



Department of Energy
Washington, DC 20585

STATE ENERGY PROGRAM NOTICE 10-011
EECBG PROGRAM NOTICE 10-013
EFFECTIVE DATE: June 23, 2010

SUBJECT: GUIDANCE FOR STATE ENERGY PROGRAM AND ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT RECIPIENTS ON PAYMENT PROCEDURES.

PURPOSE

To provide guidance to Department of Energy's (DOE's) State Energy Program (SEP) and Energy Efficiency and Conservation Block Grant (EECBG) Program Grantees on permissible methods for accelerating draw down of authorized funds and payments for projects and activities, in order to meet the goals of the American Recovery and Reinvestment Act of 2009 (Recovery Act) – to stimulate the economy, create jobs quickly, and promote energy efficiency and renewable energy.

SCOPE

The provisions of this guidance apply to those recipients of EECBG or SEP funds, pursuant to Formula Grant or the Recovery Act, provided that such Grantees draw down authorized funds on the Automated Standard Application for Payments (ASAP) system. A final National Environmental Policy Act (NEPA) determination must already have been obtained for an activity that is the subject of an advance or payment.

LEGAL AUTHORITY

DOE is authorized to administer SEP under the Energy Policy and Conservation Act of 1975, as amended. Title V, Subtitle E of the Energy Independence and Security Act of 2007, as amended, authorizes DOE to administer the EECBG Program. All grant awards made under these programs shall comply with applicable law, including the Recovery Act, and other procedures applicable to the programs.

GUIDANCE

This guidance expands on the provisions in the DOE Financial Assistance Rules (10 CFR Part 600) and U.S. Department of the Treasury (Treasury) regulations (31 CFR Part 205) concerning methods by which Grantees can: (1) increase the frequency of drawing down funds from ASAP; and (2) accelerate the payment schedules associated with their projects. DOE has identified payment milestones for the EECBG and SEP programs and recognizes that strategies being used by Grantees for making project payments and by sub-grantees/sub-recipients for invoicing payments are affecting the achievability of these milestones. To that end, DOE is issuing this guidance to make Grantees aware of

methods that will, in appropriate cases, allow them to draw down their authorized funds more frequently. These actions in the aggregate will help Grantees satisfy the payment targets of the programs. As described further below, Grantees are encouraged to utilize one or more of the following procedures going forward:

- Draw down funds on ASAP as soon as it is administratively feasible to meet their ongoing needs to disburse funds: at a minimum, to the extent practicable, Grantees should draw down funds every 2 weeks to make project-related disbursements;
- Structure contracts with sub-recipients providing for start-up costs where appropriate, in-progress milestone payments, and payment of the remainder upon project completion;
- Encourage sub-grantees and sub-recipients to provide invoices every 2 weeks, at a minimum;
- Minimize lag time between receipt of invoices and project-related disbursements to 2 weeks, where practicable;
- Provide advances to sub-grantees for disbursement of funds, as necessary;
- Forward-fund near-term purchases of required equipment, supplies, and services for projects;
- Use EECBG and SEP funds first when there are multiple funding sources for a project; and
- Utilize administrative expenses to the extent practicable and necessary.

DOE understands that Grantees (particularly States) and sub-grantees may have their own established financial management systems and procedures concerning payment, and these procedures and systems are often based on state and federal requirements. Grantees should not violate the terms of their standard procedures. However, recipients may be able to modify their current business practices so that they conform to both standard procedures and the intent of this guidance. It is critical to the goals of the Recovery Act and the programs that Grantees accelerate payment where practicable, while maintaining appropriate internal risk management procedures.

The “Background” section that follows provides details in support of the guidance contained in the preceding pages, with specific attention to these topics: (1) DOE’s basic standard of payment; (2) the use of Treasury’s ASAP system; (3) recommended practices for accelerating payments; (4) the increased use of administrative funds; (5) State procedures for awarding sub-grants under the EECBG Program; and (6) the overall regulatory framework for this topic.

BACKGROUND

Basic Standard of Payment in the DOE Financial Assistance Rules

State and local governments receiving DOE financial assistance are subject to Subpart C of the Financial Assistance Rules (10 CFR Part 600). Under Subpart C, the basic standard by which DOE makes payments to Grantees, and subsequently Grantees make payments to sub-grantees and contractors is the following: methods and procedures for payment must minimize the time elapsing between the transfer of funds and disbursement by the Grantee or sub-grantee (10 CFR § 600.221(a)-(b)).

