MARYLAND ENERGY ADMINISTRATION

EmPOWER Commercial and Industrial Loan Fund

Program Standard

11/18/2009

The Maryland Energy Administration has developed the EmPOWER Commercial and Industrial Energy Efficiency Loan Fund to provide low-interest financing to help Maryland businesses implement solutions that improve the energy performance of their facilities. The Energy Efficiency Loan Fund is financially supported through the American Recovery and Reinvestment Act State Energy Program and the State of Maryland Strategic Energy Investment Fund. MEA is seeking energy efficiency project proposals from Maryland commercial and industrial businesses. This Standard outlines the programmatic and technical details of the Energy Efficiency Loan Fund and must be read and fully understood prior to submitting a project application for consideration; this includes the ARRA Addendum – Special Terms and Conditions for ARRA-Funded Loans.

1. Purpose

This standard is for the purposes of:

a. Conducting the responsibilities assigned to the Maryland Energy Administration (MEA) in managing the EmPOWER Commercial and Industrial Energy Efficiency Loan Fund through the Jane E. Lawton Conservation Loan Program set forth under the authority of State Government Article, Title 9, Subtitle 20A, Annotated Code of Maryland, and described in the Code of Maryland Regulations Title 14, Subtitle 26, Chapter 1 (COMAR 14.26.01); and

b. Establishing requirements for eligibility for loans from the EmPOWER Commercial and Industrial Energy Efficiency Fund, procedures for accepting, evaluating, and prioritizing applications for loans, and the terms and conditions for loans.

2. Authority

a. Pursuant to State Government Article 9-20A and COMAR 14.26.01, MEA may make low interest loans to eligible businesses to promote energy conservation, promote the development and use of renewable energy resources, promote self-sustaining buildings and emergency generating units that use renewable energy resources, promote the infrastructure for renewable energy generation, reduce consumption of fossil fuels, improve energy efficiency and enhance energy-related economic development and stability in business, commercial, and industrial sectors. As the authorized agency, MEA shall make rules establishing criteria, procedures, priorities, and conditions for the award of loans from the EmPOWER Commercial and Industrial Energy Efficiency Loan Fund.

3. Definitions

Terms defined

a. “Administration” means the Maryland Energy Administration.

b. "Borrower" means an eligible business that applies and qualifies for a loan under this Program.

c. "Director" means the Director of the Administration or the Director's designated representative.

d. "Eligible business" means a commercial or industrial enterprise or business:

    i. That is incorporated in the State; or

ii. Whose principal owners are State residents and the business of which is primarily carried out in the State.

iii. Includes a corporation, association, general partnership, limited partnership, joint general partnership, joint venture, or other form of legal organization.

e. “Energy” means, for the purposes of this standard, electricity, natural gas or other methane, fuel oil, coal, or propane that is used by an eligible business to operate a building’s electrical devices, lighting, heating and cooling system, process equipment, and other systems necessary for the business’ and/or building’s operation.

f. “Energy cost payback” means the period of time, generally expressed in years, that is needed for the energy cost savings of an energy efficiency project to equal the energy efficiency project cost. It does not include the time-value of money and can also be referred to as “simple payback.”

g. "Energy cost savings" means the actual reduction in operating expenses realized by a borrower as a result of the improved energy efficiency generated by an energy conservation project financed under the Program.

h. “Energy efficiency project” means one or more improvements or modifications that enhance the energy efficiency and reduce the operating expenses of an existing facility.

i. “Energy efficiency project” does not mean

i. Improvements or modifications that enhance the energy efficiency and reduce operating expenses of facilities primarily used for religious or fraternal activities.

ii. The repair of outstanding defects to facilities or non-operational equipment;

iii. Projects that save money through the switching of fuels, energy sources, or vendors;

iv. Projects or measures intended to save money by changing the time of day or year at which energy is consumed (i.e. peak demand reduction systems); or

v. Upgrades to non-fixed appliances or equipment within a facility such as computers, copiers, and other systems.

