

CLEAN ENERGY FINANCE GUIDE, THIRD EDITION

DECEMBER 9, 2010

Chapter 10.

Resource Requirements

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A. Staffing

Any clean energy financing program will need a number of internal champions in each of the organizations involved in designing and putting it in place. The roles and responsibilities listed below may be split among several different partners who are involved in energy efficiency (EE) and renewable energy (RE) programs. Internal staffing requirements for the government entities operating such a program can be minimal as long as the program has sufficient partners in other organizations.

Roles and Responsibilities

- **EE/RE Program Lead and Program Designers** – Lead the overall effort at the local level. Every EE/RE program needs a person or group of persons who are willing and able to spearhead and organize the various components of the program. In many instances, the lead role is filled by staff at a local nonprofit and often overlaps with other roles such as Marketing Lead. In other cases, the program lead within the municipal government spearheads the effort.
- **Program Lead** – Champions the EE/RE program within a grantee or subgrantee municipal government, assists in drafting council resolutions or state legislation, coordinates with Legal Staff, drafts or oversees drafting of the request for proposal (RFP) for selecting a financial institution (FI) partner, negotiates with the FI, and coordinates execution of contracts with the FI and among other program partners.
- **Legal Staff** – Ensure all local actions and elements of the program comport with municipal, state, and federal laws.
- **Marketing Lead** – Ensures that the community is aware of the EE/RE program and its potential benefits and coordinates with the chosen FI, which will also market the program to its existing customers. Marketing efforts are intended to generate a steady flow of investment-ready projects.
- **Utility Liaison** – Ensures full use of existing utility rebate programs and promotes further development of utility involvement.
- **Contractor Coordinator** – Ensures that a pool of qualified EE/RE contractors exists and that the contractors are aware of the program and prepared to take on the work. In some cases, existing community action agencies can help in this role. See Chapter 5, Section I, *Developing and Managing the Vendor/Contractor Network*.
- **Finance Lead** – Designs finance options for the program, drafts the Loan Loss Reserve Fund (LRF) Agreement, serves as a financial resource, and testifies before municipal councils or state legislatures when needed. This person helps secure funding for the program, which can include (1) preparing/writing grants and working with state and federal officials; (2) helping in the drafting of the RFP to select FI(s) and during the FI selection process; and (3) assisting (if experienced) in drafting the LRF and overall program agreements that delineate roles and responsibilities.

B. Information Sharing

Information sharing is key to assisting the U.S. Department of Energy (DOE) in meeting its mandate to effectively report the return on investment of Energy Efficiency and Conservation Block Grant (EECBG) Program and State Energy Program (SEP) funds in terms of jobs created and energy saved to the Administration and Congress. To ensure fairness, consistency with government policies and requirements, and accurate money and project management, EECBG and SEP programs require extensive two-way communications. In one direction, federal, state, and local governments must make every effort to provide clear and timely guidance on the distribution and eventual use of funds associated with those programs. And in the other direction, clear reporting by all components of the individual EE/RE programs ensures the following: proper oversight of disbursed funds, compliance with laws, and timely adjustments and revisions of government guidance—closing the loop—to allow for and promote flexibility and creativity in individual program designs. Clear two-way communication channels allow grantees to continually refine their efforts funded by the American Recovery and Reinvestment Act of 2009 (ARRA), while adhering to the national objectives of providing maximum leverage of those funds, saving energy, getting the banks lending again, and getting Americans back to work.

Guidance documents from the implementing agencies set the rules for distribution and use of ARRA, SEP, and EECBG funds. Title V, Subtitle E of the Energy Independence and Security Act, as amended, authorizes DOE to administer the EECBG Program. All grant awards made under that program shall comply with applicable law, including the Recovery Act and other procedures applicable to the program. Links to up-to-date guidance documents can be found on the DOE website at www.energy.gov/recovery/ or www1.eere.energy.gov/wip/guidance.html.

Community outreach and marketing is a critical information component and promotes rapid uptake of the loans, which are the key driving force behind all the clean energy programs discussed in this Finance Guide. Responsibility for marketing and outreach will be assigned in program agreements delineating the roles of the various staff and partners in each program. See Chapter 15 for a DOE Template Loan Program Agreement.

Information sharing among program partners is crucial to ensuring continued improvement of the clean energy program in terms of better marketing of the loans and loan program as well as modifications to the program where necessary. For example, in some cases funds in the escrow account are available both for transferring into the LRF account when loans are lent and for reprogramming (if lending targets are not met) to interest rate buydowns to help increase market demand for the lending program. Effective communication between the FI and the grantee that controls the funds will help determine whether and to what extent funds should be reprogrammed.

Quarterly reporting includes the information that a grantee should ask an FI partner to provide as part of a residential EE loan program. In forthcoming editions of this Finance Guide, a chapter will be devoted to a detailed discussion of reporting requirements.

