

Chapter 1:
**State Energy
Program (SEP) Review**

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Table 1. State Energy Program (SEP) At-A-Glance

Objective	To promote energy conservation and efficiency and reduce energy demand by developing and implementing comprehensive State energy conservation plans supported by Federal financial and technical assistance.
Eligible Applicants	The States, the District of Columbia, and territories of the United States.
Program Regulations	DOE <i>Code of Federal Regulations</i> , Title 10, Part 420, Part 600, and Office of Management and Budget (OMB) Circulars.
Funding	Congressional appropriations, Petroleum Violation Escrow (PVE), State funds, program income, Office of Energy Efficiency and Renewable Energy (EE) end-use sector programs (for special projects), and leveraged funds.
Prohibited uses of SEP Funding	<ul style="list-style-type: none"> • Construction or repair of mass transit systems or exclusive bus lanes, buildings, or structures • Purchase land, buildings, or structures or to pay interest on construction • Subsidize fares for public transportation • Subsidize utility rate demonstrations or State tax credits for energy conservation or renewable energy measures • Conduct or purchase equipment to conduct research, development, or demonstration of energy efficiency or renewable energy techniques and technologies not commercially available. However, demonstrations of commercially available energy efficiency or renewable energy techniques and technologies are permitted.
Allowable Costs and Expenditures	As defined in OMB Circulars A-21, A-87, and A-122 and cited in 10 CFR 600.127 and 10 CFR 600.222.
Minimum Required Program Activities	Establish mandatory lighting efficiency standards for public buildings; promote the availability and use of car pools, van pools, and public transportation; establish mandatory standards and policies affecting procurement practices; mandatory thermal efficiency standards for new and renovated buildings; traffic laws that permit right turns at red traffic lights and left turns from a one-way to a one-way street or adopt model codes for local governments to mandate such measures; and procedures to ensure effective coordination among local, State, and Federal energy efficiency, renewable energy, and alternative transportation fuel programs.
Special Projects	States may apply for funding made available to support activities aimed at improving the energy efficiency of the buildings, industrial, transportation, and utility sectors and the Federal Energy Management Program (FEMP).
Application Requirements and Program Assurances	States must submit an Annual Application and a State Plan/Master File (prepared and updated as required) that describes energy conservation, efficiency and renewable energy goals, proposed activities, source of funds, budget, progress, and monitoring activities.
Reporting Requirements	States must file quarterly reports that account for funds and program status.
Audits	States are responsible for obtaining independent nonfederal audits.

Chapter 1: State Energy Program Review

Program Description

The U.S. Department of Energy's (DOE's) State Energy Program (SEP) provides Federal financial assistance and technical support to the States for energy programs and Special Projects. The program is flexible and diverse. It recognizes opportunities to address a national purpose while meeting local, State, and regional needs. Federal laws and regulations establish the program's purpose, set criteria for participation, and define, in general terms, how funds may and may not be used. Each State can propose how it would use its share of funds to address the national criteria and the specific conditions within that State.

The States are responsible for planning and implementing program activities. DOE's Regional Support Office (RSO) program officials review each State Plan, comprising the State's annual Grant Application and Master File, to verify that the State meets program requirements. RSOs also help DOE Headquarters establish policy guidance, provide technical assistance, and monitor State reports.

*See 10 CFR Part 600 in the Code of Federal Regulations
www.access.gpo.gov/nara/cfr/cfr-table-search.html*

States must comply with DOE and other Federal regulations and procedures governing financial awards. The key documents that govern State grant administration include:

- DOE Financial Assistance Rules, located in the DOE chapter (10) of the *Code of Federal Regulations* (CFR) (10 CFR Part 600, Subparts A,B,C, E, and F).
- Office of Management and Budget (OMB) Circulars, A-21, A-87, A-110, A-122 and A-133.

Program Origins

The State Energy Program originated as the State Energy Conservation Program (SECP) during the energy crisis of the early 1970s. Events during that period increased the nation's awareness of its dependence on foreign oil and of the need to lessen this dependence. Congress responded with legislation that established a broad range of conservation programs, provided support for the development of new and more efficient sources of energy, and established DOE to lead and administer the effort.