j. "Energy savings" means the combined value, in British thermal units (Btu), of all energy sources saved or not consumed as a result of an energy efficiency project. For the reporting purposes of this standard the following conversion factors[1] are used in calculating the total source energy savings:

   i. Coal – 1 pound = 10,085 Btu

   ii. Electricity – 1 kilowatt-hour = 11,747 Btu

   iii. Natural gas or methane – 1 therm = 100,000 Btu

   iv. Natural gas or methane – 1 cubic foot = 1,028 Btu

   v. Fuel oil – 1 gallon = 139,000 Btu

   vi. Propane – 1 gallon = 91,000 Btu

k. "Fund" means the EmPOWER Commercial and Industrial Energy Efficiency Loan Fund as administered through the Jane E. Lawton Conservation Loan Program Fund.

l. "Program" means the EmPOWER Commercial and Industrial Energy Efficiency Loan Fund.

m. "Quarter" means a three month period beginning with one of the following dates: January 1, April 1, July 1, and October 1.

n. "State" means the State of Maryland.

4. Eligibility of Applicants for Loans

a. Eligibility for loans from the Fund is limited to commercial and industrial businesses incorporated within the State or whose principal owners are State residents and the business of which is primarily carried out in the State.

b. Loans may be used only by eligible businesses to fully or partially finance energy efficiency projects within non-residential facilities owned and operated by the business.

c. Eligible businesses shall meet the following minimum conditions to apply for a loan:

   i. Have the legal capacity and all necessary legal authority to incur the obligations of a loan under the Program;

[1] Energy Information Administration (EIA), *BTU Content of Common Energy Units:* *http://www.eia.doe.gov/basics/conversion_basics.html*

ii. Be able to provide a contribution to the project that is of a type and amount acceptable to the Administration; and

iii. Be in good standing and qualified to do business in the State.

5. Eligibility of Projects for Loans

a. Loans may be using to fund energy efficiency projects involving renovation, upgrade, or improvement of existing facilities including, but not limited to, the following:

i. Building exterior weatherization, air sealing, insulation, or thermal efficiency;

ii. Door, window, and/or skylight upgrades;

iii. Lighting technology upgrades and/or reduction of the number of fixtures;

iv. Heating, ventilation, and air-conditioning (HVAC) replacements or upgrades;

v. Mechanical motor replacements or upgrades;

vi. Installation of variable speed/frequency drives (VSD/VFD);

vii. Commercial kitchen equipment replacements or upgrades;

viii. Commercial refrigeration equipment upgrades or replacements;

ix. Improvements to energy management systems;

x. Improvements to industrial process systems and equipment;

xi. Whole building system improvements;

xii. Improvements to compressed air systems; or

xiii. Other energy efficiency projects that an eligible business can demonstrate will result in a significant reduction in the consumption of energy within their facility.

b. There is no limit to the total number of loans a single eligible business may apply for from the Fund; however, no eligible business may receive a loan that would cause the sum of its outstanding loan balances to exceed $750,000.

c. An energy efficiency project is eligible for a loan only if the energy cost payback of the project is less than 10 years.

6. Eligible Use of Loan Funds

This section defines the specific costs incurred by an energy efficiency project that are eligible for financing from the Fund.

a. The following costs are eligible for financing from the Fund:

   i. The costs of implementing projects, including the costs of all necessary:

      (1) Technical assessments;

      (2) Studies;

      (3) Surveys;

      (4) Plans and specifications; and

      (5) Start-up, architectural, engineering, and other special services;

   ii. The costs of procuring necessary technology, equipment, licenses, or materials; and

   iii. The costs of construction, rehabilitation, or modification related to a project including the purchase and installation of necessary machinery, equipment, or furnishings.

b. The following costs are not eligible for financing from the Fund:

   i. The cost of any new construction or major renovation project;

   ii. Costs of facility improvements that are not directly related to energy efficiency projects;

   iii. Costs incurred for the acquisition of financing for the project; or

   iv. Costs for equipment or systems that reduce energy costs without also resulting in actual energy savings.

c. A loan may be made in conjunction with, or in addition to, financial assistance provided through other private, utility, State or federal programs.

d. In cases for which the eligible business receives a financial incentive or rebate from a utility or other third-party, including through other State or federal programs, for undertaking some or all of the measures in an energy efficiency project, such incentives or rebates are to be deducted from the costs that are eligible for financing from the Fund. No loans made from the Fund may exceed the final cost incurred by the eligible business for the project after third-party financing.

