ARKANSAS BUILDING AUTHORITY
SUSTAINABLE BUILDING DESIGN PROGRAM PROCEDURES
June 1, 2010

I. General

Sustainable Revolving Loan Fund

The following are the stated processes for application, review, award and monitoring of the revolving loan fund and applicable agreements between ABA and loan recipients. These processes involve the revolving loan fund only. The processes involving the solicitation, award or monitoring of contracts involving contractors, vendors, design professionals, and other consultants shall be performed pursuant to federal and state laws, rules and regulations. The process associated with "The Sustainable Energy-Efficient Building Program" (Act 1494 of 2009, codified as Arkansas Code Annotated §22-3-2001 through §2011) are under the jurisdiction of the Arkansas Energy Office within the Arkansas Department of Economic Development.

A. Definitions

1. ABA shall mean the Arkansas Building Authority.
2. ABAMSC shall mean the Arkansas Building Authority Minimum Standards and Criteria.
3. Arkansas Energy Code shall mean the most recent edition of the International Energy Conservation Code as adopted.
4. AEO shall mean the Arkansas Energy Office within the Arkansas Economic Development Commission.
5. Agency means any state agency, board or commission.
6. Committee shall mean the Sustainable Building Design Program Review Committee as appointed by the Director. The Committee shall consist of five (5) members.
    a. Two (2) members from the Sustainable Building Design Legislative Task Force, or their designees as long as the Task Force is in effect;
    b. One (1) agency staff member from the Energy Office of the Arkansas Economic Development Commission, or their designee;
    c. One (1) member from the ABA Design Review Section, or their designee; and
    d. One (1) member from the Arkansas Department of Finance and Administration.
7. Director shall mean the Director of ABA.
8. Energy shall mean electricity, natural gas or other fuel such as methane, fuel oil, coal or propane that is used to operate a state building's electrical devices, lighting, heating and cooling systems, and other equipment necessary for operations.
9. Energy Cost Savings shall mean the monetary value of the energy that is saved or the energy that is not consumed, as a result of an energy efficiency renovation project and is generally stated on an annualized basis for the term of the project. This value is measured and based upon the life cycle costs of a project using the current edition of the Energy Price Indices and Discount Factors for the Life Cycle Cost Analysis or energy source(s) utilized by the building where the renovation occurs. (www1.eere.energy.gov/femp/pdfs/ashb09.pdf)
10. Energy Efficient Renovation means any capital improvement project which consists of renovations, alterations or repairs of existing buildings or building equipment. It does not mean new construction, projects that save money solely through the switching fuels, energy sources or vendors or any combination of these; it does not mean projects or measures solely intended to save money by changing the time of day or year at which energy is consumed (i.e. thermal energy storage or other peak demand reduction systems); or upgrades to non-fixed appliances or equipment within a building such as computers, copiers, and other systems.
11. Energy Savings means the combined value, in British thermal units, also known as Btu's, of all energy sources saved or not consumed as a result of an energy efficiency project. For the purposes of this rule, the following conversion factors are used in calculating the total energy savings:
    a. Electricity 3412 Btu/kwh;
    b. Natural gas/methane 100,000 Btu/therm;
    c. Natural gas/methane 1,030 Btu/cu. ft.;
    d. Fuel oil 139,000 Btu/gallon;
    e. Coal 12,000 Btu/lb;

f. Propane 91,600 Btu/gallon

12. Fund means the Sustainable Building Design Program Revolving Loan Fund.
13. Life Cycle Cost Analysis, which shall be referred to as LCCA, shall mean an economic method of project evaluation in which all costs arising from owning, operating, maintaining, and ultimately disposing of a project are considered to be important to that decision. LCCA is particularly suitable for the evaluation of building design alternatives that may have different initial investment costs; different operating, maintenance, and repair costs (including energy and water usage) and possible different lives.
14. Manager means the ABA Sustainable Revolving Loan Fund Manager.
15. Quarter means the three month period within the state fiscal year beginning with the following dates: July 1, October 1, January 1, and April 1.

