

Status Report for EECBG Program Guidance Actions

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Presenter Bios

Mark Johnson is Program Lead for the \$3.2 billion Energy Efficiency and Community Block Grant (EECBG) program funded for the first time by the American Recovery and Reinvestment Act of 2009.

Mark's successful professional experience includes Certified General Contractor building zero-energy developments, officer of public and private corporations, Navigant Consulting, IBM Global Services, MBA Loyola University Chicago and BA University of Notre Dame.

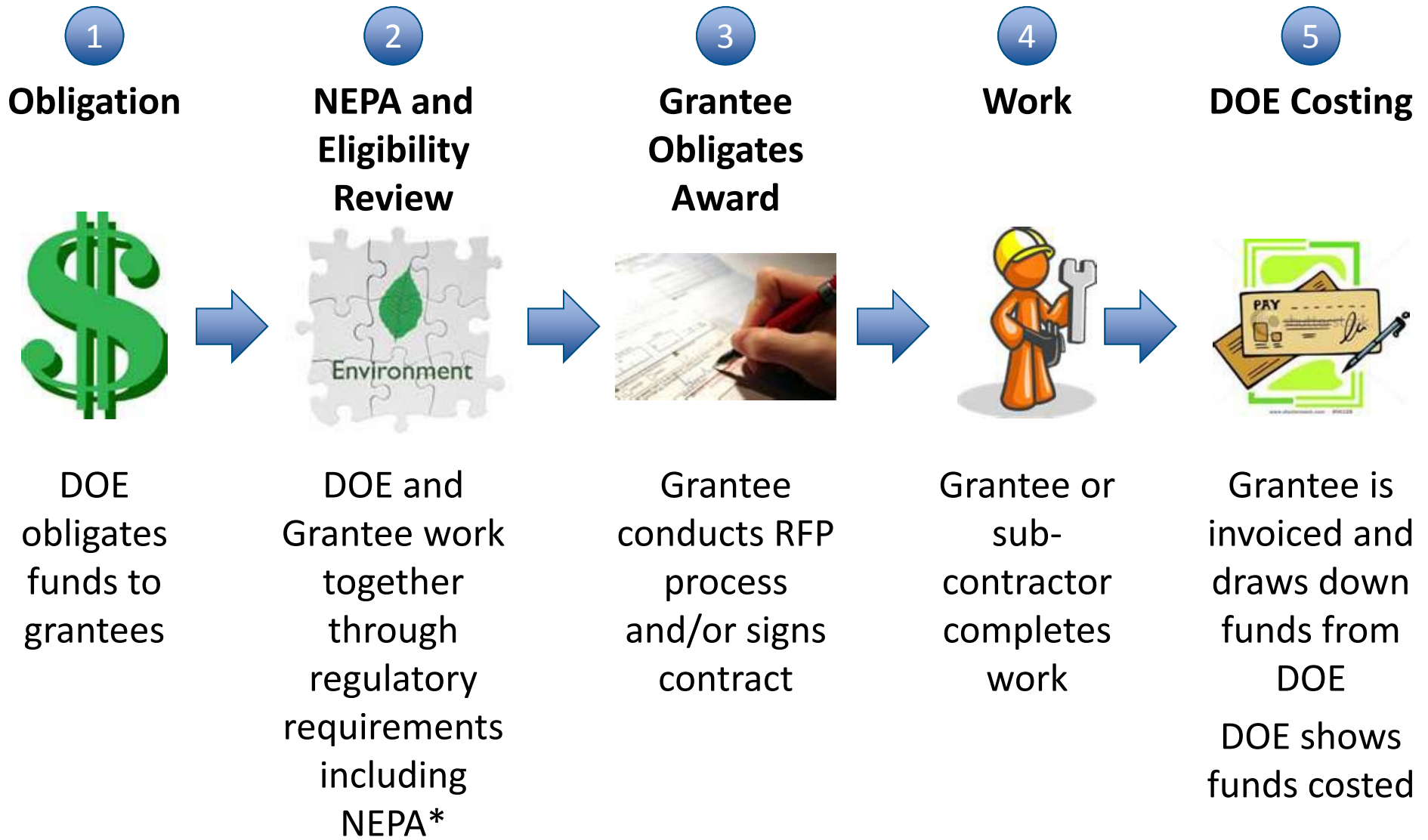
David Posner is supporting the implementation of the EECBG program. He recently served as a policy advisor to a non-profit organization focused on reducing America's dependence on oil. He holds a Ph.D. in history from Yale University and an M.B.A in finance from The Wharton School of the University of Pennsylvania. He received his B.A. from Cornell University.