7. Loan Borrower Responsibilities

In addition to any other condition or requirement in this standard deemed necessary by the MEA, a borrower of a loan from the Fund must:

a. Make a contribution to the project that is of a type and amount acceptable to the Administration;

b. Document that the anticipated energy savings over a defined period after the completion of the project are greater than the cost of the project;

c. Repay the loan and interest from specified revenues that may include the energy cost savings generated by the project in accordance with a schedule set by the Administration;

d. Bear an interest rate of 2.5% that the Administration has determined to be necessary and reasonable for the project;

e. Repay the loan and interest in accordance with a schedule that the Administration sets; and

f. Execute necessary assurances including a promissory note and other forms of collateral required by the Administration.

8. Loan Terms and Conditions

a. Eligible Loan Amount

The maximum amount that may be approved by MEA for any single energy efficiency project is:

i. $500,000 for electric efficiency projects; and

ii. $750,000 for electric and fuel (natural gas, fuel oil, propane, coal) efficiency projects.

iii. The minimum amount that may be approved for any single energy efficiency project is $35,000.

iv. No eligible business may receive a loan that would cause the sum of its outstanding loan Fund balance to exceed $750,000.

b. Contribution

The borrower shall make a contribution to the energy efficiency project, acceptable to the Administration, which may take the form of:

i. Cash;

ii. Payment of certain predevelopment costs such as preliminary architectural site plans, engineering design studies or feasibility studies, or technical assessments necessary to implement the project;

iii. Contribution of in-kind services acceptable to the Administration; or

iv. Contribution of equipment, labor, or materials for use in the project.

c. Security

i. Security or collateral are required for any loan to an eligible business.

ii. A loan shall be secured by liens on real property, equipment, or other assets purchased with loan proceeds and any other collateral approved by the lender and the Administration which may include, but are not limited to:

- The personal guarantees of the principals of the applicant;
- Liens on the business assets of the applicant;
- Guarantees of related entities;
- Indemnity deeds of trust on real property owned by the principals of the applicant;
- A cash escrow; or
- Any other form of security or collateral acceptable to the Administration.

d. Repayment

i. Loan repayment periods will be set to a term desired by the eligible business between 1 and 10 years. The loan repayment period for a single energy efficiency project begins with the first day of the quarter subsequent to the completion of the energy efficiency project, or the complete disbursement of approved loan funds, whichever comes first.

ii. The principal and interest of a loan under the Program shall be repaid:

(1) From energy cost savings realized by the energy conservation project, or other revenues specified by the eligible business; and

(2) In accordance with a schedule acceptable to the Administration provided that the date for beginning of the repayment of a loan may not be later than 1 year from closing of the loan.

(3) In calculating the energy cost savings, the Administration, on a case by case basis, may take a number of factors into consideration, including:

- Actual or anticipated changes to the energy consumption and energy use of the eligible business; and
- Whether these changes will produce monetary or other forms of savings to the eligible business.

iii. At the conclusion of each fiscal year the eligible business and the Administration shall compute in the manner prescribed by the Administration, the following:

(1) Actual energy cost savings resulting from the implementation of the energy efficiency project financed by the loan; and

(2) Projected energy cost savings for subsequent fiscal years.

iv. If the energy cost savings resulting from the project do not equal or exceed the expected repayment schedule for the loan, the Administration may:

(1) Adjust the terms of repayment with the eligible business in such a manner as to assure that the annual payment amount does not exceed the actual energy cost savings resulting from the project; and

(2) Extend the repayment period for up to 1 additional year beyond the original maturity date, at the discretion of the Program, or a longer period at the discretion of the Administration.

e. Interest Rate and Default

i. The principal of the loan shall bear interest at a rate of 2.5% as determined to be necessary and reasonable for the project.

ii. In the event of default, the Administration may modify:

- The rate of interest;
- The time or amount of payment; or
- Any other term of the loan in order to ensure repayment and achieve the purposes of the Program.

f. Insurance.

