

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF AFFORDABLE HOUSING PRESERVATION

Energy Innovation Fund – Multifamily Pilot Program
Frequently Asked Questions
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ELIGIBILITY

1. Can an entity that manages over 1,000 affordable housing units in its entire portfolio receive funds to perform work on select properties that have fewer than 1,000 affordable units?

Answer: Yes. Eligible applicants must manage or direct programs impacting a minimum of 1,000 units of affordable housing. The proposed activity is not required to affect 1,000 units.

2. What does the phrase “properties under control of applicant” mean for meeting the eligible applicant experience test required for some categories of applicants?

Answer: Eligible applicant entities must be able to show that they administer (manage or direct) affordable housing development and rehabilitation programs, which may include technical assistance and capacity building programs, so long as they impact a minimum of 1,000 units of affordable housing.

3. Is this program available only for current HUD affordable housing properties or is it available to any multifamily property in need of more energy efficiency improvements?

Answer: No, any properties are eligible so long as they meet the criteria set out in the NOFA as follows: “Eligible Multifamily Properties. Eligible Multifamily Properties are existing properties with at least 5 units, having a primary purpose of residential housing, in which a majority of units are reserved for Low-Income households as defined below, inclusive of public housing. “

4. Can these grants be used for construction of new units?

Answer: No. The overview of the program in the NOFA states that the primary purpose of the program is to stimulate innovative approaches for increasing the energy efficiency of existing multifamily residential properties that can be replicated by others. The definition of Eligible Multifamily Properties states that they are “existing properties.” Eligible Properties must be existing and occupied as of the date of application.

5. Can I bundle my portfolio of properties to meet the 1,000 unit minimum assuming I am going to apply the EIF funds to all the properties bundled to meet the 1,000 unit minimum?

Answer: The 1,000 unit requirement is to establish eligibility to apply for a grant by two of the four categories of eligible applicants; it is not a threshold number of properties that must be included in the grant activity to be performed. Please review eligible applicant and eligible activity in the NOFA for more detail.

6. Does this program apply to Mixed Income Mixed Finance properties?

Answer: Yes, so long as the affordable housing criteria are met.

7. Due to the two-year time frame, we would want to include projects in the pipeline of our current multifamily program (though they would not have funds expended until the EIF grant period begins). Is this consistent with the grant's intent?

Answer: Yes, that is an acceptable scenario.

8. We would test a variety of approaches during the grant period. Some could be instrumented, then retrofitted, then have subsequent behavior mod piece. Some would have to be retrofitted and instrumented, and then have behavior mod piece. Some would have all simultaneously. We would also analyze actual savings on projects completed before the EIF grant. We understand all these activities would be eligible under the EIF program, correct?

Answer: These appear to be eligible activities.

9. For "Applied Research" it seems clear that the requirements for site control (Sec 3.f), extended use period (Sec 3.h), reduction of consumption by 20% (2.b(2)(d)), etc., are all applicable. Is this true even if all we're doing is looking to provide more information, greater control, or solutions to individual but critical regulatory or structural barriers to innovation?

Answer: No pure research is permitted under the EIF program. There must be some direct relationship to properties.

10. How is "pure research," which is not permitted under this NOFA, distinguished from "applied research"? Are comparison groups of properties, owners, and/or tenants allowed?

Answer: Some activity must occur at the property level. You cannot have only a survey of something that occurred.

11. Could an individual use this fund to update a new purchase of multifamily four units?

Answer: This program may be used only if you meet the eligibility requirements for both applicant and activity and are bringing an innovative, replicable and scalable idea forward for testing. It is unlikely that updating a property alone would qualify for this funding.

12. Would a recent remodel of 1,000 units of housing, including improvement or replacement with energy efficient HVAC, new roofs, windows, doors, insulation and interior remodel, be an eligible activity under the Energy Innovation program?

Answer: The NOFA is designed for innovative, prospective work over which HUD will exercise some developmental control. It is not expected that this funding could be applied to work already completed.

13. We would be interested in installing solar energy panels to increase the energy efficiency at several of our affordable communities. Would these projects qualify for the grant?

Answer: Yes, this is an eligible concept; they would qualify to apply for a grant. However this is a competition for innovative ideas. Installation of solar panels alone (like installing central air, new heating units, or new windows) or a retrofit that includes a number of previously tested ideas for energy saving, may not be competitive for award.

14. We are interested in investing in sub-metering to provide more tenant control over water consumption and sewer usage. Does your program provide funding for such initiatives?

Answer: Yes, this is an eligible activity. However, the intent of this program is to elicit innovative, scalable, replicable approaches to energy efficiency, and a sub metering project per se may or may not be competitively innovative.

15. Our organization has recently assisted public housing residents at three properties in launching a recycling and composting business, resulting in reduced trash bills and increased recycling. The employees are residents with multiple barriers to work. To date 20 jobs have been created. This business has a direct impact on energy savings through our trash bills, has raised environmental awareness, diverted tons of trash to recycling and composting and created jobs for public housing residents. Is such a program eligible to apply for an Energy Innovation grant?

Answer: As described this activity would not be eligible for an Energy Innovation grant. Your program and approach have a lot of merit, however, your program does not have energy efficiency as its primary objective and therefore is unlikely to meet the 20% energy savings threshold.

16. May an organization apply as a lead applicant for one application, and also be a partner in an initiative that is the subject of an unrelated third party's application?

Answer: Yes. You may apply for as many grants as you like, but can only receive one award per category and one per entity.

17. Although eligible property is defined as existing and occupied as of the date of application, would a development that has just been vacated specifically for this work be eligible to apply for the energy innovation fund?

Answer: Unfortunately, no; the properties must be operating and occupied at the time of application.

18. If a public housing property has six buildings with four units in each building, for a total of 24 units in the property, and we selected only one of the four-unit buildings for a demonstration, would the four-unit building meet the eligibility requirements of the NOFA?

Answer: As long as the project, in this case the 24 units, meets the test, the pilot can certainly propose to do work on just part of the project. The example you give would qualify.

19. Our rent roll includes affordable housing subsidies. Would this be a building that would qualify to receive grant money?

Answer: If the property currently receives some sort of affordability subsidy (section 8 or other), it will most likely have to certify periodically to the subsidy provider (whether HUD, a state or local authority) that the residents meet the income requirements. If that is the case, and if the income requirements meet or are more restrictive than those outlined in the EIF NOFA, then the application can include a copy of the certification of incomes and eligibility to meet the NOFA affordability requirement. If the property does not have a subsidy or a requirement to certify, then the owner/manager will have to get certifications from the residents of their incomes, and will in turn, as part of its application, certify that a majority of the units serve income-qualified residents. An affordability requirement will be imposed on the property for 10 years going forward, during which time the owner/manager will have to annually certify that affordability requirements continue to be met.

