Department of Energy
Washington, DC 20585

SEP PROGRAM NOTICE 10-008F
EFFECTIVE DATE (Revised): November 10, 2020
ORIGINALLY ISSUED: December 7, 2009

SUBJECT: GUIDANCE FOR STATE ENERGY PROGRAM GRANTEES ON FINANCING PROGRAMS.

PURPOSE
To provide guidance to Department of Energy (DOE) State Energy Program (SEP) grantees on financing programs. This guidance supersedes SEP Program Notice 10-008E, which was issued May 20, 2016, and supplements SEP Program Notice 12-002, which was issued June 4, 2012.

SCOPE
The provisions of this guidance apply to grantees of SEP funds, pursuant to Annual Formula Grants and the American Recovery and Reinvestment Act of 2009 (Recovery Act).

LEGAL AUTHORITY
SEP is authorized under the Energy Policy and Conservation Act, as amended (42 U.S.C. § 6321 et seq.). All grant awards made under this program shall comply with applicable laws including, but not limited to, the SEP statutory authority (42 U.S.C. § 6321 et seq.), the Recovery Act (Pub. L. No. 111-5), 10 CFR 420, 10 CFR 600, and 2 CFR 200.

GUIDANCE

Establishment of Financing Programs
Grantees may establish Financing Programs (e.g., Loan Loss Reserves, Revolving Loan Funds, and Interest Rate Buy-Down Programs). These programs may be administered by the grantee (i.e. self-administered) and/or through an agreement with a third party to administer the Financing Program on behalf of the grantee. Grantees are responsible to ensure that third party administrators comply with all federal terms and conditions and statutory requirements.

Leveraging Funds under SEP
Grantee arrangements for leveraging additional public and private sector funds, including rebates, grants, and other incentives, must be implemented to ensure that federal funds go to support eligible activities under SEP (i.e., those activities listed in 10 CFR 420). 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 (LLRs).

TYPES OF FINANCING PROGRAMS

Revolving Loan Funds
SEP funds may be used to create a revolving loan fund (RLF), provided that the loans support activities eligible under the State Energy Program.

Loan Loss Reserves
SEP funds may be used to create a Loan Loss Reserve (LLR) 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. The activities supported by the LLR are limited to those activities that are eligible under the State Energy Program. Additionally, grantees 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 for the purchase and installation of energy efficiency and renewable energy measures and comply with all applicable conditions of Recovery Act funds (if capitalized with Recovery Act funds);
b) a grantee establishing an LLR 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 SEP funds used to establish an LLR 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 for an eligible activity under the SEP Program, including capitalization of an RLF (see section titled "Repurposing Federal Funds"); and
d) under no circumstances shall SEP funds be released to a third-party lender or secondary market investor for any purpose not pertaining to loan losses.

Interest Rate Buy-Downs (IRB)
SEP funds may be used for Interest Rate Buy-downs (IRBs) subject to the conditions identified in this section. An IRB occurs when one party (e.g., grantee) provides an upfront payment to reduce a customer's interest rate and lower financing repayment costs. An IRB has two primary purposes: (1) increase project affordability and demand by reducing customer financing costs and (2) maintain or increase lender/investor interest in making loans by maintaining market-rate returns.

Loans supported by the IRB must be for the purchase and installation of energy efficiency and renewable energy measures consistent with the SEP regulations.

Third-Party Loan Insurance
SEP funds may be used for the purchase of third-party loan insurance subject to the conditions identified in this section. Third-party loan insurance is a financial arrangement whereby a third party bears some portion (or all) of a loss on a specific portfolio.

This typically takes the form of a lender or investor purchasing an insurance policy from a third party against losses on a portfolio of loans up to a fixed percentage 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.

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 SEP regulations.

OBLIGATION, DRAWING DOWN AND EXPENDITURE OF FUNDS

Revolving Loan Funds

Obligation

Program funds advanced for an RLF are considered obligated by the grantee once they have been used to capitalize an RLF. An RLF may be capitalized in any of the following circumstances:

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

Draw Down

Funds may be drawn down from the Department of the Treasury's Automated Standard Application for Payments (ASAP) system to fund the RLF at the time the fund is obligated. ASAP is the system by which grantees receiving financial assistance from DOE can draw down the funds that have been pre-authorized by the agency for payment.

Expenditure (Self-administered)

Funds are considered expended (outlaid) when the RLF has made loans for an amount equal to or greater than the SEP funds that initially capitalized the fund.

The value of loans issued in any reporting quarter should be reported as expenditures (outlays) for that quarter. All Formula funds must be expended prior to the end of the period of performance for the award under which the RLF was capitalized.

