

## Global Project Finance Alert

March 4, 2013

### Treasury Finalizes Sequestration Percentage and Cutoff Point for the Cash Grant Program

On March 1, 2013, President Obama issued the sequestration order, triggering automatic federal spending cuts for the remaining seven months of the fiscal year ending September 30, 2013.

As discussed in our recent alert on sequestration [[available here](#)], the Department of the Treasury is required by law to implement sequestration with respect to the Cash Grant program. To implement sequestration with respect to the Cash Grant program, Treasury has announced that sequestration percentage for Cash Grants will be 8.7% through September 30, 2013, and that the sequester will apply to Cash Grant applications with respect to which grant award letters are issued by Treasury on or after March 1, 2013. Thus, every Cash Grant awarded to an applicant on or after March 1, 2013 through September 30, 2013 will be reduced by 8.7%, regardless of when the application was submitted to Treasury. The sequestration percentage may change for the 2014 fiscal year.

In further Cash Grant developments, a Treasury official spoke at a Solar Energy Industry Association conference in New York on February 27, 2013, and clarified certain aspects of the Cash Grant program:

- If Treasury asks follow-up questions about a Cash Grant application, the applicant has 21 days to respond (the "Initial Response Period"). Missing that deadline means the application is terminated, and, at this stage in the program, the applicant may not re-apply.
- Given the severity of the above rule, Treasury has implemented an automatic 30-day extension to the Initial Response Period (the "Extension Period"). However, the applicant must request the extension prior to the expiry of the Initial Response Period.
- If the applicant requests the extension and then responds in full before the end of the Extension Period, Treasury's review process with respect to the response will start when the response is complete (rather than at the end of the Extension Period).
- At this stage in the Cash Grant program, applications must be submitted within 90 days of the project's "placed in service" date, although it was acknowledged that the concept of placed in service is "very gray." Currently, there are no extensions available; however, Treasury is considering adopting an extension process.
- In a sale-leaseback, the parties have three months from the original placed in service date to execute a sale-leaseback and have the lessor be eligible for the Cash Grant. The 90-day deadline to apply for the Cash Grant starts to run on the date the sale-leaseback is executed.

- The price per Watt benchmarks that Treasury published on June 30, 2011, are now given less weight by Treasury than they were in prior years. Given the decline in solar panel prices, a project's Cash Grant request merely being based on less than the benchmark price provides little assurance that Treasury will not reduce the requested Cash Grant amount.
- Treasury has a track record of giving little credence to valuations from appraisers. Two particular sensitivities with respect to appraisals were identified:
  - a. If the appraisal uses a discounted cash flow analysis that applies a rate of return as a discount rate, that discount rate should not be lower than the rate required by the investor in the transaction at hand.
  - b. If the transaction is a partnership between the developer and the investor, the developer's return from the partnership should be reasonable. The return available on United States Treasury bonds was given as an example of a return that was not sufficient
- Approximately 213,000 "preliminary" Cash Grant applications were submitted to Treasury prior to October 1, 2012. Treasury is giving the review of these applications a lower priority than the review of final applications. This prioritization is in part due to the statutory requirement to pay Cash Grants within 60 days of acceptance of a final application.
- Through the end of 2012, Treasury had paid \$16 billion in Cash Grants for renewable energy. So far in 2013, \$2.5 billion has been paid.

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