 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 revolving loan fund; 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.

Finally, a grantee cannot use more than 50 percent of its EECBG funds for a loan loss reserve.

Interest Rate Buy-Downs — EECBG funds can 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 can 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 loan fund are considered obligated by the recipient once they have been used to capitalize a loan fund. A loan fund 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
- c) The distribution account is operated by a third party

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

Funds are considered expended when the revolving loan fund has loaned to specific borrowers for an amount equal to or greater than the program monies that initially capitalized the fund.

Loan loss reserve funds are considered expended 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 revolving loan fund operated under the grantee, loan loss reserve funds are considered committed by sending a letter to the project officer indicating the establishment of the loan loss reserve. For loan loss reserves supporting third party loans, loan loss reserve funds are considered committed when the grantee enters into a signed agreement with the third party.

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.

Federal Character of Revolving Loan Funds — Generally, federal funds used to capitalize a revolving loan fund maintain their federal character in perpetuity. As a result, federal requirements that apply to the funds such as NEPA and the National Historic Preservation Act would be applicable at each revolution of the loan fund. Federal requirements that apply to Recovery Act funds, such as the Davis-Bacon Act requirements, Buy-American requirements, and Recovery Act reporting requirements would be applicable at each revolution of a loan fund that was funded through the Recovery Act.

The applicability of these federal requirements need not cause difficulty in administering a revolving loan fund program. DOE has previously provided guidance on streamlining

compliance with NEPA and the National Historic Preservation Act. The templates that DOE has provided to States to obtain categorical exclusions under NEPA for sub-grant programs could also be applied to revolving loan funds program. DOE has worked with the Advisory Council on Historic Preservation to provide States with programmatic agreements in order to streamline compliance with the National Historic Preservation Act requirements. Individual homeowners receiving loans under a revolving loan fund program would not be required to comply with the Davis-Bacon Act. Similarly, the Buy American requirements apply to “public buildings” and “public works” and thus would not be applicable to projects performed on individual homes.

The continuing federal character of the funds means that if the grantee decides to end a revolving loan fund program or loan loss reserve program, any remaining funds would need to be used by the grantee for an eligible purpose or otherwise 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.

Historic Preservation

Formal EECBG guidance on the Historic Preservation requirements attached to EECBG projects provision was issued on February 11, 2010. This guidance, EECBG Program Notice 10-006, is available at

http://eere.energy.gov/wip/pdfs/historic_preservation_program_guidance.pdf.

Additional information on this topic is available on the WIP website at

http://eere.energy.gov/wip/historic_preservation.html.

Any property 45-50 years or older (depending on the state) and possessing “historical significance” will require review in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA).

DOE, in coordination with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO), has developed a prototype Programmatic Agreement to address its historic preservation requirements for DOE’s State Energy Program (SEP), Weatherization Assistance Program (WAP) and the EECBG Program. On February 5, 2010, ACHP released to the States a prototype Programmatic Agreement for execution by DOE, individual State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPO), and the State Energy Offices (SEOs) to address the historic preservation consultation requirement. This approach allows flexibility between the States while recognizing that many States have already instituted effective consultation protocols that can be applied to DOE’s programs. There will only be one agreement executed in each state or territory. The agreement will be signed by the SHPO and the State Energy Office and will cover all grantees and subgrantees within the state/territory. This limits the number of agreements that must be negotiated and submitted to DOE. This also means that the SEO representative should consult with the other grantees in their state to make sure that the agreement is consistent with the expectations of the various programs and recipients.

Through the prototype Programmatic Agreement, DOE has taken a categorical approach to activities to streamline reviews and reduce the heavy burden placed on SHPOs and to expedite the obligation of Recovery Act funds. Further, this approach will apply to counties, municipalities, and other local governments through DOE's financial assistance awards to ensure comprehensive coverage of DOE's program recipients. This prototype Programmatic Agreement also recognizes the sovereignty of Tribal governments while allowing them the option to participate in this comprehensive approach.

