



EPADs IN KENTUCKY

Energy Project Assessment Districts Commonwealth of Kentucky

A handbook for local governments in the Commonwealth of Kentucky to
create uniform, user-friendly and sustainable EPAD programs
for commercial property.

November 28, 2016

Created in partnership by:



This page intentionally left blank.

Responsible parties to this document

The material within this document is based upon work supported by the Commonwealth of Kentucky's Department for Energy Development & Independence (DEDI) under award number 16000000749-140316 - Energy Project Assessment District (EPAD) Initiative. This document was prepared under contract awarded to the Greater Cincinnati Energy Alliance (Energy Alliance).

History of EPAD

EPAD financing was first implemented as a pilot program in 2007 by a local government outside of the Commonwealth of Kentucky. Since that time, over 30 states have passed legislation enabling EPAD financing. In 2015, Kentucky enacted EPAD financing via House Bill 100. EPAD is a public-private partnership; while the funding is provided by private lenders, the EPAD assessments are legally authorized by the state legislation but implemented by local governments.

How to use this document

This document is designed as a "Handbook" or "how to guide" for local governments implementing commercial EPADs. It is organized by party role, including the local government's role as the EPAD Administrator. As such, some of the activities described will not necessarily be in chronological order. Furthermore, because the state EPAD law has few specific program and project requirements, each local government will have many decisions to make as they set up local programs. Throughout the Handbook there are topics to consider and recommendations that can be accepted or made more stringent. For example, the Handbook provides recommendations on contractor participation requirements, but a local government may decide to have more stringent requirements. The community is encouraged to document these decisions in a program policy document.

Contact information

This document was authored in 2016. Supporting documents and related industry links are located on the DEDI website at <https://goo.gl/1GAkm2>.

Should you have questions about this material or wish to receive assistance regarding EPADs, please contact:

Kentucky Department for Local Government
1024 Capital Center Drive, Suite 340
Frankfort, KY 40601
502.573-2382
<https://kydlgweb.ky.gov/>

Kentucky Department for Energy Development & Independence
300 Sower Boulevard
Frankfort, KY 40601
502-564-7192

Commonwealth of Kentucky
Energy Project Assessment Districts (EPADs)
Handbook for Local Governments

Contents

SECTION 1: Energy Project Assessment Districts (EPADs) 6

- A. Introduction 6
- B. State Legislation Overview 7

SECTION 2: Local Government: Statutory Responsibilities 9

- A. Creating the EPAD via Ordinance 9
- B. EPAD Assessment Requests & Approvals 9
 - 1. EPAD Assessment Requests 9
 - 2. EPAD Assessment Approvals 9
- C. EPAD Assessment and the Property Tax Record 9
 - 1. EPAD Assessment Placement 10
 - 2. EPAD Assessment Collection 10
 - 3. EPAD Assessment Remittance 11

SECTION 3: Local Government: Program Administration 12

- A. Overview 12
- B. Marketing & Outreach to Property Owners 12
- C. Marketing & Outreach to Contractors 12
- D. Facilitating the Application Process 13
 - 1. Mortgagor Consent (aka “Lender Consent”) 13
- E. Developing Relationships with EPAD Lenders 14
- F. Facilitating the Financial Closing Process 15
- G. Energy Project Oversight (Post-Financial Closing) 15
 - 1. Installation Schedules 15
 - 2. Progress Payments 15
 - 3. Change of Contractor 16
 - 4. Change Orders 16

H. Quality Assurance and Installation Verification	16
I. Post-Completion Commissioning	16
SECTION 4: Eligible Energy Project Improvements	18
A. Energy Project Eligibility	18
1. Energy Efficiency and Water Conservation Improvements	18
2. Renewable Energy Improvements	19
3. Energy Savings Requirements	19
4. Utility Data Sharing Requirements	20
5. Other Eligible Expenses	20
6. Ineligible Energy Improvements	21
B. New or “Gut Rehab” Construction	21
C. Energy Project Audit Requirements	21
SECTION 5: Property Owners	23
A. Property Owner Eligibility	23
B. Energy Project Application Process	23
1. Interest Form	23
2. Application	23
C. Required Documentation for the Energy Project Financial Closing	24
D. Funding Process for the Energy Project	24
E. Post-Energy Project Considerations	24
1. Energy Tracking and ENERGY STAR	24
2. Equipment and Labor Warranties	25
3. Retro-Commissioning	25
SECTION 6: Contractors	26
A. Eligibility	26
B. Responsibilities	27
SECTION 7: Energy Project Lenders (aka EPAD Lenders)	28
A. Eligibility for EPAD Lenders	28
B. Participation for EPAD Lenders	28
SECTION 8: Financing Standards	30
A. Financing Structure	30
B. Financing Term	30
C. Security	31

D. Underwriting Standards 31

E. Interest Rates and Financing Fees 32

F. Mortgagor Consent 32

G. Transfer or Resale of the Subject Property 32

H. Leverage with Other Incentives..... 32

I. Buildings with Multiple Tax IDs 33

[APPENDICES](#) (all materials may be downloaded from web at hyper-link) 34

[EPAD Marketing Materials](#) (all materials may be downloaded from web at hyper-link)35

SECTION 1: Energy Project Assessment Districts (EPADs)

A. Introduction

Legislation passed in 2015 by the Kentucky General Assembly authorizes local governments to establish Energy Project Assessment Districts (EPADs). EPADs provide a new, innovative, and proven way for commercial, agricultural, industrial, non-profit and multi-family property owners to pay for the following building infrastructure improvements:

- Energy efficiency upgrades
- On-site renewable energy systems
- Water conservation measures

Unlike traditional financing, EPAD financing can provide for 100% of an energy project's cost, and is repaid by participating property owners with a voluntary assessment on the property tax bill over a term equal to or less than the estimated useful life of the improvements up to 30 years. EPADs, known nationally as Property Assessed Clean Energy or "PACE", have been authorized through legislation in more than 30 states.

