

DEPARTMENT OF ENERGY

DIVISION 112

ENERGY EFFICIENCY AND SUSTAINABLE TECHNOLOGY LOAN PROGRAM

330-112-0000

Purpose and Objectives

These rules carry out provisions of ORS 470 as they pertain to the administration by the Oregon Department of Energy of the Energy Efficiency and Sustainable Technology Act of 2009. Oregon Administrative Rule, Chapter 330, Division 112 sets out the rules governing the Department's energy efficiency and sustainable technology loan program. The purpose of the program is to provide financing for energy efficiency upgrades of residential and commercial buildings in the State of Oregon.

330-112-0010

Definitions

As used in ORS Chapter 470 and in Oregon Administrative Rule, Chapter 330, Division 112, the following terms have the definitions set forth below unless the context requires otherwise:

- (1) "Act" means ORS 470.500 through 470.715.
- (2) "Base efficiency package" has the meaning given that term in ORS 470.050(3).
- (3) "Department" means the Oregon Department of Energy.
- (4) "Director" means the director of the Oregon Department of Energy.
- (5) "EEAST " means the Energy Efficiency and Sustainable Technology loan program.
- (6) "Eligible entities" means those parties that meet Department underwriting criteria to service SELP loans.
- (7) "Estimated economic benefit" means the amount by which the average estimated monthly energy savings of a project exceed the project repayment costs.
- (8) "Measure" means building shell and energy efficiency equipment improvements via materials and products that reduce energy use by an existing building.
- (9) "Nontraditional technology" means technology applicable to renewable energy sources (such as, biomass, geothermal, solar, wave, and wind), smart grid, and alternative fuels.
- (10) "Optional package" has the meaning given that term in ORS 470.050(21).
- (11) "PPFA" means Public Purpose Fund Administrator

Wednesday, September 01, 2010

- (12) "Program" or "EEAST program" means the Energy Efficiency and Sustainable Technology loan program.
- (13) "Project" means a small scale local energy project, as defined by ORS 470.050(27), being funded by the EEAST program.
- (14) "Project Manager" means a sustainable energy project manager.
- (15) "Property" means the property benefited by a project.
- (16) "Territory" or "sustainable energy territory" means the geographic service area that a sustainable energy project manager serves.
- (17) "Useful life" means the number of years that a project or project component can likely function without major repair or replacement.

330-112-0020

Sustainable Energy Project Managers

- (1) The PPFA shall be the project manager for the investor-owned utility service territory, and shall be the acting project manager in any other territory that is not served by an existing project manager. The PPFA and consumer-owned utilities are not subject to the requirements of this section.
- (2) Qualifying entities may apply to be project manager for a territory: where the 5 year term of a project manager is within 1 year of expiry; or where the PPFA is acting project manager.
- (3) Each entity applying to be a sustainable energy project manager shall submit to the director the following:
 - (a) Completed application on a form approved by the director,
 - (b) Proof of its status as a city, county, metropolitan service district, local government, nonprofit, for-profit, tribal or state entity;
 - (c) A description of the sustainable energy territory of the proposed sustainable energy project manager;
 - (d) A proposed business plan that demonstrates how the entity will provide the following services for the program within the proposed sustainable energy territory:
 - (A) Promotion and outreach;
 - (B) Technical support;
 - (C) Financial support including loan applicant support
 - (D) Energy project verification;
 - (E) Monitoring of program effectiveness;

