ARKANSAS ENERGY PERFORMANCE
CONTRACTING PROGRAM-REVOLVING LOAN LEASE FUND

POLICIES & PROCEDURES

INTRODUCTION

The Arkansas Energy Office (AEO) of the Arkansas Department of Energy and Environment (E&E) administers the Arkansas Energy Performance Contracting Program–Revolving Loan Lease Fund (AEPC—RLLF). This fund offers low-interest loans to local governments and school districts that participate in the Arkansas Energy Performance Contracting Program (AEPC). This fund is a collaborative effort by AEO and the Arkansas Development Finance Authority (ADFA). The AEPC—RLLF employs a revolving loan mechanism that allows it to operate indefinitely, so long as funds are available to be dispersed. The fund will finance Energy Cost-Saving Measures (ECMs) for public entities eligible to participate in the AEPC program. Through the AEPC program, participants are able to repay loans using energy cost-savings realized by their projects.

DEFINITIONS

1. **Arkansas Energy Office (AEO):** An office of the Arkansas Department of Energy and Environment and administrator of the Arkansas Energy Performance Contracting program.
2. **Arkansas Development Finance Authority (ADFA):** A state agency and collaborating partner for the Arkansas Energy Performance Contracting Program. ADFA is tasked by the State Entity Energy Efficiency Project Bond Act of 2013 with providing underwriting and bond issuance services to state agencies entering into guaranteed energy-savings contracts.
3. **Arkansas Energy Performance Contracting (AEPC) Program:** The standards, procedures, and documents governing the process by which participating public agencies engage the Arkansas Energy Office and qualified providers when pursuing guaranteed energy cost-savings contracts.
4. **Arkansas Energy Performance Contracting Program—Revolving Loan Lease Fund (AEPC—RLLF):** A fund developed and administered by the Arkansas Energy Office, in collaboration with the ADFA, to offer low-interest loans to counties, municipalities, school districts, and the entities thereof, participating in the Arkansas Energy Performance Contracting program.
5. **American Recovery and Reinvestment Act of 2009 (ARRA):** A federal stimulus package enacted by Congress in 2009. Projects funded with ARRA funds are required to comply with ARRA's general assurances and special terms and conditions. Copies of these documents will be provided with the loan agreement.
6. **Borrower:** An eligible county, municipal entity, or school district participating in the Arkansas Energy Performance Contracting program that is applying for or has received an Arkansas Energy Performance Contracting Program—Revolving Loan Lease Fund loan.

7. **Eligible Public Entity:** A county, municipal entity, or school district participating in the Arkansas Energy Performance Contracting (AEPC) program under the authority granted by Ark. Code Ann. 14-164-821, or a school district participating in the AEPC program under the authority granted by Ark. Code Ann. 6-20-405(f).

8. **Energy Cost-Savings Measure (ECM):** As defined in Ark. Code Ann. 19-11-1202(1)(A), Energy Cost-Savings Measure means either:

    A. A new facility designed to reduce operating costs or consumption of energy or natural resources, as a result of changes that:

        I. Do not degrade the level of service or working conditions;

        II. Are measurable and verifiable under the International Performance and Verification Protocol, as adopted by the Arkansas Pollution Control and Ecology Commission, in the rules required under Ark. Code Ann. 19-11-1207; and

        III. Are measured and verified by an audit performed by a qualified provider, or;

    B. Alteration to an existing facility that is designed to reduce the operating costs or consumption of energy or natural resources as a result of changes that conform with Ark. Code Ann. 19-11-1202 subdivisions (1)(A)(i)(a) and (b).

    C. As defined in Ark. Code Ann. 19-11-1202(1)(B), Energy Cost-Savings Measures include:

        I. Insulation and reduced air infiltration of the building structure, including walls, ceilings, and roofs, or systems within the building;

        II. Storm windows or doors, caulking or weather-stripping, multi-glazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;

        III. Automated or computerized energy control systems, including computer software and technical data licenses;

        IV. Heating, ventilating, or air conditioning system modifications or replacements;

        V. Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in lighting is necessary to conform with applicable state or local building code for the lighting system after the proposed modifications are made;

        VI. Indoor air quality improvements;

        VII. Energy recovery systems;

        VIII. Electric system improvements;

        IX. Life safety measures that provide long-term, operating-cost reductions;

        X. Building operation programs that reduce operating costs;

        XI. Other energy-conservation-related improvements or equipment, including improvements or equipment related to renewable energy;

        XII. Water and other natural resource conservation; or

        XIII. An alteration or measure identified through a comprehensive audit or assessment of new or existing facilities

9. **Guaranteed Energy Cost Savings Contract:** A contract for the implementation of one or more Energy Cost-Savings Measures and services provided by a qualified provider in which the energy and cost savings achieved by the project cover all project costs, including financing, over a specified contract term.