Property owners who utilize EPAD financing are typically able to experience multiple benefits not available with traditional loans. Historically, financing energy projects has been plagued by short repayment periods, high or variable interest rates, stringent credit requirements that don't account for savings from improved energy efficiency, and lack of equity. EPAD financing may offer the following unique benefits to the property owner:

- Requires NO down payment
- Provides fixed payments with low interest rates
- Extended repayment terms of up to 30 years allow most energy projects to have immediate positive cash flows since some improvements, such as windows and elevators, have higher upfront costs and lower energy savings. However, it is not recommended to finance measures beyond their expected useful life.
- EPAD assessments remain with the property, not the property owner, when sold or transferred
- Underwriting for EPAD financing focuses on the positive equity in the property
- Because the EPAD assessment is the ONLY repayment obligation and is attached to the property tax record and NOT the property owner, the property owner doesn't tie up other credit lines for essential operating expenses

Energy projects financed with EPAD do NOT require a subsidy or incentive from the local government sponsoring the EPAD. In fact, local governments are the direct beneficiaries of the economic development impact of EPAD projects. These are construction projects that create

jobs and save businesses money, and the time local governments invest into EPAD can be recovered through completion of projects via an administrative fee.

In Kentucky, buildings use about one-third of the energy consumed and energy prices are expected to increase. Energy efficiency measures save energy costs for businesses while reducing environmental impacts. By authorizing EPADs, local communities will benefit from improved building infrastructure, more competitive businesses, and an increase in economic activity. Local contractors, engineers, manufacturers, and energy service companies will all benefit from additional work that will be created as a result of eligible energy projects authorized by EPADs.

B. State Legislation Overview

With the passage of HB 100 in the 2015 General Assembly, a new section of the Kentucky Revised Statutes Chapter 65 was established and is known as the EPAD Act of 2015 (“EPAD Act”; Appendix A). The EPAD Act, which became law on June 24, 2015, is divided into 5 main sections (KRS 65.205-65.209):

- Definitions of key terms,
- Establishment of EPAD programs,
- EPAD Assessment requirements and guidelines,
- Property owner assessment rights,
- Local government rights related to bonds or notes used for energy project funding.

Highlights of the EPAD Act include:

- EPADs can be created and managed by local governments at the county or city level
- Local governments can charge fees for services performed while administering EPAD activities
- Eligible properties are defined as any non-residential property except for multi-family housing with 5+ units
- Participation is completely voluntary by the eligible property owner within an active EPAD
- Private capital is authorized to fund EPAD energy projects at market interest rates
- Written authorization by each mortgage lien holder is required for each EPAD energy project

- The maximum term of the EPAD assessment can be as long as the useful life of the improvement OR a weighted average can be used if the energy project consists of multiple improvements with different useful lives;
- There is no minimum or maximum loan amount for the energy project, thus, market conditions will prevail.

Key Terms of the EPAD Act:

"Energy improvement" means any permanent improvement fixed to real property and intended to increase the efficiency of energy use or decrease water or energy consumption or demand, generate electricity, provide thermal energy, or regulate temperature, including but not limited to a product, device, technology, or interacting group of products, devices, or technologies on the customer's side of an electric, gas, water, or other energy meter.

"Energy project" means the installation or modification of an energy improvement, including any associated project or financing costs.

"Energy project assessment district" or "EPAD" means a geographic area designated by a local government pursuant to KRS 65.206, within which energy projects may be undertaken and financed through the imposition of an assessment pursuant to KRS 65.205 to 65.209.

"Local government" means any city, county, consolidated local government, urban-county government, charter county government, or unified local government of the Commonwealth.

"Program" means an EPAD program established by a local government pursuant to KRS 65.206.

"Real property" excludes residential property consisting of fewer than five (5) units.

SECTION 2: Local Government: Statutory Responsibilities

There are two essential responsibilities that the local government must oversee for an EPAD program to function:

1. Adoption of an ordinance for creating the local EPAD and authorizing the EPAD Special Assessment for each Energy Project, and
2. Administration of the EPAD program (see Section 3). At a minimum, administration includes: EPAD request approvals; placing assessments on the tax record; collecting the assessments; and remitting collected assessment to lender.

A. Creating the EPAD via Ordinance

As instructed in the EPAD Act, each local government body must pass an authorizing EPAD Ordinance that creates the EPAD, including the specific geographical boundaries and any requirements that may be more stringent than the state EPAD Act (Appendix B).

Once the EPAD Ordinance is passed, the local government will need to determine how they will administer the EPAD program discussed in Section 3.

B. EPAD Assessment Requests & Approvals

1. EPAD Assessment Requests

Once the property owner's final Energy Project Application is approved and the energy project lender agrees to terms with the property owner, a final EPAD Assessment Schedule is submitted to the EPAD's local governing body (Appendix C).

2. EPAD Assessment Approvals

The EPAD's local governing body will review and consider for approval the property owner's request, per the EPAD Act, for the local government to levy an EPAD Special Assessment on the property for the amount and term as documented on the EPAD Final Assessment Schedule. Once approved, the following is allowed by EPAD law:

- a. EPAD financial closing with energy project lender,
- b. EPAD Special Assessment can be placed on the property's tax record.

C. EPAD Assessment and the Property Tax Record

It is best practice to leverage existing local government tax collection processes. However, variations in tax collection practices from county to county and city to city may require customization of the basic tax placement, collection and remittance process. It is important to communicate to all parties involved, e.g. tax collector, property owner, prospective

program participants, that the assessment is not a tax, but rather an assessment on the property to service the energy investments in the property.

1. EPAD Assessment Placement

Generally, the County Property Valuation Authority (PVA) will record EPAD assessments in county land records. It is not uncommon for cities to authorize the EPAD assessments and place them on the property owner's tax bill (Appendix D).

2. EPAD Assessment Collection

The EPAD Act allows a local government to impose fees for the EPAD assessment collection "except that the fees shall not exceed the cost of services performed."

