

SEU Direct Lending Activities – Policies and Procedures Manual

ADOPTED: May 16, 2013
AMENDED: May 15, 2014
AMENDED: September 12, 2014
AMENDED: March 19, 2015
AMENDED: March 17, 2017

1. GENERAL PROVISIONS

1.1. PURPOSE

This manual presents the criteria and processes which govern the Direct Lending activities of the Delaware Sustainable Energy Utility's (SEU) Loan Program (LP)–The Executive Director is authorized to administer direct lending as described in this manual. The SEU may contract with a third party administrator. The SEU reserves the right to modify the policies and procedures set forth herein, as it deems necessary, in its sole discretion, to develop successful projects, and to accept or reject any application for project funding. These policies and procedures are solely for the internal use of the SEU and any third party administrator retained by the SEU, and may not be relied upon by any applicant for a loan. Nothing contained herein shall be construed a) as creating any obligations on the part of the SEU or any third party administrator to an applicant, or b) as a promise, representation, warranty, or inducement of any kind to any applicant.

1.2. REVOLVING LOAN FUND OBJECTIVES

- (1) To encourage the adoption and installation of end-user energy efficiency measures and customer-sited renewable generation that result in savings that can lower customers' bills and reduce the environmental impacts of energy production, delivery, and use.
- (2) To create new markets that will help build jobs in Delaware, improve our national security, keep value within the local economy, improve energy reliability, and protect Delawareans from the damaging effects of recurrent energy price spikes.
- (3) To encourage the adoption and installation of end user greenhouse gas emission reduction measures.

1.3. FUND ASSETS

Funds allocated to Direct Lending activities may be deposited in a separate account maintained by the SEU.

1.4. CONFLICT OF INTEREST

All board members and committee members shall sign a Conflict of Interest Statement regarding loan approvals. Members of the SEU Oversight Board, Executive Director, SEU employees or employees of any third party administrator shall disclose any actual or perceived conflict of interest with any applicant. In the event that there is any financial benefit associated with the conflict, the person with the conflict shall recuse themselves from any loan decision-making related to the applicant.

1.5. CONFIDENTIALITY

The loan review and approval process as well as the contents of loan applications are confidential. No member of the SEU Oversight Board or any staff may use information learned or disclosed through a loan application for personal gain, either, directly or indirectly, or assist others to gain personally or avoid a loss. No member of the SEU Oversight Board or any staff may disclose the votes of any members of any of the loan committees, nor any

statements made by individual committee members for or against a particular loan or applicant. The SEU is subject to Delaware's Freedom of Information Act, Title 29 of the Delaware Code, Chapter 100. All loan applications and loan review materials submitted to the SEU will be handled in accordance with the Freedom of Information Act, including the provisions which relate to the handling of trade secrets and commercial or financial information which is of a privileged or confidential nature.

2. ELIGIBILITY

2.1. ELIGIBLE APPLICANTS

- (1) Applications may be submitted by cities, towns, counties, other units of government, K-12 schools (public or private), school districts, higher education institutions, hospitals, nursing homes, healthcare institutions (as defined in 24 Del. Laws c. 17 § 1702 (5)), commercial and industrial businesses (for profit businesses) and nonprofit organizations.
- (2) Hiring practices of and facilities, products and/or or services provided by applicants must be available to all persons without discrimination as to age, race, color, creed, religion, national origin, sex, marital status, sexual orientation or status with regard to public assistance or disability.
- (3) All contractors and subcontractors engaged in the construction and maintenance of the Applicant's projects shall be required by contract to provide an equal opportunity for employment to all persons and shall comply with the SEU's Responsible Contractor Policy

2.2. ELIGIBLE ACTIVITIES

Direct loans shall be available to eligible applicants for proposed improvements installed by a qualified contractor that are designed to reduce the net energy requirements and/or increase the on-site renewable energy capacity and/or greenhouse gas emissions reduction in or at properties or sites located in the State of Delaware. These activities include:

- (1) Installation of eligible measures in or on a building or site or vehicles owned or leased by the applicant;
- (2) Conducting an energy efficiency audit;
- (3) Code-related repair and health and safety measures that are required to secure the energy savings of the project.
- (4) Installation of greenhouse gas emission reduction measures in or on a building, site, or vehicle.

