

AGENDA ITEM #19
July 27, 2010

ACTION

MEMORANDUM

July 23, 2010

TO: County Council

FROM:  Keith Levchenko, Senior Legislative Analyst

SUBJECT: **ACTION: Executive Regulation 2-10AM, Home Energy Loan Program**

T&E Committee Recommendation: Approve Executive Regulation 2-10AM that addresses the following issues:

- **Clarifies the exceptions to the cost-effectiveness provision (Section IVA).**
- **Include information in the regulation that prospective applicants are responsible for verifying that the HELP program would not negatively impact any existing mortgage conditions.**
- **Adds an annual reporting requirement to the Council.**

Council Staff believes Executive Regulation 2-10AM is consistent with the T&E Committee's recommendations and should be approved by the Council.

On April 21, the County Executive transmitted Executive Regulation 2-10, Home Energy Loan Program (see ©1-5) under Method 2.¹ The T&E Committee discussed the regulation on June 24 and recommended changes to the regulation. In response, the County Executive transmitted Executive Regulation 2-10AM on July 20, 2010.

Background

Executive Regulation 2-10AM will implement the Home Energy Loan Program as created by the Council in Bill 06-09 on April 14, 2009.

¹As a Method 2 regulation, the Council may approve or disapprove the proposed regulation within 60 days after receiving it. If no action is taken within 60 days to approve or disapprove the regulation and the Council does not act to extend the deadline, then the regulation is automatically approved. On June 15, 2010, the Council extended the deadline. If approved by the Council, the regulation becomes effective the day after approval since no later date is specified in the regulation.

The Home Energy Loan Program is intended to encourage property owners of single-family (attached or detached) homes and condominiums to make cost-effective energy efficiency improvements and/or install clean energy devices to their homes by providing up front dollars to be repaid over 15 years via assessments on property tax bills. The intent is for the energy savings from the improvement to offset the assessment payments.

The County has preliminarily allocated \$1.53 million from Energy Efficiency and Conservation Block Grant funds (funded by the American Recovery and Reinvestment Act, ARRA) to provide initial funding to start-up the program.² The intent is for the HELP program to be self-supporting with fees, interest charges, and repayments being used to provide future loans to eligible property owners.

The program is to be overseen by the Department of Environmental Protection (DEP) and the Department of Finance. However, according to DEP staff, the day to day management of the loan program itself is likely to be done by a 3rd party. These details are still being developed as part of a "Program Plan" (discussed later).

Issues

Summary of Major Issues Discussed in this Memorandum

- Impact of FHFA Statements that Property Assessed Clean Energy (PACE) programs with "first lien" priority would violate the "Uniform Security Instrument" loan clause (Page 2)
- Eligible Properties (Page 3)
- Energy Audit Requirements (Page 3)
- Fundamental Health and Safety Remediation Improvements Provision Added (Page 4)
- Cost Effectiveness Calculation and Exemptions Details (Page 5)
- Renewable Energy Device Eligibility (Page 6)
- Home Equity Requirement for Loan Approval (Page 7)
- Establishment of Fees and Interest Rates (Page 9)
- Requirement for applicants to ensure the HELP program would not result in default on a current loan. (Page 9)

FHFA "First Lien" Issue

A key element of the HELP program is that the payback is to be linked to the property via an assessment on the property tax bill, rather than to the property owner directly. The assessment would be a "first lien" like property taxes. This approach removes the concern a current property owner may have of committing to pay back a significant investment of dollars for savings that may accrue to a future owner of the property. Under a HELP loan, a future property owner would assume the assessment payments.

However, as noted by the County Executive in his July 20 transmittal memorandum (see ©7), the Federal Housing Finance Agency (FHFA) has stated that "first liens" of this type would

² An FY11 special appropriation for the County Government portion of the ARRA funding was approved by the Council on July 20, 2010.

violate the “Uniform Secure Instrument” clause in its loans. If this position is not changed, the only alternative would be for the HELP assessment to become a subordinate loan. This would require a change in Section 18A of the County Code and may or may not be a viable alternative.

Council Staff believes the Executive Regulation 2-10AM should be approved now, so that if the “first lien” issue is resolved, the program can be started immediately.

Eligible Properties

As mentioned earlier, all owners of single family (attached or detached) properties as well as condominiums are eligible to receive HELP dollars. However, in the case of condominiums, the improvements “must be limited to the parts of the building that are under the exclusive control of the property owner.” (see Section V on ©15). This requirement could be a severely limiting factor in some cases, since individual and common energy-related elements in a condominium setting are not always separable. As currently structured, the HELP program is best designed for single family homes.

While there may be some opportunities for condominium owners to participate in the HELP program, Council Staff suggests that other initiatives to address energy efficiency in multi-family (and commercial) properties (such as those identified by the Sustainability Working Group) be developed as well.

Energy Audit Requirements

The regulation reiterates the language in Bill 06-09 that ALL HELP applicants MUST get an energy audit from a certified energy auditor. The regulation (see Section VI) includes more detail than Bill 06-09 as to what requirements an auditor must meet to be certified as well as the audit parameters.

The “Energy Auditor” definition on ©10 notes that the auditor must participate in the Maryland Home Performance with Energy Star Program and/or participate in a utility sponsored Home Performance with Energy Star Program or otherwise meet equivalent requirements approved by the Director (as published in the Program Plan).

Section VIA (©16) notes that, “Audits must be based on the HPwES (Home Performance with Energy Star) process developed, promoted and monitored by the US Environmental Protection Agency’s ENERGY STAR Program.”

Section VIA3 includes a provision to allow an alternative to Building Performance Institute (BPI) certification if it is deemed equivalent by the EPA under the Home Performance with Energy Star (HPwES) program and accepted by the applicable HPwES sponsor.

The intent of these specific criteria is to ensure consistency of audits across all of the loan applicants and to minimize extra administrative and programmatic infrastructure needs. The “equivalent requirements” provision is included in case the other provisions go away or are replaced by successor programs.

These details are consistent with the intent of Bill 06-09 and Council Staff supports the language included in the regulation.

Fundamental Health and Safety Remediation (FHSR)

Executive Regulation 2-10 includes an FHSR provision (Section IVB, see ©14) which is not mentioned in Bill 06-09. This provision would allow for certain non-energy efficiency or clean energy improvements costing up to 10% of the energy improvement cost (not to exceed 10% of the non FHSR costs, up to a \$1,500 maximum). These improvements must be recommended by the applicable contractor or auditor as being required to properly install the energy efficiency or renewable energy improvements. The cost of the FHSR improvements would NOT be considered in the cost-efficiency calculation (discussed later).

The intent of this new language is to ensure that FHSR issues that may be identified in an energy audit process and which should be mitigated in advance or as part of future improvements can be affordably addressed by the property owner. **Council Staff supports this provision. While these costs would increase future loan payments in comparison to assumed energy savings, the \$1,500 cap and the loan term of 15 years will minimize the impact.**

Cost-Effectiveness Calculation and Exemptions

A key element of the HELP program is the assumption regarding cost-effectiveness. A basic definition is included in the regulation (see Section II8 on ©10) which focuses on the estimated time for an improvement to pay for itself (i.e. the payback period). This information is confirmed in an energy audit and helps a homeowner decide which improvements to pursue.