City governments that have passed EPAD ordinances, such as Bowling Green, allow for fees of up to 1% of the amount assessed on the property tax bill. It is expected that most city governments will elect to have the finance department serve as their collection agent.

In county governments and urban county governments, including Lexington and Louisville, the sheriff generally serves as the collection agent. Kentucky Revised Statute (KRS) 134.199 (6) (a) (1) and (2) allow the sheriff to be paid 4.25% for property taxes collected "on behalf of the Commonwealth" or "on behalf of the counties." However, those provisions are not applicable to EPAD assessments, because these are funds securing a private loan being collected on behalf of a taxing district. In this case, KRS 134.199(6) (a) (3) is applicable because it specifies that the sheriff be compensated "as provided by law," and the EPAD Act limits fees to "the cost of services performed."

KRS 134.119(6)

(a): As compensation for collecting property taxes the sheriff shall be paid the following amounts, regardless of whether the amounts are collected by the sheriff prior to filing the tax claims with the county clerk, or by the county clerk after the tax claims become certificates of delinquency or personal property certificates of delinquency:

1. From the Commonwealth the sheriff shall be paid four and one-quarter percent (4.25%) of the amount collected on behalf of the Commonwealth;
2. From counties the sheriff shall be paid four and one-quarter percent (4.25%) of the amount collected on behalf of the counties;

3. The sheriff shall be compensated as provided by law or as negotiated if negotiation is permitted by law, for collecting taxes on behalf of any taxing district;

Charging a 4.25% fee for an EPAD assessment collection could potentially make Energy Projects economically infeasible. Fortunately, the EPAD Act allows for the collection of assessments in a manner that both preserves the viability of an EPAD program and assures that local officials are completely compensated for their expenses. There are two alternatives:

1. The sheriff can collect the EPAD assessment and charge a fee for its expenses. Since the sheriff is already collecting the property tax assessment at the same time from the building owner, charging up to 1% of the amount assessed should more than compensate the sheriff for the extra duties of accounting for and transferring the EPAD payment to the participating financial institution. The Louisville Metro Government's EPAD ordinance, passed in April 2016, permits the Jefferson County Sheriff to charge up to 1% of the assessment.

2. Another local agency – e.g. a city Department of Finance, a County Clerk, a PVA – could collect the EPAD assessment in the same manner as the regular property tax, through a separate mailing, and charge up to 1% of the amount assessed to compensate for their expenses.

a. The property tax bill would list the EPAD assessment payment, but the property owner would be instructed that monies would be collected separately.

b. Should the payment be delinquent, collection responsibility would be transferred to the sheriff, who would charge a collection fee.

c. The EPAD special assessment agreement, signed by the property owner, would contemplate a penalty in the case of delinquency to recompense the sheriff for collection.

3. EPAD Assessment Remittance

Whoever is authorized by the EPAD ordinance for collection duties, the EPAD assessment will have instructions as to where the amount collected is to be remitted. Generally, it would be anticipated that the EPAD assessment would be remitted directly to the energy project lender.

SECTION 3: Local Government: Program Administration

A. Overview

This section will detail the administrative roles and responsibilities required of a successful EPAD program. Local governments may decide to self-perform all or some of the roles of the program administrator. Local governments are encouraged to look at all costs and levels of sustained effort and should not underestimate those factors for the successful implementation of those roles. A couple of primary reasons why a local government may decide to not self-perform the administrative roles:

1. The EPAD market is a new and dynamic market that is quickly evolving, and
2. There is a very high “learning curve” to get new EPADs fully functional.

Appendix E is a checklist of the program administrator’s roles & responsibilities.

B. Marketing & Outreach to Property Owners

Because the EPAD financing model is new to Kentucky, there will need to be a focused marketing and outreach strategy to reach eligible property owners. The local business community is critical for generating demand via local chamber of commerce and economic development agencies. Additionally, the local government departments that work directly with property owners such as building permitting and sustainability departments will be instrumental to delivering these outreach efforts. In some areas, local commercial real estate trade associations such as Building Owners & Manager Association (BOMA), International Facilities Managers Association (IFMA) and similar organizations may provide direct connections to property owners.

A sustained outreach and education strategy, with clear and concise materials is crucial for these programs. For some audiences, web site and social media, will be critical to marketing and outreach success. Other more direct means may be needed as well. There are examples provided in the Appendices of this handbook.

C. Marketing & Outreach to Contractors

If there is a single key to a successful EPAD program, many program administration experts would agree that aggressive marketing and outreach to contractors is critical. Once contractors are reached with introductory “EPAD 101” training sessions, continued outreach with sales trainings and effective marketing materials is essential. Reaching contractors through trade associations such as the Energy Services Coalition, U.S. Green Building Council (USGBC), American Society of Heating Refrigeration Air Conditioning Engineers (ASHRAE) and similar organizations that provide EPAD services can provide direct connections to property owners.

A sustained outreach and education strategy, with clear and concise materials, web site, and social media, and other more personal outreach will be critical to marketing and outreach success. There are examples provided in the Appendices of this handbook.

D. Facilitating the Application Process

The application process for property owners require the program administrator to have good project management skills and be responsive to questions from the eligible property owner, registered contractors and registered lenders (see Sections 6 and 7). The application process will be detailed in the property owner section of this handbook; however, the most important step (and sometimes longest step) in the application process is obtaining written authorization from all mortgage liens on the property.

1. Mortgagor Consent (aka “Lender Consent”)

As required by the EPAD Act, each lender holding a security interest in the real property of record must execute a “Lender Consent to Special Assessment” (aka “Lender Consent”); see Appendix F. In addition, it is considered best practice for property owners to advise other lenders to the property of their intention to use EPAD financing in order to make certain that the property owner’s use of EPAD will not violate the terms of any other active loans or credit facilities.

The importance of this step cannot be overstated, recognizing that the EPAD assessment is a lien senior to any existing debt.