Several pieces of legislation form the framework for the program. The Energy Policy and Conservation Act of 1975 (P.L. 94-163), a cornerstone of Federal energy conservation legislation, established programs to foster conservation in Federal buildings and major industries throughout the States.

The SECP was established under the Energy Policy and Conservation Act to address energy conservation in the States. SECP was expanded in the Energy Conservation and Production Act of 1976, which added a supplemental State Plan to the base plan established through the earlier law. This supplemental plan was eliminated with passage of the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440).

In 1983, SECP experienced further growth when it was allocated funds under the Warner Amendment (P.L. 95-105). These new monies came from refunds collected by the Federal government from oil companies that had overcharged for petroleum and petroleum products. Passed on to the States as Petroleum Violation Escrow (PVE) funds, the new monies stimulated the States to expand programs and create new ones to get consumers to develop more efficient energy habits. As a result, State and Federal program officials began to collaborate in designing and implementing energy conservation programs.

See PVE Funds At-A-Glance and Funding History in Appendix A.

As a consequence of the Exxon and Stripper Well settlements in 1986, over \$4 billion in additional overcharge refunds, including interest earned while they were in escrow, began flowing into energy conservation programs nationwide. State governments allocated a significant portion of this money to SECP. Additional distributions again allowed the States to formulate programs and activities.

As a result of the funding infusions in the 1980s, the arsenal of energy-saving strategies or program measures grew and evolved in complexity. A host of information, education, and technology demonstration activities were added to the mandatory activities to meet the needs of various consumer groups.

The Energy Policy Act (EPAct) of 1992 (PL 102-486, Subtitle E - State and Local Assistance) amended the SECP by giving the Secretary of Energy authority to provide funding to States to finance revolving funds for energy efficiency improvements in State and local government buildings and energy efficiency training for building designers and contractors. Funding, however, was not appropriated for this activity. The 1992 Act also amended the right turn on red section of the Energy Policy and Conservation Act (42 U.S.C. 6322 [c] [5]) by adding left turns on red from one-way streets to one-way streets after stopping. In addition, Section 143 of EPAct repealed the former Energy Extension Service (EES) Program. The program's outreach activities, however, were in many cases, continued under the SEP.

State-based energy conservation and efficiency programs were propelled forward by passage of an important energy bill (State Energy Efficiency Programs Improvement Act [P.L. 101-440]) and the reorganization of DOE's Office of Energy Efficiency and Renewable Energy (EE). The energy bill contains several provisions for States to use to achieve their goals as well as the goals of a nation looking toward leadership in the global energy market.

P.L. 101-440 encourages States to undertake activities designed to improve energy efficiency and stimulate investment in and use of alternative energy technologies. It also invites States to venture into energy technology commercialization services programs. Not only does this Act require extensive public and private collaboration to achieve greater energy savings, it also confers to DOE's energy conservation programs, particularly the SEP, an important role to attain this goal.

In 1996, the SEP was established by consolidating the SECP and the Institutional Conservation Program (ICP). The SECP provided State funding for a variety of energy efficiency and renewable energy activities. The ICP provided schools and hospitals with a technical analysis of their buildings and the installation of energy conservation measures identified in that analysis. SEP combined these program activities through an integrated focus. Additional benefits include more flexible funding mechanisms, increased local decision making, and streamlined administrative procedures. RSOs provide guidance; review and approve annual Grant Applications, Master Files, and amendments; award grants; and monitor SEP performance.

Program Funding

The SEP is funded through several sources that include Congressional appropriations, State matching funds, PVE funds, and any income SEP activities can generate (see Figure 1). Congress appropriates funds annually to support the program's activities. The total Congressional funds available to the program are allocated to States according to the following formula as spelled out in the program's regulations:

See 10 CFR 420.11, Allocation of funds among the States in Appendix B.