However, the nature of the HELP program requires a slightly different definition for purposes of loan program eligibility. Since the intent of the HELP program is for the loan payments on the property tax bill to be offset (if not exceeded) by the energy savings realized, the interest payments (in addition to the principal payments) must be included in the cost-effectiveness calculation for purposes of calculating cost-effectiveness. This means that the interest rate for the loan will have an effect in determining eligibility. **Council Staff supports the approach of assuming both principal and interest for purposes of determining cost effectiveness for the loan, since this is consistent with the intent of the law to make the ongoing obligation to the property owner at least cost-neutral.**

As noted earlier, a major exception is that FHSR costs are assumed to NOT be included in the cost-effectiveness calculation (see Section IVA5a on ©13). This means that it is possible for one's future HELP payments to be higher than the energy cost savings achieved. While Council Staff supports this approach for reasons stated earlier, this means that a loan participants payments may not be fully offset by energy savings. As mentioned earlier, the impact is likely to be small given the \$1,500 FHSR cap and the loan period of 15 years.

However, with regard to non FHSR costs, Section IVA5b in ER 2-10 had to be revised, since the language incorrectly read,

“The calculation of project cost-effectiveness will not include the following...the cost of the initial energy audit, financing or loan origination fees.”

The Executive’s intent is to exempt the energy audit and any loan origination fees but NOT the financing costs. Executive Staff agreed that the word “financing” should be removed from the above section. **The T&E Committee concurs with this change. Executive Regulation 2-10AM includes revised language on ©13.**

In some cases, homeowners may wish to pursue projects which, in isolation, are not cost effective. However, when packaged with other projects, the overall package is cost-effective. This approach is allowed for in Bill 06-09 and reiterated in the regulation.

At the T&E Committee worksession, Council Staff expressed concern about how the cost-effectiveness calculation would address requests for partial funding of improvements. For instance, could an applicant assume to pay for a portion of the improvement up front and then seek a lower loan amount, thus improving the cost-effectiveness calculation? If so, this could create a situation where those applicants with sufficient cash resources could use a HELP loan to partially finance projects that were otherwise not good candidates. Section IVA3 (©13) appears to preclude this from happening, as it states that “Projected project costs will consist of all necessary...costs.” **Therefore, while incentives (such as Federal and State tax credits or utility rebates) can be considered to reduce the project cost, a participant’s own up front contribution to a project cost cannot. Executive Regulation 2-10AM includes additional language to clarify this point (see ©13).**

Renewable Energy Devices

Two other cost-effectiveness exemptions are also included in the regulation and could have a significant effect on project eligibility particularly with regard to renewable energy devices.

1. The regulation exempts property tax credits provided by Montgomery County. In the case of renewable energy devices, applicants are commonly eligible for as much as a \$5,000 property tax credit. However, there is a significant waiting list to receive these funds and it could take two or more years to receive the credit. Therefore, while the Federal tax credit for renewable energy devices (30% of total cost) and the Maryland rebate (based on type of system and capacity) are assumed in the regulation to be considered in the cost-effectiveness measure, the Montgomery County credit is not because of this annual under funding.
2. Proceeds from the sale of environmental attributes (such as Renewable Energy Credits) are also not to be considered in the cost-effectiveness calculation. These credits (while

substantial) are subject to market fluctuations and are more and more speculative over the 15 year loan period.

Another case can be made for not including the Montgomery County credit or the sale of environmental attributes with regard to renewable energy devices. Because these devices (such as solar panels, windmills, and geothermal) have major up-front costs, if the Montgomery County credit and energy attributes were considered in the cost effectiveness calculation, then HELP program funding could be swallowed up quickly by renewable energy device requests, at the expense of the energy conservation component (which was the original intent behind Bill 06-09).

Given that the Montgomery County tax credit is oversubscribed, and the concern that renewable energy devices could crowd out most other improvements, Council Staff concurs with exempting the Montgomery County Tax credit and sale of environmental attributes. NOTE: There are still several ways that renewable energy systems can qualify for funding. These are discussed in the next section.

Renewable Energy Device Eligibility

Section IVD (©15) identifies three ways renewable energy devices can qualify for HELP loan funding, even if they do not qualify under the regular cost-effectiveness criterion mentioned earlier.

First, as with energy conservation devices, the renewable energy device can be packaged with other improvements that collectively meet the standard cost-effectiveness criterion discussed earlier. However, this is unlikely given the up-front costs of renewable energy devices and the \$25,000 cap on any loan, and the fact that a renewable energy device's cost effectiveness measure cannot include the Montgomery County tax credit or the sale of environmental attributes. In fact, the renewable energy device could make otherwise eligible energy conservation devices, ineligible if packaged together.

Second, if the property in question has already achieved a high level of energy efficiency (a score of 7.5 or equivalent using the ENERGY STAR yard stick), then renewable energy devices are eligible, regardless of cost-effectiveness.

Third, if the renewable energy device is packaged with energy efficiency improvements that elevate a home to a 7.5 ENERGY STAR score or a 25% improvement in energy performance, then the renewable energy devices are eligible, regardless of cost-effectiveness.

The intent of these provisions is to provide some flexibility to allow for HELP loan financing of renewable energy devices but to emphasize energy conservation first or at least in tandem with renewable energy devices. Council Staff concurs with this approach.

Details in Bill 06-09 Assumed to Be Addressed by Regulation

Sec. 18A-29. of Bill 06-09 (see ©26) lays out a number of items to be addressed by Method 2 Regulation. These are listed below along with how they are addressed in this

regulation:

- lending standards and priorities (See Section VIII B and C, “Credit Standards” and “Loan Terms” on ©19-20)

The regulation requires that that applicants be up to date on their mortgage and property tax payments, have no other outstanding debts owed to Montgomery County or the State of Maryland, and have sufficient equity in their home, based on assessed value, to cover the amount of the HELP loan.

The equity requirement is intended to protect potential applicants from taking on too much debt while also protecting the County’s investment should a future tax sale be required. However, given current market conditions, Council Staff expressed concern that this provision could freeze out many homeowners who might otherwise be interested in the loan program and who are not in a financially precarious situation. In fact, the loan program is intended to be cost-neutral (or even cost-beneficial) to the applicant; thus improving the applicant’s financial situation.

The loan application process has a “credit worthiness” provision (see VIID1Gi on ©21) which Council Staff believes is a fairer way to address equity issues and other concerns and assess the risk of a particular applicant.

At the T&E Committee worksession, DEP and Finance staff noted that requiring sufficient home equity to participate in the County’s HELP program is consistent with Federal guidelines regarding similar programs. **The T&E Committee agreed that the equity provision should be kept in order to be consistent with Federal guidelines.**

- minimum and maximum loan amounts; (set at no less than \$2,500 with a cap of \$25,000)
- interest rates, terms, and conditions (See Section VIIC “Loan Terms” on ©19-20)

All loans are for a 15 year term with annual payments. Bill 06-09 allows for a longer term (but not shorter), but Executive Staff believe the 15 year term is reasonable given the cost effectiveness for the most common energy conservation improvements should be well within that term. Council Staff concurs.

The interest rate and other fees (such as loan origination fees, title searches, and fees for the registration of energy auditors, for instance) are noted as to be set at a level to cover the County’s costs. Since these costs are not known at this time and could change frequently in the future, the regulation assumes that the specifics will be established as part of the “Program Plan.” At the T&E Committee worksession, Council Staff expressed some concerns with this approach which are noted later in this memorandum.

- application procedures, including necessary supporting documentations (See Section VIID beginning on ©20)

- criteria for adequate security (see Section VIIID “Application Process.”)
- procedures to refer applicants to other sources of funds, and to cooperate with other public and private sources of funds (See Section VIB4)
- procedures to ask the Director to reconsider any denial of a loan or any decision on interest rates, terms, and conditions (See Section VIIID3)
- procedures for nonpayment or default (See Sections VIIC7 and VIIE3 and 4)
- procedures and requirements for post-installation inspection (See Section VIA5 and Section VIIE1b-f)
- disclosure requirements for real estate transactions (See Section IX).

The Executive notes in his transmittal that the regulation language was revised based on feedback from the Greater Capital Area Association of Realtors (GCAAR).