It is common for one to ask “Why should mortgage lenders allow an EPAD assessment?”

There are many reasons why over 100 mortgage lenders, according to the national non-profit PACE Nation, have provided written approval for EPAD financed projects:

- EPAD assessments are small in comparison to the property value and mortgaged amount and have a minimal effect on overall economics. EPAD assessments generally do not exceed 20% of the total property value, therefore, this means that the EPAD exposure in any given year is typically no more than 1% of the property value when EPAD financing is extended over a 20-year term.
- EPAD assessments do NOT accelerate in the event of a loan default or tax foreclosure. ONLY the EPAD assessment amount that is in arrears becomes due (basically paralleling the standard property taxes). The remaining EPAD assessment balance continues with the property until the term end date.
- EPAD requires no funds from the existing mortgage holder(s). (Note: An existing mortgage holder can provide the capital for EPAD financing if they so choose.)
- EPAD improvements reduce energy expenses, thus increasing cash flow to the property.
- EPAD improvements will increase the value of the property.

- EPAD capital comes from private sources. This enables property owners to reserve other lines of credit for working capital or non-energy related improvements.
- EPAD financing repayment process is secure and proven due to using the same special tax assessment structure that has been in place for over 100 years.
- EPAD assessment stays with property upon sale or transfer.
- EPAD assessment can be prepaid before the term end date (penalties may apply).

Program administrators should have a basic awareness of Commercial Mortgage-Backed Securities (CMBS). Commercial real estate first mortgage debt is generally broken down into two basic categories:

1. Portfolio loans, and
2. Loans to be securitized, known as Commercial Mortgage-Back Securities ("CMBS loans").

Portfolio loans are originated by a lender and held on the lender's balance sheet through maturity. A securitized or CMBS loan occurs when mortgage loans of varying sizes, property types, and locations are pooled together and transferred to a trust. The trust issues a series of bonds that may vary in yield, duration, and payment priority. In many cases, property owners are not aware that their mortgage has been securitized.

Therefore, this can make it difficult, or very unlikely, to obtain Lender Consent because the name of the trust entity may not be known to the property owner. In addition, if successful in obtaining Lender Consent via a CMBS loan, the process likely would be much longer than that of a portfolio loan.

E. Developing Relationships with EPAD Lenders

Most EPAD programs around the country do not work exclusively with a single energy project lender, but instead decide to stimulate the private market through an "open source funding model" by which any registered capital provider may participate and fund eligible EPAD energy projects. Many EPAD contractors may have relationships with multiple lenders and can facilitate that process for the owner. Contractors may be able to assist the property owner with educating lenders about EPAD.

Energy projects that come to the EPAD program without a dedicated energy project lender can be presented to the pool of registered Energy Project lenders for their consideration.

In order to participate in an EPAD energy project, lenders should meet eligibility criteria set forth by the EPAD program to become a registered energy project lender. Section 7 of this handbook details the energy project lender eligibility and responsibilities.

F. Facilitating the Financial Closing Process

Due to the expertise associated with facilitating the financial underwriting and closing of an EPAD energy project, some programs may not elect to assume this responsibility. However, both the underwriting and financial standards are described in multiple sections of this handbook.

It should be noted that as the EPAD program administrator, costs incurred by the local government can be recouped by imposing an “EPAD Administrative Fee” to each EPAD Energy Project. An example of this might be a recording fee. It would be added as a “closing fee” and paid from the proceeds of the financing closing, or the costs could be rolled into the financing and paid with the annual assessment. Per the EPAD Act, the EPAD Administrative Fee cannot exceed the actual cost incurred by the local government to perform eligible services.

G. Energy Project Oversight (Post-Financial Closing)

1. Installation Schedules

As part of the Energy Project Application (Appendix K), the property owner/applicant will submit an estimated project completion date. The property owner must notify the EPAD program if an extension of the energy project timeline is required.

Once final approval for the energy project has been provided by the EPAD program, the property owner has until the approved project completion deadline to complete installation of improvements on the property listed in the application documents. The EPAD program may require the property owner to use the contractor that the EPAD program approved for the work.

2. Progress Payments

For larger projects or those that will be constructed in phases, some energy project lenders may require that disbursements be made over time, based on achieving certain milestones. In such a case, the energy project lender will specify the documents and certifications that will need to be provided to trigger the next disbursement. NOTE: EPAD programs can also stipulate requirements such as to conduct Quality Assurance Inspections during installation milestones; see Appendix H for a QA Inspection Form.

In cases where project funding includes progress payments, although the property owner and/or its contractors will not have received all of the funds, interest on the EPAD assessment may begin accruing at the EPAD financial closing. These costs may be

paid at closing or capitalized through the loan. This is ultimately a program or owner decision as to how this is handled.

3. Change of Contractor

Property owners/applicants who wish to change or bring on additional contractors after application approval may require approval from the EPAD program. Any new contractors should follow the necessary program approval process as described in Section 6 of this document prior to commencing any work on an approved Energy Project.

4. Change Orders

All precautions should be taken prior to the financial closing to ensure that there is a contingency built into the financing agreement between the registered contractor and property owner. Change orders that result in a change to the total funded cost will be handled on a case by case basis.

H. Quality Assurance and Installation Verification

During the energy project installation period, the program administrator, or the program's designee, should conduct onsite inspection(s) and/or request verification of installations through photo and/or video evidence sent to the program administrator. Additionally, interviews with the property owner/applicant should be conducted to provide feedback on the registered contractor(s).

Upon completion of the project, post-installation verification activities should be conducted in order to ensure that proper equipment/systems were installed per the EPAD financing agreement. These activities could include: required submittal of photographic or video evidence of completion, or an on-site inspection by a program administrator staff member or hired third-party consultant such as a Certified Energy Manager or similar. An Energy Project Completion Certificate for each installing contractor should be signed by the property owner and contractor; see Appendix H.