Purpose of this Guidance Status Report

- To communicate critical elements of recently issued guidance and help Grantees get to “Go”
- To help identify and satisfy guidance needs of recipients and stakeholders
- To facilitate and accelerate costing/spending with clear guidance
- To continually educate and train new recipients, stakeholders, and staff
- To listen to your needs for more guidance help



EECBG Process – From Obligation to Costing



*In some cases NEPA occurs after grantee obligation

EECBG HQ Program Guidance Contacts

Email Guidance questions to:

- Your Project Officer
- Mark.Johnson@ee.doe.gov — (guidance)
- Pam.Mendelson@ee.doe.gov — (field offices and SWAT)
- Frank.Norcross@ee.doe.gov —(reporting)
- David.Posner@ee.doe.gov — (guidance)

Program Guidance -Released

- **Contracting Officer Approval Of Sub-Grants and Loans**
- **National Environmental Policy Act Guide**
- **Guidance On Implementation Of The Davis-Bacon Act Prevailing Wage Requirements**, including status of the determination whether Davis-Bacon Act wage assurance records must be kept by homeowners who participate in a program funded by a EECBG program: NO!
- **Revolving Loan Funds**
- **Guidance On The Buy American Provisions**, including Request for Information (RFI) which is located at ...
http://www1.eere.energy.gov/recovery/buy_american_provision.html

Program Guidance Coming Soon

- **New Guidance On The Buy American Provisions** in response to RFI
- **Historic Preservation Implementation**
- **Reporting**
- **Waste Stream**

Sub-grants and Loans

- DOE's Office of Procurement and Assistance Policy issued a Financial Assistance Memo (FAM) on 11/19/09 containing a revised clause for the standard EECBG Terms and Conditions of award.
- The revised clause was formerly titled "Sub-grant Approvals" and is now titled "Sub-grants and Loans."
- The former clause required DOE approval for all sub-grants with an estimated cost greater than 25% of the Total Allocation or \$1,000,000, whichever was less.
- DOE has clarified the term "loan" to include Revolving Loan Fund loans, Property Assessed Clean Energy loan-type program loans, and others.

Sub-grants and Loans \leq \$2M: What is Required

- Selection of Sub-Grantee(s) and Loan-Recipient(s) for Sub-grants and Loans with an Estimated Cost of \$2,000,000 or Less :
 - Upon the selection of sub-grantee(s) and loan recipient(s) by the direct recipient and within 180 days of the award date to the direct recipient, the direct recipient is required to notify DOE with the following information for each recipient of a sub-grant or loan: name, DUNS number, award or loan amount, and statement of work including applicable activities.
 - **DOE Contracting Officer approval of this information is not required.**

Sub-grants and Loans $>$ \$2M: What is Required

- Sub-grants and Loans with an Estimated Cost of Greater Than \$2,000,000:
 - All of the requirements for smaller Sub-grants and Loans pertain and, in addition, the direct recipient must submit for approval by the Contracting Officer the following information for each sub-grant or loan:
 - SF424A Budget Information – Nonconstruction Programs,
 - PMC 123.1 Cost Reasonableness Determination for Financial Assistance, available at <https://www.eere-pmc.energy.gov/forms.aspx>

Sub-grants and Loans

- Conclusion: Approval by the Contracting Officer of sub-grants and loans made by direct recipients is required only for sub-grants and loans with an estimated cost of greater than \$2,000,000.
- DOE Contracting Officers are not required to approve the eligibility of activities of recipient sub-grantee(s) and loan recipient(s).
- For 180-day timeline constraints, please contact your Project Officer.

NEPA

- Grantees apply for funding under broad “topic” areas. These topic areas are known as “Activities” under the EECBG program.
- Grantees may spend awarded funds only on projects for which DOE has completed its NEPA review.
- For many EECBG Activities, a Categorical Exclusion [“CX”] will be appropriate and mark the end of NEPA review.
- However, for some Activities, DOE may need more information before it can make a CX determination (or it may determine that an EA/FONSI or EIS is needed).
- Grantees must pay for the costs of an EA or an EIS out of their grant funds.