20. What is the minimum percentage of units per apartment community or individual property that must be Low Income Housing to meet the eligibility requirements?

Answer. There must be a majority of units reserved for Low-Income households. The relevant definitions from page 4 of the NOFA are quoted below:

Eligible Multifamily Properties. Eligible Multifamily Properties are existing properties with at least 5 units, having a primary purpose of residential housing, in which a majority of units are reserved for Low-Income households as defined below, inclusive of public housing.

Low Income. Low-income is defined as family income that does not exceed 80 percent of the median family income for the area, per Section 3 of the U.S. Housing Act of 1937, as amended (42 U.S.C. 1437a). A majority of the units (more than half) must meet this standard.

21. For the 1,000 unit minimum eligibility, do Housing Choice Voucher units count toward that minimum?

Answer: Generally, yes.

22. "Eligible Applicants" includes private or non-profit entities administering technical assistance and capacity-building programs impacting at least 1,000 units. Presumably such entities will not be the direct owner of any units, so would the individual owner entities need to be identified as part of the

"applicant" in order to satisfy any subsequent requirement for site control? Or can a technical assistance contract with an owner entity establish such a relationship?

Answer: You appear to fit Section 5.b. of the eligibility criteria which requires that your experience must show that you have directed programs impacting at least 1,000 units. Technical assistance programs provide the necessary relationship.

5.b. National, regional, or local private or non-profit entities currently administering affordable housing development and rehabilitation programs, including technical assistance and capacity building programs. Such entities must manage or direct programs impacting a minimum of 1000 units of affordable housing.

23. We are preparing an application to the EIF to rehab multi-family homes in NJ using advanced energy efficiency techniques. How do we determine what portion of the work is eligible for funding through the EI, i.e., do we estimate the amount of money that the energy efficiency measures will cost outright, do we estimate how much they represent in costs above and beyond the "normal" building, and can we cover costs beyond the hard costs of the energy efficiency measures (for ex., architectural fees relating to sustainable improvements, sustainable building consultants, additional staff time spent on new innovations)?

Answer: The EI NOFA does not establish a set of rules for permitted work activities. It is designed to elicit an innovative idea that you intend to test for energy savings and that, if successful, HUD can replicate in other circumstances in both large and small applications. Our key elements for an Energy Innovation activity are innovation, replicability and scalability. It would be for you to estimate the value of "hard cost" contributions based on reasonable market value.

24. Can the 1,000 units include conveyed units and NAHASDA CAS? Currently our organization manages 640 units; however, this doesn't include conveyed units that have been in our management inventory.

Answer: Please review the Eligible Applicant categories carefully to see if your "conveyed" and/or NAHASDA units provide you with the necessary experience to qualify under 5.b. or 5.d. As management of the units is in the definition for these two categories of eligibility, you may qualify.

5. Eligible Applicants. Eligible applicants are limited to:

b. National, regional, or local private or non-profit entities currently administering affordable housing development and rehabilitation programs, including technical assistance and capacity building programs. Such entities must manage or direct programs impacting a minimum of 1000 units of affordable housing.

d. Nonprofit or for-profit organizations (and/or consortia thereof) that own or control a portfolio of Eligible Multifamily Properties. Such entities must manage or direct programs impacting a minimum of 1000 units of affordable housing.

25. We are a weatherization and rehab agency working in 1,000 homes per year. Would we be an eligible candidate? If not, if we could partner with management companies managing 1,000+ units per year, would we be eligible?

Answer: Based on the four categories of Eligible Applicants, without affordable housing experience, you would need a partner.

26. Are Housing Finance Agencies eligible to apply for the financing demonstration funding?

Answer: If your charter defines your purpose as an HFA to include preservation, rehabilitation, and/or new construction of affordable rental housing serving low-income households or a more general purpose under one of the other categories that the NOFA names as identifying an “eligible applicant,” you should be eligible according to the NOFA definitions.

27. Our organization is the designated Housing Finance Agency for the state of Maryland. We provide a variety of housing financing including low income housing tax credits, tax exempt bonds, federal funds, and state funds for affordable rental housing. Does our agency qualify as a special purpose financing entity?

Answer: Generally, HFAs will qualify as entities under the “special purpose finance entity” criteria.

28. How do housing trust funds, as passive entities whose resources are distributed from the trust fund to operational entities, meet the 1,000 unit experience criteria?

Answer: There is not a 1,000 unit management and direction requirement for housing trust funds; therefore it would appear that a housing trust fund could apply directly or in consortium with its operational entities.

29. Can a local government be the lead agency working in collaboration with other non-profits?

Answer: Local government itself is not eligible, but housing finance agencies and public housing authorities can be, even if affiliated with the local government.

30. How are properties under an applicant's control if they are a CDFI or financing entity? We are a national intermediary funder with a network of members that own 80,000 units of housing, but we do not control them. Would this qualify?

Answer: It would appear that you qualify under 5.a. of NOFA: Treasury-certified community development financial institutions with affordable housing development and rehabilitation programs. Managing or directing programs for 1,000 unit of affordable housing is not a requirement for a CDFI.

31. Are RD properties eligible to apply?

Answer: As long as the rural development properties meet the affordability requirements and both the applicant and proposed activity also qualify for the program, you are eligible to apply. Eligible Multifamily Properties are defined as: existing properties with at least 5 units, having a primary purpose of residential housing, in which a majority of units are reserved for Low-Income households as defined below, inclusive of public housing.

32. Can I bundle my portfolio of properties to meet the 1,000 unit minimum, assuming I am going to apply the EIF funds to all the properties bundled to meet the 1,000 unit minimum?

Answer: The 1,000 unit requirement is to establish eligibility to apply for a grant by two of the four categories of eligible applicants; it is not a threshold number of properties that must be included in the grant activity to be performed. Please review eligible applicant and eligible activity in the NOFA for more detail.

33. The NOFA requires that the applicant must control units at proposed projects. May state housing finance agencies be the applicant, where the proposed projects are comprised of tax credit units that are not owned by the state agency?

Answer: Generally, HFAs will qualify as entities under the "special purpose finance entity" criteria, which do not have a 1,000 unit management and direction requirement

34. What defines a minority partner "interest" in the application entity?

Answer: An interest will be defined as any party named as part of the applicant entity, whether participation on that team is financial, advisory, or other, i.e., those parties who will play an active role in the EI activity. If you are named as an applicant for EI funding and/or your experience is being relied upon to meet eligibility requirements or to establish capacity of that applicant entity, you have an interest in that entity.

35. What does “properties under control of application” mean? We retrofit multifamily units, but do not own them or manage them. We partner with housing providers/owners to do these retrofits.

Answer: Please examine 5.c. Special Purpose Financing Entities in the Eligible Applicants list to determine if you are eligible in your individual capacity. Otherwise, it would appear that you require a partner who fits one of the eligibility criteria.