I. Post-Completion Commissioning

Post-completion commissioning should be considered for each energy project. Post-completion commissioning can be performed by either a third party, or the party performing the original installation of the funded improvements. The commissioning report should contain, at a minimum:

1. A statement that systems have been completed in accordance with the contract documents, and that the systems are performing as expected of such an installation;

2. Identification and discussion of any substitutions, compromises, or variances between the final design intent, contract documents and as-built conditions;
 3. Description of components and systems that exceed the owner's project requirements and those which do not meet the requirements and why; and
 4. A summary of all issues resolved and unresolved and any recommendations for resolution.
-

SECTION 4: Eligible Energy Project Improvements

A. Energy Project Eligibility

1. Energy Efficiency and Water Conservation Improvements

Per the EPAD Act, an eligible “Energy Improvement” means any permanent improvement fixed to real property and intended to increase the efficiency of energy use or decrease water or energy consumption or demand, generate electricity, provide thermal energy, or regulate temperature, including but not limited to a product, device, technology, or interacting group of products, devices, or technologies on the customer's side of an electric, gas, water, or other energy meter.

Common examples of eligible energy improvements include:

MECHANICAL

- Air conditioner and furnace upgrades
- Boilers
- Combined Heat & Power (CHP) systems
- Pumps, drives, and motors
- Industrial processes
- Elevators and escalators

ENVELOPE

- Roofing with insulation
- Windows and doors
- Exterior Insulation Finishing System (EIFS) insulation
- Green roof

LIGHTING

- LED fixtures
- Automated controls
- Parking lot lights

WATER

- Low or no flow fixtures
- Water conservation improvements

Most EPAD programs consider eligible energy improvements to be those that are commercially available with proven performance. Examples would be those products or services offered for sale, lease or license to the general public through the commercial marketplace.

Ultimately, the EPAD program administrator and governing body will provide a final eligibility ruling if an Energy Improvement being proposed is uncertain. When in doubt, it is best to consult with the EPAD program administrator or other technical consultant on the eligibility of any specific measure as early as possible in the application process.

2. Renewable Energy Improvements

The EPAD Act allows for the financing of renewable energy improvements as long as the improvement is installed on the customer's side of the electric, gas, water or other energy meter. These include, but are not limited to:

- Solar electric (photovoltaic)
- Solar thermal
- Geothermal including heating/cooling
- Wind turbines
- Heat recovery systems

3. Energy Savings Requirements

As allowed by the EPAD Act, energy improvements may be financed under the program as long as they are intended to:

“...increase the efficiency of energy use...”

OR

“...decrease water or energy consumption or demand...”

OR

“...generate electricity..”

Therefore, there is no statutory requirement by the EPAD Act that the energy project must generate more energy savings than the repayment amount.

However, the EPAD Act ***does require*** the following to be reviewed for every energy project approved by the EPAD:

- Baseline energy or water use of the property,
- Energy or water savings projections for the energy project,
- For renewable energy improvements, energy production estimates.

NOTE: Each local EPAD can add more stringent energy project requirements but careful consideration should be taken to understand any negative consequences to program participation, perhaps by holding open forum discussions with contractors.

Although the EPAD Act does not require demonstration of a certain Savings-to-Investment Ratio (SIR), it is encouraged that property owners seek energy projects with SIRs greater than 1.0 for the following reasons:

- a. EPAD Lenders may look more favorably on projects that show positive cash flow over their useful life, and
- b. Mortgage lien holders may be more likely to provide “Lender Consent” to the imposition of the senior EPAD Assessment liens for projects that show positive cash flow.

4. Utility Data Sharing Requirements

There are no utility data sharing requirements per the EPAD Act. However, it is considered best practice for a property owner to track their utility usage with the aid of free tools such as the U.S. EPA’s ENERGY STAR Portfolio Manager or various commercial software solutions available.

5. Other Eligible Expenses

Project related expenses incurred as a result of participating in EPAD financing, subject to acceptance by the energy project lender, can be capitalized. These costs may include:

- a. Appraisal fees
- b. Energy/water audit costs;
- c. Renewable energy feasibility study costs;
- d. Engineering and design expenses, including energy modeling for new construction;
- e. Construction and installation costs, including labor and equipment;
- f. Commissioning & recommissioning costs; see Appendix I.

- g. Prepaid operation and maintenance expenses including measurement & verification costs incurred;
- h. Costs of an extended labor & equipment warranty covering the full finance term for equipment financed;
- i. Any capital provider-assessed fees and required prepaid interest;
- j. Application and permit fees; and
- k. Other project-related expenses approved by the District and allowed under the EPAD Act.

6. Ineligible Energy Improvements

The EPAD program cannot finance projects that include:

- a. Energy improvements, in any combination, that do not result in utility cost savings;
- b. Energy improvements that are not permanent in nature or fixed to the subject property or building (i.e., wheeled commercial kitchen appliances or mobile industrial equipment);
- c. Health and safety improvements not directly related to or otherwise incorporated in the energy improvement.

B. New or “Gut Rehab” Construction

Unlike retrofits to existing properties, where the savings from energy and water efficiency improvements can be demonstrated by reference to pre-improvement baseline consumption data, new construction exhibits no baseline against which to measure improvements.

Therefore, the baseline for a new construction EPAD energy project should be the building energy code in effect at the time of the application. Then, the estimated energy savings for any new improvements would be compared to that baseline (i.e., What is the expected savings above and beyond the existing new construction energy code baseline?).

Energy and water savings opportunities, representing both economic development and environmental benefits, can be expected.

C. Energy Project Audit Requirements

Per the EPAD Act, there is no specific requirement for the performance of an energy audit, water audit or renewable energy feasibility analysis. However, a “review of the property’s baseline energy or water usage conditions and the energy or water savings projected to be achieved as a result of the energy project” is required.

Each EPAD program can set specific requirements for energy and water audits or renewable energy analysis if they so choose.

1. Energy & Water Audits

Industry accepted energy/water audits such as ASHRAE or EPA's Water Sense standards should be considered.