2.3. MINIMUM REQUIREMENTS

- (1) Energy efficiency and/or greenhouse gas emissions reductions measures must be justified by an audit. The audit must have been completed within the previous six (6) months unless otherwise approved.
- (2) Contractor must meet requirements for the SEU's Responsible Contractor Policy and the State of Delaware prevailing wage rates for mechanics and/or laborers for contracts greater than \$50,000. The prevailing wage rates shall be determined by the Delaware Department of Labor, Division of Industrial Affairs as prevailing in the county in which the work is to be performed.
- (3) Applicant must demonstrate the ability to repay the loan or lease as evidenced by review of credit history, financial statements, IRS filings, and bank and trade references.
- (4) For energy efficiency projects, savings over the weighted useful life of the measures must be greater than the cost of the measures including financing.

- (5) Applicants shall comply with all applicable local, state, and federal laws and codes and secure any necessary permits.
- (6) Projects shall be started within 3 months from the date of acceptance of loan commitment, unless a written exception is granted. Such exceptions may include, but are not limited to, equipment or permitting delays. Applicants shall provide a project implementation schedule not exceeding 6 months from the date of project commencement unless agreed otherwise in writing
- (7) The Executive Director will review projects that fail to start or finish implementation within the project implementation schedule. Financing may be withdrawn if a project cannot be started or completed within the project implementation schedule.
- (8) Applicant must agree to electronic repayment of funds.
- (9) The applicant shall have no outstanding judgments and not be delinquent nor in default on any federal, state, or local tax obligation.

3. TERMS AND CONDITIONS

3.1. GENERAL

Credit facilities available to eligible applicants shall include term loans and tax exempt leases for qualified applicants.

3.2. MINIMUM STANDARDS

- (1) Loan and tax exempt lease amounts shall be no lower than \$10,000 and generally no higher than \$1,000,000 per project for non-governmental entities. Tax exempt leases shall be available only to applicants qualifying under Section 103 of the Internal Revenue Code of 1986¹ and contain language limiting the repayment obligation to the appropriation of operating budget funds, when appropriate.
- (2) No more than \$2,000,000 shall be outstanding to any one non-governmental borrower. For borrowers that are business entities, "borrower" means the borrower and any other corporation, limited liability company, partnership, trust or other entity in which more than 50% of the ownership or equity interests are held directly or indirectly by borrower or those persons or entities holding more than 50% of the ownership or equity interests in borrower. However, this may be waived when there is a finding that there are significant distinctions between related business entities and there are sufficient independent sources of collateral.
- (3) Interest rates be determined by the Loan Committee and shall be range between 50%-120% of Municipal Bond Yields for 20 year bonds with AA rating as reported in the Municipal Market Data (MMD) Curve. In setting the rates the Loan Committee shall consider the needs and merits of the loan applicant and project. The SEU Oversight Board shall have the authority to set interest rates outside range when recommended by the Loan Committee.
- (4) Terms shall be either
 - a. The lessor of Simple payback plus one year, or ten years for amounts above \$25,000; five years for amounts less than \$25,000

¹ In order to qualify the applicant can be any U.S., State or District (or political subdivision thereof) that has:1) the ability to tax its citizens, 2) Police power and/or 3) the right of eminent domain

- b. A term that is justified by the projected cash flow where an energy savings performance contract model is used, meaning that the projected annual energy savings for the project are greater than the annual debt service plus measure and verification costs where required.
- (5) If construction financing is needed, interest payments shall be capitalized during the construction period. Amortized payments of interest and principal shall be paid monthly for the term of the loan beginning on the first of the month following installation. Payments shall be made automatically using electronic funds transfer.
- (6) There shall be no prepayment penalties.
- (7) The SEU will seek adequate security for all investments, including Guaranteed Energy Savings Agreements when appropriate. Typically, the fund will obtain a UCC filing on the asset being financed.

