U.S. DEPARTMENT OF
ENERGY

Bipartisan Infrastructure Law

Energy Efficiency Revolving Loan Fund Capitalization Grant Program

Frequently Asked Questions

These frequently asked questions (FAQs) have been developed by the U.S. Department of Energy (DOE) in support of the Energy Efficiency Revolving Loan Fund (EE RLF) Capitalization Grant Program established by Section 40502 of the Infrastructure Investment and Jobs Act (IIJA).

On November 15, 2021, President Biden signed the IIJA (Public Law 117-58), commonly referred to as the Bipartisan Infrastructure Law (BIL). BIL appropriates more than $62 billion to DOE to deliver an equitable clean energy future for the American people, including $250 million to provide capitalization grants to states to establish revolving loan funds (RLFs) to provide loans and grants for commercial and residential energy audits, upgrades, and retrofits, among other activities.

These FAQs address elements of RLF program design as it pertains to this provision, including issues raised in responses to DOE's Request for Information (RFI) entitled, DE-FOA-0002716 Request for Information: Designing Equitable, Sustainable, and Effective Revolving Loan Fund Programs. DOE is using these responses to inform forthcoming program guidance to support states and other entities in designing RLFs that can deliver equitable and sustainable benefits through building energy performance improvements consistent with priorities of the Biden-Harris Administration. DOE intends for release of these FAQs to help inform the beginning stages of RLF program designs prior to release of the full program guidance and application documents.

1. What is the purpose of this provision?

Sec. 40502 of BIL states that the purpose of this provision is to provide capitalization grants to states to establish revolving loan funds (RLF), under which the state shall provide loans and grants for commercial and residential energy audits, upgrades, and retrofits to increase the energy efficiency, physical comfort, and air quality of existing building infrastructure.

2. What entities are eligible to receive funding under this provision?

State energy offices (states) are the only eligible recipients of funding from DOE under this program.

3. What is the timeline for distributing funds for this provision?

DOE expects to release funding guidance and application documents for this provision no later than November 15, 2022, and we anticipate funding to be awarded in full by spring/summer 2023.

4. What is the funding for this provision and how is it allocated?

Congress authorized a total $250 million of appropriations for the EE RLF program, beginning fiscal year 2022 and to remain available until expended. This program was authorized as a formula grant program rather than a competitive grant program.

Grant periods with DOE are anticipated to run for 5 years starting in FY23. While the grants have a specific period of performance, RLFs will provide a long-term, sustainable source of financing that will enable energy efficiency upgrades beyond the grant performance period.

As required by the BIL, 40% of the program funds will be distributed to all states according to DOE's State Energy Program formula in effect January 1, 2021, and 60% of the program funds will be distributed as supplemental capitalization grants to priority states, according to a new formula established by DOE.[1] Sec. 40501 of BIL defines priority states as among the 15 states with the highest annual per-capita combined residential and commercial sector energy consumption, as most recently reported by the Energy Information Administration; or among the 15 states with the highest annual per-capita energy-related carbon dioxide emissions by state, as most recently reported by the Energy Information Administration.

5. Which are the priority states receiving the 60% supplemental funding?

60% of the program funds will be distributed to priority states according to a formula established by DOE.[2] DOE has determined a list of the following 23 priority states listed in alphabetical order.[3]

1. Alabama
2. Alaska
3. Arkansas
4. District of Columbia
5. Illinois
6. Indiana
7. Iowa
8. Kansas
9. Kentucky
10. Louisiana
11. Michigan
12. Missouri
13. Montana
14. Nebraska
15. New Mexico
16. North Dakota
17. Oklahoma
18. South Dakota
19. Tennessee
20. Texas
21. Virginia
22. West Virginia
23. Wyoming

6. What are the eligible uses of 40502 capitalization grant funds?

States must use the funding they receive under this provision to establish RLFs that provide loans to eligible recipients (see Table 1 below) for commercial and residential energy audits, upgrades, and retrofits. Public buildings, nonprofit organizations, and industrial sector buildings are eligible under the commercial sector.

