

# STATE OF COLORADO

## EXECUTIVE CHAMBERS

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Bill Ritter, Jr.  
Governor

September 4, 2008

The Honorable Abel Tapia  
Senate Committee on State, Veterans and Military Affairs  
The Honorable Paul Weissmann  
House Committee on State, Veterans and Military Affairs  
200 East Colfax Ave  
Denver, CO 80203

Dear Senator Tapia and Representative Weissmann;

The Governor's Office has two offices that provide state public benefits that that fall under required compliance in C.R.S. 24-76.5-103(9), Verification of Lawful Presence. Accompanying this letter is a report from the Governor's Office of Economic Development and International Trade (OEDIT) discussing compliance with this statute by the Colorado Council on the Arts and the Small Business Development programs.

In addition to the Office of Economic Development, the Governor's Energy Office (GEO) administers the Energy Savings Partners Program (ESP). ESP is funded by the U.S. Department of Energy, the Colorado Low Income Energy Assistance Program, Xcel Energy and Colorado Severance Tax funds. To be eligible for any ESP program service, applicants must verify legal residency. A copy of the relevant program policy is attached. See State of Colorado Energy Savings Partners Program – Client Eligibility Criteria (B) Approval Process (2) Legal Residency. In addition to providing a copy of one the approved documents, applicants are required to sign an affidavit affirming legal residency. The majority of the households served by the ESP last year were qualified through the LEAP program; approximately 16,000. Refusal of services usual occurs when an applicant fails to complete an application – including the proof of legal residency requirement. Because the applicant does not state the reason the application is not completed, it is not possible to determine how many incomplete applications are because the individual does not meet the legal resident requirement.

Please feel free to contact me if you have questions related to the services provided by either of these offices, their compliance with C.R.S. 24-76.5-103(9), or you need additional information.

Sincerely,

Norm Brisson  
Chief Administrative Officer  
Governor Bill Ritter

cc: Stephanie Villafuerte, Deputy Chief of Staff

OFFICE OF ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE  
September 3, 2008

Colorado Council on the Arts  
Annual Compliance Report Pursuant to CRS 24-76.5-101 et seq.

For Fiscal Years 2007 and 2008, the Colorado Council on the Arts took the following actions in compliance with 24-75.5-101 et seq.:

Art in Public Places Artist Design Fee Agreements and Artwork Commissions to individual artists

FY 07 – 16

FY 08 – 61

Required completion of Certification and Affidavit Regarding Illegal Aliens form and verified identification documents Personal Services contracts with sole proprietorships

FY 07 – 3

FY 08 – 4

Required completion of Certification and Affidavit Regarding Illegal Aliens form and verified identification documents.

Grants to Artists and Organizations awards to individual artists

FY 07 – 3

FY 08 – 6

Required completion of Certification and Affidavit Regarding Illegal Aliens form and verified identification documents.

Personal Services contracts with sole proprietorships

FY 07 – 3

FY 08 – 4

Required completion of Certification and Affidavit Regarding Illegal Aliens form and verified identification documents.

**Cost of Compliance:**

Processing Certification and Affidavit form and verifying identification documents takes, on average, 5 minutes of CCA staff time per contractor or grant recipient.

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**Small Business Development Centers  
Annual Compliance Report Pursuant to CRS 24-76.5-101 et seq.**

**For Fiscal Years 2007 and 2008, the Small Business Development Centers took the following actions in compliance with 24-75.5-101 et seq.:**

Clients Counseled After Completing Required Counseling Document

FY 07 – 2,822

FY 08 – 2,750

Required completion of Certification and Affidavit Regarding Illegal Aliens form and verified identification documents.

**Cost of Compliance:**

Processing Certification and Affidavit form and verifying identification documents takes, on average, 5 minutes of Small Business Development Center staff time per new client.

**STATE OF COLORADO  
ENERGY SAVINGS PARTNERS PROGRAM  
(ESP)**

<b>POLICY NUMBER/SUBJECT:</b>	<b>301.2 - Outreach/Client Services: Client Eligibility Criteria</b>
<b>DATE:</b>	<b>July 1, 2007</b>
<b>SUPERSEDES:</b>	<b>301.2, 7/1/04</b>

**(A) Policy Objective**

This policy defines the client eligibility approval process.