- criteria for loan disbursement. (See Section VIIE).

Issues Addressed by County Executive as a result of Public Comments

Below are issues specifically noted by the County Executive in his April 21 transmittal memorandum (see ©1-3).

- Direct Payment of Contractors (instead of payments going to property owners)

Based on concerns raised by contractors that direct payment to homeowners instead of to contractors could lead to contractor payment delays and possibly lead to contractors charging more for services, the regulation establishes a process (and safeguards) for program funds to be paid directly to contractors (see Section VIIE, “Disbursement of Loan Funds.”)

- Standards for Wood Stoves, Biomass

The Executive has inserted language tying eligibility to Washington State standards for these systems.

- Changes to Cost Effectiveness Calculation (previously discussed in this memorandum)
- Energy Audit Standards Modified

Section VIA3 includes a provision to allow an alternative to Building Performance Institute (BPI) certification if it is deemed equivalent by the EPA

under the Home Performance with Energy Star (HPwES) program and accepted by the applicable HPwES sponsor.

- Disclosure Requirements at the Transfer of the Property (previously discussed in this memorandum)

Elements to be included in a Program Plan instead of a regulation

As mentioned earlier, one key issue is that the Executive is assuming to include a number of key program details in a future “Program Plan.” For example, the specific loan terms (such as interest rate) and other loan-related fees would be identified in the Program Plan and likely updated on a frequent basis. In fact, all of the specifics that might result from the County utilizing a private financing company which, while consistent with the parameters in the Executive Regulation would be detailed in the Program Plan.

To assure the program is cost-neutral in a fluid market environment, Executive Staff believe flexibility is required in terms of fee and interest rate setting. From the Council’s perspective, the downside of this approach (versus setting rates and fees via a Method 2 or other regulation) is the reduced formal Council oversight involved.

The T&E Committee asked Council Staff to work with DEP and Finance staff to come up with a solution that balances the Council’s oversight interests with the Executive’s interest in program flexibility.

Council Staff and Executive staff agreed that an annual reporting requirement built into the ER 2-10AM would ensure a sufficient oversight role by the Council. New language has been added in ER 2-10AM to require this annual report.

Requirement that Applicant Review Current Mortgage

At the T&E Committee worksession, a representative from the Robert Enten of the Maryland Bankers Association noted his concerns that the HELP regulation should require applicants to confirm that a HELP assessment would be permissible under their current mortgage loan conditions.

The T&E Committee agreed that language should be added to the regulation similar to language that Sonoma County uses in its application package for its program. The Executive has added language (see ©21) that addresses this issue.

Summary of T&E Committee Recommendations

The Committee recommended that the County Executive transmit Executive Regulation 2-10AM that addresses the following issues:

- Clarifies the exceptions to the cost-effectiveness provision (Section IVA).
- Adds an annual reporting requirement to the Council.

- **Include information in the regulation that prospective applicants are responsible for verifying that the HELP program would not negatively impact any existing mortgage conditions.**

Council Staff believes Executive Regulation 2-10AM is consistent with the T&E Committee's recommendations and should be approved by the Council.

NOTE: The "first lien" issue identified by FHFA, if unresolved, would prevent the HELP program from being implemented as currently envisioned in County law. However, Council Staff believes the regulation should be approved now, so that if the "first lien" issue is resolved, the program can move forward immediately.

Attachments

- Resolution to Approve Executive Regulation 2-10AM (©A)
- April 21, 2010 County Executive Transmittal Memorandum for ER 2-10 and Fiscal Impact Statement (©1-5)
- July 20, 2010 County Executive Transmittal Memorandum for ER 2-10AM (6-7)
- Executive Regulation 2-10AM "Home Energy Loan Program" (©8-25)
- County Code Chapter 18A "Home Energy Loan Program Excerpts (©26)
- Comments Received by the County Executive on Regulation 2-10 (Summary listing of individuals and organizations who commented is attached on ©27. Full comments are included on the web version of the June 24, 2010 T&E Committee packet at: http://www.montgomerycountymd.gov/content/council/pdf/agenda/cm/2010/100624/20100624_TE2.pdf beginning on ©25)

Resolution No.:
Introduced:
Adopted:

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

By: County Council

SUBJECT: Executive Regulation 2-10AM, Home Energy Loan Program

Background

1. On April 21, 2010 the Council received Executive Regulation 2-10, "Home Energy Loan Program" from the County Executive. This regulation is intended to implement the Home Energy Loan Program created by the Council in Buill 06-09 enacted on April 14, 2009.
2. On June 24, 2010, the Council's Transportation, Infrastructure, Energy & Environment Committee discussed Regulation 2-10 and recommended changes to the regulation.
3. On July 19, 2010 the County Executive transmitted Executive Regulation 2-10AM, "Home Energy Loan Program" which included changes to address issues raised by the Council's Transportation, Infrastructure, Energy & Environment Committee.

Action

The County Council for Montgomery County, Maryland approves the following regulation:

Executive Regulation 2-10AM, "Home Energy Loan Program"

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

(A)



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

April 21, 2010

TO: Nancy Floreen, President
County Council

FROM: Isiah Leggett 
County Executive

SUBJECT: Executive Regulation 2-10 – Home Energy Loan Program

2010 APR 21 PM 4:19

RECEIVED
MONTGOMERY COUNTY
COUNCIL

Section 18A-29 of the County Code requires the Executive to establish regulations to administer the Home Energy Loan Program (HELP). It is my pleasure to transmit proposed Executive Regulation 2-10 as well as public comments on the proposed regulation, and a fiscal impact statement for consideration by the Council. Key issues related to the development of this proposed regulation are detailed below.

Public Process:

Executive Regulation 2-10 was posted for public comment in the County Register on March 1, 2010, and a hearing was conducted on March 25, 2010. The period for public comment closed on April 1, 2010. Testimony was received from 19 individuals and organizations including the Maryland Energy Administration, county residents, energy service companies, and the Greater Capital Area Association of Realtors (GCAAR).

Concerns Addressed During Regulation Development:

Banking and Lending Community Concerns: Key concerns were initially raised in the context of the Home Energy Loan Program, and property assessed clean energy (PACE) programs nationwide, about the potential effects of the repayment provisions on the lending industry and ability of residents to refinance.

The Department of Economic Development (DED), based on the experiences of other similar programs, determined that the repayment provisions of HELP would not burden the lending industry or hinder homeowners from obtaining re-financing. In addition, DED believes

the borrower's additional cash flow from energy savings and potentially enhanced home value would largely offset any impacts of the HELP loan.

However, based on national best practices published by the Department of Energy for PACE programs, the County incorporated key protections as part of the proposed regulation. A resident must have sufficient equity, based on the full assessed value of the property, to cover the amount of HELP loans, less any mortgage or deed of trust liens against the property. In addition, loans are capped at the lesser of 5 percent of assessed value or \$25,000. Furthermore, the County anticipates developing robust educational components as part of the program, emphasizing financial literacy and the financial implications of a HELP loan. Members of the banking and lending community were included in an email to program stakeholders announcing the public comment period for the regulation. No representatives from the banking and lending industry testified at the March 25 public hearing or submitted written testimony.

Energy Audit Cost: Initial concerns were raised regarding the costs of energy audits to consumers, as an energy audit is a prerequisite to program financing. At the time the original legislation passed, qualifying full scope energy audits cost between \$350 and \$600 per home. Meanwhile, each of the electric utilities (Pepco, Allegheny and BGE) serving Montgomery County has implemented home energy audit programs. Pepco and Allegheny significantly subsidize audits, \$100 and \$180 respectively per audit, while all three utilities provide enhanced incentives for retrofits for individuals that undertake compliant audits. All three utilities indicate that the HELP program enhances their programs and coordination is anticipated.