As long as the grantee adheres to a scope of work in conformance with an executed Programmatic Agreement, the grantee need not perform any further Section 106 review. Each agreement will contain a list of undertakings with no adverse effect on the property. Under normal circumstances, most work performed inside a home or building will have no impact on the historical significance of a property and should be able to proceed with no review required by the SHPO or THPO. However, when the services will alter the visual exterior of the building or severely impact the interior craftsmanship of the property, SHPO or THPO review will still be required.

DOE is prepared to enter into Programmatic Agreements upon execution of the Programmatic Agreement by the SHPOs and State Energy Offices. Project Officers will notify grantees when their state has signed a Programmatic Agreement. Once in place, a Programmatic Agreement will serve to exempt many activities from Section 106.

DOE will schedule teleconferences with the States to clarify DOE's approach to historic preservation consultation and answer any questions. In the interim, inquiries related to historic preservation may be emailed to historicpreservation@go.doe.gov.

A grantee is always at liberty to immediately begin an individual consultation with its SHPO to get approval from that SHPO for proposed activity. SHPO contact information is available at <http://www.ncshpo.org/find/index.htm>. If the grantee has determined that an activity would not adversely affect the historic property and submits documentation to a SHPO and the SHPO does not respond within 30 days, that constitutes approval. If a grantee does receive a letter from the SHPO within the thirty-day period, it may not, depending on the contents of that communication, be permitted to start work.

If the grantee determines that the activity would adversely affect the historic property then, work cannot proceed regardless of whether a SHPO has responded. Grantees or subgrantees need to retain documentation of their receipt of approval from their SHPO or THPO. Grantees or subgrantees shall make the documentation available to DOE only upon DOE's request.

National Environmental Policy Act (NEPA)

Formal EECBG guidance on this topic was issued on December 17, 2009. This guidance, EECBG Program Notice 10-003, is available at http://eere.energy.gov/wip/pdfs/nepa_program_guidance_notice_10-003.pdf.

Once DOE determines the type of NEPA review that it must conduct for a particular proposed action, DOE will notify the applicant of its NEPA determination (e.g., a CX

determination or an EA determination). For many applicants, the key to assisting DOE with completing NEPA review of its proposed projects will be to provide adequate information for DOE to make a CX determination. To this end, DOE has created certain tools for expediting NEPA review of “CX’able” projects; the tools are discussed below.

When DOE has not completed the NEPA review process, DOE typically places a NEPA “condition” (also known as a “prohibition”) on an Activity or some types of projects within an Activity. The condition prohibits the grantee from spending EECBG funds on the Activity or projects for which NEPA review is incomplete.

Awards may identify “exemptions” (sometimes known as “exceptions”) to a NEPA condition. These exemptions are projects for which DOE has completed NEPA review. Grantees can spend EECBG funds on these projects.

In some circumstances, DOE may conclude that it cannot make NEPA determinations for any projects in an Activity. In that case, the grantee cannot use EECBG funds for any projects until the grantee provides more information.

To expedite NEPA review, particularly for those projects that qualify for CX determinations, DOE has created certain tools. For example, in October 2009, DOE provided a NEPA Template to the States. A State may use the Template to help expedite NEPA review of certain EECBG subgrants that States plan to award to eligible units of local governments (subrecipients) under Sections 544 and 545(c) of EISA (42 USC 17154 and 17155(c)). Under this approach, the State will provide information to DOE regarding the projects allowable under its subgrant program. If the subgrant program meets the criteria and conditions described in the Template, DOE will make a CX determination for the entire program, as appropriate. If DOE determines that a CX determination is appropriate for an entire proposed program, individual projects within that program will not be subject to further NEPA review. Attachment B to this Program Notice contains an unexecuted, updated version of the NEPA Template.

DOE has also developed a Statement of Work (SOW) that units of local government can utilize to provide assurance that they will fund only projects that fall within certain bounded categories and are consistent with certain prescribed limitations. On the basis of such assurance, DOE may apply one or more CXs to the award for all projects in a particular activity. Attachment C contains an unexecuted SOW.