**(B) Approval Process**

(1) Eligibility Determination. All clients receiving services under the ESP grant must first have their eligibility and legal residency status verified by the Local Administrative Agency (LAA) and documented in the client file. Eligibility for receipt of ESP services must be determined by one of the methods listed below:

a. The Colorado Department of Social Services has determined the applicant to be eligible for LEAP benefits.

**Or**

b. Gross family income for the 12 months preceding the date of eligibility determination is at or below 185 percent of the poverty level, in accordance with the Federal Poverty Income Guidelines published for the current year. These guidelines and calculation of the 185 percent levels are incorporated as parts of this section. Please note that gross income is used before deductions for taxes, insurance, etc. Therefore, when regular Social Security is included in income, the gross must be before Medicare deductions.

NOTE: In situations where the legal dissolution of a family has occurred for any cause during the last 12 months, an individual may use his/her income since the dissolution, annualized, to determine eligibility in accordance with the 185 percent of poverty guidelines.

**Or**

c. The household includes a member who has received cash assistance payments under Title IV or Title XVI of the Social Security Act, or in accordance with applicable State or local law, at anytime during the 12 month period preceding the determination of eligibility. Title IV pertains to such programs as Temporary Assistance of Needy Families (TANF) and the Work Incentive Program (WIN). (Check with your county social service offices for other programs under Title IV in your service area. Notify the ESP State Office prior to using these programs for eligibility.) Title XVI pertains only to Supplemental Security Income (SSI). The applicable state programs which can be used for eligibility determination are Old Age Pension (OAP) and Aid to the Needy Disabled (AND).

CONTRACT CHECKLIST (Continued)

Federal Requirements (refer to reference for a detailed explanation and applicability):

- \_\_\_\_\_ 1. Subcontracts over \$10,000- Equal Employment Opportunity Clause (10 CFR 600, Appendix A, and Subpart B, Appendix A).
  
- \_\_\_\_\_ 2. Subcontracts over \$2,500-Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act as noted in 40 USC 327-330[01/06/97 edition].
  
- \_\_\_\_\_ 3. Negotiated subcontracts (any contract resulting from a negotiated RFP) over \$10,000-Retention of records and provision that the subgrantee, state and federal government and their representatives have access to any books, documents, etc. during the period of the contract and for three years after final payment (10 CFR 600.136 and .234)
  
- \_\_\_\_\_ 4. Administrative, contractual or legal remedies for contract violations or breach of contract (10 CFR 600.161, .162, .173, .243, .244, .251 and .252) before payment.
  
- \_\_\_\_\_ 5. Termination for cause and convenience, including the manner by which it will be effected and the basis for settlement (10 CFR 600.160 and .244).

## ESP "CONTRACT CHECKLIST" Federal Requirements

### General Requirements:

- \_\_\_\_\_ 1. Effective date of the contract.
- \_\_\_\_\_ 2. Termination date of the contract.
- \_\_\_\_\_ 3. Names of the contracting parties.
- \_\_\_\_\_ 4. Total dollar amount.
- \_\_\_\_\_ 5. Minimum number of units and the dollar amount of materials, if applicable.
- \_\_\_\_\_ 6. Method of payment.
- \_\_\_\_\_ 7. Schedule of work.
- \_\_\_\_\_ 8. Reference to exhibits, standards, etc., if applicable.
- \_\_\_\_\_ 9. Contract subject to funding from the State, DOE and/or LEAP.
- \_\_\_\_\_ 10. Prices for goods and/or services rendered.
- \_\_\_\_\_ 11. Bid specs – incorporated or by reference.
- \_\_\_\_\_ 12. Signature lines and dates.