3.3. ADDITIONAL REQUIREMENTS FOR TENANT APPLICANTS

- (1) Application must include the written approval of the property owner.
- (2) The term of the loan cannot exceed the life of the property lease.

3.4. FEES

- (1) Commitment Fee. A non-refundable commitment fee of ½ % of the loan amount shall be due when the applicant countersigns the commitment letter. This fee shall be applied in full toward the closing fee.
- (2) Closing Fees. The following shall be due at or before closing:
 - a. A closing fee of ½ % of the loan amount
 - b. Loan document preparation, recording and filing fee charges of up to \$500, or actual cost, whichever is greater.
 - c. Legal fees incurred by the SEU.

4. APPLICATION AND REVIEW PROCESS

4.1. GENERAL

- (1) Applications may be submitted at any time during the calendar year.

4.2. INITIAL INQUIRY

- (1) The Executive Director or third party administrator shall explain direct lending opportunities to prospective applicants, provide written information, assist applicants in understanding eligible measures, identifying contractors, and completing applications.
- (2) The Executive Director or third party administrator shall make an initial determination of project and applicant eligibility.

4.3. PROJECT DEVELOPMENT AND APPLICATION

- (1) The applicant shall obtain an energy or greenhouse gas emissions audit report. Energy audits must be conducted by or under the direction of a Certified Energy Manager (CEM) or a Delaware-licensed Professional Engineer (PE).
- (2) The applicant will then decide upon the appropriate scope of work and negotiate its cost with the Contractor.

- (3) The applicant shall submit a completed loan application in the proscribed format, either electronically or via hard copy submitted to the Executive Director or third party administrator. The application shall, at a minimum, contain the following information:
- a. Applicant description including history, resumes of principals (when appropriate), bank and trade references (including prior lending history and mortgage information) and three years of financial statements or annual audits; tax returns; current year budget; and current year unaudited financial statement (if available). Applications for commercial and industrial (for profit) projects under \$25,000 will not require financial statements and will be evaluated based on the credit of the business owner(s).
 - b. Copies of outstanding loan agreements or other loan documents that contain outstanding loan terms and conditions.
 - c. A copy of the energy audit or emission reduction report.
 - d. A project description, budget and projected energy or emission reductions benefits. Contractor commitment including proposal detailing scope of work, anticipated scheduling, and cost and acceptance of Delaware prevailing wage requirements as stated in Section 2.4(4) Standard Disclosures.
- (4) The Executive Director or third party administrator confirms receipt of a completed application with the applicant, or advises the applicant of additional information that is required to complete the application.

4.4. LOAN REVIEW

- (1) General Process
- a. The Executive Director or third party administrator may deny applications that are clearly ineligible or incomplete.
 - b. Applicants that submit incomplete applications, but include an e-mail address in their application, will be sent an e-mail by the Executive Director or third party administrator and be advised what information is missing and how they can complete the application.
 - c. Credit memos (loan recommendations) will be prepared by the Executive Director or third party administrator for any recommended loan within 45 business days of the receipt of a completed application.
 - d. Loans of up to \$75,000 that meet specified criteria may be approved by the Executive Director or third party administrator's internal loan committee described below. All other loans require approval by the SEU Loan Committee. Reasonable efforts shall be made to render loan decisions within 45 business days of receipt of a completed application.
 - e. Reasonable efforts shall be made to inform applicant of loan approval or denial within 45 business days of receipt of a complete application.
- (2) The Executive Director or third party administrator's internal loan committee made up of the Executive Director, the third party administrator if any, the SEU Financial Advisor, and SEU Treasurer may approve loans that meet the following criteria:
- a. Loan amount does not exceed \$75,000.
 - b. The applicant's previous credit history is good – no late payment > 60 days and no more than 2 late payments within the last 12 months.
 - c. Personal guarantees of the owner(s) of commercial and industrial applicants will be required unless the business can demonstrate that: (1) it can operate without the owner's participation, or, (2) has a history of prior lending without personal guarantee(s) of the owner(s).