Comments Received During Comment Period:

Written and oral testimony was supportive of the program, and included suggestions for improving the regulation. Comments that were adopted are detailed below.

Direct Payment of Contractors and Service Providers: The draft regulation called for the loan funds to be provided to the homeowner, who would then pay the contractors that performed the work. The auditor and contractor community testified that the significant delay could occur between a resident receiving a check from the County and passing that payment to the contractor. Such a delay could potentially result in contractors charging more for their services. The final regulation provides for direct payment to contractors, upon notification by the homeowner that the work has been satisfactorily completed, in order to maintain low prices and streamline administration.

Standards for Wood Stoves and Biomass Energy: The Alliance for Green Heat suggested that the County adopt standards, as permitted by the originating legislation, to ensure

any wood stoves or fireplace inserts covered by the program comply with the Washington State standards, which are widely recognized as the gold standard for efficiency and low emissions.

Cost-Effectiveness: Several entities testified that the County's proposed calculation for cost-effectiveness should include incentives for which the consumer is eligible. This would improve the cost-effectiveness of the retrofits allowing a much larger package of incentives to be funded, yielding greater energy savings. The cost-effectiveness calculation has been modified to allow the project costs to be reduced by incentives the consumer is eligible to receive. However, these calculations do not include the County Property Tax Credit which is not sufficiently funded to assure that residents applying for the loan will ultimately receive the credit, nor the sale of environmental attributes for which markets are highly speculative.

Energy Audit Standards: Two entities testified that the County should recognize energy audit standards that are equivalent to those maintained by the Building Performance Institute. The regulation was amended to allow these standards to be adopted where appropriate.

Disclosure: Disclosure requirements have been further detailed to enhance clarity in response to comments from GCAAR.

Conclusion:

I firmly believe that this regulation, within the authority granted by the legislation, balances the concerns of the various stakeholders involved in the development of this program. We anticipate that the HELP program will provide substantial benefits for residents, enabling them to adopt energy-efficiency measures and overcome the initial costs of making these improvements. I look forward to your prompt review and approval of this regulation so the County can implement this exciting program to benefit our residents and energy service businesses. Please contact Bob Hoyt in the Department of Environmental Protection at 240-777-7781 or bob.hoyt@montgomerycountymd.gov to discuss this regulation.

Attachments



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

April 19, 2010

TO: Joseph F. Beach, Director, Office of Management and Budget

VIA: Jacqueline Carter, Management and Budget Manager *JAC*

FROM: John Greiner, Management and Budget Specialist *JMG*

SUBJECT: Executive Regulation 2-10, Home Energy Loan Program

REGULATION SUMMARY

This executive regulation implements the Montgomery County Home Energy Loan Program (HELP), Chapter 18A, Article 4, incorporated into County Code by the passage of Bill 6-09. HELP provides loans to homeowners, re-paid through the property tax bill, for energy efficiency and renewable energy improvements.

FISCAL SUMMARY

The County has allocated \$1,526,780 from its anticipated Energy Efficiency and Conservation Block Grant funded by the American Recovery and Reinvestment Act to provide initial funding to build program infrastructure, provide initial operating capital, and market the program. This will be supplemented, as necessary, by additional fees and interest surcharges added to the loans to cover all operating costs of the program. Repayments of loan funds originating from grant sources will be recycled into future loans to consumers.

Additional capital for loans will be provided through additional grant resources that may become available, the issuance of bonds, or other options as identified by the Department of Finance.

Although it is expected that the Department of Environmental Protection and the Department of Finance will incur administrative costs in connection with this program, this regulation provides that the interest rate and/or loan fees be set at levels adequate to cover all costs. Hence, the program will be self-supporting, with no fiscal impact to the County.

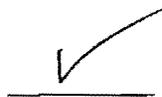
Joseph F. Beach, Director, Office of Management and Budget
April 19, 2010
Page 2

Stan Edwards of the Department of Environmental Protection, Glenn Wyman of the Department of Finance, and John Greiner of the Office of Management and Budget contributed to and concurred with the analysis.

JFB:jg

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Stan Edwards, Department of Environmental Protection
- Glenn Wyman, Department of Finance
- John Greiner, Office of Management and Budget
- John Cuff, Office of Management and Budget

OMB REVIEW



Fiscal Impact Statement approved

OMB Director

4-19-10

Fiscal Impact Statement not approved, OMB will contact department to remedy.



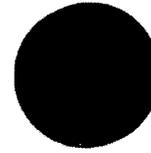
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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

July 20, 2010



2010 JUL 20 PM 4:33

RECEIVED
MONTGOMERY COUNTY
COUNCIL

TO: Nancy Floreen, President
County Council

Method 2

FROM: Isiah Leggett
County Executive

SUBJECT: Modifications to Executive Regulation 2-10 – Home Energy Loan Program

Montgomery County Code, Section 18A, Article 2, requires the Executive branch to establish regulations to administer the Home Energy Loan Program (HELP). Proposed Executive Regulation 2-10 was transmitted to the County Council on April 21, 2010. A Transportation, Infrastructure, Energy & Environment (T&E) Committee worksession on the regulation was held on June 24, 2010. Based on discussions at the worksession, the T&E Committee requested several modifications to the proposed regulation. These modifications are summarized below:

Proposed Modifications to Regulation

Cost Effectiveness Calculation [Section VI(A)]

- Clarify that financing costs would be part of the cost-effectiveness calculation.
- Exclude funds contributed by the homeowner to implement projects from the cost-effectiveness calculation.

Acknowledgements during Application Process [Section VIII(D)]

- Require applicants to acknowledge that they have reviewed their loan documents or contacted their lender to ensure that engaging in a HELP loan does not constitute default on a current loan.

Financial Parameters of Program [Section X]

- Add new section to require the County Executive to provide an initial report before the formal launch of the Program, and each year thereafter, outlining the interest rates, fees, and other financial parameters of the program (including how these items were determined), as well as Program results.

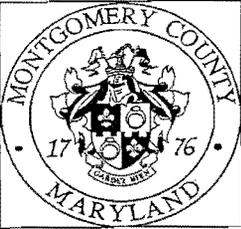
Timing of Program Implementation

Recent statements by the Federal Housing Finance Agency (FHFA) may affect the ability of jurisdictions to create marketable Property Assessed Clean Energy (PACE) programs like HELP. Such programs are predicated upon the PACE assessment having "first lien" priority in the same manner as property taxes. According to the FHFA, homeowners with existing loans regulated by FHFA (e.g. Fannie Mae or Freddie Mac loans) would violate their "Uniform Security Instrument" by getting a HELP loan (and as a result be in default), and anyone with a HELP loan would be prohibited from refinancing under an FHFA regulated loan (or buyers assuming HELP loans would have to pay them off in full if they were financing using an FHFA regulated loan).

The alternative is to have a "subordinate" loan program where, in the case of default, the HELP assessment would be paid after the mortgage is paid off. In cases where the sale of a home was insufficient to cover the outstanding mortgage and the HELP loan, the County would have to cover the outstanding cost of the loan from a loan reserve fund. This has implications for the cost of the program. The Department of Environmental Protection (DEP), Finance, and the County Attorney are currently evaluating the legal, programmatic, and fiscal implications of a subordinate loan program.

PACE programs are a priority of the Obama administration, and negotiations are continuing between administration staff, the Department of Energy, and FHFA to resolve the "first lien" issue. Communities across the nation with PACE programs in place (e.g., Sonoma, San Francisco, and Boulder) have suspended their programs until a resolution of this issue. Nonetheless, DEP and Council staff recommend moving forward with finalizing Executive Regulation 2-10AM to ensure we are in position to move forward if the issue of PACE programs and FHFA regulated mortgages is resolved. In the event that a resolution is not reached and alternative approaches like a subordinate program are necessary, this regulation would not be implemented, or the legislation establishing HELP would have to be amended and this regulation modified accordingly.