- (1) If the available funds equal \$25.5 million, such funds shall be allocated to the States according to Table 10 found in CFR 420.11 located in Appendix B.
- (2) If the available funds for any fiscal year are less than \$25.5 million, then the base allocation for each State shall be reduced proportionally.
- (3) If the available funds exceed \$25.5 million, \$25.5 million shall be allocated as specified in Table 10 and any in excess of \$25.5 million shall be allocated as follows:
 - C One-third of the available funds is divided among the States equally;
 - C One-third of the available funds is divided on the basis of the population of the participating States as contained in the most recent reliable census data available from the Bureau of the Census, Department of Commerce, for all participating States at the time DOE needs to compute State formula shares; and
 - C One-third of the available funds is divided on the basis of the energy consumption of the participating States as contained in the most recent State Energy Data Report available from DOE's Energy Information Administration (EIA).

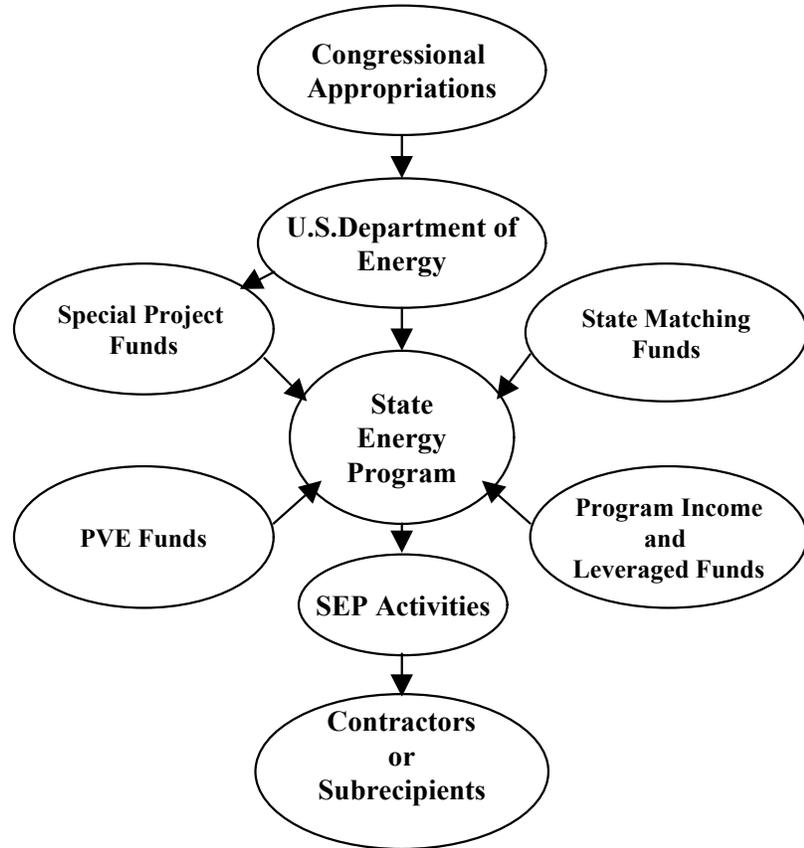


Figure 1. SEP Funding

State Matching or Cost Sharing

SEP regulations require that States contribute cash, in-kind contributions, or both (State match or cost sharing) for SEP activities in an amount totaling not less than 20% of the appropriated funds awarded to the State. Matching or cost-sharing requirements for Federal grants are:

For States' matching contributions see 10 CFR 420.12.

For a definition of matching or cost sharing see 10 CFR 600.224 at www.access.gpo.gov/nara/cfr/waisidx/10cfr600_99.html

- (1) Allowable costs incurred by the grantee, subgrantee, or cost-type contractor under the assistance agreement. This includes costs borne by non-Federal grants.
- (2) Third-party in-kind contributions.
- (3) Verifiable from the recipient's records.
- (4) Not included as contributions for any other Federally-assisted project or program.
- (5) Necessary and reasonable for proper and efficient accomplishment of project or program objectives.
- (6) Allowable under the applicable cost principles.
- (7) Not funds from the Federal grant or paid by the Federal Government under another award, except where authorized by Federal regulations, to be used for cost sharing or matching.