36. It was mentioned in the webinar that sub-metering of water would be considered an eligible expenditure for the EIF fund but such an application may not be competitive as it is not innovative. Our past requests to HUD Field Offices to change water & sewer from an owner-paid utility to a resident-paid utility were denied. Can you please advise us of HUD's policy regarding changing water & sewer from an owner-paid utility to a resident-paid utility for properties with a Project Based Section 8 HAP Contract?

Answer: Your application should clearly state your proposal and cite the rule or handbook that would require prior approval or waiver.

37. Can this funding be used to provide incentives to rental owners to install deep energy retrofit measures such as insulation, windows and mechanical upgrades?

Answer: Please note that the intent of this program is to elicit innovative, scalable, replicable approaches to energy efficiency. An incentive program, even with energy efficient components, per se may not be competitive unless it offers a unique perspective and can be adapted for future applications. Please be sure to review the descriptions of the Financing Demonstrations and Applied Research Demonstrations in the NOFA starting on page 6.

38. Is it acceptable under the grant to use all or a portion of the HUD grant award to fund actual construction hard costs as part of project activity under the grant scope of work?

Answer: Yes.

39. Is a Mobile Home Co-Op as an Eligible Entity?

Answer: After consideration and since we understand that the applicant entity is a co-op, we could possibly accept a use agreement on the underlying real estate. However, it would still be necessary to meet the affordability standard set out in the NOFA and the members of the co-op would be required to agree to income verification for the purpose of assessing affordability.

40. Could an entity that does energy audits use the grant as funding to implement and measure additional energy efficiency measures undertaken by its clients? If so, we would not have site control, but might have numerous properties and numerous clients involved.

Answer: In the example you give, the entity may be able to demonstrate site control by virtue of its clients' consent to do the audits or work at the properties.

41. Would partnering with another organization with project management expertise to operate the revolving loan fund be considered using specific expertise for purposes of the application?

A: Yes.

42. Would it impact the eligibility of the application if the organization offering specific expertise to operate the revolving loan fund is also applying for an EIF grant for a separate and unrelated project?

Answer: Yes, an "interest" will be defined as including any of the named entities whether advisory or otherwise and those parties who will play an active role in the EI activity. If you are named as an applicant for EI funding or your experience is being relied upon to meet eligibility requirements you would be eligible to participate in one activity as a principal and a second as a less than 50% interest holder.

43. Is site control required to be provided at the time of application, or can it be identified after award receipt?

Answer: Evidence of site control is not required at time of application; it is a condition precedent to the obligation of funds. However, applicants unable to demonstrate such control due to the nature of their proposed EI activity should bolster their application with such evidence as they do have. For those entities who won't own property, evidence may include letters from interested property owners demonstrating their interest in pursuing the proposed financing solution.

44. What is considered research and appropriate use of funds? For instance, could funding be used to provide quarterly measurement and verifications, on-site quality assurance, outreach and education to PHAs interested in an energy performance contracting model, and collection of utility data to support the development of benchmarking tools?

Answer: All of these activities may be eligible, but may not be innovative. Innovation is a keystone of the EI Fund activity and the most competitive applications will be offering unique ideas for testing.

45. Would we be limited to the PHA consortia identified in the application or could other PHAs participate as interest grows?

Answer: That would depend on the role the newly-proposed PHA would play. For new partners with an active role in the grant activity, you would need to request an amendment to the agreement. For lesser roles, you would need to ask in writing and have the change approved by HUD in advance of introducing new relationships.

46. What level of “shovel readiness” do you expect a project applying for the applied research grant to be at in order to be competitive? For example, do you expect projects to have completed their scopes of work detailing the retrofit measures? Will you be looking for plans or some other form of architectural/engineering documentation that describes the improvements? Will you require documentation substantiating project costs?

Answer: We recommend that you look at the draft work plan document (found in the application instructions package on grants.gov) for detail about how you will need to define the proposed activity. Certainly to define your project activity for the purposes of the EI Fund Application, you would need to have a defined scope of work and some supportable basis for projecting cost to support the funds requested. The better documented the activity is, the more competitive it is likely to be. And, to the extent that the specific, proposed scope of work is the innovation at the core of the proposal, more detail will be helpful in substantiating the feasibility of the proposal. Detailed documentation for each property may not be necessary.

47. Must an applicant meet ALL (a. – d.) eligibility requirements?

Answer: No, you must meet one of the four eligibility category requirements.

48. Would it be possible for us to be the lead applicant (and the awardee), but have a range of partners that fulfill the comprehensive requirements below? See below.

Answer: Yes, you will need a partner with the requisite affordable housing experience and that meets the management or direct programs requirements if eligibility is under Section b. or d.

49. We have a very affordable building material made out of recycled material that is designed to retrofit all buildings for energy efficiency and is made on-site. We are looking for a partner who manages properties that need retrofitting and who would be interested in demonstrating for this grant. Is there a source through HUD to find eligible properties?

Answer: We do not have a source for identifying eligible partners, but suggest that you look at the four categories of “eligible applicants” found in the NOFA to see who you might best partner with. You could contact your local HUD office or perhaps a local non-profit housing group for advice. You might also contact public housing authorities. If your reach is national, you might try National Leased Housing or NAHMA. Or you might also try them for referral to local organizations.

50. Can grant funds be used to reduce water consumption and can reduced water consumption be included in the "analysis to support a projected reduction in energy consumption of at least 20 percent on average by project over pre-intervention performance"? If so, how would an applicant arrive at an average projected savings among water consumption and other fuel consumption?

Answer: Water is not precluded as an activity; however, this activity alone may not form the basis for a competitive application. The second question here is the one you would be defining and addressing as a proposed activity.

APPLICATION

1. I have several complexes I am going to lump together to comprise 1,000 units. What name should appear on the application?

Answer: The 1,000 unit requirement is to establish eligibility to apply for a grant by two of the four categories of eligible applicants; it is not a threshold number of properties that must be included in the grant activity to be performed. Generally, applications should be made in the name of the eligible entity. Please consult the NOFA to determine which category of eligible applicant you are and that will likely guide your selection of a name under which to apply.

2. Please confirm that an eligible applicant can submit multiple applications for funding, but can only be a part of two funded applications: one as a lead or partner for a grant in one category and one as a partner with a successful applicant in another category.

Answer: Yes, but with the following caveat from the NOFA:

3. Number of Awards. An applicant is eligible for only one award to the applicant entity, either in the category for financing demonstrations or applied research demonstrations. Notwithstanding an award of grant funds made to any applicant entity, one separate award (in either category) may be made to another entity in which the applicant has an interest, as long as the interest is less than 50 percent ownership or control and is therefore not considered a Related Party as defined herein.