NEPA

- What is a categorical exclusion? DOE has concluded that many types (or classes) of actions normally do not have the potential to cause significant environmental impacts and, thus, are categorically excluded from the need to prepare an EA or EIS. CXs must be established by rulemaking. The complete list of DOE's CXs is contained in Appendices A and B to Subpart D of DOE's NEPA regulations (10 CFR Part 1021); please refer to:
http://apps1.eere.energy.gov/state_energy_program/doe_guidelines_nepa.cfm
- Appendix A mostly includes administrative actions.
- Appendix B includes actions more likely to have a physical effect.

NEPA

- Some proposed projects of a type that normally would fit within one or more of DOE's CXs but may require further NEPA review (i.e., preparation of an EA or EIS) because of "extraordinary circumstances."
- A CX determination completes the NEPA review process for the projects addressed in that CX determination.
- For detailed CX exclusion lists, please contact the your Project Officer or a member of the Block Grant team.

NEPA

- In cases where the proposed project may have a significant impact on the human environment, DOE must 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. If it finds that there is a potential for significant impacts, DOE must then prepare an EIS.
- If DOE finds that there are no significant impacts, it may issue a Finding of No Significant Impact (FONSI) and go forward with the project. Preparing EAs/FONSIs and EISs can take from a few months to more than a year and can be costly.

NEPA

- When DOE has not completed the NEPA review process for all of the projects proposed by a Grantee within an Activity, DOE typically places a NEPA “condition” (also known as a “prohibition”) on some types of projects within the Activity. The condition prohibits the Grantee from spending funds on *any project within an Activity that DOE has not exempted from the prohibition.*
- 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 funds on these projects. Indeed, Grantees can use all of the funds for a particular Activity on these projects even though spending funds on other projects within the Activity is prohibited until NEPA reviews on them are completed for those projects.
- Infrequently, DOE may conclude that it cannot make NEPA determinations for any projects in an Activity. In that case, all projects are prohibited until the Grantee provides more information.

NEPA

- NEPA Condition Example: Some Grantees sought grants to conduct an energy audit of all of their government buildings in order to identify the retrofit activities that would provide the most energy savings. Where the range of buildings and potential retrofit activities were broad, DOE made a CX determination which allowed the Grantee to expend funds on the actual audit yet placed a condition on the grant funds pending NEPA determinations for any of the specific retrofit activities. In order to remove or “clear” this condition, the Grantee needed to provide additional information to the DOE project officer upon completion of the audit and selection of the retrofit activities.

NEPA

- DOE already has made CX determinations for several revolving loan programs proposed in **SEP** applications. DOE reviewed the parameters of the revolving loan program and based its NEPA determination on the types of activities for which a Grantee proposed to make or award a loan or grant. More detailed and specific parameters (e.g., targeted at a particular type of activity such as solar hot water heaters for residences) are simpler for DOE to review than very general parameters (e.g., a very broad program to fund everything from retrofitting homes with energy efficient windows to creating large wind farms).

NEPA

- In October, DOE provided an EECBG Template to the states. These Templates are optional tools that a Grantee may use to help DOE expedite NEPA review for certain EECBG projects or groups of projects. DOE has learned that many of the proposed projects, and even entire programs, may qualify for CX determinations. In the Templates, DOE has identified certain categories of projects that commonly qualify for CX determinations. The Templates provide instructions on how submit information to DOE and what requirements must be met in order for a Grantee to use them.

Davis-Bacon Act

- 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. 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.

Davis-Bacon Act

- The provisions of this guidance do not apply to U.S. Territories.
- Tribal governments are exempt from the DBA provisions only when the Tribal government performs work using its employees.
- The Davis-Bacon Act applies to all contractors that employ laborers and/or mechanics performing work under a Grant Award.
- DBA provisions do not apply to homeowners.

Davis-Bacon Act

- On January 5, 2010, Department of Labor (DOL) provided guidance to DOE concerning the applicability of DBA requirements to individual homeowners who participate in and benefit from rebates, grants and financing programs under EECBG.
- DOL has determined that DBA requirements do not apply to individual homeowners who participate in or benefit from
 - 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;
 - 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
 - EECBG energy improvement financing programs that consist of providing direct loans to individual homeowners for energy efficiency and renewable energy projects for their homes.