Please contact Bob Hoyt in the DEP if you have any questions at 240-777-7781 or bob.hoyt@montgomerycountymd.gov.



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Montgomery County Regulation on:

MONTGOMERY COUNTY HOME ENERGY LOAN PROGRAM

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND
DEPARTMENT OF FINANCE

Issued by: County Executive
Regulation No. 2-10

Authority: Chapter 18A, Article 4
Council Review: Method (2) under Code Section 2A-15
Register Vol. 27, No. 3

Comment Deadline: April 1, 2010
Effective Date:
Sunset Date: None

Summary: This regulation establishes the administrative procedures for implementing the Montgomery County Home Energy Loan Program.

Address: Written comments on these regulations should be sent to:

Stan Edwards, Chief
Division of Environmental Policy and Compliance
Department of Environmental Protection
255 Rockville Pike
Rockville, Maryland 20850

Glenn W. Wyman
Debt and Cash Manager
Department of Finance
101 Monroe Street, 15th floor
Rockville, Maryland 20850

Staff Contact: For further information or to obtain a copy of this regulation, contact Eric Coffman at (240) 777-7754.

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Sec. 1. Regulation

Section I: General Provisions

- A. Authority. In accordance with the authority conferred under Chapter 18A, Article 4, of the Montgomery County Code, 2004, as amended (hereinafter referred to as the "Code"), the County Executive hereby promulgates this regulation to implement County law pertaining to the administration of the Home Energy Loan Program (hereinafter referred to as the "Program" or "HELP"). The Program provides loans to homeowners, re-paid through the property-tax bill, for energy efficiency and renewable energy improvements.
- B. Applicability. This regulation applies to the administration of the Program by the County Government and participation in the program by consumers, auditors, and contractors.

Section II: Definitions

For purposes of this regulation, the following words and phrases have the following meanings unless the context clearly indicates otherwise:

1. Amortization Period – The period over which a HELP loan is repaid to the County by a borrower.
2. Annual Real Property Tax Bill – The annual real property consolidated tax bill that the County mails each year to property owners in the County.
3. Annual Tax Lien Sale – A sale of real property tax liens that the County conducts on the second Monday of each June to recover amounts owed to the County in delinquent taxes and charges on real property.
4. Applicant – An owner of a residential property in the County who submits a HELP loan application to the Department of Finance, the Department of Environmental Protection or their designee.
5. Assessed Value – The full cash value as indicated on the most recent assessment notice from the Maryland Department of Assessments and Taxation.
6. Borrower – An applicant who has received a HELP loan.
7. Contractor – An individual or business entity meeting the program requirements established by the Department of Environmental Protection to perform work associated with energy audits and energy related home improvements.

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8. Cost-Effectiveness – The maximum estimated amount of time it takes for an energy efficiency improvement to pay for itself through reduced energy costs (the “payback” period), as determined by the Department of Environmental Protection.
9. County – Montgomery County, Maryland.
10. Department – The Department of Environmental Protection or DEP.
11. Director – The Director of the Department of Environmental Protection or the Director’s designee.
12. Director of Finance – The Director of the Department of Finance or the Director’s designee.
13. Energy Auditor – An individual or company that:
 - (a) is a participating auditor with the Maryland Home Performance with ENERGY STAR Program;
 - (b) is participating in a utility sponsored Home Performance with ENERGY STAR Program;
or
 - (c) meets any other equivalent requirements approved by the Director as published in the Program Plan.
14. Eligible Cost – The cost of buying and installing an energy efficiency improvement or renewable energy device, including any part, component, or accessory necessary to operate the improvement or device, less any amount received from a public or private program because the improvement or device is or will be made or installed.
15. Energy Efficiency Improvement – A cost-effective improvement to an existing single family home that reduces the home’s energy consumption and cannot be readily removed as defined in Section 18A-24 of the County Code.
16. ENERGY STAR Rating - The ENERGY STAR rating developed by the U.S. Environmental Protection Agency (EPA) which rates a product's energy efficiency and other factors.
17. Environmental Attributes – Environmental benefits for which there are accessible and quantifiable markets. Environmental attributes include renewable energy certificates (RECS) and carbon offsets. (10)



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18. Fundamental Health and Safety Remediation or FHSR - means improvements necessary to remedy health or safety issues that may be exacerbated by energy efficiency or renewable energy improvements (e.g., moisture mitigation); or alternatively, measures necessary to ensure the fundamental function of the improvement.
19. Home Energy Audit - An evaluation of the energy efficiency of a home which includes any test or diagnostic measurement conducted by a registered energy auditor that the Department finds necessary to:
 - (a) assure that a home's energy efficiency is accurately measured; and
 - (b) identify cost-effective steps that can be taken to improve a home's energy efficiency.
20. Home Energy Loan Fund or Fund - The fund established under Section 18A-30 of the County Code to provide funding for the Home Energy Loan Program.
21. Home Energy Loan Program (HELP or Program) -- The program established under Section 18A-25 of the County Code to assist single-family homeowners to make energy efficiency improvements or install a renewable energy device; establish a loan fund to provide homeowners loans under the Program; and generally amend the environmental sustainability law.
22. Home Energy Yardstick - The U.S. Environmental Protection Agency's ENERGY STAR Program tool for assessing the relative performance of existing homes.
23. Home Performance with ENERGY STAR or HPwES - The energy audit and quality assurance program offered through the EPA and delivered through local program sponsors that recruit and train home improvement contractors and consultants that are qualified to perform comprehensive energy audits.
24. Home Performance with ENERGY STAR Sponsor or HPwES Sponsor - A non-profit organization, state or local government, or utility that signed a partnership agreement with the EPA to administer an HPwES program.
25. Program Plan - The fundamental operating manual developed by the Director outlining the Program's administrative, marketing, education and outreach components.
26. Property Owner or Homeowner – The person who is listed on the County's tax records as the owner of the property where the energy improvements will be installed.



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27. Renewable Energy - Energy derived from solar, wind, geothermal, and any other energy source or technology which the Director finds is derived from natural processes that do not involve the consumption of exhaustible resources, and is specified by the U.S. Department of Energy (DOE), EPA, or Maryland Energy Administration (MEA).

28. Renewable Energy Measure or Device- A measure that:

- (a) converts, or actively uses renewable energy;
- (b) is permanently installed on the home or property; and
- (c) meets safety and performance standards set by a nationally recognized testing laboratory for that kind of device, if these standards are available.

29. Renewable Energy Product Provider- A specialized contractor installing technologies and products that use renewable energy.

30. Single Family Home – A single family detached or attached residential building. A single family home includes a condominium.

31. Test-out – A series of diagnostic tests and post-installation quality control and assurance inspections required by the EPA or HPwES sponsor to verify the quality of workmanship, and performed by an energy auditor.

Section III: Program Established

There is a Home Energy Loan Program (HELP) under which the County encourages energy conservation and the use of clean energy by making loans available to residential property owners interested in making energy efficiency and renewable energy improvements to their homes. The loans finance a package of improvements, adhere to defined cost-effectiveness criteria, and are approved based on the results and recommendations of an energy audit. The loans must be repaid through the County real property tax bill for the home of the borrower.

Section IV: Eligible Energy Efficiency and Renewable Energy Measures

The Program provides loans to fund cost-effective energy efficiency and renewable energy improvements to single family homes within the County. Renewable energy installations that do not satisfy

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cost-effectiveness criteria may be funded through HELP loans in concert with energy efficiency improvements that collectively achieve a prescribed minimum level of performance.