This said, not all projects are suitable for CX determinations. In cases where the proposed project may have a significant impact on the human environment, DOE will prepare an Environmental Impact Statement (EIS). If DOE is unsure whether a proposed action will have significant impacts, it may conduct a briefer environmental assessment (EA) to determine if significant impacts would occur. Preparing EAs and EISs can take from a few months to more than a year and can be costly. If the applicant’s proposed project requires an EA or EIS, the NCO will work with the applicant to identify the information about environmental impacts that the applicant must provide, the manner in which DOE will engage the public, and the appropriate role of contractors in assisting with the documents.

Waste Stream Guidance

Formal EECBG guidance on this topic was issued February 22, 2010. However, the ensuing discussion in this Summary Guidance updates and clarifies the February 22, 2010, guidance.

DOE does not require applicants to submit a plan for waste management with applications for EECBG funding. The applicant must produce its plan for waste management on DOE's request during project monitoring, audit or other oversight process.

Timing for Obtaining Waste Management Plans — There has been some confusion about the stage of a project at which an applicant must prepare or require a subrecipient to prepare a plan for waste management. The applicant must prepare or require a subrecipient prepare a plan for waste management before the project generates waste. The applicant and/or project proponent can begin to use EECBG funds for a project before addressing waste management as long as the project has not yet begun to generate waste and DOE has completed NEPA review for the project.

Format and Content of Waste Management Plans — DOE does not require a plan for waste management to follow any particular format. Where a State or local permit, or other required document, will provide waste management information, that permit and its supporting documentation are adequate to constitute a waste management plan for a particular project. However, where there is no existing requirement to document how project proponents will address waste management, then DOE requires that the waste management plan contain the following information:

- (i) Type(s) and estimated volume(s) of waste that the project proponent anticipates will be generated; and
- (ii) The disposal path for each waste stream (e.g., landfill disposal, recycling, reuse).

States and local units of government that use the Template or SOW respectively can satisfy the Waste Stream Conditions clause of those documents by assuring that the States, local units or sub-recipients will prepare a plan or strategy for waste management that satisfies State or local waste management requirements or contain the minimum information identified above.

In effect, DOE's requirements for what waste management plans must contain are not onerous. Elaborate planning documents need not be submitted. Rather, DOE requires basic evidence that project proponents are complying with State and local law.

Projects that Do Not Require Waste Management Plans — waste management plans are not required for projects that do not generate waste (e.g., hiring a consultant, conducting an energy audit).

Required Period for State to Provide Subgrants

Formal EECBG guidance on this topic was issued March 09, 2010. This guidance, EECBG Program Notice 10-009, is available at http://www1.eere.energy.gov/wip/pdfs/eecbg_10-009_subgrants_program_guidance.pdf.

A State that receives a grant under the EECBG Program must use not less than 60 percent of the amount received to provide subgrants to units of local government in the State that are ineligible units of local governments.

The subgrants for ineligible units of local government must be provided within 180 days after the date DOE approves the State's energy efficiency and conservation strategy, i.e., 180 days after the Contracting Officer signs the award.

The 180-day period applies to all subgrants made to ineligible units of local government. For example, if a State uses 80 percent of its EECBG grant to provide subgrants to ineligible units of local government, the State must provide all of those subgrants within 180 days.

A subgrant is considered to be provided to an ineligible unit of local government grant at the time the State has obligated, or otherwise similarly committed, the funds to the ineligible unit of local government.

The 180-day period begins when DOE has approved a State's energy efficiency and conservation strategy, i.e., the date on which the Contracting Officer signed the award.

However, DOE interprets this period to exclude any period of time in which DOE is reviewing substantially complete information necessary to remove a DOE condition that applies to the funding for the subgrants. For example, if a State is providing the required subgrants through a request for proposals (RFP) and the Federal funding for the projects under the RFP is subject to a NEPA condition, the period of time during which DOE is reviewing the information provided by the State that is necessary to remove the NEPA condition does not count towards the 180-day period.