The Administration may require an eligible business to maintain insurance as described in this section.

i. Multi-Peril Insurance. Multi-peril insurance provides fire and extended coverage insurance on the project both during and upon completion of construction, rehabilitation, or modification of a project. The insurance coverage shall include the endorsements that the Administration may require, including:

(1) Collapse;

(2) Explosion;

(3) Loss of rents; and

(4) Vandalism.

ii. Liability Insurance. Comprehensive general liability insurance shall be maintained with the endorsements that the Administration may require both during and after construction, rehabilitation, or modification of a project.

iii. Flood Insurance. If the project is located on real property which is in the 100-year flood plain, as designated by the U.S. Department of Housing and Urban Development, the project shall be covered by a flood plain insurance policy. Before closing of a loan for a project, permits shall be secured from the Maryland Department of Natural Resources and the political subdivision in which the project is located.

iv. Contractor's Insurance. If a project involves construction, rehabilitation, or modification of a structure or improvements of any kind, the general contractor shall provide insurance coverage for comprehensive public liability, property damage, and Workers' Compensation in the form and amounts required by the Administration.

v. Other Insurance. The eligible business shall provide at closing of the loan other insurance the Administration may require, including:

(1) Builder's risk;

(2) Boiler insurance;

(3) Comprehensive automobile liability; and

(4) Broad form Workers' Compensation.

vi. Terms and Conditions. Insurance coverage shall meet the following minimum requirements plus any additional requirements which may be set by the Administration:

(1) Insurance shall be provided by:

(2) Companies or other legal entities that are authorized to transact business in the State, and which are reputable and financially sound, as determined by the Administration; or

(3) In the case of local jurisdictions, self-insurance programs that are acceptable to the Administration;

(4) To the extent applicable, insurance shall be in force upon the closing of the loan;

(5) To the extent applicable, an insurance policy shall contain a standard lender endorsement attached to or printed in the policy naming the Administration as mortgagee;

(6) To the extent required by the Administration, the insurance policy shall name the Administration as loss payee and additional insured;

(7) Insurance shall provide for notification to the Administration before termination; and

(8) Insurance shall contain terms and coverage satisfactory to the Administration.

g. Disbursement

i. Loan proceeds shall be disbursed directly to the eligible business upon the terms and conditions set forth in the loan documents.

9. Reporting and Site Visits

a. In the period between signing the project contract and project completion, the eligible business shall complete and provide MEA a report at the beginning of each quarter. The report shall include information on the eligible business' progress in completing the energy efficiency project, the most current estimate for the time of project completion, what proportion of the loan award has been disbursed in the quarter and total to date, and any notable problems or changes to the scope of the project since execution of the contract such as delays or budgetary issues.

b. After the loan funds have been completely disbursed, the eligible business shall complete and provide to MEA annual reports due at the beginning of the calendar quarter in which the anniversary of the loan repayment period began. This annual report shall include the following:

   i. A description of the performance of the facility and of the performance of the measures included in the energy efficiency project; and

   ii. Documentation of the facility energy consumption and cost in the prior year.

c. Annual reports shall be provided for each year of the repayment period.

d. After project completion, MEA staff will conduct a site visit to the location of the energy efficiency project to verify project completion and assess the success of the project. Additional site visits may also be conducted by MEA staff during the repayment period. Loan recipients will assist MEA with such site visits, including providing access to all components of the energy efficiency project.