A. An energy efficiency improvement or renewable energy measure will be deemed cost-effective if the sum of projected energy cost savings resulting from the improvement or measure is equal to or greater than the sum of principal and interest payments [of the loan obtained to finance the improvement or measure], assuming the entire project is financed, over a 15 year amortization period at the interest rate in effect at the time of application. Cost-effectiveness will be determined as follows:

- (1) Projected energy savings will be calculated based on the energy cost savings identified by an energy auditor, using a broadly accepted software package, or estimates by a renewable energy product provider, using a broadly accepted renewable energy calculator. Energy cost savings must be calculated using energy costs, provided by the Director, based on applicable tariffs and other commonly available energy cost information and published periodically in the Program Plan or provided by a widely accepted source (e.g., DOE).
- (2) For the purposes of calculating cost effectiveness, [P]principal and interest of the estimated loan amount will be based on the total projected costs of the energy-efficiency improvement or renewable energy measure as estimated by the auditor, contractor, or renewable energy product provider and included in the loan application by the homeowner. Total projected costs must not include the items indicated in paragraph 5.
- (3) Projected project costs will consist of all necessary labor, services, materials and equipment costs necessary to install the improvement or measure for which the loan was approved.
- (4) Projected project costs may be reduced to represent the net cost including all incentives which the applicant is eligible to receive.
- (5) The calculation of project cost-effectiveness will not include the following:
 - (a) FHSR necessary to ensure well-being or effective deployment of the measure (e.g., combustion safety improvements);
 - (b) [the cost of the initial energy audit, financing, or loan origination fees]
cost of the energy-audit and test-out;
 - (c) loan origination and application fees;
 - (d) funds contributed by the homeowner to reduce the cost of the financed package;



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- (e) property tax credits provided by Montgomery County; or
- (f) proceeds from the sale of environmental attributes.

B. Fundamental Health and Safety Remediation (FHSR).

- (1) Applicants may receive additional loan funds, which will not be included in cost-effectiveness calculations, of up to 10 percent of the energy efficiency or renewable energy project costs not to exceed \$1,500 for FHSR. The total loan must not exceed the cap specified in Section VIII (C) of this regulation.
- (2) The loan for FHSR must only be authorized in connection with an energy efficiency improvement or renewable energy measure. The additional loan funds may only be used to remediate a structural, mechanical, electrical or other issue that directly jeopardizes the well being of building occupants, quality of the indoor environment, or the durability or longevity of the structure.
- (3) Loan applications requesting FHSR must be signed by the applicable contractor or auditor specifying or performing the work, describing the reason why FHSR is required to properly install the energy-efficiency or renewable energy improvement.

C. An applicant for a loan to finance energy efficiency improvements and renewable energy measures must satisfy the following requirements:

- (1) The applicant must have commissioned and received the final report from an energy auditor.
- (2) The proposed improvements or measures must be identified in the applicant's home energy audit.
- (3) Improvements that are fundamentally dependent on another improvement identified in the home energy audit report must be combined. These specifically include:
 - (a) Insulation and comprehensive air-sealing where needed;
 - (b) Heating, ventilating, and air conditioning (HVAC) unit replacement and duct sealing where needed; or
 - (c) Other devices where significant evidence exists that coupled performance improves overall cost-effectiveness, as defined in the Program Plan.
- (4) The applicant must have obtained a cost proposal for the energy efficiency improvement or renewable energy measure from the contractor or renewable energy product provider that will be responsible for installing the improvement.
- (5) In cases where FHSR is required, the applicant must provide cost estimates and the cost cannot exceed the criteria established in subsection (B).



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- D. Renewable energy measures that do not meet the requirements of subsections (A) and (C) may also qualify for a loan if:
- (1) The single-family home where the renewable energy measure is to be installed has already achieved a prerequisite level of energy efficiency, equivalent to a score of 7.5 using the ENERGY STAR Home Energy Yard Stick as calculated by the applicant's energy auditor, or equivalent methodology approved by the Director;
 - (2) The proposed renewable energy measure is part of a package of energy efficiency improvements that collectively meet the cost-effectiveness requirements established in subsection (A); or
 - (3) The proposed renewable energy measure is part of a package of energy efficiency improvements projected, as calculated by the applicant's energy auditor, to elevate the home to a score of 7.5 on the ENERGY STAR Home Energy Yard Stick or that result in at least a 25 percent improvement in the energy performance of the applicant's home.
- E. Specialized systems, may qualify if they meet the following requirements.
- (1) In the case of wind energy systems, the application must include an analysis and site plan by the renewable energy product provider or consultant estimating the annual generation of the system based on the characteristics of the site and specified turbine, or equivalent as defined by the Director in the Program Plan.
 - (2) Solar water heating systems application must be certified by the Solar Rating Certification Corporation, or equivalent as defined by the Director in the Program Plan.
 - (3) Wood, pellet, or biomass heating systems must meet Washington State emission standards, codified at Wash. Admin. Code §§ 173-433-100 and 173-433-130, and be included on that state's approved list of stoves, or equivalent as defined by the Director in the Program Plan.
 - (4) Specifications and requirements for renewable energy systems not included in this regulation must meet the requirements specified by the Director in the Program Plan.

Section V: Eligible Properties

All eligible homes must be located within Montgomery County. Properties eligible for a HELP loan include both existing attached and detached single family homes and condominium units. If the property for which the loan is requested is a condominium, the work to be performed must be limited to the parts of the building that are under the exclusive control of the property owner.



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Section VI: Eligible Home Energy Audits and Auditors

All applications for loans for energy efficiency improvements and renewable energy measures must include a comprehensive home energy audit. The home energy audit must satisfy the following requirements:

- A. Audits must be based on the HPwES process developed, promoted and monitored by the U.S. Environmental Protection Agency's ENERGY STAR Program.
- (1) Auditors providing services must be registered energy auditors as defined in Section VII of these regulations and the Program Plan.
 - (2) Home energy audits must be based on the Building Performance Institute's (BPI) audit requirements as included in the certification program for building analysts. Auditors must remain current in their skills as required under both the federal HPwES program and its state-level counterpart implemented by MEA. Auditors and contractors must comply with standards adopted by EPA, MEA, or the HPwES sponsor within one year after adoption. The Director may amend requirements where MEA, HPwES sponsor or EPA standards are inconsistent.
 - (3) Alternatives to BPI certification may be accepted, if they are deemed equivalent by the EPA under the HPwES program, and accepted by the applicable HPwES sponsor.
 - (4) Audit analysis must be conducted using software accepted by HPwES.
 - (5) A formal test-out procedure, including application of a blower door test, must be conducted by the energy auditor after the installation of energy efficiency improvements.
 - (6) In the case of a lapse in both the MEA's HPwES program and utility sponsorships of HPwES programs, the Director will recommend whether the County should engage in a HPwES sponsorship as a local government.
- B. In order for the home energy audit to be eligible for the Program, it must comply with HPwES requirements and must also:
- (1) Identify a package of cost-effective energy efficiency improvements or renewable energy measures that meet the requirements of subsection (A) and, at the request of the applicant, identify a package of cost-effective energy efficiency improvements or renewable energy measures that are projected to yield annual energy savings greater than the annual principal and interest payment for the improvements;
 - (2) Provide projected energy savings from energy efficiency improvements or renewable energy measures to be financed under the program;
 - (3) Address all major fuel sources used in the home;



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- (4) Identify any public or private financing mechanism that can be used to implement energy efficiency improvements or renewable energy measures (e.g., property tax credits, federal tax credits, and utility incentives);
- (5) Include, or link to, program application and educational materials;
- (6) Disclose any business relationship where an auditor specifies a contractor, manufacturer, vendor or service provider; and
- (7) Adhere to any additional requirements identified in the Program Plan.