Grantees and sub-grantees shall be paid in advance, provided they maintain or demonstrate both the willingness and ability to maintain procedures minimizing the time elapsing between the fund transfer and the disbursement of funds by the Grantee or sub-grantee (10 CFR § 600.221(c)). Reimbursement shall be the preferred method when these requirements are not met (10 CFR § 600.221(d)).

“Sub-grantee” is defined as a government or other legal entity to which a sub-grant is awarded and which is accountable to the Grantee for the use of the funds provided. “Sub-grant” includes any financial assistance provided by a Grantee to an eligible sub-grantee (including when provided by a contractual legal agreement), but does not include procurement purchases (10 CFR § 600.202).

Use of ASAP to Expeditiously Draw Down Program Funds and Minimize Lag Time Between Receipt of Invoices and Payment

ASAP was developed by Treasury as a standardized, electronic financial management system for quick processing of fund transfers from federal agencies to States, local units of government, and other entities authorized to receive federal financial assistance. As such, ASAP is the system through which recipients receiving financial assistance from DOE can draw down funds that have been pre-authorized by the agency for payment through Treasury. Under ASAP, Grantees can draw down funds to coincide with their immediate cash needs without submitting any invoices, with some exceptions (*e.g.*, agency hold of conditioned portions of awards).

Grantees must pay out federal funds as soon as is administratively feasible under their financial management systems. It is critical that Grantees submit requests for advances on ASAP as frequently as is required to meet their needs to disburse money for project costs. Grantees do not need to wait until a project is completed in order to draw down funding if in-progress payments can be made. At a minimum, to the extent practicable, Grantees should draw down funds every 2 weeks to make project-related disbursements. Grantees should also make project-related disbursements within 2

weeks of receiving invoices. It is critical to the goals of the Recovery Act that Grantees make an effort to minimize lag time between receipt of invoices and payment, provided that they maintain appropriate risk controls for the proper review of invoices.

Grantees' use of ASAP is subject to the terms and conditions of their award, and their ASAP activity is monitored by DOE contracting and project oversight staff. Grantees should time each request to receive payment on the same day that they disburse funds for direct project costs. If same-day transfers are not feasible, advance payments must be as close to actual disbursements as administratively feasible.

State Grantees should not draw down funds on ASAP unless they anticipate disbursing the funds (*e.g.*, payments to sub-grantees or sub-recipients) within 3 working days of draw down. Non-State Grantees (for EECBG) should also minimize the time elapsing between draw down and disbursement of funds, and that time period should not exceed 30 calendar days. Grantees and sub-grantees shall promptly, but at least quarterly, remit to the federal agency interest earned on advances drawn in excess of disbursement needs. The Grantee or sub-grantee may keep interest amounts not exceeding \$100 per year for administrative expenses (10 CFR §600.221(i)). Interest-bearing accounts (rather than non-interest accrual accounts) are preferred. Grantees are required to retain records documenting the activities and invoices associated with each draw down.

EECBG Grantees that have yet to enroll in ASAP should immediately do so in order to have access to their authorized funds as quickly as possible. For ASAP enrollment procedures, contact your award administrator.

Recommended Payment Practices

The following are recommended options for Grantees to consider in order to accelerate payments to sub-grantees and sub-recipients:

More Frequent Invoices: Grantees should encourage sub-grantees (*e.g.*, local units of government) and sub-recipients (*e.g.*, vendors and contractors providing goods and services) to submit invoices to Grantees every 2 weeks. This practice would result in Grantees drawing down funds in ASAP on a much more frequent basis (at a minimum, every 2 weeks) to provide immediate payments once invoices are submitted.

Advances to Sub-grantees: Grantees can pay sub-grantees in advance using ASAP to draw down funds for actual and immediate cash needs, provided the latter demonstrate the willingness and ability to maintain procedures minimizing the time elapsing between the fund transfer and the disbursement of funds by the sub-grantee. To that end, Grantees should be able to confidently make a determination that any sub-grantee has

adequate financial management procedures that enable it to conform to this basic standard of payment. Grantees must monitor the use of funds that are drawn down for any advances to sub-grantees.