C. Consultants

Grantees and program partners can take advantage of consultants to advise them on certain areas of the EE/RE program design process. The extent of consultant involvement usually depends on the program's budget. Consultants' fees can be covered in the grant budget. (See Section A above for a discussion of roles). In such programs, consultants are most effectively used in areas that include assistance in EE/RE program design, all areas of financial design and document drafting and execution, as well as marketing.

D. Legislative Rulings

In some instances legislative and executive efforts are required to implement EE/RE programs, while in other cases legislative efforts set broad objectives rather than specific targets and mandates.

In some examples (see Attachment A), a state can promote the use of loan loss reserves through strongly worded state legislation. For instance in Washington State, legislation provided that:

“The legislature finds that the creation and use of risk reduction mechanisms will promote greater involvement of local financial institutions and other financing mechanisms in funding energy efficiency improvements and will achieve greater leverage of state and federal dollars. . . . Local municipalities receiving federal stimulus moneys through the federal energy efficiency and conservation block grant program or state energy program are authorized to use those funds, subject to federal requirements, to establish loan loss reserves or toward risk reduction mechanisms, such as loan loss reserves, to leverage financing for energy efficiency projects.”

[RCW 43.330.330-350 [2009 c 379 § 206-8].

At the formal local decision-making level (see Attachment B), legislation is needed to authorize the use of city/county time and funding to guide EE program direction at each level of completion,

“The City Council directs City Staff to continue to explore and develop mechanisms by which the City can assist – without General Fund usage and preferably through leveraged private sector involvement – in the creation of an energy efficiency financing program to complement the Energy Efficiency Community Challenge.”

[Bellingham, Wash., Res. No. 2009-05, § 3.]

E. Legal Approvals

Clean energy programs using EECBG or SEP funds must comply with statutory law and will require careful attention to ensure compliance with those laws. However, every effort is being made to streamline the compliance procedures so that funds can be committed and expended, EE/RE projects can be put in place, and green jobs can be created and maintained.¹

The discussion on the following pages deals with a few of the more widely known EECBG and SEP requirements under federal, state, and local laws.

Other determinations regarding the use of funds in an LRF and clean energy lending program are included in Chapter 5, Section D, *Eligible Use of ARRA Funds and Key ARRA Guidelines and Issues*. There, grantees can find information on, for example, the definition of “spent” for use of EECBG funds as credit enhancement, the LRF budget and use of grant funds for program development and administration costs, interest earnings on loan loss reserve funds, the use of quarterly reports instead of monthly reporting, and the disposition of the reserve fund at end of the LRF Agreement.

¹ Title V, Subtitle E of the Energy Independence and Security Act, as amended, authorizes DOE to administer the EECBG Program. All grant awards made under this program shall comply with applicable law including the American Recovery and Reinvestment Act of 2009 (ARRA) and other procedures applicable to this program. Links to the full text of ARRA, as well as links to other updated federal guidance can be found on the DOE website at www.energy.gov/recovery/.

Federal Laws

National Environmental Policy Act (NEPA) – The Energy Efficiency and Conservation Block Grant (EECBG) Program and the State Energy Program (SEP) require compliance with the National Environmental Policy Act (NEPA). Any EE/RE program using these funds must submit an Environmental Questionnaire to DOE. See Attachment C for a sample Environmental Questionnaire.

However, if EE programs are designed to produce improvements on existing buildings (without new construction) and to reduce energy consumption, they should be eligible for a categorical exclusion to NEPA under Subpart D, Appendix A or B. This exclusion is based on the fact that energy efficiency projects are not classified as construction activities and, typically, do not produce any new impact on the site location. See Attachment D for a sample EECBG NEPA Review Document, certifying a categorical exclusion.

National Historic Preservation Act (NHPA) – Projects, including those related to rehabilitation, energy efficiency retrofits, renewables, and weatherization under various federal funding programs (among others ARRA, EECBG, SEP, and the Weatherization Assistance Program), are subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA) and its implementing regulations at 36 CFR part 800.

However, most of the energy efficiency projects and programs highlighted in this Finance Guide will receive categorical exemptions. In accordance with 36 CFR 800.3(a)(1), as long as the individual energy efficiency undertakings on the exterior of the building—including caulking, weather stripping, thermal insulation, door and window replacement, exterior resurfacing, and the various repairs necessary to make the EE/RE improvements—do not change the appearance of the exterior of the building, they are determined to have no potential to cause effects on historic properties even when historic properties are present. As such these projects will receive a categorical exclusion from NHPA and need not submit applications. The same is true of interior work not visible from a public right of way. However, to establish a chain of responsibility for the projects, states must enter into a Programmatic Agreement with DOE. See Attachment E for a sample NHPA Programmatic Agreement, certifying a categorical exclusion for such projects under ARRA, EECBG, SEP, and the Weatherization Assistance Program.

Davis-Bacon and Buy American – Contractors and subcontractors directly receiving ARRA funding for projects through SEP must adhere to the wage rules under the Davis-Bacon Act (DBA).