C. An applicant may utilize an audit performed within the 12 months preceding the effective date of this regulation if the audit satisfies all the requirements of subsection (A) and (B).

Section VII: Requirements for Energy Auditors, Contractors, and Renewable Energy Product Providers

- A. In order to deliver services to homeowners under the Program, all auditors, contractors, and renewable energy product providers must register with the County or its designee, and agree to the requirements in Section VI (B) as defined in the Program Plan.
- B. Energy auditors must:
 - (1) Use the cost-effectiveness calculations and methods identified in Section IV (D) of this regulation;
 - (2) Deliver audits adhering to the requirements of Section VI;
 - (3) Adhere to Program marketing and customer education requirements developed by the County and published in the Program Plan;
 - (4) Agree to provide a test-out, including all diagnostics prescribed by the HPwES program, within 14 days after receiving a request from the consumer; and
 - (5) Adhere to all other requirements and conditions specified by the Director in the Program Plan.
- C. Contractors and energy auditors performing energy efficiency improvements must:
 - (1) Maintain an active home improvement contractor's license issued by the Maryland Department of Labor, Licensing and Regulation;
 - (2) Possess, in the case of Contractors providing air-sealing services, a valid BPI Envelope Professional certification;



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- (3) Adhere to any Program marketing and customer education requirements developed by the County;
- (4) Agree to take all reasonable measures to resolve complaints; and
- (5) Adhere to all other requirements and conditions specified by the Director in the in the Program Plan.

D. Renewable energy product providers must:

- (1) Use cost-effectiveness calculations and methods identified in Section IV (D) of this regulation;
- (2) Maintain an active home improvement contractor's license issued by the Maryland Department of Labor, Licensing and Regulation;
- (3) Adhere to Program marketing and customer education requirements developed by the County;
- (4) Agree to take all reasonable measures to resolve complaints; and
- (5) Adhere to all other requirements and conditions specified by the Director in the Program Plan.

E. All auditors, contractors, and product providers must comply with all applicable permitting and licensing requirements mandated by the County, state and, if applicable, the municipality.

F. The County may charge fees for registration of auditors, contractors, and renewable energy product providers sufficient to offset its administrative costs. Fees will be specified by the Director and documented in the Program Plan.

G. The County may revoke the registration, and eligibility to participate in the Program if a provider fails to comply with the requirements of this Section. However, the County will not guarantee, warranty, or be responsible for the qualifications or performance of any auditor, contractor, or product provider in connection with any home improvement or measure paid for under the Program.

Section VIII: Program Financing

HELP loans and repayments are a lien on the borrower's property that conveys with the property. Therefore, if title to the property is transferred, the obligation for payment of the loan transfers with the property to the new owner.

A. Financial Eligibility

- (1) The applicant must be the owner of record of the property. The County, or its designee, will perform a title search for each application.



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- (2) The total amount of HELP loans outstanding on each property must not exceed the maximum described in subsection (C) (4).
- (3) All real property taxes due and owing on the property must be paid in full. Any property that is in tax sale or has liens against the property, other than mortgage liens, will not be eligible for a HELP loan.
- (4) Applicants must meet the credit eligibility standards of the Program described, in subsection (B).

B. Credit Standards

- (1) An applicant must not have any outstanding debts owed to the County or the State of Maryland. In addition, an applicant must be current on any mortgage or deed of trust debt on the property.
- (2) An applicant must have paid all real property taxes on the property on time for the previous three years. If the applicant has owned the property for less than three years, the applicant must be up to date on all real property taxes and must not have defaulted on taxes for any real property owned in the County in the three years prior to the application.
- (3) The applicant must not be in bankruptcy.
- (4) A property must have sufficient equity, based on the assessed value, to cover the amount of HELP loans, less any mortgage or deed of trust liens against the property.

C. Loan Terms

- (1) All loans must be paid in annual installments over 15 years.
- (2) The interest rate on loans will be based on the County's cost of funds, as determined by the Director of Finance, used to capitalize the program plus any costs of administration, loan processing, Program marketing and any required reserve funds.
- (3) Origination and application fees may be imposed to cover the cost to the County, or its designee, of loan processing, appraisals, title search and other program operational costs. These costs will be non-refundable and identified in the Program Plan.



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- (4) HELP loans are available in amounts not less than \$2,500 and may not exceed 5 percent of property's assessed value up to a maximum of \$25,000.
- (5) Loan payments on all loans are due on September 30th of each year. The HELP loan payments are included on the annual real property tax bill. Borrowers that are permitted to pay their property taxes semi-annually will pay one-half of the loan payment amount by September 30th and the second half of the loan payment by December 31st of that same year.
- (6) Any payment delinquency after the due dates will be subject to collection through the County's annual property tax lien sale.
- (7) The loan amount and any accrued interest are a first lien on the real property. Under Maryland law, delinquent amounts are collectable by suit or tax sale like all other real property taxes. In addition, interest and penalties accrue on the unpaid balance at the rate of 20 percent per annum.
- (8) A property owner may pay off the entire balance of a HELP loan at any time without penalty. A request for a pay-off balance must be made to the Montgomery County Department of Finance, Attn: Director of Finance. In order to pre-pay a HELP loan, all principal and accrued interest up to the payment date must be paid in full.
- (9) Partial annual loan payments are not accepted. However, a borrower may reduce the total amount of principal owed by making a lump sum payment against the outstanding balance of the loan. The single payment will be applied first to interest owed and then to principal. A new loan balance will be calculated and the annual payment amount will be adjusted based on the new loan balance. Lump sum payments must be arranged through the Department of Finance. Lump sum payments may not be made in lieu of the regular annual payment.
- (10) The property owner must disclose, in the initial application and with the request for loan disbursement, the amount of any energy efficiency or renewable energy incentives received from both public and private sources. The total HELP loan for which the applicant is eligible will be reduced by that amount.

D. Application Process

- (1) HELP loan applications must be completed and submitted to the Department of Finance, the Department of Environmental Protection, or their designee, as described in the Program Plan. Applications must include the following:



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- (a) Completed application form;
 - (b) Copy of audit report clearly indicating auditors recommended actions and annual energy savings;
 - (c) Estimate of total project costs;
 - (d) Principal amount requested by the applicant;
 - [(d)](e) Names and contact information of all auditors, contractors and renewable service product providers involved in the project;
 - [(e)](f) Application fees;
 - [(f)](g) Releases necessary to process the application, including information to:
 - (i) establish credit-worthiness; and
 - (ii) request energy usage history from applicant's utilities; and
 - (h) Acknowledgement from the applicant that the applicant has reviewed all existing loan documents applicable to the Property and the applicant is satisfied that entering into a HELP loan agreement, which requires consenting to an assessment levied against the Property for repayment of the loan, will not constitute a default under any existing security instrument.
 - [(g)](i) Acknowledgement by the applicant of Program terms and conditions, including agreements from contractors to comply with all applicable federal, state, and local laws.
- (2) The applicant will receive a confirmation from the County, or its designee, concerning the disposition of the loan application. If the loan is approved, the confirmation notification will indicate the terms and conditions of the loan. The applicant must acknowledge the confirmation notification, agree to the terms and conditions of the loan, and return the document to the County or its designee.
- (3) If the HELP loan application is not approved, the applicant may seek a reconsideration of the decision from the Director of Finance. Any request for reconsideration must be in writing and



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must include the reasons for the request. A request for reconsideration must be made within 14 days after notification that the loan application was not approved or the Director's decision becomes final.

- (4) The terms of disbursement, as described in subsection (E) must be included in the application to the Department of Finance.