B. Fund Corpus

Funds will be collected and deposited pursuant to Acts 754 and 1363 of 2009 for the purposes as stated in Act 1372 of 2009, as codified in Arkansas Code Annotated §22-3-1901 through §1904. The Sustainable Building Design Revolving Loan Fund (Fund) is a miscellaneous fund which consists of funds transferred to it from the General Improvement Fund or other funds, gifts, bequests, foundation grants and gifts, Governor's or other emergency funds, federal grants and matching funds, proceeds from bond issues, service charges or fees, interagency transfers of funds, and other funds as may be appropriated by the General Assembly. The fund shall consist of funds received from agencies, boards and commission to repay loans for the Sustainable Building Design Program, funds made available by the General Assembly from time to time and other authorized revenues.

C. Initial Process Overview

Any agency which does not have sufficient appropriation and/or funding to complete desired energy efficient upgrades for state owned facilities may participate in the Sustainable Building Design Program for renovations which exceed two hundred fifty thousand dollars ($250,000) upon ABA approval. After project approval is provided, the agency may request a transfer from the Sustainable Building Design Program appropriation authorized with the act from the Chief Fiscal Officer of the State. The request shall clearly state the amount required and such other information as may be required by the Chief Fiscal Officer of the State necessary to make a decision regarding the request. Upon approval of the Chief Fiscal Officer of the State, and prior review by the Arkansas Legislative Council or Joint Budget Committee, the State Auditor shall be notified as of the amount and the purposes for which the appropriation and/or funding is to be transferred and shall be established upon the books of the Department of Finance and Administration and the State Auditor. If desired, the appropriation may be supplemental to those regularly appropriated for like purposes by the General Assembly for that agency.

The Sustainable Building Design Program is intended to provide additional appropriation authority for the Sustainable Building Design Program. Funding for the program may be made available by the Chief Fiscal Officer of the State, in the form of a loan, from a transfer from the Fund after the required review by the Arkansas Legislative Council or Joint Budget Committee, approval by the Chief Fiscal Officer of the State and approval through rules and regulations established and administered by the Arkansas Building Authority. Moneys made available for the repayment of a loan shall be deposited to the credit of the Fund as a "Refund to Expenditure" for the year in which the deposit is made. In the event that the funds for the repayment of a loan are held in depositories other than the State Treasury, the administrative head of the affected agency shall issue a check drawn against the funds, which shall be deposited in the Fund.

Agencies who receive loan funds shall be required to file a financial report annually for expenditures. The report shall be filed with the Chief Fiscal Officer of the State and the Director of Arkansas Building Authority as directed by the Manager.

II. Loan Programs

A. Fund

There shall be established within the Arkansas Building Authority a separate and segregated account for the purpose of ensuring the viability of the program through the creation of an inviolate corpus (principal account).

B. Annual Loans
Projects funded during a regular fiscal annual loan period: These loans are submitted through the regular annual loan cycle with projects and expenditures occurring between July 1 and June 30 of each year. No loan shall be made for $250,000 dollars or less. While loans may be made which exceed $500,000, the self sustaining aspect of the funding of the program through origination fees shall be reviewed and justified by the Director prior to awards exceeding $500,000.

III. Application for Funds Process

A. Eligibility to Apply
Applicants for funding from the Fund shall be agencies, boards and commissions of the State of Arkansas which receive General Revenue funding and are authorized by law to make renovations for state owned facilities which exceed the amount of $250,000 and require approval by ABA.

- Applicants for projects to be funded by the American Recovery and Reinvestment Act of 2009 (ARRA) monies shall submit applications no later than December 12, 2011.
- Applicants for projects to be funded by the General Improvement Fund monies may submit applications on an as needed basis.

B. Loan Review Criteria
1. ABA shall only approve those projects which exceed $250,000 for the renovations of existing state owned facilities which ABA determines to be of value for sustainable design building purposes. Projects shall be selected for funding on the basis of their conformity with these purposes, pursuant to Arkansas laws. Projects may be bundled to meet the minimum threshold amount of exceeding $250,000; however all contracting of these projects shall be made pursuant to federal and state laws, regulations and rules.