To the extent that it is administratively feasible under their financial management systems, States should structure their award agreements with sub-grantees to include the following payment streams: (1) advances for actual and immediate cash payment needs; (2) in-progress payments at the project initiation stage and after the performance of prescribed milestones; and (3) payment of the remainder of the award after the completion of a project or program.

Further, Grantees or sub-grantees performing their own work under either program are entitled to an advance for project-related costs, subject to the same standard applicable to advances. In addition, advances should not be made until and unless a final NEPA determination has been made for an activity for which an advance has been requested.

Contracting with Sub-recipients: To the extent that it is administratively feasible under their financial management systems, Grantees and sub-grantees should structure their contracts for goods and services with sub-recipients to provide for the following payment streams: (1) start-up funds at the outset of a project once there is a near-term need for expenditures by the sub-recipient; (2) in-progress payments at the project initiation stage and after the performance of prescribed milestones; and (3) payment of the remainder of the contracted amount after the completion of the project. The amount provided under contractual agreement should align with a Grantee's principles for risk and asset protection and will depend on the type of underlying activity. An example contract could be structured as follows: 10% start-up costs; 20% upon project commencement; 50% after performance of in-progress milestones; and the final 20% at project completion. It is expected that achievement of completion milestones for authorized construction-type projects will be subject to on-site technical inspections and certified with regard to the percentage of completion. Grantees and sub-grantees should implement a plan for the recovery of costs in the event of default.

Contracts setting forth these terms will permit sub-recipients to ramp-up their project activity at the outset, as well as motivate sub-recipients to accelerate their activities to meet the milestone targets and ultimately complete the project. DOE prefers that Grantees and sub-grantees structure their contracts with progress payments as opposed to executing contracts with sub-recipients that provide for full payment only after the completion of a project.

Depending on project scope, this method could be utilized in contracts for: (i) the provision of goods and services; (ii) payments on capital projects; and (iii) financing mechanisms, as well as other specific activities. If Grantees have already executed

contracts with sub-recipients that do not provide for the above terms, yet would prefer to make payments based on progress payments, they are encouraged to negotiate and execute an addendum to any such contracts, where practicable. Grantees are encouraged to include this concept – tailored to their specific projects – in any new contracts using EECBG or SEP funds. It is also critical that Grantees remain apprised of the progress and performance of sub-recipients for all EECBG- or SEP-funded activities, and that all fund disbursements are made only when sub-recipients have demonstrated a need for reimbursement.

DOE recognizes that each Grantee will have to structure their own policies and contracts in accordance with local law and regulation as well as the standards in the DOE Financial Assistance Rules.

Construction and Capital Expenditures: Grantees should consider the practicability of forward-funding required upfront design/construction-related and capital equipment purchases (*e.g.*, on-site renewable energy technologies) for their projects. In this manner, payments can begin at the time of site investigation and architectural/engineering activities and do not need to wait until the project has completed all of the design and engineering work necessary to commence construction authorized under applicable regulations. In addition, to the extent that Grantees are implementing projects that will require the acquisition and purchase of materials and supplies in the near-term, such Grantees should consider drawing down funds to purchase all required necessary supplies and services up front rather than on an as-needed basis. In either case, a Grantee can draw down in advance an amount equivalent to the cost of the equipment, supplies, or services to be obtained for a project. Grantees should limit this practice to those items for which capital equipment procurement and installation requirements have been established and for which a final NEPA determination has already been obtained. Grantees also should confirm that they are pre-paying for equipment, supplies, and other materials from viable, reputable counterparties.

Use of Working Capital: State Grantees are urged to consider the establishment of a working capital fund, as permitted by State regulation, from a pool of unobligated funds (including an administrative expense set-aside), to be able to advance cash to qualified sub-grantees for initial disbursements. It is anticipated that the duration of such a fund would be short and limited by the overall amount of unobligated funds. Establishment of this fund requires the concurrence of the DOE procurement official of record and must be consistent with 10 CFR § 600.221(e).

Priority of Payments: When Grantee projects are being funded with numerous public and private sources, including EECBG or SEP awards, Grantees should structure their projects such that SEP and/or EECBG program funds are used to make payments prior to other funding sources (particularly non-Recovery Act leveraged funding sources).