3. If an applicant makes a decision to officially support one other application with a less than 50% interest (in addition to an application in which they are a Related Party), can they informally indicate a desire to work with the applicant in the future and then determine if there are any formal opportunities to align/partner after HUD has announced the awards?

Answer: If the primary applicant can present a competitive application, fully detailing the work to be done and with what resources (or with a proposed range of alternative resources) the work will be

accomplished, without identifying specific other parties that may later be selected to have a partnership role, it is possible that the partners would not have to be specifically identified at the application stage.

4. Will HUD publish a list of all awardees? Is HUD anticipating another round of the EIF next year? Is it possible to be on the list of notification for that?

Answer: A complete list of all awardees will be posted publicly on the HUD website. At this time we do not anticipate another round of funding for this pilot initiative.

MATCHING FUNDS

1. Properties in our multifamily portfolio have cash in their reserves for replacement or residual receipts accounts. If we were to apply for funding under the Applied Research category to fund a comprehensive training and outreach program, could we use these funds as matching dollars?

Answer: Generally, no. Reserves for replacement will not be allowable to fulfill the match requirement. The match funds must be private, non-governmental funds. Reserve accounts that are owner funds, independent of the property, can certainly be used, as they are private funds. Reserve accounts that are the assets of the property, and not the owner specifically, may not be viewed as private assets--this is largely dependent upon the controlling regulations, who holds and controls the account, etc. Please consult your counsel to determine who owns and controls the accounts in question

2. Is investor equity from tax credits considered a non-governmental matching source?

Answer: Yes, new investor equity from tax credits can be considered a non-governmental matching source.

3. Can money that has already been used to initially establish a revolving loan fund count as part of the matching funds for grant application purposes?

Answer: No, funds have to be pledged, or a fund created, specifically for the purpose of the Energy Innovation Fund demonstration.

4. In the case of a loan loss reserve or similar credit enhancement facility, is HUD seeking a 2:1 match of the funds in the credit enhancement pool, or is it seeking a match of the incremental loans leveraged by that credit enhancement? For instance, let's say that a HUD grant of \$5 million is used to set up a credit enhancement fund. This fund leverages lenders to make loans supporting energy efficiency retrofits, which would otherwise not have been provided absent the credit enhancement. Does that additional loan increment count toward the match?

A: In your example, the \$5 million HUD grant will have to be matched by at least \$10 million of eligible funding (cash or cash equivalent) to be the basis of a \$15 million lending fund. You must further demonstrate that the \$5 million HUD grant will be matched by at least an additional \$5 million of project-level investment, for example through direct loans supporting energy efficiency retrofits. The match must be in cash or cash equivalent. We cannot view the value of loans made that otherwise would not have been made, as matching funds.

5. We are very interested in submitting a behavioral based application which would, in part, involve the installation of data acquisition monitoring equipment into particular housing projects. Due to the 2 year timeline on this grant we would very much like to do this research on projects currently or soon to be under construction. To that end, is the non-governmental match funding (e.g. LIHTC Equity and Regional Greenhouse Gas Initiative [RGGI] funding) on projects currently in construction or soon to be committed acceptable as match funding under this grant?

Answer: New construction is not permitted in the EI program. The NOFA requires that:

2. Applied Research Demonstrations. Applied Research Demonstrations are initiatives that demonstrate innovative and scalable methods of defining and implementing a solution to a longstanding barrier to multifamily residential retrofits that is not primarily financial in nature. The barrier could be behavioral, structural, regulatory, or related to availability of information or options. Applied Research Demonstrations must apply a proposed solution to an actual property or group of properties and be applicable to other similar properties.

Your “in construction” properties would not meet the eligible property test unless they come online before the point of application (October 20, 2011) for EI grant funds.

6. In the FAQs, you have said that replacement reserves are not private funds. I don’t understand why. Wouldn’t this only be true if governmental funds were used in the development of the property? For example, if a private citizen owned a rental property and set aside money for replacements, why wouldn’t those be private funds?

In the case of tax credit properties, you have said that investor equity would constitute a match. Following this logic, wouldn’t the replacement reserves of a tax credit property that had no soft financing from governmental sources be private funds?

Answer: Replacement reserves are considered to be an asset of the property and not an asset of the owner. Investor equity belongs to the investor.

7. Is there any requirement for 50% non-governmental match funds on a per-project basis, as opposed to an overall program basis? Might we, for example, provide funding for building retrofits on some buildings in the program, exceeding match funds on that building (but not of course in the program as a whole)?

Answer: No, overall matching is acceptable for applied research demonstrations.

8. We expect to use Regional Greenhouse Gas Initiative and Forward Capacity Market funds as match. This money is channeled through the VT Dept of Public Service (the state energy office), through a contract with the state's "efficiency utility," Efficiency Vermont. There is an existing commitment to support a low-income multifamily retrofit program. With concurrence of VT DPS, can we pledge that entire amount as match funds for EIF?

That level of match funds would support a grant application of up to \$2 million over 24 months. Our EIF program would consist of a three-pronged approach: energy retrofits to building (insulation, windows, mechanicals, solar); tenant behavior modification; and equipping the building for verification, acquisition of detailed usage data, and to support behavior mod.

Answer: These are energy earmarked funds. If pledged to the EI activity they appear to be eligible funds.

9. If a non-profit, energy organization (not the specific PHA projects) were to provide private matching funds to offset the soft costs related to the energy project, can the value of those funds be used to meet "private" matching eligibility requirements?

Answer: Yes, the value of that source and those funds can be counted toward the match requirement.

10. If the pilot PHAs use funds from their Central Office Cost Center (COCC) as the private matching funds, would those funds meet eligibility requirements? COCC funds are considered non-federal funds. We need confirmation from your Office that the COCC funds will meet "private" eligibility requirements under the NOFA.

Answer: Yes, COCC funds are considered private for purposes of the match requirement.

11. Do leveraged funds also have to be used for energy retrofit work to count as leverage(as opposed to capital funds to purchase a building)?

Answer. To count as "matching" funds it has to go to the program activity. "Leveraging" is the additional funding above the match, but has the same requirements to fund eligible program activity as the matching fund.

12. The NOFA says " Financing Demonstrations: Matching Funds of at least \$2 for every \$1 requested and will be required to bring additional funds of \$1 for every \$1 loaned at the project level." What is 'loaned at project level' and how is this calculated? What is 'project level'? Does this total up to a \$3 match in total?

Answer: 'Loaned at the project level' must be applied to the financing activity being proposed by the grantee when a property is benefiting from HUD's grant dollars. For example, the Grantee may establish a revolving loan fund with the HUD grant and the 2:1 matching funds. A property may apply to this loan fund for a \$150 loan, in which case the property would be required to show (prove) that they have \$50 from some other source to use for the same activity as the loaned funds will be used for. This source

could be owner funds, it could be funds from some utility program, it could be from a bank loan. They are only required to match the HUD funds in a 1:1 relationship, not the entire amount (HUD grant plus other matching/leveraging monies) that capitalized the loan fund. Further, it is not necessary to demonstrate the 1:1 match at the project level for any activity that is not a loan. However, additional dollars of leveraging at this level will score more favorably.

