Department of Energy
Washington, DC 20585

STATE ENERGY PROGRAM NOTICE (10-004), ENERGY EFFICIENCY CONSERVATION BLOCK GRANT PROGRAM NOTICE (10-005), AND APPLIANCE REBATE PROGRAM NOTICE (10-001)

EFFECTIVE DATE: January 11, 2010

SUBJECT: GUIDANCE ON DAVIS BACON ACT (DBA) REQUIREMENTS FOR AMERICAN REINVESTMENT AND RECOVERY ACT OF 2009 (ARRA)-FUNDED REBATE, GRANT AND FINANCING PROGRAMS FOR INDIVIDUAL HOMEOWNERS CONDUCTED UNDER THE STATE ENERGY PROGRAM (SEP), ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG) PROGRAM, AND THE APPLIANCE REBATE PROGRAM

SCOPE: The provisions of this guidance apply to rebates, grants and financing programs for individual homeowners conducted under the SEP, EECBG Program, and Appliance Rebate Program that are funded in whole or in part by ARRA funds. The identified programs benefit individual homeowners who are not responsible for compliance with DBA requirements and are not regarded as ARRA "recipients" or "subrecipients" under applicable guidance issued by the Office of Management and Budget. This guidance does not extend to SEP and EECBG program grant recipients and subrecipients such as utilities, small businesses, contractors or other entities that receive ARRA-funded grants, rebates, discounts, or financing.

BACKGROUND: On November 19, 2009**,** the Department of Labor (DOL) issued guidance to the Department of Energy (DOE) that individual homeowners who receive rebates for material and/or labor costs they have incurred in connection with qualifying energy efficiency and weatherization improvements to their homes under an ARRA-funded SEP rebate program are not responsible for compliance with DBA requirements. On January 5, 2010, DOL provided additional guidance to DOE concerning applicability of DBA requirements to individual homeowners who participate in and benefit from rebates, grants and financing programs under other ARRA-funded EERE programs.

DOL has determined that DBA requirements do not apply to individual homeowners who participate in or benefit from the following ARRA-funded programs: (1) the Appliance Rebate Program under which participating homeowners receive rebates for the purchase of residential Energy Star products; (2) 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; (3) SEP and 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 (4) SEP 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.

APPLIANCE REBATE PROGRAM: Under the Appliance Rebate Program, grants are awarded to States that establish (or have established) a State energy efficiency appliance rebate program that provides rebates to residential consumers for the purchase of residential Energy Star products, or products with improved efficiency in cold climates. While most of these rebates will involve the purchase of equipment that does not require construction activities (such as refrigerators, dishwashers, and washers/dryers), some of the equipment (such as heating and cooling systems and hot water heaters) will require a homeowner to hire a contractor to install the equipment. Based upon DOL guidance, DBA requirements do not apply to individual homeowners who receive rebates through this program.

EECBG CONSUMER REBATES: EECBG-funded programs established by States or ULG for energy efficiency and/or renewable energy improvements may include consumer rebate programs that directly benefit individual homeowners. Under these programs, DOE provides grants to States or ULG that in turn provide rebates directly to individual homeowners who may have expended funds for qualifying construction activities associated with energy efficiency and/or renewable energy improvements to their homes. Based upon DOL guidance, DBA requirements do not apply to individual homeowners who receive rebates through such EECBG- funded programs.

SEP AND EECBG GRANT PROGRAMS FOR INDIVIDUAL HOMEOWNERS: SEPand EECBG grant programs provide “up-front” funding for energy efficiency and/or renewable energy projects by individual homeowners for their homes. As part of a project, an individual homeowner may hire a contractor to perform any necessary construction work to complete the project. No repayment to the entity providing the grant would be required under these programs. Based upon DOL guidance, DBA requirements do not apply to individual homeowners who receive grants under such SEP and EECBG programs.

SEP AND EECBG FINANCING PROGRAMS FOR INDIVIDUAL HOMEOWNERS: SEP and EECBG energy improvement financing programs involve States and ULG providing ARRA funds for upfront funding in the form of direct loans to individual homeowners for energy efficiency and renewable energy projects.. As part of a project, an individual homeowner may hire a contractor to perform any necessary construction work to complete the project. A homeowner may apply for a loan from a State or ULG and then the homeowner will repay the loan over time through different mechanisms as determined by the State or ULG such as: (1) an additional fee on the individual’s utility bill (*i.e.*, “on-bill financing”); (2) direct loan payments by the individual to the State or the ULG or their fund management representative; or (3) an assessment on the individual’s property tax bills.

ARRA funds for these financing programs may be used to support those programs in addition to being used to provide loans direct to individual homeowners. States and ULG may use ARRA funds to administer the loan programs and/or collateralize funds provided by third-party lenders ("program enhancement") to States or ULG that can be used for additional loans to individual homeowners. For example, the ARRA funds may be used so that States and ULG may charge homeowners a lower interest rate than they would otherwise be able to obtain from a State or ULG by using the funds to pay the difference between the interest rate charged to the homeowner and the going market interest rate (*i.e.*, an "interest rate buy down"). In addition, ARRA funds may be used by a State or ULG to purchase loan insurance that enables the State, ULG, or third-party lender to issue a loan directly to an individual homeowner at a lower rate than the going market interest rate. Also, ARRA funds may be used by a State or ULG to establish a debt service reserve fund or loan loss reserve fund to serve as added assurance to lenders, the State or ULG that there are sufficient funds to cover delinquencies if individual homeowners are unable to make their payments on time. Based upon DOL guidance, DBA requirements do not apply to the described SEP and EECBG financing programs.

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