2. Renewable Energy Feasibility Study.

Renewable Energy Feasibility Studies provide technology and financing recommendations that a property owner or project developer should pursue. Ultimately, the feasibility study needs to provide enough information for the property owner or project developer and design team to make informed decisions about the types of technologies to include in the final project design.

The feasibility study should be performed by a renewable energy expert with detailed knowledge of the renewable energy systems under consideration, including technical and design issues, resource assessment, relevant policies and incentives, utility tariffs and interconnections issues, etc.

SECTION 5: Property Owners

A. Property Owner Eligibility

Per the EPAD Act, eligible “real property” includes all property EXCEPT residential property that is four units or less. This includes office, retail, industrial, agricultural, non-profits and multi-family residential consisting of five-units or more.

B. Energy Project Application Process

The EPAD program shall establish an application process. It may include, among others, these key steps:

1. Interest Form (Appendix J), and
2. Application (Appendix K) and Energy Project Improvement Summary (Appendix L).

NOTE: Property owners may elect to proceed directly to the Application if a contractor has been selected and an agreed upon project scope is finalized; additionally, if “Lender Consent” has been obtained (or if the property does not have an existing mortgage).

1. Interest Form

The 1-page Interest Form is a streamlined process whereby property owners can indicate their interest in applying for EPAD financing by submitting preliminary details about the energy project and ensuring that all intended participating parties have begun the process of becoming eligible per the EPAD program requirements. Once the Interest Form is reviewed by the program administrator and meets program requirements, the property owner and energy project will obtain a conditional project approval to file a formal application. Full approval and project funding will be dependent upon approval of documentation required in the Application.

2. Application

The EPAD Project Application is a more detailed process that requires the property owner to complete all EPAD program related project planning and application tasks. The EPAD program administrator will review the completed Application and related materials to determine if eligibility requirements have been met. Any incomplete, missing or incorrectly filled out application materials may result in delay of the approval process. The EPAD program administrator will work with project applicants to answer questions and assist with the application process when needed.

Some of the key elements of the application include:

- Parcel number of the property

- Market value of the property
- Existing mortgage loans for the property
- Contact information for the mortgage company
- Energy Project Summary including proposals/bids

C. Required Documentation for the Energy Project Financial Closing

Once the Energy Project has been approved by the EPAD program administrator, there will be several contracts that will need to be executed if the financing structure will be in the form of a Financing Agreement rather than a Bond; see Appendix M for Due Diligence Requirements. Some of the Due Diligence information will be needed during the Energy Project Application process, but also may be needed for financing; however, each EPAD program will decide when they need the specific Due Diligence information.

There are two main categories for the contractual agreements in a Financing Agreement:

- Special Assessment Agreements,
- Financing Agreement.

Once the contracts are executed, the funding can be disbursed for the approved Energy Project.

D. Funding Process for the Energy Project

1. Installation Schedules (See Section 3G for details)
2. Progress Payments (See Section 3G for details)
3. Change of Contractor (See Section 3G for details)
4. Change Orders (See Section 3G for details)

E. Post-Energy Project Considerations

1. Energy Tracking and ENERGY STAR

Portfolio Manager

Although not required by the EPAD Act, it is considered best practice for a property owner to track their utility usage. Some programs require property owners who have implemented a project to report their energy savings, greenhouse gas emissions reduction, or other metrics resulting from their energy efficiency or renewable energy installations. This can provide valuable information to EPAD program administrators

wishing to document and share the success or track progress towards community sustainability goals.

The U.S. EPA's ENERGY STAR program provides a free and valuable tool for this very purpose. Portfolio Manager (Appendix N) is an online tool that allows property owners to measure and track energy and water consumption of their building. Portfolio Manager compares a building's energy and water use to thousands of other similar type buildings in the United States that also have real utility data entered into the system. Visit www.energystar.gov to learn more.

Recognition

For buildings that report their energy usage data into ENERGY STAR's Portfolio Manager, there are opportunities for recognition. Facilities whose energy consumption is in the top twenty-fifth percentile can earn ENERGY STAR certification. Some communities hold events to recognize and encourage this level of performance. The Commonwealth of Kentucky is often able to help with these types of events.

2. Equipment and Labor Warranties

As part of the energy project improvements, the contract and/or equipment manufacturer is able to offer extended warranties on equipment and labor. These costs can be included with the overall EPAD funding request.

3. Retro-Commissioning

When the energy project is completed, there should be some type of commissioning as described in Section 2. Additionally, retro-commissioning can be a valuable energy savings technique in that the improvement undergoes a process to confirm that it is performing to the manufacturer's specifications, thereby ensuring the most energy efficiency benefits. Retro-commissioning can be prearranged to occur on intervals as recommended by qualified contractors.

SECTION 6: Contractors

Contractors are the lifeblood to a successful energy efficiency program like EPAD. In addition to robust sales and marketing outreach to contractors, program eligibility and responsibilities should be made clear so that the process is simple as possible. Contractors usually work best within program frameworks where the “rules” are clearly defined and easily understood.

A. Eligibility

The EPAD Act does not specifically reference contractor eligibility requirements. However, for the purposes of EPAD programs, “contractor” is defined as any agent, employee or subcontractor thereof who is performing work required for installation of eligible energy improvements, or program compliance on behalf of an EPAD participating property owner or energy project lender. Examples of contractors would be mechanical contractors, energy services companies or “ESCOs”, insulation companies, window/door companies, architects/engineer (A/E) firms, etc.

A “contractor” can include individuals or companies performing installations and other work associated with the energy project as well as those individuals or companies performing commissioning or other forms of energy project verification as may be required within the guidelines of a particular EPAD program.