Expenditure (Third party-administered)

For RLFs administered by a third party, grantee funds are considered expended (outlaid) when the funds have been transferred to the third party for operation of the RLF. Funds transferred to a third-party administrator in any reporting quarter should be reported as expenditures (outlays) for that quarter. Regardless of whether an RLF is administered by a grantee or a subgrantee, if the RLF makes loans for ineligible activities, DOE may take an enforcement action against the grantee, subject to the flow down provisions of the subagreement, for noncompliance of the terms of the award agreement. Enforcement actions may include disallowing all or part of the cost of the activity or action not in compliance or other allowable remedies subject to the flow down provisions of the subagreement. *See* 10 CFR 600.243 and 2 CFR 200.

Loan Loss Reserves

Obligation

LLR funds are considered obligated when they are committed as a credit enhancement to support a loan or portfolio of qualifying loans under SEP guidelines.

For LLRs supporting a new or existing Recovery Act or non-Recovery Act funded financing program operated by the grantee, LLR funds are considered obligated when the grantee sends a letter to the Project Officer indicating the establishment of the LLR.

For LLRs supporting third-party loans, LLR funds are considered obligated when the grantee enters into a signed agreement with the third party.

Draw Down

Once LLR funds have been obligated, the funds may be drawn down from the Department of the Treasury's ASAP system to fund the LLR account.

Expenditure (Self-administered)

LLR funds are considered expended after they have met the above requirements for obligation, the grantee has drawn funds down from the ASAP system to fund the LLR account and committed them to support individual loans, or a portfolio of loans that a third-party commits to issue. The value of funds committed to support loans in any reporting quarter should be reported as expenditures (outlays) for that quarter.

Expenditure (Third party-administered)

For LLR funds operated by a third party, the grantee's funds are considered expended when the funds have been transferred to the third party for operation of the fund. The value of funds transferred to the third party for operation of the LLR in any reporting quarter should be reported as expenditures (outlays) for that quarter.

Interest Rate Buy-downs and Third-party Loan Insurance

Obligation

Funds used for an IRB or third-party loan insurance are considered obligated by the grantee once the funds have been committed to an IRB or third-party loan insurance, in support of a loan or loan program. These funds may be committed in any of the following ways:

a) Receipt of a loan application from potential borrowers;
b) State or local requirements (regulatory, statutory or constitutional) dictate that funds be available in advance;
c) The grantee enters into a signed agreement with a third party to support an ongoing loan program with IRBs or third-party loan insurance; or
d) The grantee has entered into an agreement with a third party to operate the distribution account.

Draw Down
Funds may be drawn down at the time they are committed to an IRB program or third-party loan insurance.

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

MISCELLANEOUS PROVISIONS

Loan Defaults
Grantees are not required by DOE to replenish or replace any amounts that 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 SEP grant. Grantees should utilize prudent lending practices to minimize the risk of defaults.

"Close Out" of Financing Programs
Grantees may end or reduce funding for a financing program at any time as long as any remaining funds are used by the grantee for an eligible purpose after submitting and receiving approval of a repurposing request. Alternatively, funds may be returned to the Federal government.

Interest Income from Advances
Any interest earned on funds that have been drawn down but not expended (outlaid) by a State grantee is subject to the terms and conditions of its grant. *See* 31 CFR 205.15 and 205.25; 10 CFR 600.225(g). Interest earned may be rolled back into the RLF or LLR account or used for another approved, eligible activity. If such interest is not rolled back into the RLF or LLR, or used for another approved eligible activity, it must be returned to the Federal government.

Program Income
All program income (including interest earned) paid to grantees is subject to the terms and conditions of the grant. See 10 CFR 600.225 (g)

Administrative Expenses
Administrative expenses must be reasonable relative to industry standards. Interest earned on loan funds and loan repayments are considered program income under 10 CFR 600.225(a) and can be used to pay administrative costs associated with those loan funds.

CONTINUING FEDERAL CHARACTER OF CERTAIN FINANCING PROGRAMS

Recovery Act funds retain their Federal character in perpetuity. This includes RLFs, LLRs and repurposed funds.

Grantees that administer financing programs can expedite compliance with these statutory requirements as detailed below.

National Environmental Policy Act (NEPA)

Revolving Loan Funds, Loan Loss Reserves, Interest Rate Buy-Downs, and Third-Party Loan Insurance

Many grantees received a NEPA determination for their ARRA-funded financing programs, which could include Interest-Rate Buy Downs, Third-Party Loan Insurance and/or Revolving Loan Funds, when their programs were established during ARRA.

To more clearly document NEPA reviews for ARRA Financing Programs, grantees were given the option to follow either the NEPA determination for their Formula award (beginning with PY20 and continuing forward) or to continue to follow their original ARRA NEPA template/NEPA determination. With this option, once a grantee elects to include the ARRA Financing Programs in the annual Formula award NEPA determination, this decision cannot be reversed. Each grantee operating ARRA Financing Programs has a Formula award NEPA determination that documents both the Formula award and which NEPA determination they elected to follow for their ARRA Financing Program activities. Grantees that elect to include ARRA Financing Programs in their annual Formula award NEPA determination are required to forward the annual Formula Award NEPA determination to the third party administrator of their ARRA Financing Program, as applicable.