(8) Provided for in the approved budget.

Income earned from the SEP activities may be used for matching, but only if the award agreement expressly permits this use. Federal regulation 10 CFR 600.224 details the requirements concerning the valuation of in-kind services and the keeping of records on costs and contributions toward matching requirements. See also 10 CFR 600.123, 420.12, and 420.18.

Petroleum Violation Escrow (PVE) Funds

See PVE Funds At-A-Glance and Funding History in Appendix A

The PVE funds or oil-overcharge funds, described under Program Origins and in Appendix A, support a variety of energy-related programs in the States. Each State determines how it wishes to allocate the funds across eligible programs. The States may use these funds and the interest earned to finance SEP activities. In that case, PVE funds allocated to SEP are treated as appropriated funds and are subject to program requirements. PVE funds are not subject to the matching requirement or the 20% limitation on equipment purchases under the program.

Program Income

See 10 CFR Part 600.225[b] www.access.gpo.gov/nara/cfr/waisidx/10cfr600_99.html

DOE encourages States to earn income in connection with SEP activities to defray program costs. States must include an estimated amount of earned income in the budget portion of the Grant Application and in the Master File. Program income is defined in Federal regulations as gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. Program income includes but is not limited to:

See 10 CFR 600.101, Definitions www.access.gpo.gov/nara/cfr/waisidx/10cfr600_99.html

- C Income from fees for services performed.
- C The use or rental of real or personal property acquired under Federally-funded projects.
- C The sale of commodities or items fabricated under an award.
- C License fees and royalties on patents and copyrights.
- C Interest on loans made with award funds.

Except as otherwise provided in this subpart, program regulations, or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them. Interest earned through loan fund programs generated by grant-supported activities is treated as program income.

When a State proposes to use funds for a revolving loan fund, they are treated as obligated or encumbered. Once such a program is in place, returned principal and interest collected may be used to make additional loans or to fund the operations of the revolving loan program. During this time, returned principal is not accounted for as program income.

When DOE approves funds for a revolving loan, the State assumes responsibility for the stewardship and ultimate recapture of the principal and any interest at the end of the approved life of the program. These funds must eventually be closed out and a final accounting submitted to DOE. The report should include the amounts of interest collected and principal repayment. The State must apply the remaining

principal and interest to restitution (in the case of PVE funds) or to other uses in the program for which they were originally authorized, including a decision on a reasonable time frame for expenditure. Re-authorization of funds used in the revolving program will be based on State proposals and program rules and regulations along with court orders in effect at that (later) time. The interest would be considered program income when the program ends, and the final accounting report would reflect the balance of funds remaining over and above the original principal after subtracting any operating expenses.

Program regulations govern all funds assigned to SEP activity use, whatever their source. Appropriated funds, PVE funds, an estimated amount for program income, and the State share must all be listed in the budget portion of the Grant Application. All funds must then be spent on the activities described in the Grant Application and addressed in the financial and performance reports required under the grant. The terms and conditions of the program's Federal grant will specify whether program income may be used for cost sharing.

Leveraging means the obtaining by a State of additional program targeted nonfederal cash or in-kind contributions as a result of SEP-funded activities. Leveraged contributions may not include cash or in-kind contributions that have already been used to match a State's Federal SEP grant (or any other Federal grant), or that have been included in leveraged funds for other programs, nor may they include PVE funds, which are tracked separately under SEP. "Leveraging" under SEP should be limited to contributions that can be clearly attributed to a State's SEP activities and that are used to augment those activities.

Special Project Funds

See Implementation of Special Projects Financial Assistance regulations, 10 CFR 420.30-37 in Appendix B or at www.access.gpo.gov/nara/cfr/waisidx/10cfr420_99.html

When funding is available, States may apply for financial assistance to undertake a variety of State-oriented, energy-related Special Project activities in addition to the funds provided under the regular SEP grants. A number of EE end-use sector programs fund the activities and projects, which must meet the requirements of those programs. The types of funded activities may vary from year to year, and from State to State, depending upon funds available for each type of activity and DOE and State priorities.