13. What is the time frame to demonstrate matching funds in the application process?

Answer: The application must describe the approach or framework that will be used to ensure that the additional 1:1 match at the project level is being provided. For example, will it come from the entity applying for the grant? Or is the proposal going to require that an entering property provide matching funds in order to participate in the Grantee's proposed activity? The framework should be made clear in the application. Specific 1:1 matching dollars at the property level will need to be confirmed for the property to receive funding from the Grant activity.

14. When applying for funding for an applied research demonstration, does the Grantee have to cover 50% of the cost of the project? If we seek funding for a \$3M scope of work under the applied research track, would we be granted up to a maximum of \$1.5M?

Answer: Yes to both questions. In the case of the Applied Research Demonstration, the ratio of matching funds is one to one. The ratio of matching funds for a Financial Demonstration is two to one. You should apply for the amount of funding you expect to receive as a grant pursuant to this program. In your application you will show the source(s) and amount of matching funds needed to address the entire scope of work you are proposing.

15. Are funds from utility sources considered "private funds" for the purposes of the match?

A. Yes.

16. When will matching funds need set aside for this purpose actually need to be committed? If we promise \$2M for a \$1M grant, must the \$2M immediately be segregated, or can we simply draw from it as we draw grant funds?

Answer: A letter of intent dated after publication of the NOFA must be provided with the application to show that funds are earmarked for the EI grant activity. Funds must be committed before a successful applicant can enter into a cooperative agreement with HUD.

17. Under Applied Research: do resident satisfaction surveys, PHA and resident educational workshops, on-site quality assurance, on-site assessment and review of implemented ECRMs, and assistance with other funding applications apply as matching activities for the \$1 private to \$1 public funding match? These activities will be conducted with private matching funds.

Answer: Unless these activities are a part of the EI program activity proposed in your application, the funding could not be counted as a part of the match. If they are a part of the work to be performed under this NOFA, Letters of Intent from this funding source must be dated after the date of publication of the EI NOFA.

18. Can our own administrative, operations, and maintenance costs count towards the matching funds requirement?

Answer: No, it is not specific to the EI grant activity.

19. Would utility money be an eligible source for the private sector match?

Answer: Yes, if it is new funding, earmarked for the purposes of the EI Fund activity.

20. Do payments for technical assistance/special expertise count towards the matching funds requirement? What if they are made in advance of the grant application, but as part of the same revolving loan fund plan?

Answer: No, matching funds must be cash or cash equivalent, and cannot include in-kind services.

21. Would proceeds from the sale of tax-exempt or taxable multifamily bonds be considered a nongovernmental source of matching funds?

Answer: Generally the sales proceeds from bonds may not be used because they are governmental in nature. Multifamily bonds secured by real estate where repayment is required would be a non-governmental source (e.g., real estate debt financing). This would not be the case for general obligation bonds which are governmental.

22. Would the amount of a restructured loan from an existing mortgage on a multifamily property whose terms were restructured by a state agency in order to provide for more favorable repayment terms be considered a nongovernmental source of matching funds?

Answer: Yes, these funds are likely to be permitted as they represent the applicant/owner's equity. However, any such transaction must have been accomplished pursuant to the rules of the insuring and/or financing entity. Further the issue for effectively introducing these funds into the EI grant application match may be timing; if this is an event to occur in the future, it may not be possible to count these funds for the purpose of determining compliance with match requirements.

23. Would a state administered revolving loan fund that is capitalized by funds from a private foundation be considered a nongovernmental source of matching funds?

Answer: Yes, these would be permitted.

24. Are funds from utility sources, such as from Regional Greenhouse Gas Initiative, considered "private funds?"

Answer: Yes

25. If a state agency were to provide loan insurance to an eligible property, would the insured amount of the loan be considered an acceptable source for matching funds?

Answer: No, loan insurance cost is not an eligible source.

26. Is the requirement for additional 1:1 matching funds at the property level applied only to grant funds or to the total loan amount going to the property (grant and matching funds)? For example, say a grantee received \$5 million for a financing innovation and generated \$10 million in matching funds. For the sake of argument, assume all \$15 million is loaned at the property level. Does the property then have to generate \$15 million additional matching funds to achieve the 1:1 leverage?

Answer: This only applies to the HUD EIF grant amounts.

27. Is there recourse against the grantee in the event that despite best efforts, the grantee is unable to obtain the necessary matching funds or to meet the energy savings requirement despite its best efforts to do so?

Answer: This is unlikely to occur because there must be a letter of intent provided at the application stage and these are converted to commitment letters at the point of grant award. Should matching fail despite a commitment letter, it is anticipated that HUD would withdraw the remaining grants funds. If you have made your best effort and the activity is unsuccessful, HUD might stop the work and withdraw the remaining funds. However, if the failure of the activity is not known before the end, HUD will consider that it has at least gained knowledge to use in future activities. The final report from this activity would be expected to evaluate and draw useful conclusions from the events.

28. Is it possible to count an organization's property management and resident services staff time as an "in-kind" match for a portion of the required match?

Answer: Leveraged funds must be in cash or cash-equivalent funding commitments. In-kind services (e.g. donated office space or staffing) cannot be used to meet the leveraging requirements of this

Program. For Applied Research Demonstration proposals, the definition of cash-equivalent may include in-kind energy efficiency equipment.

29. Could you please comment on the matching funding requirements, specifically the additional matching funds required at the site level. The site is required to match 1:1 “at least \$1 matching funds for every \$1 of Demonstration financing utilized by that property.” Does this mean \$1 site funds to every \$1 HUD / government funds, or \$1 site funds for every \$1 of total loaned funds? The language is confusing, and could result in a very different number.

A: As discussed in the webcast, the 1:1 at the project level only concerns HUD funds.

30. Private matching funds can include tax credit equity; can this include tax credit equity that was already awarded to the project prior to application for EIF funds?

Answer: Matching funds are those identified for this program activity and evidenced by letters of intent dated no earlier than the date the NOFA was published.

31. If we were to design a revolving loan program for green retrofits using this HUD Grant, would the \$2 to \$1 private match funds have to be a part of the revolving loan, or could it be expended once for green retrofits as a straight match. If it has to be part of the revolving loan, for how long must the matching funds be part of the loan? Finally, can the \$1 to \$1 property contribution be expended once for part of a larger property specific rehab, or does it have to meet other criteria?

Answer: This might be allowable but would not garner the same points as an application where the dollars continue to fund the grant activity that is primary to the revolving loan fund. Applications must detail the length of commitment of the matching funds.