Davis-Bacon Act

- 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).

Davis-Bacon Act

- All recipients, 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.

Davis-Bacon Act

- 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 provide the wage determination to the contractors or subcontractors 10 calendar days prior to issuing the solicitation.
- 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 agency 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.

Davis-Bacon Act

- Payroll Records: Grantees/subgrantees and contractors/subcontractors on these projects funded or assisted in whole or part by Recovery Act funds shall maintain payrolls and basic records relating to payroll during the course of the work and preserve them for a period of three years thereafter for all laborers and mechanics working on the project, or as designated in the grant document. They must also ensure that all laborers and mechanics on a project funded or assisted in whole or part with Recovery Act funds are paid on a weekly basis and must submit weekly certified payroll records to the contracting and administering agency.

Davis-Bacon Act

- **Electronic Signatures:** Electronic certification documents are sufficient for compliance purposes under the DBA and may be accepted and maintained by the Recipient in compliance with its requirement to maintain the records on behalf of DOE. The Recipient is responsible for ensuring the accuracy of the electronic signature process, and the proper retention and accessibility of the electronically transmitted documents.
- **Scanned Hard Copies:** do not carry the same legal effect as handwritten signatures for DOL enforcement purposes. As such, a CAA may not simply scan the certified payroll and forward to the Recipient. The Recipient, in turn, may not maintain such scanned certified payrolls as fulfillment of its requirements to maintain the records on behalf of DOE.

Davis-Bacon Act

- **Wage Rates:** Wage rates can be found at www.wdol.gov. If county recipients in any State do not have published DOL wage rates, then the county must submit a request for conformance to the DOL. The conformance process often takes up to six weeks to be completed so county should plan its project activities accordingly.

Revolving Loan Funds

- EECBG grantees must comply with Title V, Subtitle E of the Energy Independence and Security Act of 2007 (EISA; Pub. L. No. 110-140) that mandates a limitation on the use of funds for the establishment (i.e., capitalization of revolving loan funds by formula-eligible units of local government and formula eligible tribes. This limitation is the greater of 20 percent of the allocation or \$250,000.

Revolving Loan Funds

The Restriction **does not** apply to

- Administrative costs associated with an RLF such as loan loss reserve funds, loan insurance, or interest-rate buy-downs.
- Financing programs that are not RLFs such as
 - Property-Assessed Clean Energy (PACE) financing programs that use municipal bonds or other sources of funds as the direct loan capital
 - loan guarantees
 - energy saving performance contracting (ESPC) programs that use private capital as the direct loan capital
 - other financing programs permissible under 42 USC 17154 (4) that do not use EECBG funds as direct loan capital.
- RLFs established by states, U.S. territories, formula-ineligible units of local government, or formula ineligible tribes.

Revolving Loan Funds

- There is no limitation on the amount of leverage funds that can be contributed to the establishment of an RLF. Leveraged Funds are any funds the recipient secures from a source other than DOE EECBG program funds that are contributed to activities supported by DOE EECBG program funds.
- **Obligation:** EECBG program monies being used for a revolving loan fund are considered obligated by the recipient once they have been used to capitalize an RLF. EECBG recipients may draw down funds to capitalize a loan fund only when a loan application from potential borrowers has been received for such funds, unless state or local requirements dictate otherwise. If an EECBG recipient requires an earlier draw down under such requirements, they should document the relevant requirement and share that documentation with their Project Officer before making an early draw down.

Revolving Loan Funds

- Expenditure: EECBG program monies being used for a revolving loan fund are considered expended by the recipient when the RLF has loaned to specific borrowers an amount at least equal the program monies that initially capitalized the fund.
- Fund Structure: All loan repayments and income (such as fees and interest) from an RLF that uses EECBG funds to capitalize the fund must be reinvested into the RLF.

Summary of Buy American Provision

- The Buy American provision in the American Recovery and Reinvestment Act of 2009 (section 1605 of Title XVI), 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, or repair of a public building or public work unless all the iron, steel, and manufactured goods used are produced in the United States. The law also requires that this provision be applied in a manner consistent with U.S. obligations under international agreements.
- The three exceptions are:
 1. that applying the Buy American Recovery Act provisions would be inconsistent with the 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”).