If a State is unable to meet the 180-day deadline for providing subgrants to ineligible units of local government, the State must submit to the Project Officer for approval by DOE an action plan that identifies specific activities and responsible parties to allow for providing the subgrants as expeditiously as possible.

DOE may approve the action plan and provide additional time for the State to provide the required subgrants. Additional time provided, if any, will be dependent on the circumstances of the State. In most instances DOE will seek to limit extensions to between 15 and 60 days.

Agency Waiver for Budget Changes under section 10 CFR 600.230

Recipients no longer need to request Contracting Officer approval for budget revisions for transfer of funds among direct cost categories unless there is a change in activities or project scope. If a grantee zeros out an activity, this is considered a scope change. This waiver is currently set to expire December 31, 2010

LEGAL HOTLINE FOR RECOVERY ACT QUESTIONS

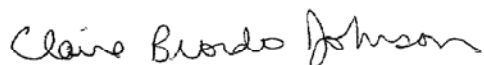
The DOE General Counsel's (GC) office operates an email hotline for legal questions related to the 2009 American Recovery and Reinvestment Act, including the EECBG program. State, county, municipal, and tribal government representatives are welcome to email their legal questions to GChotline@hq.doe.gov.

Questions will be fielded to the appropriate GC attorney or program contact. Responses will be emailed as quickly as possible to the questioner. Our attorneys can expedite a response to your question if you include any or all of the following information in your email:

- Name of the project
- Grant or procurement number
- Program under which you are receiving the grant
- Your contracting officer's first and last name

You can see all responses to these frequently asked questions (FAQs) on the [GCHotline FAQ Web pages](#).

This guidance is intended to provide grantees with an overview of important aspects of DOE's EECBG Program for implementation. As the EECBG Program continues to progress, DOE may determine that this guidance should be updated or revised or that additional guidance should be prepared.



Claire Broido Johnson
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Weatherization and Intergovernmental Program
Energy Efficiency and Renewable Energy

ATTACHMENT A: GUIDANCE MATRIX

CONDITIONS WHERE GUIDANCE MAY APPLY

ACTIVITIES

	NEPA	Davis Bacon	Buy America	Financing	Reporting	Historic Preservation	Waste Stream Guidance	Contracting Officer Approval of Sub-Grants and Loans
Government Building Retrofits	Yes	Yes	Yes	Depends	Yes	Yes	Yes	Depends
Commercial/Residential Building Retrofits	Yes	Yes	Yes	Depends	Yes	Yes	Yes	Depends
LED Street/Traffic Lighting	No	Yes	Yes	No	Yes	Depends	Yes	Depends
Deploying Solar Systems on Public Buildings	Yes	Yes	Yes	Depends	Yes	Yes	Yes	Depends
Offer Rebates/Incentives to Public and Businesses	No	Depends	Depends	Depends	Yes	Depends	Depends	Depends
Implementation of Revolving Loan Fund	Yes	Yes	Yes	Yes	Yes	Depends	Depends	Depends
Other Financing Programs (e.g., Commercial Energy loans through Community Banks, and/or PACE program)	No	Yes	Yes	Yes	Yes	Depends	Depends	Depends
Energy Conservation/Efficiency Education Campaigns	No	No	No	No	Yes	No	No	Depends

LEGEND

STOP AND READ GUIDANCE	GUIDANCE MAY APPLY	GUIDANCE UNLIKELY TO APPLY
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*Please note that the list of Activities above is not exhaustive. Other Activities are permissible under the EECEBG Program. This select list of Activities and conditions where guidance may apply was created for illustrative purposes only.