Loan loss reserves, interest rate buy-downs, and similar credit enhancements are eligible uses of funding under this provision. States are strongly encouraged to maximize equitable access to financing for energy efficiency improvements by leveraging private capital through co-lending with private capital providers. Additionally, states may use funding from BIL Section 40109 (State Energy Program) and/or repurpose unspent funds from the American Recovery and Reinvestment Act to support a range of financial mechanisms subject to DOE guidance.

A state may also use up to 25% of the funds to provide grants or technical assistance to eligible recipients for energy audits, upgrades, and retrofits and up to 10% of the funds for administrative expenses. To maximize leveraging of private capital with available funds, states are encouraged to use grants judiciously and to prioritize loans.

Table 1. Eligibility by Type of Assistance and Building Sub-Sector

Type of Assistance	Building Sub-Sector	Eligible Recipient(s)
Loans	Commercial[4] (Includes publicly and privately owned buildings)	A business that satisfies both of the following: • Conducts a majority of its business in the state that provides the loans. • Owns or operates one or more commercial buildings or commercial space within a building that serves multiple functions, such as a building for commercial and residential operations.
	Residential[5]	An individual who owns one of the following: • A single family home. • A condominium or duplex. • A manufactured housing unit. A business that owns or operates a multifamily housing facility.
Grants and Technical Assistance	Commercial[6]	A business that meets both criteria to receive loans (see above) and has fewer than 500 employees.
	Residential[7]	A low-income individual that owns a residential building.[8]

7. What entities are eligible recipients of loans, grants, and technical assistance under 40502?

See Table 1 above for an overview of eligible recipients of loans, grants, and technical assistance as defined by BIL Sec. 40502 (e). DOE may provide additional guidance on eligible recipients in the future, as necessary.

8. What types of energy efficiency audits and upgrades are eligible under this program?

A state that receives a capitalization grant under the program will establish an RLF program to provide loans or grants to eligible recipients to carry out audits and upgrades or retrofits of building infrastructure and systems that meet certain requirements listed in BIL.[9] Table 2 below summarizes the key requirements and optional elements for audits and upgrades/retrofits described in BIL and DOE will provide additional guidance on eligible audits and retrofits.

Table 2. Key Elements of Qualifying Energy Efficiency Audits and Upgrades

Commercial Energy Audits	REQUIRED	• Determine the overall consumption of energy of the facility of the eligible recipient. • Identify and recommend lifecycle cost-effective opportunities to reduce the energy consumption of the facility of the eligible recipient. • Identify the period and level of peak energy demand for each building within the facility of the eligible recipient and the sources of energy consumption that are contributing the most to that period of peak energy demand. • Recommend controls and management systems to reduce or redistribute peak energy consumption. • Estimate the total energy and cost savings potential for the facility of the eligible recipient if all recommended upgrades and retrofits are implemented, using software approved by DOE.[10]
	OPTIONAL	• Recommend strategies to increase energy efficiency of the facility of the eligible recipient through use of electric systems or other high-efficiency systems utilizing fuels, including natural gas and hydrogen.
Residential Energy Audits	REQUIRED	• Use the same evaluation criteria as the Home Performance Assessment used in the Energy Star program.[11] • Identify and recommend lifecycle cost-effective opportunities to reduce the energy consumption of the facility of the eligible recipient • Recommend controls and management systems to reduce or redistribute peak energy consumption. • Compare the energy consumption of the residential building of the eligible recipient to comparable residential buildings in the same geographic area. • Provide a Home Energy Score, or equivalent score (as determined by the Secretary),[12] for the residential building of the eligible recipient by using DOE's Home Energy Score Tool or an equivalent scoring tool.
	OPTIONAL	• Recommend strategies to increase energy efficiency of the facility of the eligible recipient through use of electric systems or other high-efficiency systems utilizing fuels, including natural gas and hydrogen.