10. Loan Application Process

Eligible businesses applying for a loan must have the loan application signed by the chief operating officer or an authorized officer of the business. Loan applications must contain the following information in addition to any other information required by MEA:

a. The projected cost to accomplish the proposed project;

b. If applicable, the amount of energy or fuel the proposed project is expected to save over a defined period of time after completion of the project;

c. The anticipated environmental benefits in the form of reduced emissions or pollution attributable to the proposed project;

d. The amount of cost savings expected to be generated over a defined period of time after completion of the proposed project; and

e. A description of the applicant's contribution to a proposed project as set forth in Paragraph 8.b. of this standard.

11. Evaluation Criteria

a. Energy efficiency project applications will be evaluated and awarded in the order in which they were received within their respective utility service territory funding pool. Utility service territory funding pools were established on the percentage of electricity sales by each utility within the State. Funding pools will be reserved until February 12, 2010; after which, all funding pool balances will be

authorized for qualified project applications in the order in which they were received, regardless of utility service territory.

b. MEA shall take the following factors into consideration in prioritizing loans for any fiscal year:

   i. Amount of projected energy saved and/or fossil fuels displaced;

   ii. The extent to which the loan would leverage other energy investment dollars, including funds from the eligible business or other private, local government, or federal financing;

   iii. Risk profile of loan, including the length of the payback period, the eligible business' ability to repay or provide security or collateral, or both, as required by the Administration;

   iv. The availability of insurance;

   v. How the loan interacts with the eligible business' broader energy conservation strategy; and

   vi. Project readiness.

c. During the application review process and prior to approval, MEA may request either of the following in order to determine the feasibility and validity of the energy efficiency project proposal:

   - a formal presentation of the proposal including technical rationale for proposed energy savings; and/or

   - a site visit and demonstration of the proposed energy efficiency project.

12. Books and Records

a. Borrowers, contractors, and subcontractors shall maintain books, accounts, and records, and shall file with the Administration financial and other reports, that the Administration may from time to time require.

b. The books, accounts, and records referenced in §12.a. of this standard, as well as the administrative personnel, whether full-time or part-time, shall be available for inspection by representatives of the Administration or other agencies of the State during reasonable working hours.

c. Books, accounts, and records of contractors and subcontractors shall be maintained and made available for inspection for 3 years past the date of

termination of the contractual relationship between the contractor and the borrower.

13. Nondiscrimination

a. A borrower may not discriminate against an individual on the basis of race, color, religion, national origin, sex, marital status, physical or mental handicap, or age in any aspect of the Program.

b. A borrower shall comply with all applicable federal, State, and local laws and Administration policies and programs regarding discrimination and equal opportunity in employment, housing, and credit practices including:

   i. Titles VI and VII of the Civil Rights Act of 1964, as amended;

   ii. Title VIII of the Civil Rights Act of 1968, as amended; and

   iii. The Governor's Code of Fair Practices, as amended.

c. Covenants implementing these requirements, including affirmative action measures, shall be included in appropriate agreements between the Administration and other parties.

14. False Statements or Report

a. A person may not knowingly make or cause to be made any false statement or report in any document required to be furnished to the Administration by any agreement relating to a loan.

b. A person applying for a loan under the Program may not knowingly make or cause to be made any false statement or report for the purpose of influencing the action of the Administration on an application for a loan or for the purpose of influencing the action of the Administration affecting a loan already provided.

c. A person who violates §A or B of this regulation is guilty of a misdemeanor, and on conviction is subject to a fine not exceeding $50,000 or imprisonment not exceeding 1 year, or both.

15. American Recovery and Reinvestment Act of 2009 Special Terms and Conditions

Loans made in the Program this fiscal year are being funded in whole or in part by funds made available to MEA through the American Recovery and Reinvestment Act of 2009 (ARRA). ARRA monies come with significant terms and conditions. Loan applicants must agree to abide by the attached ARRA Addendum – Special Terms and Conditions for ARRA-Funded Loans, the contents of which are expressly incorporated by reference into this standard.