Increased Use of Administrative Funds

Under EECBG: (1) State Grantees may not use more than 10 percent of their awards for administrative expenses; and (2) City and County Grantees may not use more than 10 percent or \$75,000, whichever is greater, for administrative expenses (excluding the cost of meeting reporting requirements). Under SEP, Grantees may use any amount judged “reasonable and prudent” by DOE when reviewing the State’s annual plan of their awards for general services and administration. For SEP Recovery Act activities, States usually follow the limit that applies to their respective state funds.

All Grantees should consider utilizing contractor staff to support their administrative, grant management, and reporting activities, to the extent that their own staffing resources are insufficient to provide administrative support. The administrative expenses were included as part of the award funding to permit Grantees to develop and implement their programs in an expeditious manner, and Grantees should accelerate their payments dedicated to administrative support where practicable and necessary.

State Procedures for Awarding Sub-Grants under EECBG Program

To the extent that a State’s established sub-grant procedures permit, EECBG State Grantees should consider mechanisms permitting them to award a portion of the pass-through funds allocated to sub-grantees as advances after awarding the sub-grant, provided that sub-grantees maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of funds and their disbursement by the sub-grantee. It is critical under this arrangement that units of government are subject to both a State’s procurement regulations and continued oversight by the State Energy Office.

States must follow their own laws and procedures when awarding and administering sub-grants of financial assistance to local and tribal governments. States must ensure that any advances of grant funds to sub-grantees substantially conform to the same standards of timing that apply to cash advances by federal agencies. All other Grantees must conform to the applicable requirements in Subpart C when awarding sub-grants (10 CFR § 600.237(a)(4), (b)).

Regulatory Framework

Treasury regulations (31 CFR Part 205) set forth rules for the transfer of funds between federal agencies and States for federal assistance programs. A State and federal agency must minimize the time between transfer of funds from Treasury and the State’s payout of funds, whether the transfer occurs before or after the payout of funds. The agency and State must limit the amount of funds transferred to the minimum required to meet

a State's "actual and immediate cash needs" (31 CFR § 205.11(a)-(b)). Once a federal agency transfers funds to States via a cash advance, no more than three business days can elapse before the day the State issues checks or initiates payments (31 CFR § 205.12).

Federal funds should be promptly refunded to DOE when the funds advanced are in excess of immediate disbursement needs. The only exceptions to the requirement for prompt refunding are when the funds involved: (1) will be disbursed by the recipient organization within 7 calendar days; or (2) are less than \$10,000 and will be disbursed within 30 calendar days. These exceptions to the requirement for prompt refunding should not be construed as approval by Treasury for a recipient organization to maintain excessive funds; they are applicable only to excessive amounts of funds erroneously drawn (DOE Accounting Handbook, Chapter 7).

Grantees that have drawn down more funds than they need can return funds via ASAP within 32 calendar days of when the funds have been drawn. Instructions for the return of funds by Grantees to DOE via ASAP can be found at the following link:

<https://www.fms.treas.gov/asap/pay-return2.pdf>.

CONCLUSION

In this guidance, DOE has identified a number of tools for EECBG and SEP Grantees to consider when developing their payment strategies for projects. In combination, the mechanisms described above can increase Grantees' access to their program funding and expedite payments to sub-recipients. Grantees are encouraged to utilize one or more of the following procedures going forward:

- Draw down funds on ASAP as soon as it is administratively feasible to meet their ongoing needs to disburse funds: at a minimum, to the extent practicable, Grantees should draw down funds every 2 weeks to make project-related disbursements;
- Structure contracts with sub-recipients providing for start-up costs where appropriate, in-progress milestone payments, and payment of the remainder upon project completion;
- Encourage sub-grantees and sub-recipients to provide invoices every 2 weeks, at a minimum;
- Minimize lag time between receipt of invoices and project-related disbursements to 2 weeks, where practicable;
- Provide advances to sub-grantees for disbursement of funds, as necessary;
- Forward-fund near-term purchases of required equipment, supplies, and services for projects;
- Use EECBG and SEP funds first when there are multiple funding sources for a project; and

- Utilize administrative expenses to the extent practicable and necessary.

It is critical that Grantees expeditiously spend their project funds in accordance with the programs' payment targets and applicable laws and regulations, and the guidance above is intended to provide additional tools that can help to accelerate Grantee projects, advance program goals, and satisfy the goals of the Recovery Act.

A handwritten signature in black ink that reads "Tobias Russell". The signature is written in a cursive style with a large, stylized initial 'T'.

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