- d. Energy savings, greenhouse gas emissions reductions and generation projections are clearly defined and reasonable.
 - e. The applicant answered no to all financial disclosures questions on the application.
 - f. The loan does not create any exceptions to policy.
 - g. The loan approval receives unanimous approval from the Committee.
- (3) A Loan Review Committee (LRC) of 5 persons shall be created by the SEU Oversight Board. The members of the Loan Review Committee shall be members of the SEU Finance and Audit Committee designated by the SEU Oversight Board and the fourth shall be the SEU Financial Advisor and the fifth shall be the Executive Director.
- a. The LRC shall have the authority to review, select and approve any loan.
 - b. The LRC shall also have the authority to make standards and policy recommendations to the SEU Oversight Board for adoption.
 - c. LRC meetings will be held as necessary. All members shall be given at least 48 hour prior notice of each meeting. LRC meetings may be conducted by conference call.
 - d. Official actions must have the support of the majority of the total LRC. Vacant positions on the LRC shall be counted in determining the total number of committee members.
 - e. The LRC may, at its sole discretion, forward recommendations about loan applications which create an exception to the policies contained herein, to the SEU Oversight Board for a loan decision.

4.5. EVALUATION CRITERIA

Applications will be evaluated and awarded in the order in which they were received using the following general criteria:

- (1) The ability of the applicant to repay the loan including an assessment of the applicant's credit history, creditworthiness of the guarantor (if applicable), the likely risk, the length of the payback period and the strength of the collateral;
- (2) Amount of projected energy saved, greenhouse gas emissions reductions or generated and/or fossil fuels displaced in appropriate physical units (e.g. KWh's for electricity);
- (3) Project readiness including the strength and potential of the applicant and its contractor(s) to implement the project;
- (4) Project's visibility and the impact it has on encouraging other eligible applicants to adopt broader energy conservation and sustainability and , greenhouse gas emissions reduction strategies;
- (5) Ensuring that limited funding is dispersed to a diverse array of projects in locations around the state.
- (6) The Executive Director or third party administrator shall establish and maintain a standardized scoring system that will be used in assessing each loan.

4.6. LOAN DENIALS

- (1) Applications may be denied by the Executive Director or third party administrator Loan Committee or LRC. Reasons for the denial may include but will not be limited to: insufficient collateral; excessive debt; restrictive covenants on existing debt; past or present credit delinquencies; outstanding liens or judgments, insufficient cash flow for repayment; failure to provide adequate financial or other information, less than two (2) years in business, ineligibility of the applicant, and ineligible use of the proceeds.

- (2) Loan denials shall be conveyed to applicants by written notice with a brief explanation of the reason for the denial. If the decision was influenced by a credit reporting agency, the applicant shall be informed of the source.

4.7. LOAN COMMITMENT

- (1) If the loan is approved, The Executive Director or third party administrator shall send a letter of commitment with the terms and conditions of the loan. The commitment must be accepted within 30 days after the offer is made and closing shall occur no later than 90 days after acceptance.

5. **LOAN CLOSING AND DISTRIBUTION OF FUNDS**

5.1. LOAN CLOSING (Loan Documents Signed)

A closing will be scheduled to execute the necessary loan documents which shall, at a minimum, include:

- (1) Letter of Commitment countersigned by the Applicant
- (2) Signed financing agreement, including Promissory Note for any progress payments, if applicable.
- (3) Proof of property ownership or a copy of the facility lease agreement.
- (4) Contractor Participation Agreement
- (5) Security agreement and/or personal guarantees provided as security for all loans shall be prepared and executed at the time of the loan closing. The following non-inclusive list of documents shall also be provided.
 - a. UCC searches and filing.
 - b. Casualty Insurance binder.
 - c. Other documentation as may be appropriate.
- (6) Repayment schedule dated and signed by the recipient and a signed approval for electronic funds repayment.
- (7) Evidence of permits - documentation must be in place that the applicant has secured all necessary permits, licenses and any other registrations or requirements.