Buy American: Guidance Soon

- EERE recognizes that the Recovery Act Buy American provisions have generated numerous questions pertaining to their application and implementation (programmatic questions) in diverse projects around the country. Additionally, some grantees have encountered difficulties in procuring certain manufactured goods in compliance with the Buy American provisions.
- In response to these programmatic and procurement-related questions, 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 provisions, based on the nonavailability criterion outlined in 2 CFR 176.80.

Buy American: RFI Issued

EERE's Buy American Strategy:

1. The week of February 1st, we issued a Request for Information (RFI) in the Federal Register and on the Buy America website soliciting questions relating to (i) programmatic issues and (ii) procurement difficulties. NASEO is a key stakeholder that EERE aims to work with in order to draw attention to this RFI.
2. Answers to the programmatic questions identified through the RFI process will be issued as new Buy American guidance. EERE will continue to conduct outreach, for example through webinars, to provide opportunity to discuss and improve this guidance.

Buy American: RFI Process

EERE's Buy-American Strategy (cont.):

3. The procurement difficulties section of the RFI will provide a format for the submission of technical specifications for manufactured goods. Submitted information will be catalogued and disseminated to the manufacturing community through the U.S. Department of Commerce's Manufacturing Extension Partnership (MEP), labor unions, trade associations, and other stakeholders. This is a critical element of EERE's due diligence process for thoroughly investigating the domestic manufacturing potential for goods before considering the granting of any waivers based on the nonavailability criterion.
4. Simultaneously, the week of February 8th, 2010 EERE will issue waivers for 3 manufactured goods that have been holding up projects around the country due to their domestic nonavailability.
 - LED traffic lights and signals
 - Fluorescent electronic ballasts
 - Compact fluorescent light bulbs

Buy American: Resources

- Questions can be submitted to: buyamerican@ee.doe.gov
- Website:
http://www1.eere.energy.gov/recovery/buy_american_provision.html

Historic Preservation: Guidance Soon

- 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 NHPA.
- DOE has developed a “draft” Agreement that can be executed between the Grantee and the SHPO that outlines how compliance will occur.
- This “draft” Agreement, when executed between the Grantee and the SHPO, serves as the “consultation” step in the Section 106 review process (see Step 1 on next slide). As long as the Grantee adheres to a scope of work in conformance with this agreement, the Grantee need not perform any further Section 106 review.

Historic Preservation: Guidance Soon

- The Agreement to be included in the Guidance (and which will represent agreement between DOE and any undersigned SHPO/THPO, 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 the property and should occur with no review required by the SHPO or THPO. It is when the services will alter the visual exterior of the building or severely impact the interior craftsmanship of the property that SHPO or THPO review is required.

REPORTING: GUIDANCE SOON

- As published in the January 21 edition of the [Federal Register](#), DOE has invited the public to comment on draft reporting guidance for the EECBG program.
- This draft program guidance DID NOT take effect prior to the DOE reporting deadline on January 30th and IS NOT YET in effect.
- Comments are due no later than February 4, 2010.
- 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. A host of training tools to familiarize users with PAGE are available, including a weekly webinar.

REPORTING: GUIDANCE SOON

- DOE has developed a “calculator” tool to help recipients estimate 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 29th, an updated calculator covering all metric activities has been available on the guidance webpage
- Before the next quarterly reporting deadline, it will be available online as a link from the Metrics Wizard functionality on PAGE.

For More Information

- **EECBG Program Page**
<http://www.eecbg.energy.gov/>
- **EECBG Solution Center**
<http://www.eecbg.energy.gov/solutioncenter/default.html>
- **EECBG Program Guidance**
http://www.eecbg.energy.gov/about/program_guidance.html
- **EERE Recovery Act Activities**
<http://www.eere.energy.gov/recovery/>
- **Weatherization and Intergovernmental Program**
<http://www.eere.energy.gov/wip/>

Additional Resources: EECBG Knowledge Base

Fast, easy and all EECBG guidance questions and answers in one place!