To qualify for funding in whole or in part as a sustainable building design project, the state owned facility shall be a facility of an agency and shall be designed, renovated and certified pursuant to the Arkansas Energy Office's requirements of "The Sustainable Energy-Efficient Building Program" which is currently stated a reduction of at least ten percent (10%) below the baseline energy consumption determined in accordance with the Performance Rating Method of Appendix G of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Standard 90.1-2007, as it existed on January 1, 2009.

The Sustainable Building Design Program Review Committee shall review the applications forwarded from the Manager and make recommendations to the Director for project loan approval.

2. Other review criteria include:

a) Agency has completed their Strategic Energy Plan (StEP) and was approved by the StEP Energy Workgroup, and plan includes specific sustainable renovation projects within the Capital Projects section of the plan.
b) Agency has contracted or will be contracting for a Measurement and Verification (M&V) of the project.
c) Agency has completed a Life Cycle Cost Analysis. Should an agency determine an analysis is not needed; the Director may waive this requirement upon proper written justification presented by the agency.
d) A statement from the Agency Director as to the agency's method of repayment of the loan.
e) Renovations which may include:
    i. Building exterior weatherization, air sealing, or thermal efficiency;
    ii. Increase or improvement in building insulation;
    iii. Door, window, or skylight replacement;
    iv. Lighting technology upgrades, or reduction of the number of fixtures;
    v. Heating, ventilation, heat recovery, steam system and air conditioning (HVACR) replacements;
    vi. Improvements to energy control systems/sensors;
    vii. Other energy efficiency projects such as VFD motors that will result in a significant reduction in the consumption of energy within a building.
f) The following direct costs are eligible:
    i. Building materials

ii. Doors, windows and skylights;
iii. Mechanical systems and component including HVACR and hot water;
iv. Electrical systems and components including lighting and energy management systems;
v. Labor necessary for the installation of the energy efficient project;
vi. Design and planning of the energy efficient project which include but not limited to design professionals, consultants and Energy Service Companies (ESCO)
vii. Costs associated with energy audits, re-commissioning, or retrocommissioning, or any combination thereof which include but are not limited to design professionals, consultants and ESCOs.

g) The following are not eligible costs:
   i. The costs of the project which are not directly related to energy efficiency measures;
   ii. Any costs incurred for the financing of the project;
   iii. Costs for equipment or systems that reduce energy costs without also resulting in reductions in the use of energy; however nothing in this section shall be deemed to prohibit costs associated with renewable energy or geothermal projects.
   iv. Loan funds cannot be used to pay for consultants to write loan applications, reports, or manage the loaned funds.

h) Energy efficient projects undertaken as a part of a renovation project that are covered by the prescriptive requirements of the Arkansas Energy Code must exceed the minimum Arkansas Energy Code requirements in order for their costs to be eligible for a loan from the fund.

i) Conformity with other plans
   i. Conformity with plans, laws, and/or regulations currently existing, developed, and/or administered by other State or Federal agencies.

C. Loans

There is only one category of loans for which application may be made.

1. Annual loans - Projects funded during a regular annual loan cycle with projects and expenditures occurring between July 1 and the following June 30.

2. Origination Fees – ABA shall credit an origination fee to the Arkansas Building Authority Maintenance Fund for expenses associated with the administration of the program. Applicant agencies shall remit an origination fee of .5% of the requested amount of the loan; however no origination fee may exceed $2,500 per loan application.

3. The term for repayment of the loan shall not exceed ten (10) years.

4. State agencies shall certify that it will not make additional requests from general revenue for funding to be used for repayment of the project loan.

D. What Is/Is Not Funded

Only those projects which conform to the purposes defined in the legislation, rules and loan application procedures will be considered. No loan funds shall be used to fund any other project or in any manner not defined within these rules. Loans shall be for a project renovation which exceeds $250,000 on a state owned facility.

E. Loan Elements

1. Design Professional, Consultant and ESCO Contracts: Licensed Design Professionals shall prepare plans and specifications for sustainable projects funded with the Funds. Contracts for such professionals, consultants and ESCOs shall follow the processes pursuant to federal and state laws, regulations and rules, however agencies do not have to contract for such services if they have licensed design professional(s) on staff. The design professional shall prepare and certify plans, specifications, a work-cost breakdown, and other required contract documents for submission and will observe the project work.