Commercial and Residential Upgrades and Retrofits	REQUIRED	• Recommended in the qualifying commercial energy audit or residential energy audit, as applicable, completed for the building or facility of the eligible recipient.
		• Satisfy at least one of the criteria in the Home Performance Assessment used in the Energy Star program (residential only).
		• Are life-cycle cost-effective.
		• Improve, with respect to the building or facility of the eligible recipient, *at least one* of the following:
		  • The physical comfort of the building or facility occupants.
		  • The energy efficiency of the building or facility.
		  • The quality of the air in the building or facility.
		• Lead to *at least one* of the following outcomes:
		  • Reduce the energy intensity of the building or facility of the eligible recipient.
		  • Improve the control and management of energy usage of the building or facility to reduce demand during peak times.

9. Will federal characteristics apply to the RLF in perpetuity?

No. The federal character (and corresponding federal requirements) of this money will not remain in perpetuity. At the end of the award, a closeout agreement will be negotiated that will contain minimum terms for the continued use of the RLF, and this agreement will replace the federal grant agreement. DOE intends to issue additional guidance during FY23 to provide more comprehensive guidance on this process.

10. Are projects completed with loans and grants under this provision subject to Davis-Bacon and Build America, Buy America Act (BABA) requirements?

Davis-Bacon will apply to all loans and grants under this provision.

The Davis-Bacon Act requires contractors and subcontractors to pay laborers and mechanics employed on federally supported contracts for construction, alteration, or repair work no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area as established by U.S. Department of Labor. Contractors must maintain an accurate record of hours worked and wages paid, including fringe benefit contributions, and submit certified payrolls on a weekly basis to DOE.

Build America, Buy America

BIL created a new Buy America (BA) framework that applies to certain federally funded projects, regardless of whether or not the funding for those projects originated in BIL.

Per Section 70914 of BIL, "Application of Buy America Preference," this requirement is to be applied as follows:

"Not later than 180 days after the date of enactment of this Act[13], the head of each Federal agency shall ensure that none of the funds made available for a Federal financial assistance program for infrastructure…may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." (emphasis added)

Some of the definitions provided in BIL are necessary to implement the language above. Section 70912 of BIL provides the following definition:

- ***Infrastructure*** includes, at a minimum, the structure, facilities, and equipment for, in the United States:
  - A. Roads, highways, and bridges;
  - B. Public transportation;
  - C. Dams, ports, harbors, and other maritime facilities;
  - D. Intercity passenger and freight railroads;
  - E. Freight and intermodal facilities;
  - F. Airports;
  - G. Water systems, including drinking water and wastewater systems;
  - H. Electrical transmission facilities and systems;
  - I. Utilities;
  - J. Broadband infrastructure; and
  - K. Buildings and real property.

  In addition, the infrastructure in question must be "public" infrastructure—that is, it must be (1) publicly owned; (2) or privately owned but primarily utilized for a public purpose. For example, a privately owned electric generation facility that puts electricity onto the grid for public consumption would likely be treated as "public" for Buy America purposes, as would a privately-owned museum that is open to the public. By contrast, a privately-owned residence that is closed to the public would not be subject to Buy America requirements.

- ***Project*** means the construction, alteration, maintenance, or repair of infrastructure in the United States.

- ***Financial Assistance*** is given the same definition that is provided in the government-wide financial assistance regulations at 2 C.F.R. 200.2; but is also expanded to include "all expenditures by a Federal agency to a non-Federal entity for an infrastructure project."

- Because the BA framework applies to "Infrastructure Projects," the BA requirement will not apply unless it involves the construction, alteration, repair, or maintenance of one of the items defined as "infrastructure," above.

Requirements of the Buy America provision

Any projects that are categorized as "Infrastructure Projects" will require that any iron, steel, manufactured goods, and construction materials used in the project to be produced in the United States. This means something a little different for each product:

- ***Iron and steel:*** All manufacturing processes, from the initial melting stage through the application of coatings must occur in the United States;

- ***Manufactured products:*** The manufactured product must be manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product;

- ***Construction material:*** All manufacturing processes for the construction material occurred in the United States.