EPAD programs may consider a range of options when evaluating contractors. A program may opt for a “open market” approach, a simple registration, or pre-approval. It is important to understand that these are listed in order of increasing complexity and obligation. Pre-approval requires more effort to solicit and vet applying contractors. Some communities may not feel qualified to screen applications and vet the applications. And because this approach implies some level of evaluation by the program, some communities may not feel comfortable with the risk associated with this “approval” or “endorsement.” Since property owners are apt to call the program for potential contractors, some communities may opt to have a list of possible names. Registration provides this middle ground approach that simply allows contractors to be listed as insured professionals interested in providing these types of services.

In order to become a registered contractor within an EPAD program, contractors should meet eligibility criteria established by the EPAD. An example Contractor Application is included as Appendix O plus an example “Registered EPAD Contractor” Certificate as Appendix P.

How an EPAD program chooses to use a registration process is not defined in statute, so is open to how individual programs may want to implement this. That said, some contractor registration policies for the EPAD program to consider include:

- Contractors should become a registered EPAD contractor prior to submitting any paperwork for a specific energy project.

- Contractors who become registered EPAD contractors should provide the EPAD program with updated insurance certificates, licenses, certifications, etc. as they become outdated.
- The EPAD program should clearly communicate that EPAD program participation is completely voluntary and the EPAD program reserves the right to delist contractors if they are found to be in violation of any of the standards set forth by the EPAD program or for any other valid reason the EPAD program finds the contractor to be in violation of industry best practices.
- Contractors are encouraged to actively promote EPAD financing as normal course of their financing offerings.

B. Responsibilities

Registered EPAD contractors must obtain all necessary permits that are required by law to complete the proposed/approved scope of work for an Energy Project. Additionally, registered EPAD contractors should ensure that the property owner has a positive customer service experience. Some EPAD program administrators should consider providing some degree of quality assurance and oversight – such as a final site visit to ensure the work is actually performed.

SECTION 7: Energy Project Lenders (aka EPAD Lenders)

A. Eligibility for EPAD Lenders

Most EPAD programs around the country do not work exclusively with a single energy project lender, but instead decide to stimulate the private market through an “open source funding model”.

In order to participate in an EPAD Energy Project, capital providers should meet minimum eligibility criteria set forth by the EPAD program. An example of the eligibility criteria is detailed in the EPAD Lender Approval Application as Appendix Q plus an example “Registered EPAD Lender” Certificate as Appendix R.

EPAD Lender considerations for EPAD programs include:

- EPAD Lenders should become registered with the EPAD program prior to submitting any paperwork for a specific energy project.
- EPAD Lenders who become approved as registered EPAD Lenders should disclose any material changes to their initial application.
- The EPAD program should clearly communicate that EPAD program participation is completely voluntary and the EPAD program reserves the right to disqualify or revoke registration of EPAD Lenders if found to be in violation of any of the standards set forth by the EPAD program or for any other valid reason the EPAD program finds the EPAD Lender to be in violation of industry best practices.
- EPAD Lenders should work in concert with the EPAD to promote a consistent marketing and outreach message to both property owners and registered contractors.

B. Participation for EPAD Lenders

As with contractors, an EPAD program must decide how to deal with eligible lenders. EPAD programs often elect to have an “open source funding model” that allows for any registered EPAD Lender to participate in funding eligible EPAD energy projects.

Some contractors will come to an EPAD project with their own lending partners – some of these contractors often have partnerships and considerable experience with various lenders to facilitate financing. The EPAD program should have a process that can accommodate these types of business arrangements.

Energy projects or contractors that come to the EPAD program without a dedicated EPAD Lender can be presented to the pool of registered EPAD Lenders for consideration.

Once registered as an EPAD Lender, participation in the program can be, but not limited to, the following:

1. Work directly with EPAD contractors to underwrite developing energy project scopes before submitting an Interest Form and/or Application to the EPAD program;
2. Assist the EPAD contractors and/or property owners with Interest Form and/or Application completion and submittal;
3. From time to time, property owners may apply directly to the EPAD program but will not have worked with an EPAD Lender prior to Interest Form and/or Application submittal. In this case, the EPAD program may provide pre-approved projects to registered EPAD Lenders and contact the property owner or registered EPAD contractor if they are interested in funding the energy project.

If the EPAD program chooses to maintain a list of register lenders, they should be prepared to make it available to property owners and contractors.

SECTION 8: Financing Standards

A. Financing Structure

Any registered capital provider may be eligible to provide EPAD financing to property owners for energy projects. Programs may consider having a capital provider approval process to become a registered EPAD lender.

As a local public entity, the EPAD program may voluntarily issues bonds to finance EPAD projects. The program may elect to create a pool of capital to distribute to project applicants. However, bond issuance represents a more significant level of investment by the community and consultation with a bond attorney is highly encouraged.

Participating property owners should understand the following important features of EPAD financing:

- The principal amount will be equal to all project costs that the property owner may choose to finance through the program, which may include costs associated with implementing the project such as permits, audit expenses, closing fees and capitalized interest (See Section 4 A. 5).
- The rate of interest on the financing will be established by the project's capital provider.
- Depending on when the project's EPAD financing closing occurs, it may not be possible to place the EPAD assessment on the property tax bill until the following tax roll cycle. In this case, the interest payments that the property owner would have paid in the first tax year are capitalized into the principal amount.
- There will be administrative fees charged to each successful Energy Project. Per the EPAD Act, administrative fees cannot exceed the actual cost of the administrative services performed by the local EPAD program.
- Interest on a project may begin accruing the day after the EPAD financial closing.

B. Financing Term

Per the EPAD Act, the maximum term cannot exceed the useful life of the energy improvement. In cases where multiple energy improvements comprise the Energy Project, then a weighted average of the useful lives may be considered by the EPAD program and registered EPAD Lenders. For example, if an Energy Project consisted of the following improvements: solar electric, elevators, LED lighting and a heating & cooling system. Then there would be two improvements (solar electric and elevators) with 30+ year useful lives and two improvements with 15+ year useful lives; therefore, a weighted average of 20-25 years would be reasonable.