ATTACHMENT B: NEPA TEMPLATE

Template for Expedited NEPA Review of Certain Energy Efficiency and Conservation Block Grant (EECBG) Sub-grants

Purpose: This document provides an optional approach that a State may use to help the Department of Energy (DOE) expedite National Environmental Policy Act (NEPA) review of certain Energy Efficiency and Conservation Block Grants (EECBG) sub-grants that States plan to award to eligible units of local governments (Sub-recipients) under Sections 544 and 545(c) of the Energy Information and Security Act of 2007 (EISA 2007). Under this approach, the State will provide information to DOE regarding their sub-grants. If those sub-grants meet the criteria and conditions described below, DOE intends to categorically exclude them from further NEPA review.

Understanding the Template

EISA 2007 requires a State to award at least 60 percent of its EECBG funds in block grants to Sub-recipients, which are political subdivisions within the State that are ineligible for direct formula grants from DOE. Thus, the States would receive funding from DOE through a *grant* and then award 60 percent of those funds through *sub-grants* to *Sub-recipients* for Projects that EISA 2007 establishes are eligible for funding. *See* EISA 2007 §§ 545(c)(1), 544. Each State identifies the type of activities (“Projects”) that it intends to fund through Requests for Proposals (RFPs) from Sub-recipients.

To facilitate NEPA review of sub-grants, DOE is providing the Template, which describes: (a) the categories of Projects that DOE has found often fit within its existing Categorical Exclusions (CXs); and (b) the conditions by which those Projects would qualify for a CX.

To take advantage of the Template, Projects that the State proposes to fund under a particular RFP for sub-grants must fall into at least one of the categories listed in Part I of the Template. For organizational purposes, the Part I categories track some of the eligibility categories in the EECBG statutory provisions (*see* EISA 2007 § 544(1) – (13)); however, the Part I categories are narrower. If the State limits its request for grants to Projects listed in Part I, and certifies that each Project meets the conditions set forth in Part II, DOE intends to apply CX(s) to all Projects identified in the RFP. The State will also not have to submit each of those Projects to DOE for a subsequent, more detailed NEPA review. DOE’s CXs are listed at 10 C.F.R. Part 1021, Subpart D, Appendices A and B.

If DOE determines that some or all of the proposed Projects may require an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), then the State must submit sub-grant proposals for each of those Projects to DOE for detailed NEPA review.

Important Considerations

Energy Efficiency and Conservation Block Grant Program Notice 10-011

- Using the Template is optional. In providing the Template, DOE in no way intends to discourage States from opting to award sub-grants to Projects not suitable for CXs. A State can use the Template for an appropriate RFP and then, on a separate page of the Project Activity sheet, submit RFPs for Projects that may have a significant impact on the environment. Sub-grants for the Projects in that category will require NEPA review (and an EA or EIS) based on specific information about a particular Project.
- There may be instances where a State plans to award sub-grants for Projects that do not fall into one of the Part I categories, but nonetheless arguably have no significant impact on the environment such that DOE might issue a CX determination for those Projects based on information in the State's application. In that case, the applicant should describe the Projects and explain why DOE should apply a CX to sub-grants for them, but the State should do so on a separate page or separate section from the Template language. For example, a State may submit an RFP for wind energy systems that produce 40KW per year. Such a Project does not fall into any of the Part I categories because it produces more than 20 KW. *See* Part I(11) below. However, the State may consider the Project physically and functionally the same as a 20 KW Project. In such a case, the State should not amend the Template, for example, by crossing out 20 KW and replacing it with 40 KW. Instead, the State should submit the RFP and explain why such Projects should be categorically excluded.
- The State is responsible for informing DOE of any extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment or any inconsistency with the "integral elements" from a particular Project. (These "integral elements" are described below in Part II.) *See* 10 C.F.R. 1021 Appendix B. DOE will conduct NEPA review of the sub-grant for each such Project prior to the State awarding it.
- Any CX determination that DOE makes on the basis of the Template and its supporting documentation is a finding that a proposal does not have significant environmental impacts; it is *separate from an eligibility or award determination*.
- Expedited NEPA review based on the Template's language and supporting documents does not preclude DOE from conducting stewardship activities, including post-award audit and oversight of individual Projects, or from exercising any other rights under the EECBG program.