Other Documents – other documents may be requested based on the type of applicant and nature of the project. The documents may include organizational documents for the borrowing entity such as certificate of good standing, corporate borrowing resolution, attorney’s letter confirming authority to enter into agreement, current financial statements, and environmental assessments or other documents, which the SEU or its third party administrator deem relevant in their sole discretion.

5.2. DISTRIBUTION OF FUNDS

- (1) The Funds will be placed into one account managed by the Executive Director or third party administrator who will make authorized payments in a timely manner to the contractors/vendors. Payments will be made either in the form of (a) progress payments (if necessary) or (b) full payment upon project completion and borrower acceptance.
- (2) The SEU’s preference is to finance completed projects. However, up to two progress payments totaling no more than 75% of the total loan amount may be made by the Executive Director or third party administrator, when required by the installing company. Progress payments must receive a written sign-off from the customer and be secured by a promissory note signed by the customer as well as a completed AIA

certification from the contractor (to require the contractor to certify that the stated percentage of work has been completed).

- (3) A final payment of no less than 10% of the loan will be made to the Contractor after the following has occurred:
 - a. Fully-executed Delivery and Acceptance Agreement
 - b. The Executive Director or third party administrator has verified energy benefits or, greenhouse gas emissions reductions and quality assurance.
 - c. Final, properly executed loan agreement has been received by the Executive Director or third party administrator that includes (1) any accrued interest on any funds advanced during the construction or installation period and (2) interest on the paid funds up until the billing anniversary date, both of which will be capitalized in the loan.
 - (4) The Executive Director or third party administrator will determine whether all documents have been properly executed and received.

6. DOCUMENTATION

6.1. WRITTEN RECORDS

All direct lending activities, including loan committee meetings, loan applications, and related documents, shall be maintained in writing in appropriate files by the Executive Director or third party administrator. All files should be maintained in a secure place with access only by authorized personnel.

6.2. LEGAL DOCUMENTS

The SEU attorney shall prepare or have prepared templates for all loan agreements, promissory notes, lien instruments, and counsel the SEU on default matters. The Executive Director or third party administrator shall adapt the template documents for each loan closing. The attorney shall be consulted, as needed, in regards to documentation for any unusual borrower, loan or terms. The Executive Director or third party administrator or its authorized designee shall prepare and file UCC filings and or liens on behalf of the fund.

6.3. CREDIT FILES

Each loan committed shall have a credit file which shall be maintained by the Executive Director or third party administrator. The Credit file shall contain:

- (1) Loan Application File: The application, energy audit or greenhouse gas emissions reductions report, financial statements, credit reports, work scope documents, and other supporting loan information , including all applicable correspondence
- (2) Loan Recommendation File: This file should contain a summary of the analysis, recommended actions for the application, and a copy of any Committee minutes for the meeting summarizing the action taken on the loan request.
- (3) Commitment Letter accepted by Borrower.
- (4) Loan Closing File: This file contains copies of all loan-closing documents. Legal documents from the loan closing will include, but not be limited to, security instruments, the note, and verification that the equipment has been installed properly and to the borrower's satisfaction, and other applicable correspondence. The note shall be placed in a locked, fireproof safe or stored in a secure off-site location.

- (5) Repayment Monitoring File: This file should include the loan amortization schedule, status of payments, and the outstanding balance of the loan.
- (6) Loan Servicing Record: Borrower will get a loan schedule at closing. The loan servicing record shall include all post-closing correspondence; a record of important telephone conversations; a list of applicable loan covenants; certificates of insurance for builder's risk and property-casualty; and any other required documentation.
- (7) Tickler file: A tickler file system should be established and maintained by The Executive Director or third party administrator to ensure that loan repayments, financial information, the loan agreement, UCC updates, and other time sensitive documentation requirements are tracked and obtained as required.