E. Disbursement of Loan Funds

All projects must be completed within 180 days after the Director of Finance approves the HELP loan, unless an extension is granted. The borrower and the auditor, contractor, or renewable energy product provider (collectively, the parties) must agree to how payments for work will be disbursed at the time that they agree on the scope and price of the work. Those terms may include a single payment or up to three progress payments depending on the scope of work and the mutual agreement between the parties.

- (1) Smaller projects that can be completed in less than 14 days from the date of approval will qualify for a single payment and are subject to the following requirements:
 - (a) The borrower must certify that the work is acceptable within 14 days after completion, or test-out, if applicable.
 - (b) The borrower must notify the Director of Finance within 14 days after project completion or test-out if there is a dispute between the parties. The parties will have 45 days from the date of project completion or test-out to resolve the dispute.
 - (c) If the borrower certifies satisfactory completion of the work under subparagraph (a) the County will pay the auditor, contractor or renewable energy product provider. If no certification is received or the parties have not resolved their dispute as required in subparagraph (b) the County will pay the applicable auditor, contractor, or renewable energy product provider.
- (2) Projects larger in scope that will take more than 14 days to complete may qualify for progress payments to the auditor, contractor, or renewable energy product provider.
 - (a) The Director of Finance will authorize a payment of 30 percent of the contractor estimated costs upon approval of the loan application.



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- (b) The Director of Finance will authorize a second progress payment if agreed to by the parties to the contract at a pre-determined event during installation. That event must be identified in the contract between the parties. The borrower must contact the Department of Finance, as specified in the Program Plan, to authorize payment. The second progress payment will be 40 percent, unless the contract provides for a different amount.
- (c) A final progress payment will be made to the auditor, contractor, or renewable energy product provider at the time of project completion.
- (d) The borrower must certify, as specified in the Program Plan, that the work is acceptable within 14 days after completion or test-out, if applicable
- (e) The borrower must notify the Director of Finance, as specified in the Program Plan, within 14 days after project completion or test-out if there is a dispute between the parties. The parties will have 45 days from the date of project completion or test-out to resolve the dispute.
- (f) If the borrower certifies satisfactory completion of the work under subparagraph (d) the County will pay the auditor, contractor, or renewable energy product provider. If no certification is received or the parties have not resolved their dispute as required in subparagraph (e) the County will pay the applicable auditor, contractor, or renewable energy product provider.

F. Post-Loan Administration

- (1) Beginning the first tax levy year following the first disbursement of HELP loan funds, the annual HELP loan payment will appear on the property owner's annual real property tax bill.
- (2) After final payment of the HELP loan to the County, the loan payment will be removed from the annual real property tax bill.
- (3) Delinquent loan payments may be collected through the Annual Tax Lien Sale or by any other means authorized by law.
- (4) In the event of a foreclosure by a lending institution during the life of the loan, only the amount due or delinquent, including accrued interest, fees, charges, or penalties, must be paid at the time of foreclosure.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject Montgomery County Home Energy Loan Program	Number 2-10AM
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IX: Real Estate - Disclosure Requirements

- A. If the borrower transfers title to the property, the borrower (grantor) must disclose to the new owner (grantee) that the grantee must continue to repay the HELP loan through the annual real property tax bill. The required disclosure must occur in accordance with the grantor's obligation to disclose real property tax information to new owners of property, as described in Section 40-12C of the Montgomery County Code. Disclosures must include:
1. The estimated full-year property tax bill that a grantee would be obligated to pay in the next full tax year after the property is transferred; and
 2. The existence of the HELP loan and that the obligation to repay the HELP loan transfers with the property, the original purpose of the loan, the maturity date of the loan, the annual payment amount, and the approximate pay-off.
- B. The disclosure described in subsection (A) must also be given to the grantee before transfer of title to the property and the grantee must sign a statement indicating that the grantee understands that the HELP loan is being assumed, that the grantee will be responsible for future payments, and that failure to make future payments could result in the property being included in the County's Annual Tax Lien Sale.

X: Reporting

The County Executive will provide a report to the County Council before the formal launch of the Program, and by July 1 each year thereafter, documenting Program performance and financial information. The report will include, where applicable:

- A. Interest rates and fees that apply to Program borrowers and other participants, including a description of how these fees were established and justification for any changes;
- B. Financial report-out including Program fund balances, revenues, expenditures, and reserves;
- C. Number of projects executed, dollars loaned; and
- D. Estimated energy and cost savings to borrowers.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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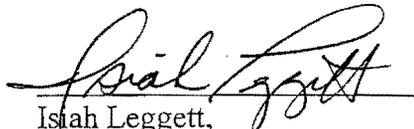
Subject Montgomery County Home Energy Loan Program	Number 2-10AM
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Sec. 2. Severability

If a court holds that a portion of this regulation is invalid, the other portions remain in effect.

Sec. 3. Effective Date

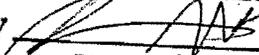
This regulation takes effect upon approval by the County Council.


Istah Leggett,
County Executive

Distribution:

- Clerk, County Council
- County Executive
- Chief Administrative Officer
- County Attorney
- Director, Department of Environmental Protection
- Director of Finance

Approved as to Form and Legality
Office of County Attorney

By 
Date 7/16/10
Walter E. Wilson

Chapter 18A “Home Energy Loan Program” Excerpts

Sec. 18A-24. Definitions (excerpt).

In this Article, except as provided in Section 18A-30, the following words have the meanings indicated:

- *Home Energy Loan Program* or *Program* means the program that provides zero or low interest loans to install an energy efficiency improvement or renewable energy device.
- *Low interest loan* means a loan with an interest rate below prevailing rates for residential home improvement loans, and which reflects:
 - (a) the County’s current cost of borrowing funds or the cost, if any, of federal funds made available to the County for this purpose; and
 - (b) the cost of administering the Program. (2009 L.M.C., ch. 8, § 1.)

Sec. 18A-25. Established; purpose.

The Director must create and administer a Home Energy Loan Program to:

- (a) improve energy efficiency;
- (b) promote energy conservation;
- (c) reduce greenhouse gas emissions; and
- (d) reduce consumption of fossil fuels by County residents; and
- (e) create jobs. (2009 L.M.C., ch. 8, § 1.)

Sec. 18A-29. Regulations.

The Executive must adopt regulations under Method (2) to administer the Program, including:

- (a) lending standards and priorities;
- (b) minimum and maximum loan amounts;
- (c) interest rates, terms, and conditions;
- (d) application procedures, including necessary supporting documentations;
- (e) criteria for adequate security;
- (f) procedures to refer applicants to other sources of funds, and to cooperate with other public and private sources of funds;
- (g) procedures to ask the Director to reconsider any denial of a loan or any decision on interest rates, terms, and conditions;
- (h) procedures for nonpayment or default;
- (i) procedures and requirements for post-installation inspection;
- (j) disclosure requirements for real estate transactions; and
- (k) criteria for loan disbursement. (2009 L.M.C., ch. 8, § 1.)

Written Testimony in Response to Executive Regulation 2-10 Home Energy Loan Program

Individual	Organization
John Ackerly	Alliance for Green Heat
Joyce Breiner	N/A
Beau Engman	E2 Capital Partners
Jay Fisette	Metropolitan Washington Council of Governments
Joe Glitchell	N/A
Doris Ickle	CMC Energy Services
Adam Landsman	Abaris Realty
Authur Lazerow	Home Energy Team
Peter Mellen	Mellen Investment Properties
Shelly Murray	Greater Capital Area Association of Realtors
Suzanne Parmet	Live Green LLC
Bill Prindle	N/A
Gary Skulnik	Clean Currents
Phillip Stiff	N/A
Brian Toll	Efficiency First/Eco Beco
Malcolm Woolf	Maryland Energy Administration
N/A	Energy and Air Quality Advisory Committee