



Department of Energy

Washington, DC 20585

EECBG PROGRAM NOTICE 11-003 EFFECTIVE DATE: NOVEMBER 1, 2011

SUBJECT: GUIDANCE ON THE REQUIRED PERIOD FOR GRANTEES TO OBLIGATE FUNDS AND THE PROCEDURES FOR REPORTING OF OBLIGATED FUNDS FOR THE ENERGY EFFICIENCY CONSERVATION BLOCK GRANT PROGRAM (EECBG)

PURPOSE

To provide guidance and clarify the required period for obligation of funds as established in the Energy Efficiency Conservation Block Grant (EECBG) Program Funding Opportunity Announcements (FOAs) Number DE-FOA-0000013 and DE-FOA-0000148, and to clarify the procedures for the reporting of funds obligated by the grantees.

SCOPE

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

LEGAL AUTHORITY

Title V, Subtitle E of the Energy Independence and Security Act of 2007, as amended, authorizes the Department of Energy (DOE) to administer the EECBG Program. All grant awards made under this Program must comply with all applicable laws including the Recovery Act and other procedures applicable to this Program. The EECBG Program Funding Opportunity Announcements (FOAs) Number DE-FOA-0000013 and DE-FOA-0000148, are available at:

http://www1.eere.energy.gov/wip/pdfs/eecbg_foa.pdf and
<http://www.eecbg.energy.gov/Downloads/EECBGCompetitiveFOA148MON.pdf>

which outline grantee requirements for obligating and committing award funds.

GUIDANCE

The FOAs state: “In keeping with the agenda of the Recovery Act, and supporting the goal of immediate investment in the economy, entities are required to obligate/commit all funds within eighteen (18) months from the effective date of the award. In the event funds are not obligated/committed within eighteen (18) months, DOE reserves the right to deobligate the funds and cancel the award.”

Grantees should always refer to their state and local procurement requirements and internal accounting practices and requirements for final guidance to determine whether funds from the Federal award may be considered obligated, committed, or otherwise encumbered. If grantees need further clarification as what constitutes an “obligation” for purposes of satisfying the EECBG award requirements, grantees may rely on the following definition:

“A definite commitment that creates a legal liability of the government for the payment of goods and services ordered or received, or a legal duty on the part of the grantee that could mature into a legal liability by virtue of actions on the part of the other party beyond the control of the grantee. Payment must be made immediately or in the future. A grantee incurs an obligation, for example, when it places an order, signs a contract, awards a sub-grant, purchases a service, or takes other actions that require it to make payments.”

Setting forth an activity or scope of work does not constitute an obligation; it is simply the intention to carry out an activity. Signing a contract would constitute an obligation. It is unlikely that the mere identification of a sub-grantee would qualify as an obligation unless the grantee can establish that it incurred a definite commitment that creates a legal liability.

For Financing Programs, the Office of Weatherization and Intergovernmental Programs has developed guidance defining the term “obligation” specifically regarding Revolving Loan Funds, Loan Loss Reserves, interest rate buy-downs and third-party loan insurance (go to <http://www1.eere.energy.gov/wip/guidance.html> Refer to most recent version of Program Notice 09-002; titled “Guidance for EECBG Grantees on Financing Programs”).

Required Period for Obligating Funds

The 18-month period for obligating funds begins on the effective date of the award, as set forth in Block 3 of the Assistance Agreement. This 18-month period excludes any period of time in which DOE is reviewing substantially complete information submitted by the grantee in order to remove DOE conditions on award activity funding. For example, if a grantee is providing the required obligations through a request for proposals (RFP) and Federal Funding for the project under the RFP, the project is subject to a National Environmental Protection Act (NEPA) condition. The period of time during which DOE is reviewing the information provided by the grantee in order to remove the NEPA condition, does not count towards the 18-month period.

If a grantee is unable to meet the 18-month deadline for obligating funds, the grantee must submit a written request for extension of the deadline with an action plan for approval to the DOE Project Officer that identifies:

1. specific activities requiring the extension,
2. the length of time requested,
3. justification explaining why the extension is requested,
4. plan for obligating funds within the time of the requested extension, and
5. plan for spending all funds by the end of the project period.

DOE may approve the Action Plan and the Contracting Officer may provide additional time for the grantee to obligate funds. In most instances, DOE will limit extensions to 90 days or less unless extreme hardship can be demonstrated. DOE will consider extending the 18-month deadline only if DOE determines that extending the deadline will not put the grantee at risk of missing the expenditure deadlines set forth in the award terms and conditions. If DOE believes that the proposed project or schedule will put the grantee at risk of missing established expenditure deadlines, the grantee will be asked to work with their DOE Project Officer to select activities that will meet required expenditure deadlines.

Should it become clear that a grantee is unable to meet DOE expectations for obligation of funds and successful completion of its award, DOE may find the grantee to be materially noncompliant with the terms of the award. Under 10 CFR 600.243, DOE may exercise a number of actions if a grantee is found to be noncompliant, including, but not limited to, temporarily withholding cash payments; disallowing all or part of the action not in compliance; de-obligating funds and wholly or partially suspending or terminating the award.

Reporting of Obligated Funds

Grantees should report obligation of funds via the Performance and Accountability for Grants in Energy (PAGE) system, and specifically in SF-425 as soon as contracts are signed or subgrants are issued. Obligations must be entered into line 10f of the SF-425 in PAGE as “unliquidated obligations.”

Funds budgeted for administrative expenses and personnel hired by the grantee to work directly on EECBG projects should be reported as obligated at the time that they are budgeted as long as permitted by local statutes, rules, and procedures.

Funds and projects included in the capital improvement and general fund budgets of local government agencies should be reported as obligated once the grantee’s decision maker approves the budget, provided that the capital improvement is permitted by local statutes, rules, and procedures.

High risk grantees with restrictions, or grantees otherwise operating on a reimbursement basis, should check with their Contracting Officer to determine if administrative funds and personnel salaries can be obligated at the time they are budgeted.

Within 180 days of the effective date of their award, states are required to use at least 60% of their grant funds to provide subgrants to ineligible local units of government. Upon meeting this requirement, all states must report at least 60% of their funds as obligated.

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In the case where grantees have met the obligation requirements, but previously obligated funds become available at a later in the project period, such as when a rebate is received or if a project is completed for less than the budgeted cost, the grantee should work to re-obligate the funds as soon as practicable. Extension requests are not required once a grantee has met the initial obligation requirement; however, grantees should work with their assigned Project Officers to determine appropriate activities for re-obligation under these circumstances and to ensure accurate reporting.

Additional guidance related to the EECBG Program's requirements for states to provide 60% of their allocation via subgrants to units of local government can be found at:

http://www1.eere.energy.gov/wip/pdfs/eecbg_10-009_subgrants_program_guidance.pdf

Additional guidance related to EECBG Program reporting requirements can be found at:

http://www1.eere.energy.gov/wip/sep_10_006B_eecbg_10_07C.html



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