C. Security

Per the EPAD Act, EPAD funding is secured by a special assessment levied by the local government and constitutes a first and prior lien against the real property on which the assessment is imposed from the date on which the notice of assessment is recorded pursuant to the EPAD Act until it is paid. The EPAD assessment lien shall have the same priority status as a lien for any other state or local ad valorem tax upon the property.

D. Underwriting Standards

EPAD programs generally will not establish the underwriting requirements for EPAD financing since each EPAD lender will use its own underwriting criteria.

However, the following are examples of underwriting guidelines used by national EPAD lenders for existing properties and may be used by the program administrator when reviewing a proposed EPAD project:

1. Total property-related debt (including mortgage debt, EPAD financing and any other obligations secured by the property) is not to exceed 90 percent of the property's value. This value may be established by either:
 - (a) The assessed value of the property, or
 - (b) The appraised value as supported by a recent appraisal.
2. In either case, the property's value may include the enhanced value of the property resulting from the installation of the energy improvements being financed with the EPAD assessment.
3. The property owner has been current on its property tax and assessment payments with respect to the property for at least three (3) years.
4. The property owner must not have any involuntary liens, defaults, or judgments applicable to the subject property. A property owner may be able to participate if it can be demonstrated that there is an acceptable reason for the lien, default, or judgment and provide supporting documentation.
5. The property owner or their affiliated companies have not been a debtor in a bankruptcy proceeding during the past seven years and the property proposed to be subject to the contractual assessment must not currently be an asset in a bankruptcy proceeding.
6. The cash flow generated by the property during the past 12 months exceeds 1.25 times the sum of the amount of the annual assessment plus any interest expense associated with any mortgage debt for the past 12 months.

Appendix S provides an overview of the key EPAD financing standards.

NOTE: As of 2016, there are no industry standards for EPAD underwriting of new construction or “gut rehab”; therefore, each Energy Project would be considered by EPAD lenders on a case by case basis.

E. Interest Rates and Financing Fees

The applicable interest rate and closing fees will be negotiated between the EPAD Lender and property owner/applicant. Additionally, there will be administrative fees charged by the EPAD program and tax collection agencies that will be added to the Energy Project’s financial closing statement.

F. Mortgagor Consent

As previously described in Section 3 and as required by the EPAD Act, each lender holding a mortgage lien in the real property of record must execute a “Lender Consent to Special Assessment” (aka “Lender Consent”). In addition, it is considered best practice for property owners to advise any other lenders of their intention to use EPAD financing in order to make certain that the property owner’s use of EPAD will not violate the terms and conditions of any other active loans or credit facilities.

G. Transfer or Resale of the Subject Property

If the property is sold or transferred prior to the end of the agreed-upon EPAD assessment term, the new owner will assume the EPAD assessment obligation. Ownership of any authorized energy improvements on the subject property will transfer to the new owner at the close of the real estate sale. Authorized energy improvements financed through the program may not be removed from the property until the EPAD assessment has been fully repaid. Program participants agree to make all legally required disclosures about the existence of an EPAD assessment lien on the property in connection with any sale or transfer.

H. Leverage with Other Incentives

EPAD financing can be leveraged with other state and federal incentive programs such as tax credits, accelerated depreciation and utility rebates. It is in the property owner’s best interest to apply for all federal, state, local and utility incentives that are available for all of the energy improvements within their energy project.

I. Buildings with Multiple Tax IDs

In some communities, buildings with multiple taxing IDs, such as condominiums, may require additional documentation and underwriting protocols. The EPAD special assessment may be tied to an individual parcel ID that has sufficient property value to underwrite as a project. If this situation arises, the taxing authority will need to work with building owners on how to approach this. Furthermore, the program may need policies in place to deal with projects with multiple parcel IDs if any one parcel ID number cannot support the EPAD project.

APPENDICES

All materials referenced below are provided as examples or templates and may be downloaded in electronic format at the following web address: <https://goo.gl/1GAkm2>

SECTION 1: Energy Project Assessment Districts (EPADs)

A. Document: Kentucky EPAD Act of 2015

SECTION 2: Local Government: Legislation

B. Template: Local EPAD Ordinance
C. Template: EPAD Assessment Schedule Approval
D. Exhibit: EPAD Assessment Listing on Tax Bill

SECTION 3: Local Government: Program Administration

E. Checklist: Roles & Responsibilities
F. Template: Mortgage “Lender Consent”
G. Template: Quality Assurance Inspection Form
H. Template: Energy Project Completion Certificate

SECTION 4: Eligible Energy Project Improvements

I. Fact Sheet: Commissioning and Retro-Commissioning

SECTION 5: Property Owners

J. Pre-Application: Energy Project Interest Form
K. Application: Energy Project Application
L. Application: Energy Project Improvement Summary
M. Checklist: Due Diligence Required for Funding
N. Fact Sheet: Energy Star Portfolio Manager

SECTION 6: Contractors

O. Application: Contractor Registration Application
P. Certificate: Registered EPAD Contractor

SECTION 7: Energy Project Lenders

Q. Application: Energy Project Lender
R. Certificate: Registered EPAD Lender

SECTION 8: Financing Standards

S. Fact Sheet: Overview of Key Financing Standards

EPAD Marketing Materials

All materials listed below may be downloaded in electronic format at the following web address:

<https://goo.gl/1GAkm2>

1. EPAD Handbook: Energy Project Assessment Districts, Commonwealth of Kentucky
2. EPAD flyer: Energize Your Business
3. EPAD flyer: Frequently Asked Questions (FAQ)
4. EPAD case study: Ivy Knoll Senior Retirement Community Invests with EPAD
5. EPAD tri-fold brochure: Energy Efficiency Financing
6. EPAD newsletter article: A new way to finance energy efficiency improvements: EPADs
7. EPAD PowerPoint:
 - (a) EPAD for Local Governments
 - (b) EPAD for Contractors
 - (c) EPAD for CRE Professionals
8. EPAD newsletter template
9. EPAD letterhead template