- (F) Cooperation and coordination of outreach and promotional efforts with local utilities and other stakeholders;
 - (G) Use of customer contacts, resources and capacity of utilities to engage and inform utility customers about the program;
 - (H) Coordination with gas utilities regarding any changes to a gas pipeline or the installation of appliances used for space heating, water heating and compressed natural gas refueling;
 - (I) Coordination with electric utilities regarding electric charging or any changes to electrical connections that are external to a structure;
 - (J) Differentiation between certified contractors, who provide health insurance benefits, when providing information to program participants;
 - (K) Referral of applicants with household incomes that may qualify them for a weatherization program to the Housing and Community Services Department;
 - (L) Provision of the following information to the Department on a monthly basis:
 - (i) the total amount of energy efficiency and sustainable technology loans issued;
 - (ii) the types of projects being funded by the loans;
 - (iii) the characteristics of the loan recipients; and
 - (iv) the number of applications denied, and the reasons for denial;
 - (M) Maintenance of records that document the receipt and disbursement of funds provided through the program;
 - (N) Maintenance of records that document both approved and denied applications for loans; and
 - (O) The underwriting criteria used to determine loan eligibility
- (f) A detailed breakdown of the cost of implementation of its business plan, in particular the elements of its business plan listed in OAR 330-112-0020(3)(d)(A) through (D); and
- (g) Background information about the applicant including, but not limited to, the qualifications, relevant experience, financial status and staff of the applicant.
- (4) The Department may request verification that a project manager continues to meet the required qualifications and provide the required services at any time.
- (5) The director may terminate the certification of a project manager for:
- (a) Failure to adequately implement an applicable energy efficiency and sustainable technology loan program plan;

Wednesday, September 01, 2010

- (b) Noncompliance with the regulatory or statutory requirements of the energy efficiency and sustainable technology loan program;
- (c) Failure to meet any project manager criteria established by the director; or
- (d) Failure to perform other certification conditions.

If the director terminates the certification of a project manager, the PPFA shall become acting project manager.

- (6) The Department shall monitor reports to determine compliance with program requirements, monitor fiscal patterns and chart program progresses. The Department may conduct a review of a project manager to include:
 - (a) Financial records of the project manager;
 - (b) Loan files;
 - (c) Work completed by the program manager, including training and technical assistance provided; and
 - (d) Post-installation inspections conducted by the program manager.
- (7) When reviewing an applicant, the Department may consider:
 - (a) The organizational experience of the applicant and the capacity of the applicant to successfully implement the energy efficiency and sustainable technology loan program goals and requirements;
 - (b) The strength of the applicant's proposed plan for implementing the goals and requirements of the energy efficiency and sustainable technology loan program;
 - (c) The cost at which the applicant can conduct outreach, promotion, loan applicant support and project verification services necessary to implement the energy efficiency and sustainable technology loan program;
 - (d) Any fiduciary or other obligation of the program manager that creates an actual or apparent conflict of interest that may interfere with achieving the goals of the energy efficiency and sustainable technology loan program; and
 - (e) The approval of the utility or utilities within whose service territory the applicant is requesting certification.
- (8) The director may negotiate any feature of the applicant's proposed plan, or place such conditions on the certification, as necessary to ensure that the applicant will meet the goals and requirements of the energy efficiency and sustainable technology loan program.

Wednesday, September 01, 2010

- (9) Pilot program project managers in consumer-owned utility service areas shall provide information to the Department, in a form approved by the director, to meet the requirements of Oregon Laws 2009, Chapter 753, Section 44.
- (10) A project manager that wishes to contract with a qualified third party to assist in providing services within its territory must provide a copy of the proposed contract to the Department and obtain the approval of the director prior to execution.

330-112-0030

Sustainable Energy Territories

Territory boundaries shall follow the following hierarchy:

- (1) The sustainable energy territory served by the PPFA shall be the service territory of investor-owned electric utilities.
- (2) The sustainable energy territory served by the PPFA shall also include the service territory of investor-owned gas utilities, unless those utilities choose to act as project manager. The sustainable energy territory of an investor-owned gas-utility shall be the service territory of that investor-owned gas utility, other than those areas assigned above.
- (3) The sustainable energy territory of local electric utility shall be its service territory, subject to adjustment by the director pursuant to ORS 470.530(3).
- (4) If a consumer-owned local electric utility elects not to be the project manager and the consumer-owned local gas utility elects to be the project manager and the service territories of both overlap, the sustainable energy territory shall be the service territory of the local gas utility, subject to adjustment by the director pursuant to ORS 470.530(3).
- (5) Territory boundaries not delineated above may be set by the department as necessary to accomplish the goals of the program.