2. Contractors/Vendors: Contractors/Vendors shall be selected pursuant to applicable laws. The requirement for a contractor may be waived if the agency has staff expertise within the applicant agency.

3. Project Preparation/Plans and Specifications: All projects funded, in whole or in part, with the loan must be in accordance with the federal and state laws, regulations and rules.

4. Project. The project in its entirety, including amendments for design services and change orders to the project contract shall adhere to all applicable laws and rules, including but not limited to the ABAMSC for the entities under the jurisdiction of ABA.

5. Maintenance and Administration. Agencies who own the properties assisted by the revolving loan funds must agree that the property shall be maintained to every extent possible in accordance to applicable laws, codes, and rules. Additionally, the agency must agree to give ABA the right to observe the project at all reasonable times throughout the loan period to ascertain the agency's compliance with the loan agreement.

6. Site Visits. As work on the project progresses, in addition to regular visits by the Construction Section staff, other state staff representatives may make periodic site visits to observe the work in progress or visits after the completion of the project to observe how the project is functioning or operating, or both. Once work has begun on the project, the site visits may be made without notification to the agency.

F. Application Instructions

1. Application Form - Each loan application must include a completed loan application form. Loan applications may include more than one like project.

2. Approval by Agency's Chief Executive Officer and other approval - Each agency applicant must certify that the loan proposal has been previously submitted to and approved by its respective executive office and its board or commission as applicable. The name, email address and telephone number of the applicant's fiscal officer who will be handling the finances of the loan project are also required.

3. Acquisition Project Requirements - Agencies applying for acquisition funds must submit or have on file with ABA verification that such procedures have been met.

4. Application Obligations - Parties to a loan agreement specifically recognize that loan assistance from ABA creates an obligation to maintain the property described in the project agreement consistent within these rules and the act. The applicant agrees that the project is being renovated and maintained with loan funds (or that such funds are integral to the project) and shall not be converted to a use that would compromise the integrity of the original loan project. By the acceptance of a loan, the agency will give ABA staff and other state officials the right to inspect the property at all reasonable times to ascertain the agency's compliance with the loan agreement.

5. Returned Funds - If, for some reason, a project is terminated or if actual costs are less than anticipated or if the loan contract date has expired, all remaining unobligated funds will be returned to Arkansas Building Authority. All such funds shall be reclaimed by the Chief Fiscal Officer and returned back to the Fund.

6. Loan Extensions - If a loan project is delayed due to conditions beyond the applicant's control, the applicant may request in writing an extension of the project period. No more than one extension of up to one year shall be approved per loan.

7. Loan Submittal - One (1) original and one (1) electronic copy of the loan application will be required; however, only one copy is to be submitted by the stated deadline. Applicants will be encouraged to contact the Manager for assistance in preparing an application prior to its submittal to lessen the chance for errors.

a) After the Manager reviews the application for completeness and accuracy, the applicant will be notified. Applications which are not completed or where more information is warranted may result in delay of the application process.
b) After the Manager receives all application documents, they will be forwarded to the Director.

c) The completed application will be sent to the Committee by the Manager. The Committee will review and make a recommendation to the Director regarding approval of the award.
d) Upon receipt of the Committee's recommendation, the Director shall make a determination of the loan award.
e) The Director may request the applicant make a presentation to explain the loan proposal. The presentation will be limited to 15 minutes per application.
f) If a proposal is approved, all forms needed to implement the loan will be prepared.

G. Review Committee Meetings

A meeting with the Committee shall be held at the Director's discretion but no less than once a year. At that meeting, a report of the funds collected, donations, returned funds, all other funds available for loaning for the next loan period and other pertinent information may be topics of discussion and review.
Actions include, but are not limited to the following:

1. Manager shall recommend to the Director regarding the funding to be placed in the Fund for the year.

2. Review of the status of the current project and loans.

H. Legal, Financial, and Reporting Requirements for Loan Recipients

1. Contracts

a) After award decisions are made, award letters, contracts, final budget forms, and instructions shall be mailed to recipients. All documents are to be completed, signed, and returned to the Manager 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.
b) Once the terms of the loan are finalized, no substantive changes which affect the scope or completion of the project may be made in the program or budget as described in the original loan application unless the agency submits a written request for a change in advance. This request is to be submitted to the Manager who shall provide it to the Director for approval or denial. Nothing shall prohibit the Director from requesting additional information from the agency.
c) Once fully executed, the loan contract is a legal document. The Manager will provide instruction to the loan recipient on requisite submittals for the loan process and will work with the loan recipient to make corrections, however repeated failure to abide by the terms of the loan contract will result in immediate suspension of outstanding payments and recall of allocated funds.
d) The forfeiture of a loan under such conditions will be reported to the Governor, the Legislative Task Force on Sustainable Building Design and Practices and to the Arkansas Legislative Council, and may result in the ABA no longer accepting loan applications from the forfeiting agency.

2. Distribution/Reimbursement of Loan Payments

a) When a loan award is made, the agency receiving the loan is given a new state appropriation and funding specific to the loan. The Department of Finance and Administration will establish an appropriation code and a fund code for each loan.
b) Monies are transferred to the agency's new fund account according to the schedule as established by the Manager.
c) Reimbursement of the loan shall be in accordance with the schedule as established by the Manager.
d) All expenditures are subject to the State of Arkansas Accounting Procedures and Purchasing laws and rules and state public works laws and the accounting and budgetary procedures for capital improvements.

3. Audit Requirement

For accounting purposes, financial records shall reflect all obligations and disbursements of loan and matching monies. The financial accounts shall be subjected to audit by the agencies of DFA, ABA, State of Arkansas, and/or the Federal Government as applicable. The agency shall be responsible for the safekeeping and identification of records maintained to account for funds awarded. Said records must be kept in the agency's file pursuant to the State Record Retention Schedule.

4. Compliance with State and Federal Laws

Each loan project will comply with all applicable State and Federal laws relating to the nature and purposes of the loan project (i.e. ABAMSC, Davis Bacon, American Recovery and Reinvestment Act, Public Works, retention of records, NEPA, and SHPO etc.).

5. Reports

Loan recipients are required to submit reports during the year to the Manager.

a) For all loans, a final financial summary of the official state financial report for all expenses, final narrative/activity reports ("final report") and photographs of the completed project as applicable are due no later than 30 calendar days after the project's completion or earlier as stated if ARRA funds are used as directed by the Manager.

b) Loan recipients shall submit complete monthly progress reports as directed by the Manager. Reports shall include:

i. Detailed narratives identifying the accomplishments associated with each project element;
ii. Financial information for the specified time period with an outline of expenditures related to each project element and appropriate AASIS reports;
iii. Appropriate photographs or other documentation to give a clear impression of the project's progress through the specified date;
iv. Difficulties as well as the ease the project encountered with sustainable issues shall be discussed;
v. Copies of articles from newspapers, magazines, or other publications related to the project; and
vi. Agencies shall submit appropriate reports as outlined in the schedule provided by the Manager. A deadline extension shall be requested in writing if the agency is unable to submit the reports on time. Failure to submit reports as agreed shall be reported to the Chief Fiscal Officer of the State.

6. Project Directors' Meeting

After loan awards are made, a mandatory meeting will be held with loan recipient agency directors or their designees. Any agency who does not send appropriate personnel to review the procedures at this meeting shall not receive funds until the agency has made arrangements to meet with the Manager.

7. Personnel

a) Each loan recipient shall specify in writing one Project Contact and one Fiscal Officer. It is the responsibility of the loan recipient to keep the Manager informed of any changes in the designated contacts. The Project Contact must be employed by the agency.

b) Loan funds cannot be used to pay for consultants to write loan applications, loan reports, or manage the loaned funds. The agency applying for a loan shall be responsible for providing personnel to write and manage the loan, focus the project on the scope of the contract, respond to questions, submit reports in a timely manner, provide appropriate financial documents and reports, and monitor the work of architects, contractors, consultants, and extra help workers.

8. The required forms shall be made available to the agencies by the Manager. Forms may include but are not limited to the application, agreement, budget, agency progress report(s), and final report.