States may apply for SEP Special Project funds through an annual competitive process. When the funding is available, DOE publishes one or more notice(s) in the Federal Register. The notice describes the activities, the amount of available funding, and the program contact that can provide additional information, application forms, and the due dates for the forms. A guidance, in the form of an SEP Program Notice, is also provided that includes project descriptions, criteria, and other information about the particular special project categories being offered.

For more information about SEP Special Projects visit the Program's Web site at: www.eren.doe.gov/buildings/state_and_community/sep.html#spec_proj

Special Projects may have cost-sharing requirements. These requirements are included in the project descriptions and criteria found in the SEP Special Projects Program Notice. Funds used to meet SEP Special Projects cost-sharing requirements must comply with 10 CFR Part 600.224 as explained under State Matching or Cost Sharing.

Prohibited Uses of SEP Funding

See 10 CFR 420.18 Expenditure prohibitions and limitations in Appendix B.

The SEP is subject to regulations regarding the types of projects that can be done. Some projects are prohibited, depending on the source of funds. Other regulations limit the amount of money that can be spent to administer the programs.

States are prohibited from using SEP financial assistance to:

- (a) Build mass-transit systems or exclusive bus lanes, or for the construction or repair of buildings or structures.
- (b) Purchase land, buildings, or structures, or any interest therein.
- (c) Subsidize fares for public transportation.
- (d) Subsidize utility rate demonstrations or State tax credits for energy conservation or renewable energy measures.
- (e) Conduct, or purchase equipment to conduct research, development, or demonstration of energy efficiency or renewable energy techniques and technologies not commercially available. However, demonstrations of commercially available energy efficiency or renewable energy techniques and technologies are permitted.

See 10 CFR 420.18 (e)(2) in Appendix B.

States may use SEP funds for the purchase and installation of equipment and materials for energy efficiency and renewable energy measures, including reasonable design costs, with the following conditions:

- (1) Such use must be included in the State Plan.
- (2) If PVE funds are used, States must adhere to administrative terms and conditions imposed upon State use of such funds.
- (3) A State may use no more than 50% of all funds allocated by the State to SEP in a given year, regardless of source. This limitation does not include regular or revolving loan programs funded with PVE funds and is subject to waiver by DOE for good cause.
- (4) Buildings owned or leased by the United States are not eligible for energy efficiency or renewable energy measures under SEP.
- (5) Funds must be used to supplement not supplant weatherization activities under the Weatherization Assistance Program for Low-Income Persons (WAP), under 10 CFR 440.
- (6) States may use a variety of financial incentives to fund purchases and installation of materials and equipment including, but not limited to, regular loans, revolving loans, loan buy-downs, performance contracting, rebates, and grants.
- (7) States are *not* allowed to use rebates for more than 50% of the total cost of purchasing and installing materials and equipment or loan guarantees.

No more than 20% of the annual Federal allocation can be spent for office supplies, library materials, and equipment. The limit does not apply to supplies, library materials, and equipment that are integral to a program activity, such as brochures distributed as part of an education program or equipment used in preparing a demonstration. The 20% limitation does not apply to PVE funds used under SEP.

Allowable Costs and Expenditures

See OMB Circulars A-21, A-87, and A-122 as cited in 10 CFR Part 600.127 at www.access.gpo.gov/nara/cfr/waisidx/10cfr600_99.html

Allowable costs and expenditures under SEP are defined in Cost Principles for Educational Institutions (OMB Circular A-21), Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87), and Cost Principles for Nonprofit Organizations (OMB Circular A-122), which are cited in the DOE Financial Assistance Rules, Section 600.127. The Cost Principles contain basic guidelines for determining whether a cost is allowable, distinguishing between direct and indirect costs, and allocating shared costs across programs. It also includes standards to determine the allowability of selected items of cost.