However, the Department of Labor has determined that DBA requirements do not apply to individual homeowners who participate in or benefit from ARRA-funded SEP and EECBG energy improvement financing programs that consist of providing loans to individual homeowners for EE/RE projects for their homes. This guidance provides a categorical exclusion for all residential loan loss reserve programs. Similarly, the Buy American requirements apply to “public buildings” and “public works” and thus would not be applicable to projects performed on individual homes. For guidance on the Davis-Bacon Act and Buy American requirements, visit http://www1.eere.energy.gov/eere_faq/default.aspx?pid=10&spid=1.

State Laws

States must contract with recipients of ARRA funds to ensure that the funds are used in accordance with federal guidelines. Under DOE guidelines, in order to ensure that a given use of EECBG funds furthers the purposes of the EECBG Program, the activities must comport with those listed as eligible in the EECBG statute. The statute allows for the establishment of financial incentive programs for energy efficiency improvements.²

Recent DOE guidelines state that a grantee cannot use more than 50% of its EECBG funds for a loan loss reserve fund and go on to stipulate that—

² 42 U.S.C. 17154(4); Title V, Subtitle E of the Energy Independence and Security Act, as amended (P.L. 110-140, H.R. 6); <http://thomas.loc.gov/cgi-bin/query/F?c110:1:./temp/~c110Ma6DdU:e562229>.

- (a) The grantee can review and monitor loans.
- (b) The grantee must ensure that it is not liable for losses beyond the amount of the reserve.
- (c) Any funds that were part of the loan loss reserve but were not used to pay losses must be used by the grantee for an “eligible use” under the EECBG Program.
- (d) Funds can only be released to a lender for purposes pertaining to loan losses.

Contracts between states and city/county recipients of EECBG funding will include provisions addressing those and other requirements of the EECBG Program. An issue has arisen regarding item (c) above and the disposition at the end of the contract period of loss reserve funds that were not used to pay loan losses. By this Guidance,³ city and/or county recipients of EECBG funding that used those funds to create loan loss reserve programs—but did not use all of those funds to pay loan losses—may use the funds at the end of the contract period with the state for any other eligible use under the EECBG Program.

If the loan loss reserve program is successful, the city/county grantee may continue the loan loss reserve program, thereby furthering the objectives of the DOE State Energy Program, “not only to support current energy efficiency and renewable energy projects but also to seed sustainable programs and put in place long-term funding mechanisms.”⁴

Local Laws

Many municipalities prohibit sole-source contracting and require strict adherence to local laws in selecting the FI partner. Grantees and those assisting them should draft request for proposal (RFP) procedures using existing city and county RFPs as a template, covering “boilerplate” procedural topics including the RFP schedule, RFP questions and answers, evaluation and selection, and negotiating procedures. A DOE template RFP and a sample RFP from one city in Missouri are included in Chapter 15 of this Finance Guide.

Once an FI partner is selected, grantee municipalities will negotiate and execute an LRF Agreement with the FI that will lay out the terms of lending for the EE program. A DOE template LRF Agreement and a sample LRF Agreement from Michigan are included in Chapter 15.

The Program Lead should also execute additional agreements covering the roles and responsibilities of the EE program partners. Such agreements lay out responsibilities for monitoring and reporting on loans, energy savings, and jobs and responsibilities for other important functions, such as marketing and outreach. A DOE template Loan Program Agreement is also included in Chapter 15.

³ See Attachment A for the full text.

⁴ DE-FOA-0000052, pg. 23; CFDA Number: 81.041, State Energy Program, 04/24/2009; www1.eere.energy.gov/wip/pdfs/sep_arra_foa.pdf.

Resources

The two guidance documents below are attached at the end of Chapter 5, and they are available on the DOE website.

EECBG PROGRAM NOTICE 09-002B. Guidance for Energy Efficiency and Conservation Block Grant Grantees on Financing Programs

EFFECTIVE DATE (Revised): August 10, 2010 (Originally Issued: December 7, 2009)
http://www1.eere.energy.gov/wip/pdfs/eecbg_financing_guidance2010_08_10.pdf

SEP PROGRAM NOTICE 10-008B. Guidance for State Energy Program Recipients on Financing Programs [revolving loan funds and loan loss reserves]

EFFECTIVE DATE (Revised): August 10, 2010 (Originally Issued: March 8, 2010)
http://www1.eere.energy.gov/wip/pdfs/sep_financing_guidance2010_08_10.pdf

Attachments

- A. *SB 5649 Abridged (3 pages)*
- B. *Resolution 2009-05 (2 pages)*
- C. *NEPA Environmental Questionnaire (12 pages)*
- D. *NEPA Categorical Exclusion (1 page)*
- E. *NHPA Programmatic Agreement and Categorical Exclusion (18 pages)*

The five attachments total 36 pages; they appear in the order above starting after the next page (which is blank).

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