TEMPLATE

TEMPLATE

By signing below, [State] provides assurance that it shall *only* award sub-grants under RFP [Y] for Projects that fall within the categories in Part I below and, moreover, are consistent with the limitations prescribed therein. To assist DOE in satisfying its NEPA obligations, [State] provides as attachments to this Project Activity Worksheet: (1) the Request for Proposal for these sub-grants and (2) a completed environmental questionnaire (EF-1).

Part I – Bounded Categories

3. Provision of grants to nonprofit organizations and governmental agencies for the purpose of performing energy efficiency retrofits, provided that:
 - Projects Are Limited To: installation of insulation; installation of efficient lighting; heating, venting, and air conditioning (HVAC) and high-efficiency shower/faucet upgrades; weather sealing; the purchase and installation of ENERGY STAR appliances; installation of solar powered appliances with improved efficiency; and replacement of windows and doors.

8. Replacement of traffic signals and street lighting with energy efficient technologies.

9. Development, implementation, and installation on or in any government building of onsite renewable energy technology, provided that:
 - Projects Are Limited To:
 - Solar Electricity/Photovoltaic - appropriately-sized system or unit on existing rooftops and parking shade structures; or a 60 KW system or smaller unit installed on the ground within the boundaries of an existing facility.
 - Wind Turbine - 20 KW or smaller.
 - Solar Thermal - system must be 20 KW or smaller.
 - Solar Thermal Hot Water - such as appropriately sized for small buildings.
 - Ground Source Heat Pump - 5.5-ton capacity or smaller, horizontal/vertical, ground, closed-loop system.
 - Combined Heat and Power System - boilers sized appropriately for the buildings in which they are located.
 - Biomass Thermal - 3 MMBTUs per hour or smaller system with appropriate Best Available Control Technologies (BACT) installed and operated.

Part II - Integral Element Requirements and Other Conditions

Energy Efficiency and Conservation Block Grant Program Notice 10-011

State [X] shall award sub-grants only for Projects that would not:

- (1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of DOE and/or Executive Orders;
- (2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators);
- (3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases; or
- (4) Adversely affect environmentally sensitive resources. Environmentally sensitive resources include, but are not limited to:
 - (i) Property (e.g., sites, buildings, structures, objects) of historic, archeological, or architectural significance designated by Federal, state, or local governments or property eligible for listing on the National Register of Historic Places;
 - (ii) Federally-listed threatened or endangered species or their habitat (including critical habitat), Federally- proposed or candidate species or their habitat, or state-listed endangered or threatened species or their habitat;
 - (iii) Wetlands regulated under the Clean Water Act (33 U.S.C. 1344) and floodplains;
 - (iv) Areas having a special designation such as Federally- and state-designated wilderness areas, national parks, national natural landmarks, wild and scenic rivers, state and Federal wildlife refuges, and marine sanctuaries;
 - (v) Prime agricultural lands;
 - (vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and
 - (vii) Tundra, coral reefs, or rain forests.

Waste Stream Conditions

State (X) shall obtain a waste management plan addressing waste generated by a proposed Project prior to the subgrantee generating and disposing of sanitary or hazardous waste. This waste management plan will describe the Sub-recipient's plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead paint, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed Project. [State] shall make the waste management plan and related documentation available to DOE on DOE's request (for example, during a post-award audit). [State] shall ensure through

specific contract terms that the Sub-recipient complies with all Federal, state and local regulations for waste disposal.

NHPA Conditions

Prior to awarding a sub-grant for a Project, [State] and the Sub-recipient shall comply with Section 106 of the National Historic Preservation Act (NHPA). If applicable, the Sub-recipient must contact the State Historic Preservation Officer (SHPO), and the Tribal Historic Preservation Officer (THPO). [State] shall retain sufficient documentation, from the Sub-recipient or other sources, to demonstrate that the Sub-recipient has received required approval(s) from the SHPO or THPO for the Project. [State] shall deem compliance with Section 106 of the NHPA complete only after it has this documentation. [State] shall make this documentation available to DOE on DOE's request (for example, during a post-award audit).