10. **Investment Grade Audit (IGA):** The process by which a qualified provider evaluates, analyzes, develops, and recommends various Energy Cost-Savings Measures. The IGA provides the financial and technical basis for a guaranteed energy cost savings contract between the eligible public entity and the qualified provider. IGA costs are allowed to be funded as standalone loans under the Arkansas Energy Performance Contracting Program—Revolving Loan Lease Fund.

11. **Measurement and Verification (M&V):** A method of confirming whether guaranteed savings are being met as specified under a guaranteed energy cost savings contract. The method of M&V approved for Arkansas Energy Performance Contracting program projects is the International Performance Measurement and Verification Protocol (IPMVP).

12. **Operational Cost Savings:** Expenses eliminated and future replacement expenditures avoided as a result of equipment installed or services performed, as defined in Ark. Code Ann. 19-11-1202(1)(A).

13. **Substantial Completion:** The stage in the project when the work, or a designated portion thereof, is sufficiently complete, in accordance with contract documents, such that it can be used for its intended purpose.

14. **Qualified Provider:** As defined by Ark. Code Ann. 19-11-1202(6)(B), a person or business, including all subcontractors and employees of that person or business, and third-party financing company that:

    A. Is properly licensed in the State of Arkansas;

    B. Has been reviewed and certified by the Arkansas Energy Office as a qualified provider under the Guaranteed Cost Saving Act, Ark. Code Ann. 19-11-1201, *et seq*.

    C. Is experienced in the design, implementation, measurement, verification, and installation of Energy Cost-Savings Measures;

    D. Has at least five years of experience in the analysis, design, implementation, installation, measurement, and verification of energy efficiency and facility improvements;

    E. Has the ability to arrange or provide the necessary financing to support a guaranteed energy cost savings contract; and

    F. Has the ability to fulfill a contract that requires the person or business to guarantee the quality and performance of the work performed by one or more subcontractors.

16. **Utility Savings:** Savings achieved by Energy Cost-Savings Measures that are measured and verified for at least three years through a Measurement and Verification (M&V) plan in accordance with the International Performance Measurement and Verification Protocol (IPMVP). This may include an option for the borrower to renew the plan on an annual basis, as desired.

17. **Useful Life:** The rated service life of an individual energy conservation measure, as defined by the following industry governing bodies:

    A. American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE);

    B. Illuminating Engineering Society (IES); or

    C. Solar Energy Industries Association (SEIA).

STATUTORY AUTHORITY & COMPLIANCE WITH STATE & FEDERAL LAWS

The AEPC–RLLF operates in accordance with the Energy Policy and Conservation Act (42 U.S.C. 6321, *et seq.*), as amended by the Energy Conservation and Production Act (42 U.S.C. 6326, *et seq.*). Each AEPC–RLLF project shall comply with all applicable state and federal laws relating to the project (*e.g.*, Arkansas Procurement Law, Guaranteed Energy Cost Savings Act, Arkansas Building Authority Minimum Standards and Criteria, Davis Bacon, American Recovery and Reinvestment Act, Public Works, retention of records, National Environmental Policy Act, State Historic Preservation requirements, *etc.*).

FUND OVERVIEW

The AEPC–RLLF is a standing fund that consists of monies transferred in to it from ARRA sources, other federal grants and matching funds, proceeds from bond issuances, service charges and fees, and other authorized revenues. Loans from the AEPC–RLLF will be distributed to applicants as funding is available to be disbursed. Loans will be issued first from non-ARRA sources, if available, then from ARRA sources.

LOAN ELIGIBILITY & REQUIREMENTS

To be eligible for an AEPC–RLLF loan, the borrower and their selected qualified provider must meet the following requirements:

1. The project must be initiated and conducted within the AEPC program with an eligible public entity.
2. Eligible public entities must evaluate responses to solicitations as defined in Ark. Code Ann. 19-11-1205.
3. The qualified provider must submit both an IGA and a guaranteed energy cost-savings contract to both AEO and the borrower for review, feedback, and approval—unless the borrower is opting to finance IGA costs through the AEPC–RLLF program. In these cases, an executed IGA contract shall be submitted to both AEO and the borrower to secure funds. Note that funds will be capitalized through the IGA process.
4. The maximum term a borrower has to pay back an AEPC–RLLF loan, including interest (payback period) is fifteen years. The loan application must include ECMs for which a combined weighted useful life is no shorter than the maximum payback period.
5. An AEPC–RLLF loan will not exceed $2,500,000 (excluding administrative fees) unless the guaranteed energy cost savings contract has a simple payback period of less than fifteen years. In these cases, AEO may be petitioned to approve larger loan amounts.
6. After financing, the minimum loan amount approved by the AEPC–RLLF will be $250,000 per fully-executed project or the total cost of any IGA that is funded as a standalone enterprise.
7. The interest rate for AEPC–RLLF loans is 0.4%.
8. Fees for loan closing, documentation, origination, servicing, and underwriting will be included in the loan amount.
9. Utility savings must cover at least 50% of the total project cost for the guaranteed energy cost savings contract.

10. Projects must be completed within the budgeted cost; if the project cost exceeds the budgeted cost, then the borrower must complete the project at its own expense or reduce the project scope accordingly.

11. Loan reporting must be done electronically. ADFA will provide electronic versions of all reporting forms. The borrower must have the capability to complete these forms and must submit them electronically.

12. A loan application must contain an implementation schedule that includes timelines and major milestones.

13. Borrowers must require their qualified provider to provide certification of insurance for general liability, vehicles, workers compensation, and professional errors and omissions, in accordance with AEPC contract rules.

14. Failure to comply with the terms of this agreement, or with any applicable federal and state regulations, may result in ineligibility to receive future loans.

15. The project must comply with all applicable federal, state, and municipal laws, codes, rules, and regulations for the work being performed.

16. Loans derived from ARRA funding sources may not be commingled with AEPC—RLLF loans derived from non-ARRA funding sources.

17. If a loan is issued using ARRA funding sources, borrowers and their qualified provider must agree to comply with ARRA's general assurances and special terms and conditions. Copies of these documents will be provided with the loan agreement.

18. Borrowers shall identify in writing one project contact and one fiscal officer in the application. It is the responsibility of the borrower to keep AEO informed of any changes in the designated contacts. The project contact must be employed by the borrower.

19. Funds requested from the Arkansas Energy Performance Contracting Program - Revolving Loan Lease Fund (AEPC-RLLF) may not be used to pay down previously incurred debt by the borrowing entity or to finance projects formerly executed through the AEPC program or solely procured by the borrowing entity.

APPLICATION PROCESS & REQUIRED DOCUMENTS

For an application to be deemed complete it must be filled out in its entirety and submitted to AEO for review. Applications must include one electronic copy and one hard copy of the following documents:

1. **AEPC—RLLF Application**
2. **AEPC IGA Contract***
3. **AEPC IGA Report****
4. **AEPC Guaranteed Energy Cost Savings Contract****
5. **Department of Energy Environmental Determination Questionnaire*****
6. **Financial Statements and Tax Returns for the most current period ended and previous 3 years ended.**
7. **Other documents as ADFA may deem necessary**

8. Application Fee

For all AEPC-RLLF applications submitted:

A. ADFA will assess a non-refundable application fee of $2,500.00 to be collected from borrower at time of submission to ADFA by E&E for underwriting consideration.

B. If the loan/lease is recommended and successfully closed, the application fee will be applied to the closing fee noted below.

C. For all AEPC-RLLF closed loans/leases, ADFA will collect a transaction set-up fee of one percent (1%) of the loan/lease amount, or $5,000.00, whichever amount is greater. The $2,500 application fee will be applied to this amount.

*The AEPC–RLLF program allows for an AEPC Investment Grade Audit (IGA) Contract to be funded as a separate measure. If choosing to use this option, Applicants only need to submit an executed IGA Contract and an AEPC–RLLF application.

** May be submitted in advance of application packet.

*** Only applicable to loans derived from ARRA funding sources.

APPLICATION REVIEW PROCESS

The application review process will be performed by representatives from AEO and ADFA, and involves three phases:

1. **Screening Review:** AEO will review the application to ensure that all required documents have been submitted for the proposed project and that the proposed scope falls within program policies. Applicants will be notified once this initial screening is complete.

2. **Technical and Financial Reviews:** The technical and financial reviews will take place simultaneously with the screening review.

   A. The technical review will verify that proposed projects meet program policy and procedure guidelines of both the AEPC program and the AEPC–RLLF. This includes a review of the proposed project scope in the guaranteed energy cost-savings contract by AEO staff or a consulting engineer. This review should take no more than ten business days after submission of all required documents.

   B. The financial review will be performed by ADFA to verify financial stability and the ability of the borrower to repay the loan. ADFA may require the borrower to provide additional information or documentation.