6.4. ACCOUNTING RECORDS

- (1) The Executive Director or third party administrator shall maintain accounting records in accordance with guidelines set by the SEU accountant. The Executive Director or third party administrator shall report monthly to the SEU Oversight Board regarding the loan activity.
- (2) A separate accounting record for each loan shall be kept to account for all funds loaned.
- (3) The Executive Director and the third party administrator shall report to the SEU Board on all loans and the loan account at least every six months.

7. **POST APPROVAL REQUIREMENTS**

7.1. OBLIGATION OF LOAN RECIPIENT

In addition to the terms and conditions of the loan, all borrowers shall agree to comply with the following:

- (1) To use the loan money only to pay the cost of services and materials necessary to complete the project or activity for which the loan funds are awarded.
- (2) To start the project within 3 months from the date of acceptance of loan commitment, unless a written exception is granted by the Executive Director or third party administrator. Such exceptions may include, but are not limited to, equipment or permitting delays. Applicants shall provide the Executive Director or third party administrator with a project implementation schedule not exceeding 6 months from the date of project commencement unless agreed otherwise in writing by the Executive Director or third party administrator
- (3) Authorize the repayment of the financing via automatic fund transfers (AFTs) from their bank.
- (4) To permit inspections during normal business hours by persons authorized by the SEU of all projects and properties assisted with loan funds. Related project materials shall also be open to inspections during normal business hours, which include, but may not be limited to, contracts, materials and equipment.
- (5) To maintain records on the project as may be requested by the SEU. These files shall be maintained as long as the loan is active and for at least three (3) years after completion of the work for which the loan has been obtained, whichever is longer.
- (6) To maintain fire and extended coverage insurance, and any other insurance called for by the nature of the project on the project property required during the term of the loan. The SEU shall be listed as Loss Payee, Mortgagee, or "additional insured" on the policy.
- (7) To abide by all federal laws, when applicable.

8. LOAN COLLECTION AND MONITORING

8.1. LOAN COLLECTION

- (1) Loan repayments shall be made electronically. Payments may be arranged by the applicant or automatically withdrawn by the Executive Director or third party administrator or a third party billing company.
- (2) In the event that the payment is not made in full or there are insufficient funds in the account, the borrower shall be notified within 10 days and asked to identify an alternate account, provide the payment or otherwise remedy the obligation.
- (3) If full payment is not made within 15 days of the date of the notification letter, a late payment fee of 10% of the payment is added to the amount due.
- (4) If full payment is not made within 30 days of the due date, a letter is sent by the Executive Director or third party administrator reminding the borrower of his or her overdue payment and warning them of actions to be taken for non-payment.
- (5) If full payment is not made within 60 days of the due date, a letter is sent by the SEU Attorney informing the borrower that they are in default and immediate payment must be made.
- (6) If full payment is not made within 90 days of the due date, the Executive Director or third party administrator will provide written notice to the SEU's Loan Review Committee (LRC), and the LRC shall within 5 business days, instruct the Executive Director or third party administrator to turn the obligation over to a collection agency, repossess the equipment, proceed through the court system for default or write-off the loan without further action.
- (7) On the third instance within a one year period where borrower has not made full payment in 30 days of due date, The Executive Director or third party administrator will provide written notice to the SEU's Loan Review Committee (LRC), and the LRC shall, within 5 business days, instruct the Executive Director or third party administrator as to what course of action to take.
- (8) Each month the loan is overdue, a 5% service charge will be added to the payment amount.
- (9) The Executive Director or third party administrator may depart from the collection policy if a hardship can be documented to his or her satisfaction, and if the departure is approved by the SEU's LRC in writing. The determination of whether a hardship exists shall be at the sole discretion of the SEU's LRC. The Executive Director or third party administrator should maintain the records which relate to any departure from the foregoing policy in the borrower's file.

8.2. MONITORING AND LOAN DISCHARGE

The Executive Director or third party administrator shall monitor each loan to ensure compliance with the loan terms and conditions.

Upon receipt of all amounts owed, the loan shall be discharged and all security released by the Executive Director or third party administrator.