Cumulative Impacts, Connected Actions and Extraordinary Circumstances

DOE's CXs are not absolute. CXs do not apply to Projects that involve "extraordinary circumstances," connected actions, or cumulative impacts that may have significant environmental impacts. See 10 C.F.R. § 1021.410(b). If DOE grants a CX based on descriptions in the State's RFP for EECBG grants, DOE will base its decision on the lack of such "extraordinary circumstances" and significant impacts. [State] shall review section 1021.410 and must immediately contact DOE if it identifies a Project that may involve "extraordinary circumstances," cumulative impacts or connected actions that could have significant environmental impacts. Typically, DOE will either subject the sub-grant for the Project to NEPA review or the State will elect not to proceed with awarding the sub-grant.

Part III

On the basis of [State's] assurances in this Project Activity Worksheet, DOE intends to apply one or more CXs to the State's sub-grants for all Projects described in the State's RFP. However, because DOE has only recently started employing this approach to categorically excluding sub-grants, there may be unforeseen circumstances that make it inappropriate to apply a CX to a Project(s) that meets all the Part I and Part II requirements. DOE does not waive its discretion to decline to apply a CX for EECBG sub-grants.

By signing below, [State] acknowledges the preceding paragraph, agrees to all conditions in Parts I, II and III, and provides its assurance that all statements in the Project Activity Worksheet and attachments are accurate to the best of its knowledge.

Authorized Signatory [State]

ATTACHMENT C: NEPA STATEMENT OF WORK

Statement of Work FOR [CITY] [COUNTY] OF []

The [City] [County] of [] will only fund projects that fall within the bounded categories in Part I below and, moreover, are consistent with the limitations prescribed therein. This SOW applies to Activity #, _____ name of activity _____.

Part I – Bounded Categories

1. Conducting residential and commercial building energy audits, which includes hiring technical consultants to conduct such audits.
2. Establishment of financial incentive programs for energy efficiency improvements, including establishing Revolving Loan Funds that are limited to the bounded categories within this Statement of Work.
3. Provision of grants to nonprofit organizations and governmental agencies for the purpose of performing energy efficiency retrofits, provided that:
 - Projects Are Limited To: installation of insulation; installation of efficient lighting; heating, venting, and air conditioning (HVAC) and high-efficiency shower/faucet upgrades; weather sealing; the purchase and installation of ENERGY STAR appliances; installation of solar powered appliances with improved efficiency; and replacement of windows and doors.
4. Development and implementation of energy efficiency and conservation programs for buildings and facilities within the jurisdiction of the entity, provided that:
 - Projects Are Limited To: design and operation of the programs; identifying the most effective methods for achieving the maximum participation and efficiency rates; public education, measurement and verification protocols; and identification of energy efficient technologies.
5. Development and implementation of programs to conserve energy used in transportation, provided that:
 - Projects Are Limited To: use of flex time by employers; use of satellite work centers; development and promotion of zoning guidelines or requirements that promote energy efficient development; and synchronization of traffic signals.
6. Development and implementation of building codes and inspection services, and associated training and enforcement of such codes in order to support code compliance and promote building energy efficiency.

7. Projects to increase participation and efficiency rates for material conservation programs.
8. Replacement of traffic signals and street lighting with energy efficient technologies.
9. Development, implementation, and installation on or in any government building of onsite renewable energy technology, provided that:
 - Projects Are Limited To:
 - Solar Electricity/Photovoltaic – systems or unit on existing rooftops and parking shade structures must be sized for the load of the particular building it is installed on; or a 60 KW system or smaller unit installed on the ground within the boundaries of an existing facility.
 - Wind Turbine - 20 KW or smaller.
 - Solar Thermal - system must be 20 KW or smaller.
 - Solar Thermal Hot Water - such as appropriately sized for small buildings.
 - Ground Source Heat Pump - 5.5-ton capacity or smaller, horizontal/vertical, ground, closed-loop system.
 - Combined Heat and Power System - boilers sized appropriately for the buildings in which they are located.
 - Biomass Thermal - 3 MMBTUs per hour or smaller system with appropriate Best Available Control Technologies (BACT) installed and operated.