3. **Final Evaluation:** Once complete, representatives from AEO and ADFA will determine whether applications will be approved for an AEPC–RLLF loan and make funding recommendations to the E&E Secretary.

LOAN AGREEMENT, REPAYMENT, REIMBURSEMENT & REPORTING

1. **Loan Agreement:** Once project approval has been granted, a loan agreement is issued. The loan agreement is a document that authorizes the borrower and their qualified provider to implement the approved project and includes guaranteed funding for the ECMs specified in the application. The qualified provider can then begin the process of designing and implementing the project as described in the application, in accordance with the standards of the AEPC program. A sample loan agreement containing terms and conditions that will be executed between the borrower and AEO is available electronically here: **www.adeq.state.ar.us/energy/incentives/rllf.aspx**.

2. **Loan Terms and Conditions**

   A. Loan funds cannot be used to pay for consultants to write loan applications, loan reports, or manage the loaned funds.

   B. After award decisions are made, award letters, contracts, final budget forms, and instructions shall be sent electronically to recipients. All documents are to be completed, signed, and returned to AEO by the stated deadline. Failure to return the completed forms by the deadline may result in a delay of funding or forfeiture of the loan.

   C. Once the terms of the loan are finalized, no substantive changes can be made that affect the budget or scope of the project, as described in the approved loan application, unless the borrower submits a written request that explains the necessitating circumstances and impact on the project. This request shall be submitted to AEO to approve or deny. Additional information may be required.

   D. Parties to a loan agreement specifically recognize that the agreement creates an obligation between AEO, the borrower, and the qualified provider to enact the scope of work as described in the application and for the borrower and ADFA to repay the loan per the terms of the agreement, consistent with these policies and procedures. The borrower agrees that the approved project is maintained with loan funds (or that such funds are integral to the project) and will not be converted to a use that would compromise the integrity of the original loan project.

   E. By acceptance of a loan, the borrower gives AEO staff and consultants the right to inspect the property at all reasonable times to ascertain the borrower's compliance with the loan agreement and, if applicable, ARRA requirements.

   F. Once fully executed, the loan agreement is a legal document. ADFA and AEO will provide instruction to the borrower on requisite submittals for the loan process and will work with the borrower to make corrections. However, repeated failure to abide by the terms of the loan agreement will result in immediate suspension of payments to the borrower and the recall of previously disbursed money.

   G. The forfeiture of a loan under such conditions may result in AEO no longer accepting loan applications from the forfeiting borrower.

   H. Borrowers may not hold concurrent loans from the AEPC—RLLF Program.

3. **Reimbursement & Repayment Process:** Reimbursement will be made based on submission of paid invoices following the rules and processes established in the loan agreement. ADFA will forward an amortization schedule to the borrower that contains the outstanding loan balance, the term of the loan, and the schedule of quarterly payments. Loan repayments will begin within sixty calendar days of project completion and are due upon the date specified in the signed loan agreement.

4. **Returned Funds:** If actual project expenditures are lower than anticipated, funds may either: A) Be returned to ADFA and the financed amount revised to reflect returned funds, or B) Be reinvested in the project scope, per the borrower's request. If the latter option is chosen, a revised scope of work must be submitted to and approved by AEO.

5. **Loan Extensions:** If completion of an AEPC–RLLF project is delayed due to circumstances beyond the borrower's control (as determined by AEO review), the borrower may request, in writing, an extension of up to one year. No more than one such extension shall be granted per loan.

6. **Reporting Process & Compliance with State and Federal Laws:** The borrower shall provide the following reports:

   A. **Non-ARRA Project Status Reports:** If the loan is derived from non-ARRA sources, design and construction status reports must be submitted to AEO within thirty calendar days of substantial completion. This report must indicate changes to the original scope of work, if applicable. The report shall also detail circumstances that altered or delayed progress and what steps were taken to remedy these circumstances.

   B. **ARRA Project Status Reports:** If loan includes any ARRA funds, the borrower must submit quarterly status reports to AEO no later than the fifth day of the first quarter following the closing of the loan. Status reports must be submitted each quarter thereafter, through the duration of the project, no later than the fifth day of each quarter. The status report should address the following:

      I. Progress on the project as it relates to the scope of work

      II. Accomplishments and milestones

      III. Budget

      IV. Timeline

      V. Financial status of the project

      VI. Summary of changes to scope of work and any issues that altered or delayed progress

   C. **Measurement & Verification Reports:** For at least three years following substantial completion of the project, an annual measurement and verification report shall be submitted to the AEO no later than thirty calendar days after the annual anniversary of the mutually agreed-upon substantial completion date.