330-112-0030

Form of Loan Assistance The following apply to EEAST program:

- (1) The Department shall make loans to eligible entities under the terms of written commitments.
- (2) Loans shall be made directly with proceeds from bonds issued pursuant to ORS 470.610 or other available funds obtained by the Department. The Department may establish such fees, charges, premiums, interest rates, and repayment terms, as the Department considers appropriate or necessary to provide sufficient funds to:
 - (a) Pay for the cost of borrowing through bond issuance; and
 - (b) Carry out the EEAST program;

Further, the Department may include in the loan documentation such covenants, performance criteria and reporting requirements as the Department considers appropriate or necessary for the type, use and amount of loan provided, and such other provisions as the Department considers appropriate or necessary, to provide sufficient safeguards to protect the financial interest of the state. The Energy Loan Program Advisory Committee may assist the Department in the advising on such matters.

- (3) The borrower shall comply with the provisions of the program rules and the Act. If the borrower does not comply, the Department may revoke its commitment or approval, demand repayment of all or a portion of the loan funds advanced, or exercise any remedy available to it at law or in equity.
- (4) If the Department receives loan applications in an amount greater than the amount of funds available, the Department shall select those applications which, in the judgment of the Department, best achieve the purposes of the program rules and the Act. The Department may seek assistance from the Energy Loan Program Advisory Committee.

330-112-0040

Loan evaluation, processing and collection

- (1) Projects and EEAST loans will be delivered through a project manager. The PPFA and consumer-owned utilities that participate in the EEAST program will be the initial project managers within their territories.
- (2) The Department will make loans to eligible entities that will use the funds to provide EEAST loans.
- (3) To help the Department or a project manager evaluate the financial strength of an applicant, the applicant shall submit any documents, credit reports and financial statements requested by the Department or project manager as is consistent with the provisions of the Equal Credit Opportunity Act as it relates to the Department. The Department or the project manager may request an applicant's social security number in accordance with provisions of the Privacy Act of 1974.
- (4) The Department or project manager will review all applications of eligible entities. An applicant may be required to submit further documentation to determine whether a loan should be approved. If the Department or project manager fails to receive any items requested within fourteen days after making its request to the applicant, the loan application may be denied. If a loan application is denied, the applicant must submit a new application and again pay any fees and charges applicable to loan applications if such applicant chooses to reapply.
- (5) The Director or project manager may deny a loan to any applicant that restricts membership, sales, or services on the basis of any of the protected classes listed in ORS 659A.003.
- (6) The final maturity of a loan shall not exceed the lesser of (a) 20 years from the date of its making, and (b) the dollar-weighted average of the useful life of the project components.
- (7) The Director may limit the term and amount of any loan. The Director may deny any loan request or set such terms and conditions as needed to assure a sound loan or to protect the program funds and the Department.

Wednesday, September 01, 2010

- (8) All loans made by the Department shall meet the following criteria:
- (a) Proposed loan amount and existing debt secured by liens on the property shall not exceed 90% of the value of the subject property after the project improvements are made.
 - (b) Applicants must be current on all debt secured by the property.
 - (c) Applicants must obtain written approval from holders of existing liens on the property for financing that exceeds 50% of the applicant's equity in the property.

330-112-0050

Certification Standards for Contractors

These standards apply to contractors participating in the construction of projects financed through the program, but not including home energy auditors. Contractors must obtain certification under ORS 701.119 from the Construction Contractors Board to participate. To obtain certification the contractor must:

- (1) Prove that the contractor has sufficient skill to ensure that the contractor can successfully install energy efficiency, renewable energy or weatherization projects with a high degree of quality and customer satisfaction, such skills to be demonstrated by one of the following:
 - (a) Oregon Home Performance with ENERGY STAR Building Performance Institute (BPI) certified
 - (b) Residential Energy Analyst Program (REAP) certified through the Oregon Energy Coordinators Association.
 - (c) Completion by employees of training based on curriculum developed by an accredited organization to meet the United States Department of Energy standards and any additional specifications and standards designated by the Department and PPFA.
- (2) Not be a contractor listed by the Commissioner of the Bureau of Labor and Industries under ORS 279C.860 as ineligible to receive a contract or subcontract for public works.
- (3) Be an equal opportunity employer or small business or be a minority or women business enterprise or disadvantaged business enterprise as those terms are defined in ORS 200.005.
- (4) Demonstrate a history of compliance with the rules and other requirements of the Construction Contractors Board and of the Workers Compensation Division and the Occupational Safety and Health Division of the Department of Consumer and Business Services.
- (5) Employ at least 80 percent of employees used for energy efficiency and sustainable technology loan program projects from the local work force, if a sufficient supply of skilled workers is available locally.
- (6) Demonstrate a history of compliance with federal and state wage and hour laws.

- (7) Pay wages to employees used for projects at a rate equal to at least 180 percent of the state minimum wage, unless federal prevailing wages for residential weatherization and energy efficiency retrofit work is higher, in which case the higher wage requirement will apply.
- (8) Pay wages to employees used for commercial structures at the prevailing wage rate for each trade or occupation employed.

Certified contractors that provide the department proof that they provide employees with health insurance benefits shall be identified as preferred service providers by the Department and project managers. This information must be provided annually on the anniversary of certification by the Construction Contractors Board.

330-112-0060

Standards for Contractors during Pilot Programs

Contractors without certification may work on projects under pilot programs if no certified contractor is available, and the PPFA or project manager has approved the contractor. The contractor must pay wages to employees used for pilot projects at a rate equal to at least 180 percent of the state minimum wage or, if the project is for a commercial structure or is subject to prevailing wage laws, the prevailing wage for each trade or occupation employed.

330-112-0070

Energy Audits

Proposed measures shall be ranked in order of energy cost savings per dollar of measure cost before incentives, with less effective measures including in their energy savings calculations any reductions in energy use available from more effective measures.

The estimated costs and energy savings calculations for each measure in the energy audit shall clearly and separately note all eligible rebates, tax credits or other incentives for the measure.

330-112-0080

Base Efficiency Package and Optional Packages Content

- (1) The base efficiency package and any recommended optional packages for a property shall be compiled from the results of the energy audit. Any measure that is anticipated by the audit results to produce energy savings equal to or greater than the loan payment amount for that measure shall be included in the base efficiency package. Any other measures that the project manager believes to be feasible for the property shall be part of one or more optional packages. A measure that does not during its useful life produce anticipated energy savings of at least 25 percent of the cost of the measure is not eligible for a loan under this program; but this restriction does not apply to nontraditional technologies approved by the Department.

- (2) Notwithstanding (1), the base efficiency package for a residential dwelling served by a single meter shall include an insulation package in accordance with installation standards to at least the following, as applicable:
 - (a) Building Envelope
 - (A) Attic/Ceiling: insulate to R-38;
 - (B) Floor: if currently R-11 or less, insulate to R-30 or full cavity thickness;
 - (C) Wall: if currently R-4 or less, insulate to R-11 or fill wall cavity; and
 - (D) Air Leakage: whole-house air sealing measures in accordance with installation standards.
- (3) Any measure identified in an audit that produces energy savings equal to 95 percent or more of the loan payment amount for that measure may also be included in the base efficiency package if there are sufficient loan offset grant funds available to offset measure costs to the point where energy savings and loan costs for the base efficiency package are equal.
- (4) All base efficiency package measures, if any, shall be included in the project before a project may include any optional packages.
- (5) Optional package measures may be added to a project in order of energy savings per dollar of measure cost. More efficient measures must be included in a project before less efficient measures can be considered.

330-112-0090

Fees

(1) Base Efficiency Package Fee

A base efficiency package which produces an estimated economic benefit shall not be eligible for loan offset grant funds and shall include a base efficiency package fee of 10 percent of the estimated economic benefit associated with the base efficiency package. Prepayment calculations for loans that include a base efficiency package fee shall include the amount of the base efficiency package fee for the term of the loan.

(2) Project Initiation Fee

The department hereby establishes the project initiation fee for all EEAST loans at three percent of the application loan amount.