<http://www.eecbg.energy.gov/about/faq.html>

The screenshot shows the 'About the Program' page of the EECBG Knowledge Base. The page header includes the U.S. Department of Energy logo and the text 'Energy Efficiency & Renewable Energy'. Below the header is a green banner with the title 'Energy Efficiency and Conservation Block Grant Program'. A navigation menu includes links for 'About the Program', 'Solution Center', 'Grantees', 'Information Resources', and 'Financial Opportunities'. The main content area is titled 'About the Program' and features a section for 'EECBG Frequently Asked Questions'. This section includes a search interface with a text input field, radio buttons for 'Exact Phrase', 'All Words', and 'Any Word', and a dropdown menu for 'Select a category'. The dropdown menu lists categories such as 'All Categories', 'Award Date', 'Buy American', 'Competitive Grant', 'Davis-Bacon Act', and 'Eligibility'. A 'Search' button is located below the search options.



- Current, fresh and vetted FAQs
- Updated and verified continuously
- EECBG guidance knowledge-base of all Q&As
- Fast search, even by category

Additional Resources

EECBG Program Guidance

- **EECBG 10-001 Contracting Officer Approval of Sub-grants and Loans Under EECBG — Formula**
 - http://www.eecbg.energy.gov/Downloads/EECBG_Sub_Grants_and_Loans_Program_Guidance_12009.pdf
- **EECBG 10-002 Revolving Loan Funds under the EECBG — Formula and Competitive**
 - http://www.eecbg.energy.gov/Downloads/EECBG_RLF_Program_120709.pdf
- **EECBG 10-003 National Environmental Policy Act NEPA / Wastestreams**
 - http://www.eecbg.energy.gov/Downloads/EECBG_10-003_NEPA_Program_Guidance_Notice_121709.pdf
- **EECBG 10-004 Davis Bacon Act**
 - http://www.eecbg.energy.gov/Downloads/EECBG_Program_Guidance_DBA_121709.pdf
- **Guidance on the Buy American provision as applied to Energy Efficiency and Renewable Energy Projects funded by the American Recovery and Reinvestment Act of 2009**
 - http://www.eecbg.energy.gov/Downloads/EERE_Program_Guidance_Buy_American_121709.pdf
- **EECBG 10-005 Guidance on Davis Bacon Act for Individual Homeowners**
 - http://www.eecbg.energy.gov/Downloads/Guidance_for_Rebates_Notice.pdf
- **EECBG - Recovery Act Benefits Calculator**
 - http://www.eecbg.energy.gov/Downloads/ARRA_Benefits_Reporting_Calculator.xls

Additional Resources

- **Frequently Asked Questions for EECBG**
 - <http://www.eecbg.energy.gov/about/FAQ.html>
- **NEPA Guidance**
 - http://apps1.eere.energy.gov/state_energy_program/doe_guidelines_nepa.cfm
- **NEPA FAQs**
 - <http://www.eecbg.energy.gov/nepa.html>
- **Frequently Asked Questions for Davis Bacon Act**
 - <http://www.eecbg.energy.gov/davisbacon.html>
- **Formula post-award procurement questions**
 - http://www.eecbg.energy.gov/Downloads/Post_Award_Questions_10_27_09.pdf
- **Formula methodology**
 - http://www.eecbg.energy.gov/downloads/EECBG_Federal_Register_Notice_04_15_09.pdf
- **Formula Funding Opportunity Announcement**
 - http://www.eecbg.energy.gov/downloads/DE_FOA_000013_Amendment_000003.pdf
- **State and local formula allocations**
 - <http://www.eecbg.energy.gov/grantalloc.html>
- **Tribal formula allocations**
 - <http://www.eecbg.energy.gov/tribealloc.html>

Additional Resources

- **Formula appeal decisions**
 - <http://www.oia.doe.gov/EECBG/report.asp>
- **Competitive grants main page**
 - http://www.eecbg.energy.gov/about/competitive_grants.html
- **Competitive grants frequently asked questions**
 - http://www.eecbg.energy.gov/about/competitive_grants.html
- **Competitive Funding Opportunity Announcement**
 - http://www.eecbg.energy.gov/Downloads/EECBG_Competitive_FOA148_Amendment3.pdf
- **Archived webcasts**
 - <http://www.eecbg.energy.gov/solutioncenter/webcasts/default.html>

Thank You !

Check the website for guidance updates:

www.eecbg.energy.gov

http://www.eecbg.energy.gov/about/program_guidance.html

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