

## Global Project Finance Alert

February 5, 2013

### Clarification of the Date the President is Required to Issue the Sequestration Order and Slight Increase in the Estimated Sequestration Percentage for the Treasury Cash Grant Program

Further discussions with Capitol Hill and Office of Management and Budget (OMB) staff have clarified the effective date rule and a slight increase in the sequestration percentage. Sequestration is looking more likely every day.

Unless the necessary deficit reductions are enacted, the President is required to issue a sequestration order on March 1, 2013.<sup>1</sup> The Treasury Department will have up to 120 days to implement the sequestration order;<sup>2</sup> therefore, Treasury implementation could occur with respect to the Treasury Cash Grant program as early as March 1, 2013. Alternatively, Treasury could wait until as late as July 29, 2013, or could select a date between March 1 and July 29 to implement the sequestration order.

It is still unknown what “effective” date Treasury will use to distinguish between Cash Grant applications that will be subject to sequestration and those that will not. Such possible dates include the date of payment, the date the application is formally accepted by Treasury, the date the application is submitted to Treasury or the project’s “placement in service” date. Whichever triggering event may be chosen, it appears that the most likely effective date will be the date on which Treasury implements the President’s sequestration order. However, there is concern that Treasury could choose March 1, 2013; in other words, it is possible that if (for example) the Cash Grant is to be paid with respect to an application received on March 2, 2013, such Cash Grant could be sequestered even if the sequestration order is not implemented until a later date. We believe it would be most prudent to surmise that the relevant date should be the date of Treasury’s implementation, but it is impossible to be certain that this will be the case at this stage.

The current continuing resolution to fund the federal government expires on March 27, 2013. If a budget or a new continuing resolution is not passed by March 27, 2013, then major segments of the federal government will be forced to suspend operations. Such a suspension would likely include the Treasury office that approves and processes payments for Cash Grant applications, so it is likely that no Cash Grant applications would be processed or payments made during a suspension of operations. Thus, Treasury’s Cash Grant operations could be suspended either before or after Treasury implements the President’s sequestration order.

<sup>1</sup> § 901(c)(2) of the American Taxpayer Relief Act of 2012 (amending § 251A of the Balanced Budget and Emergency Deficit Control Act of 1985; note, § 251A was first enacted by § 101 of the Budget Control Act of 2011 and is now codified as 2 U.S.C. § 901(a) (2013)).

<sup>2</sup> 2 U.S.C. § 906(k)(3) (2013) (“regulations or similar actions implementing a sequestration order shall be made within 120 days of the sequestration order.”).

Finally, the current estimate of the percentage of the Cash Grant that will be subject to sequestration is 5.1 percent, although there have been indications that it could be 5.3 percent. The percentage will be confirmed when the OMB issues further guidance, which is expected in the middle of this month

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