Recipients who undertake "Infrastructure Projects" must purchase all iron, steel, manufactured products, and construction materials for the project that have been produced according to the standards above, unless a waiver is granted. Recipients will also need to be prepared to report on the origin of these products as part of the execution of their federal award. DOE strongly recommends that states consult with the Agency if there is any confusion as to whether a proposed project meets the requirements for Buy America applicability.

Waivers

Section 70914 of BIL, in addition to defining the scope of application for the BA requirement, also discusses the process by which a waiver of the requirement may be requested, evaluated, and either granted or denied. There are two types of waivers: standard waivers and waivers of general applicability.

Standard waivers are those that are requested and processed with respect to specific, individual projects, and will typically originate from the recipient who is being asked to apply the BA requirement.

Waivers of General Applicability are waivers that apply broadly, for instance waiving entire classes of products from the domestic production requirements or waiving all projects under a given program or FOA. These waivers are time-limited, carry a more substantial public notice and comment requirement, and will likely require more scrutiny over time.

Waivers can be granted based on three justifications:

1. Applying the domestic preference requirement would be inconsistent with the public interest;
2. Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
3. The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall product by more than 25%.

In general, the waiver process will proceed as follows:

1. A recipient sends the Agency a waiver request, which must include the justification being cited and an analysis of why that justification should allow for the recipient's exemption from the domestic preference requirement;
2. If the Agency determines that issuance of a waiver is warranted, the Agency will draft a detailed written explanation for the proposed determination to issue the waiver. The Agency will be required to publish this explanation on its website, as well as a website designated by OMB for a period of no less than 15 days for public comment on the proposed waiver.
3. Following the public comment period and provided that the comments provided by the public do not change the Agency's determination to issue the wavier, the Agency may finalize the waiver and notify the recipient. ■

ENDNOTES

1 Distribution of funds for this program are described in Sec. 40502 (b) of BIL. Priority state formula allocation details will be included in forthcoming funding guidance and application documents.

2 The priority state formula allocations and methodology will be included in forthcoming program guidance and application documents.

3 The definition of priority states for this program can be found in paragraph 1 of Sec. 40501 of BIL. DOE used two data sets identified in this definition to establish the list of priority states: (1) State Energy Data System (SEDS), Table C14, Total Energy Consumption Estimates per Capita by End-Use Sector, Ranked by State, 2019 and (2) Energy-Related CO2 Emission Data, Table 4, Per capita energy-related carbon dioxide emissions by state, 2019. The energy consumption data (Table C14) was adjusted to exclude energy consumption from the transportation and industrial sectors to align with the priority state definition in Sec. 40501 of BIL. A state that was in the top 15 of either adjusted data set was determined to be a priority state.

4 Eligible recipients of loans for commercial building audits, upgrades, and retrofits are defined in Sec. 40502 (e)(2)(A)(iv) of BIL.

5 Eligible recipients of loans for residential building audits, upgrades, and retrofits are defined in Sec. 40502 (e)(2)(B)(iv) of BIL.

6 Eligible recipients of grants and technical assistance for commercial building audits, upgrades, and retrofits are defined in Sec. 40502 (e)(3)(B)(i) of BIL.

7 Eligible recipients of grants and technical assistance for residential building audits, upgrades, and retrofits are defined in Sec. 40502 (e)(3)(B)(ii) of BIL.

8 See paragraph 36 of 29 U.S.C. 3102 for a definition of a low-income individual eligible for grants and technical assistance under this program.

9 Required elements of audits and upgrades/retrofits in commercial and residential buildings financed by loans provided through this program are described in subparagraphs (A), (B), and (C) of Sec. 40502 (e)(2). These elements also apply to audits and upgrades/retrofits financed by grants, per Sec. 40502 (e)(3)(A).

10 Additional guidance forthcoming.

11 The Energy Star Program as established by 42 U.S.C. 6294a. Additional information on the Home Performance Assessment can be found here.

12 Additional guidance forthcoming.

13 May 14, 2022.

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