32. Do the matching funds also need to be spent on energy efficiency investments, or can they be spent on other concurrent rehabilitation work that does not directly affect energy performance of the building?

Answer: All EIF grant and matching/leveraging dollars must be spent on the program activity.

33. What is the time frame for a match? That is, how broadly can the project time period be defined? How far prior to either an EI application or EI award can we count?

Answer: Letters of Intent must be dated after the date of publication of the EI NOFA. All matching dollars for the first tier of the financing demonstration (2:1) and all dollars for the applied research activity must be identified by the date of application (via letters of intent) and confirmed prior to any award (via commitment letters).

34. Can excess project-level funds count as a match at the program level? That is, if the match is better than 1:1 with project funds (for example, LIHTC equity), can that count toward the 2:1 program-level match?

Answer: New LIHTC equity is acceptable for the match, but generally project funds such as reserve account are not.

35. Would you explain the matching funds final 5 points, beyond the first 10 available points?

Answer: Additional points may be earned for continuation of the activity beyond the grant period.

36. Does the value of solar PV equipment installed through a PPA count as private matching funds? (Tax credit equity counts as private money, so the IRC Sec. 48 energy credit should not taint the match, and state-level rebates are in fact rate-payer money from utilities that are merely regulated, but not funded, by state government.)

Answer: Per the NOFA, "Leveraged funds must be in cash or cash-equivalent funding commitments. In-kind services (e.g. donated office space or staffing) cannot be used to meet the leveraging requirements of this Program." The value of cash-equivalent contributions of goods will be scrutinized in the application review process.

37. In the case that tax credit equity has been provided prior to the application, but that equity is intended to support the project for the remainder of its compliance period (which I understand from the NOFA must be at least 10 years from the time of application), can the third party provide documentation to simply confirm they had provided this equity prior in order to sustain the project for the remainder of the compliance period? Perhaps stated more simply, does the letter of intent have to represent commitment of new equity or can it just confirm the existence of a past equity infusion that is intended to sustain the project for at least the next 10 years?

Answer: Your matching funds must represent commitment to new equity. The ten year requirement is for the term of an existing, extended or new Use Agreement and has no association with the matching funds issue.

38. The State of Alaska has a Weatherization Program and a Supplemental Funding program that we'd like to use as match to our grant application. Is it possible that HUD will consider State of Alaska dedicated funding for this purpose as match to the EIF grant?

Answer: The NOFA limits the source of matching funds to "private, non-governmental" funds. It does not appear that these funds could be used, as they appear to be governmental in character.

39. Can you please confirm that for Financing Demonstrations the combined match requirements are 3:1? I.E., for every \$1 contributed by HUD, the project must identify an additional \$3 committed to the project. The minimum match requirement will consist of a 2:1 match at the fund level plus a 1:1 match at the project level. Put another way, for a \$5M HUD contribution, the project must provide \$10M in private non-governmental capital at the fund level plus an additional \$5M at the project level (\$15M in total matching funds). Is this correct?

Answer: Yes. However, the Grantee must provide 2:1 at the funding level, but the Grantee might require the property owner to contribute the additional \$1 dollar.

40. The EIF grant looks like an opportunity to build on our existing multifamily deep-energy retrofit pilot program. A vital piece is post-retrofit verification and analysis. We would like to include some projects from our existing program, and use funds expended on them to meet part of the match requirement for EIF. Would this be acceptable as matching funds?

Answer: No, using funds in an existing program does not meet the matching requirements for EI. Although building more features into an existing retrofit program could be an eligible activity, the matching funds have to be pledged, or a fund created, specifically for the purpose of the Energy Innovation Fund demonstration. Funds already expended in the work described below could not be used to meet this requirement. For funds not yet spent, their eligibility to count as matching funds might depend on whether the source of those funds required them to be earmarked for a specific activity or whether they are resources of the owner for general use. Also don't forget that there is an innovation element needed to make the application a competitive one.

41. Are service benefits resulting from utility funding that is passed through a state agency (which administers the program on behalf of the utility) eligible as non-government match?

Answer: For an eligible activity, yes.

42. Can we use Investor Owned Utility (IOU) rebates that are paid to a utility selected subcontractor as matching funds? For example, the utility has hired a private subcontractor to perform free lighting retrofits. The properties do not receive the rebate directly; the subcontractor does. But properties get free lighting fixtures, lamps and installation worth tens of thousands of dollars.

Answer: To be eligible, you would have to be able to demonstrate that a) you exercise necessary control over these rebates for them to represent a confirmed contribution to the EI activity, in advance of the activity (as opposed to a rebate that may occur at some point after installations are complete), and b) that they were earmarked for EI after the date of publication of the EI NOFA.

43. Can we count domestic hot water and photovoltaic rebates that go directly to the property owner and are administered through the local IOU as matching funds?

Answer: To be eligible, you would have to be able to demonstrate that a) you exercise necessary control over these rebates for them to represent a confirmed contribution to the EI activity, in advance of the activity (as opposed to a rebate that may occur at some point after installations are complete), and b) that they were earmarked for EI after the date of publication of the EI NOFA.

44. To help verify we are calculating the matching funds/leverage ratios correctly, would you provide a summary of how you would interpret the following lending summary:

**\$5 million HUD first loss pool
\$50 million additional loan funds from lender portfolios
Of the \$50 million loaned, an increment of \$10 million in new energy efficiency lending**

Answer: If there is \$5 million of HUD EIF money, the amount lent to energy activities has to be \$15 million (at 2:1, your \$10m plus HUD's \$5m). This may be what you are proposing when you say incremental lending of \$10 million (from match funds), though if that \$10 million is inclusive of HUD's \$5 million, it doesn't meet the 2:1 to be spent on energy efficiency. You must first clarify that it is \$10 million plus \$5 million that would have to be lent specifically toward energy innovation activities; we would view that as a 2:1 match. There will also need to be a 1:1 match at the property level, i.e., \$5 million worth of match additional in your example. We are seeking matching at the property level (an extra \$5 million) of energy efficiency activities that otherwise would not have been performed.

45. Would UIUC or SEDAC be an eligible applicant in partnership with the State Energy Office and a consortium of interested PHAs?

Answer: Yes.

WAIVER OF PROGRAM RULES

1. We are considering applying for the loan loss reserve component, and are concerned about the environmental clearance required by every property. Is there a way to get a programmatic waiver for this requirement?

Answer: Environmental requirements may not be waived. However, there are a number of excluded activities. You can find that information at 24 CFR, Part 50.19 (Code of Federal Regulations).

2. Can consideration be given to granting waiver of a HUD requirement if essential to the feasibility of the proposal?

Answer: Yes. However, waivers for which there is no precedent nor substantial policy argument may compromise the success of your application. It is critical that your application clearly identify any waiver that might be needed so that it can be considered and investigated for feasibility in the course of application review.