Part II - Integral Element Requirements and Other Conditions

[City] [County] of [] will not fund Projects that would:

- (1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of DOE and/or Executive Orders;
- (2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators);
- (3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases; or
- (4) Adversely affect environmentally sensitive resources. Environmentally sensitive resources include, but are not limited to:
 - (i) Property (e.g., sites, buildings, structures, objects) of historic, archeological, or architectural significance designated by Federal, state, or local governments or property eligible for listing on the National Register of Historic Places;

- (ii) Federally-listed threatened or endangered species or their habitat (including critical habitat), Federally- proposed or candidate species or their habitat, or state-listed endangered or threatened species or their habitat;
- (iii) Wetlands regulated under the Clean Water Act (33 U.S.C. 1344) and floodplains;
- (iv) Areas having a special designation such as Federally- and state-designated wilderness areas, national parks, national natural landmarks, wild and scenic rivers, state and Federal wildlife refuges, and marine sanctuaries;
- (v) Prime agricultural lands;
- (vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and
- (vii) Tundra, coral reefs, or rain forests.

Waste Stream Conditions

The [City] [County] of [] shall obtain a waste management plan addressing waste generated by a proposed Project prior to the subgrantee generating and disposing of sanitary or hazardous waste. This waste management plan will describe the recipient's plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead paint, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed Project. [City] [County] of [] shall make the waste management plan and related documentation available to DOE on DOE's request (for example, during a post-award audit). [City] [County] of [] shall ensure through specific contract terms that the Sub-recipient complies with all Federal, state and local regulations for waste disposal.

NHPA Conditions

Prior funding projects or awarding a sub-grant for a Project, [City] [County] of [] shall comply with Section 106 of the National Historic Preservation Act (NHPA). If applicable, the Sub-recipient must contact the State Historic Preservation Officer (SHPO), and the Tribal Historic Preservation Officer (THPO). [City] [County] of [] shall retain sufficient documentation to demonstrate that the Sub-recipient has received required approval(s) from the SHPO or THPO for the Project. [City] [County] of [] shall deem compliance with Section 106 of the NHPA complete only after it has this documentation. [City] [County] of [] shall make this documentation available to DOE on DOE's request (for example, during a post-award audit).

Cumulative Impacts, Connected Actions and Extraordinary Circumstances

DOE's CXs are not absolute. CXs do not apply to Projects that involve "extraordinary circumstances," connected actions, or cumulative impacts that may have significant

environmental impacts. *See* 10 C.F.R. § 1021.410(b). If DOE grants a CX based on descriptions in the recipient’s RFP for EECBG grants, DOE will base its decision on the lack of such “extraordinary circumstances” and significant impacts. [City] [County] of [] shall review section 1021.410 and must immediately contact DOE if it identifies a Project that may involve “extraordinary circumstances,” cumulative impacts or connected actions that could have significant environmental impacts. Typically, DOE will either subject the sub-grant for the Project to NEPA review or the [City] [County] of [] will elect not to proceed with awarding the sub-grant.

Part III

On the basis of [City] [County] of [] assurances in this Project Activity Worksheet, DOE intends to apply one or more CXs to the award for all Projects described in the recipient’s RFP. However, because DOE has only recently started employing this approach to categorically excluding sub-grants, there may be unforeseen circumstances that make it inappropriate to apply a CX to a Project(s) that meets all the Part I and Part II requirements. DOE does not waive its discretion to decline to apply a CX for projects/grants.

By signing below, [City] [County] of [] acknowledges the preceding paragraph, agrees to all conditions in Parts I, II and III, and provides its assurance that all statements in the Project Activity Worksheet and attachments are accurate to the best of its knowledge.

Authorized Signatory [City] [County] of []