For activities/projects requiring additional NEPA review, Grantees must complete the environmental questionnaire (https://www.eere-pmc.energy.gov/NEPA.aspx) for review by DOE (https://www.eere-pmc.energy.gov/NEPA.aspx). Grantees may submit questions to the GoNEPA@ee.doe.gov mailbox.

National Historic Preservation Act (NHPA)

In 2010, as the result of unprecedented levels of funding and number of projects initiated under the Recovery Act, the DOE, Advisory Council on Historic Preservation, and National Conference of State Historic Preservation Officers developed a first-of-its-kind Prototype Programmatic Agreement (Prototype PA). The intent of the Prototype PA was to provide DOE's WAP, SEP, and EECBG recipients with a streamlined method for complying with DOE's responsibilities under Section 106 of the NHPA.

Most, but not all, grantees have a DOE-executed Programmatic Agreement. Grantees should refer to their NEPA determination, to ensure they follow the correct requirements for compliance with the NHPA.

The U.S. DOE-executed Historic Preservation PAs can be viewed at:
https://www.energy.gov/eere/wipo/historic-preservation-executed-programmatic-agreements.

Davis Bacon Act (DBA) and the ARRA Buy American Provision

Section 1606 of the Recovery Act 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. Accordingly, 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). 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 laborers and mechanics that do the work.

Individual homeowners receiving loans under a RLF program funded by ARRA dollars are not subject to DBA.

The DBA and Buy American provisions of the Recovery Act do not apply to LLR funds.

The DBA and Buy American provisions of the Recovery Act do not apply to IRBs.

Formula Award Financing Programs

Grantees administering Formula Award financing programs must comply with NEPA and NHPA. Formula Award financing programs are not subject to DBA or ARRA Buy American requirements. Grantees must adhere to the restrictions of their NEPA determination for their most current Formula award. The NEPA determination documents includes restrictions for both NEPA and NHPA compliance.

Continuing Oversight of Federal Funds

To ensure that grantees continue to use these Federal funds in accordance with the applicable Federal requirements, DOE will maintain oversight of the funds remaining in financing programs past the period of performance stated in the grantee's award agreement. Reporting requirements continue for all ARRA-funded financing programs.

SEP Formula funds may be used for administrative costs associated with the continued operation of the financing mechanism.

Repurposing Federal Funds

Grantees may request to repurpose funds remaining in their Financing Programs towards another eligible SEP activity by requesting approval from DOE. Grantees should email repurposing requests to their Project Officer and to SEPFinancingPrograms@ee.doe.gov prior to taking any action. DOE will accept repurposing requests twice each year, between the periods of January 1-31 and July 1-31. In emergency situations Grantees may submit a request to their Project Officer and the email inbox at SEPFinancingPrograms@ee.doe.gov with a statement of why it is necessary to request repurposing review outside the timeframes listed above. The SEP Program Manager has discretion on whether to approve the request. If a repurposing request will deplete the loan program completely, thus effectively ending the program, it must be noted in the request.

If there are outstanding loans, a repayment schedule with the end date for the last repayment must be provided. The Recipient should include the following information in its email request:

1. In the subject line: Request to Repurpose Federal SEP Financing Program Funds: Location, State (Grant Number);
2. In the email body:
   a. The planned start date;
   b. Description of the eligible SEP project (including a project budget) to which the funds are to be repurposed;
   c. A complete accounting of all funds up to the planned repurposing start date;
   d. Confirmation that the repurposing project complies with all relevant flow down requirements; and
   e. The activity or project planned beginning and ending dates for the repurposed funds.

DOE will evaluate the request and endeavor to provide a written response of approval or rejection within 30 days of receiving all the requested information.

If a grantee is interested in moving ARRA financing program funds from one financing program to another financing program within the Financial Programs Report (FPR), the grantee should enter an Inter-Program Transfer in the FPR, provide an explanation in the FPR Remarks section, and notify its Project Officer of the transfer. Contracting Officer approval is not required for Inter-Program Transfers.

Grantee Reporting of Financial Programs

DOE requires reporting to confirm the funds are being used in accordance with their federal character. Grantees with ARRA funds remaining in financing programs will be required to report information on the program until the funds are:
(1) rolled into another eligible activity and expended;
(2) fully expended through default; or
(3) returned to the Federal government.

Anna Maria Garcia

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Date: 2020.11.10 15:04:53 -05'00'

AnnaMaria Garcia
Program Manager
Weatherization and Intergovernmental Programs
Office of Energy Efficiency and Renewable Energy