3. Is there a way to get the environmental clearance approved on a programmatic level instead of building-by-building?

Answer: It is difficult to see how you could meet environmental requirements other than by examining the property on which a structure sits. There can be wide variations in conditions over even a relatively modest parcel. As we noted in an earlier message, some activities are exempt from environmental requirements. If you have checked those and your properties do not meet the test, you might speak with an environmental expert about how best to meet federal law requirements.

4. In an applied research application, will the requirement for environmental review apply to properties in which either tracking or behavior is the only intervention occurring?

Answer: There are a number of exclusions provided in 24 CFR, Part 50.19. We think it is likely that properties where either tracking or behavior is the only intervention occurring will meet the exclusion tests, but you need to go to the Code of Federal Regulations and determine what applies. It would be helpful if you note those determinations in your application.

5. If non-HUD funds are used for those parts of the project that relate to comparison and/or control groups, would those properties be exempt from the Use Agreement and environmental review requirements?

Answer: It is expected that applications may offer to compare data from the Energy Innovation activity with data from another source, not funded by the EI program. If the comparison groups are paid for with funds other than the HUD funds or the match requirement funds, neither the use agreement nor environmental requirements would apply. In other words, if the EIF + required match funds were used only for the physical work at properties in the improvements group, and the overall study will use results from improvement group and two other control groups, then the use agreement requirement would

apply to only the improvement group, and the environmental may or may not apply to the improvement group, depending on whether the proposed activity is excluded.

6. It was mentioned in the webinar that sub-metering of water would be considered an eligible expenditure for the EIF fund but such an application may not be competitive as it is not innovative. Our past requests to HUD Field Offices to change water & sewer from an owner-paid utility to a resident-paid utility were denied. Can you please advise us of HUD's policy regarding changing water & sewer from an owner-paid utility to a resident-paid utility for properties with a Project Based Section 8 HAP Contract?

Answer: Your application should clearly state your proposal and cite the rule or handbook that would require prior approval or waiver.

AWARD / GRANT TERM

1. When will grant awards be determined and when will the grant term begin?

Answer: The point of award is not a date certain. Applications that score the highest number of points will result in those applicants being invited to negotiate a final work plan with HUD. Awards will be made only if agreement can be reached on a final work plan. From the point of grant award, the grantee will have 24 months to complete the activity.

2. Are the Energy Innovation grants actually loans? Will the grantee have to eventually pay back the money for which they are receiving a grant?

Answer: No. HUD will be awarding grant funds; they are not repayable. As described in the section on financing demonstrations, grantees may use grant funds for a loan program.

3. Can these award funds be received in the form of a loan rather than as a grant?

Answer: No. HUD will be awarding grant funds; they are not repayable. As described in the section on financing demonstrations, grantees may use grant funds for a loan program.

4. Is there a target grant amount on which EIF is focusing? If not, are there rough minimums / maximums for grant amounts that EIF will likely fund?

Answer: The maximum award amount under the Financing Demonstration component will be \$7.5 million to any applicant. The maximum award amount for the Applied Research component will be \$3 million to any applicant.

No minimum dollar amounts are established in the NOFA; however the NOFA also states that

HUD will award a minimum of one grant for Financing Demonstrations and a minimum of two grants for Applied Research Activities.

5. What is the grant period? One year, two years, etc.?

Answer: There is a 24 month performance period that commences after award. Please see page 7 of the NOFA.

6. Will administration costs be available? If so what is the amount?

Answer: Expenses for the general administration of the organization and costs that do not relate solely to the activities carried out by the grant can be no more than 10%. Funds cannot be used for the following activities:

- 1. Income payments to subsidize individuals or families;*
- 2. Political activities;*
- 3. Projects or activities intended for personal gain or private use; or*
- 4. Acquisition of land or building.*
- 5. No profit is permitted with regard to grant funds.*

7. Are all costs that would be considered administrative captured in a non-profit applicant's indirect cost rate? Would costs such as administrative personnel whose time is tracked for hours worked directly on the project be considered administrative expenses also?

Answer: Expenses for the general administration of the organization and costs that do not relate solely to the activities carried out by the grant can be no more than 10%. Costs for administrative personnel whose time "is tracked for hours worked directly on the project" would appear to be permitted in the 10%.

8. To help determine the start date for the required SF424 form, could you please provide an approximate time range we would expect to receive the grant should we be selected to receive an award?

Answer: We hope to award funds early in the second quarter of FY2012 (January, February, and March), perhaps in January. The NOFA advises that you will have 24 months to use the funds after award.

LETTER OF INTENT

1. Can you provide a model/example letter of intent from a company that intends to put up matching funds for a given retrofit? Or could you provide an outline?

Answer: The required contents for letter of intent are provided in the NOFA as follows:

4. Letter(s) of Intent. As a part of the application process, the applicant must demonstrate the ability to match funds in conformance with program requirements. To do so, applicants must either demonstrate their own capacity to provide required funds or must provide letters of intent from one or more third parties. To qualify, the letter must include the third party 1) agreeing to perform an activity specified in the application; 2) demonstrating the financial capacity to deliver the resources necessary to carry out the activity; and 3) evidencing the intent to commit the resources to the activity if the application is funded. Each letter of intent must include the third party organization's name, the applicant's name, and describe the proposed total level of commitment expressed in dollar value as it relates to the proposed program activity. The letter of intent must be written on the letterhead of the third party organization, must be executed by an official of the organization legally authorized to make commitments on behalf of the organization, must be dated no earlier than the date of publication of this NOFA, and must state that the commitment remains valid for the full period of grant activities should an award be granted. Prior to the execution of the Cooperative Agreement and other related grant documents (collectively "Grant Documents"), each organization involved in providing the matching funds will be required to reconfirm the availability of such funds, and convert the Letter of Intent to a Third Party Commitment Letter through documentation in form and substance described below. All such funds shall conform to the requirements of 24 CFR 84.23.

2. Does the letter of intent have to represent commitment of new equity or can it just confirm the existence of a past equity infusion that is intended to sustain the project for at least the next 10 years?

Answer: Past equity will not be considered matching funds, only new equity for the express purpose of the energy efficiency measures will meet the matching requirement. To be clear, the ten year requirement is for the term of an existing, extended or new Use Agreement and has no association with the matching funds issue.

3. What would happen to an entity that signed a letter of intent to provide matching funding for a given project but then later decided to not participate in the project after the awards were received by the applicant entity?

Are the letters of intent from the entities to receive the grant binding? In other words, are they required by law to come up with the matching funds once the grant has been awarded? What would happen if it ended up that they could not come up with the matching funds after the grant has been awarded?

Answer: Default is unlikely to occur because there must be letters of intent provided at the application stage. These must be converted to commitment letters at the point of grant award. Most entities would not renege on a commitment letter. And there could be sanctions applied for doing so. Should matching fail despite a commitment letter, it is anticipated that HUD would withdraw the remaining grants funds.

4. As some applicants may submit an application with a hope to leverage funds that they are expecting but don't yet have commitments for – can an applicant use a letter of intent from a capital

source (i.e., a local utility) as match funds that could be taken out at a later date with potentially better priced capital (possibly from a bank, foundation or other funder)?

Answer: Letters of Intent must be for funds identified after the date of publication of the NOFA and must be specific to the proposed EI activity. This is your threshold eligibility requirement. However, we believe that you could substitute other eligible funds at the point of commitment.

5. To whom should the Letter(s) of Intent be addressed?

Answer: Letters of intent should be addressed to the applicant entity to whom the commitment is being made, with a cc to HUD, and specifically stating that the commitment is to support the Energy Innovation Fund match.

USE AGREEMENT

1. Can you please discuss what a Use Agreement is in more detail and how that relates to the applicant's ability to Control the multifamily properties for this grant?

Answer: A Use Agreement is a legally-binding agreement between two parties that is recorded in the land records. The recorded Use Agreement binds the real property to the terms of the agreement for a period of time regardless of transfer of ownership. In the EIF program, a Use Agreement that restricts some or all of the units in a multifamily property to occupation by low-income tenants at affordable rents will be required for a minimum term of ten years.

2. Do you have a sample Existing Use Agreement you can provide or a blank one?

Answer: HUD is not prescribing a particular form document for use in the EIF program. We anticipate that some awardees will already have use restrictions for low-income tenants on the property that will extend 10 years and thus be sufficient. Others may have existing use restrictions that need to be extended to meet the ten-year minimum. Still others might have no existing use restrictions and thus will need a new Use Agreement. Accordingly, the Use Agreement will have to be tailored to fit the particular property.

If a new Use Agreement is necessary, it must be in a form and substance acceptable to HUD and must contain provisions addressing the following:

- 1. Use Requirement. The Agreement must ensure that throughout the term the Project must be used solely as rental housing, with the majority of units reserved for families with income meeting the NOFA definition of low income ("family income that does not exceed 80% of the median family income for the area...").*

2. *Civil Rights Requirements.* The Agreement must contain an agreement by the Owner to comply with the provisions of any applicable federal, state or local law prohibiting discrimination in housing on the basis of race, color, religion, creed, sex, national origin, handicap, or familial status, including but not limited to:

Title VI of the Civil Rights Act of 1964 (P.L. 90-284, 82 Stat. 73), the Fair Housing Act of 1968, as amended (42 U.S.C. §3601 et seq.; 24 CFR 100 et seq.),
 Section 504 of the Rehabilitation Act of 1973 implemented at 24 CFR Part 8
 Section 109 of the HCDA of 1974 implemented at 24 CFR Part 6,
 Executive Order 11063,
 And all requirements imposed by or pursuant to the regulations of HUD implementing these authorities, including, but not limited to, 24 CFR Parts 1, 100, 107 and 110, and Subparts I and M of Part 200.

3. *Violations and Secretary's Remedies.* It must provide that, if the Secretary determines that the Owner has violated any of the terms of the Agreement, the Secretary may apply to any court, state or federal, for specific performance of the Agreement, or for such other equitable relief as may be appropriate.

4. *Covenants to Run with Land.* The Use Agreement must subject the Property to the required covenants, reservations and restrictions and must declare the express intent that they run with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property throughout the Term.

5. *Other Agreements.* The Agreement must provide that the Owner will not execute any other agreements with provisions contradictory to the provisions of the Agreement and that the provisions of the Agreement are paramount and controlling as to the rights and obligations set forth therein and supersede any other conflicting requirements.

6. *Amendment.* The Agreement must contain a provision that it may not be modified except by an instrument in writing executed by each of the signatories.

7. *Severability.* The Agreement must contain a provision that, if any one or more of its provisions are determined to be illegal, invalid or unenforceable, it will not affect any other provision of the Agreement.

8. *Recording.* The Agreement must immediately be recorded by Owner, at no expense to HUD, in the appropriate land records office and returned to HUD as soon as possible following recordation.

9. *Signatory Authority.* Any person signing the Agreement on behalf of a party (e.g., the General Partner signing for an owner) must represent that he or she has the authority to bind the party for whom he or she is signing.

A draft Use Agreement must be submitted to HUD's Office of Affordable Housing Preservation for review no less than ten days prior to any prospective disbursement of funds. Funds may not be disbursed without the prior written approval of the form of Use Agreement by HUD.

20% ENERGY REDUCTION REQUIREMENT

1. How will the 20% energy reduction requirement be assessed in applied research submissions?

Answer: The applicant must propose the measurement and the analysis behind the estimates to achieve a 20% reduction.

2. Please clarify on the strictness of the 20% energy savings requirement and whether it applies equally to financing demonstrations and applied research demonstrations.

Answer: For both the financing and the applied research activities, the applicant is expected to look for ways to reach a 20% performance improvement. Those applications that demonstrate a thoughtful and reasonable approach to reaching such a goal are those that will receive more favorable consideration.

3. How will the 20% energy reduction requirement be assessed in applied research submissions?

Answer: The applicant must propose the measurement and the analysis behind the estimates to achieve a 20% reduction.

4. Does the NOFA reference to 20% energy reduction relate to whole project energy use (e.g., all energy consumed on a subject project including heating, cooling, lighting, domestic water heating, in-unit and common area electrical consumption, etc.), or does it only refer to targeted energy use on a particular project? For example, if a proposed project targeted heating energy in a building would the applicant then be required only to reduce heating energy by 20%?

Answer: HUD will look at the anticipated effect on the particular activity offered in the proposal (for example “heating” to “heating”). It is recognized that 20% is a “target” result, but the application must demonstrate reasonable assumptions and methodology for attaining results at this level.

5. Do the requirements for 20% improvement, environmental review, and extended affordability periods apply to a research project that is primarily focused on resident behavior and incentives in specific projects rather than physical upgrades to those projects?

Answer: Yes, it is a goal to be attempted in all cases and the application should propose how that would be expected to be achieved.

OTHER PROGRAM REQUIREMENTS

1. Would receipt of a grant trigger Davis-Bacon wage requirements?

Answer: HUD has not been granted authority to waive Davis-Bacon for the EI program.

2. Are there additional rule/regulations regarding preference, wages, etc. beyond 24 CFR 135.9 for those hired to do refits through the revolving loan fund we hope to establish (beyond the baseline of applicable Federal, State, and Local labor laws)?

Answer: There may be. At present we have identified Davis-Bacon as an additional rule. HUD has not been granted authority to waive Davis-Bacon for the EI program.

3. Would an EI grant trigger NEPA requirements? If so, when would the NEPA need to be complete?

Answer: Please refer to page 27 of the NOFA for a discussion of environmental requirements.