### Requirements Per State Contract:

- \_\_\_\_\_ 1. Proof of general liability insurance, including pollution occurrence insurance.
- \_\_\_\_\_ 2. Proof of Workers' Compensation coverage (see Policy 208).
- \_\_\_\_\_ 3. Waiver of liens against units served.
- \_\_\_\_\_ 4. Clause that states that work must pass inspection by the Agency personnel before payment.
- \_\_\_\_\_ 5. Clause requiring that the billing must contain the address of the unit served and must have charges separated into labor and material costs.
- \_\_\_\_\_ 6. Clause which states that the contract in no way implies a contract between the State and the subcontractor.
- \_\_\_\_\_ 7. Proof of appropriate licenses.
- \_\_\_\_\_ 8. Compliance with the Privacy Act of 1974.
- \_\_\_\_\_ 9. Compliance with Paragraph 5 of the State Special Provisions (Discrimination and Affirmative Action).
- \_\_\_\_\_ 10. Signed statement that the subcontractor requires proof of legal residency as a condition of employment, as required by Colorado law (HB 06S-1023).

**STATE OF COLORADO  
ENERGY SAVINGS PARTNERS PROGRAM  
(ESP)**

<b>POLICY NUMBER/SUBJECT:</b>	206 - Subcontracting
<b>DATE:</b>	July 1, 2007
<b>SUPERSEDES:</b>	206 7/1/04

**DISCUSSION:** Local Administering Agencies (LAAs) are authorized to subcontract for the provision of weatherization materials and/or services. The estimation of work to be performed, final inspection of work performed, and heating system efficiency and safety assessment may not be subcontracted. Changes to the work order must be authorized and verified by qualified agency staff.

Subcontracts may not extend beyond the termination date of the weatherization contract through which funds are provided. No subcontract shall extend longer than the end of the program year in which it was executed (subcontracting should coincide with the LAA's annual request for bids and/or proposals).

All bid documents will require that subcontractors agree to attend ESP training in order to be an eligible bidder on weatherization work. This requirement will also be part of the signed contract between the agency and the subcontractor.

Use the attached list to check your contracts for required provisions. The items apply primarily to a contract involving subcontracted labor; however, some will apply to material purchases as well. The LAA must make that determination on the local level. For complete descriptions of required clauses, see state or federal references.

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**SUPPORTING REFERENCES:** 10 CFR 600.144 "Procurement Procedures" and .236 "Procurement", and OMB Circular A-110.

**CROSS REFERENCE:**

**SUPPLEMENTARY RESOURCES**

Policy 301.2 (Continued)

Any household served during the current program year must be determined eligible using one of these three methods. Any household determined eligible using the current program year's eligibility criteria remains eligible throughout the program year.

All applicants for ESP services must complete, sign and date the ESP Weatherization Application. The applicant must sign and date the application prior to receiving services. (See attachment to Policy 301.2 for ESP State approved Weatherization Application.) Each client file must contain the signature of the staff person determining the eligibility and the date when the eligibility was determined.

- (2) Legal Residency: In accordance with Colorado law, HB 06-1023, applicants must verify their legal residency by providing a copy of one of the following forms of documentation (must be current or expired less than one year):
- a. Colorado driver's license
  - b. State ID
  - c. Military ID
  - d. Tribal Document

Additional documents may serve as acceptable forms of legal residency status verification and can be found at the Department of Revenue's website:

[http://www.revenue.state.co.us/mv\\_dir/formspdf/DR\\_2300\\_ID\\_Requirements.pdf](http://www.revenue.state.co.us/mv_dir/formspdf/DR_2300_ID_Requirements.pdf).

In addition, applicants must sign an affidavit affirming legal residency. Agencies may use the affidavit provided by the Colorado Attorney General's Office, or they may incorporate the affidavit into an agency form so long as the following statements are included: A statement that the signatory is a United States citizen, legal permanent resident, or otherwise lawfully present in the United States pursuant to federal law, and that the person swears or affirms under penalty of perjury that the statement made in the affidavit is true and complete.

**NOTE:** Proof of legal residency and a signed affidavit do NOT need to be collected for weatherization applicants that have been approved for LEAP in the current heating season. Since LEAP's application also functions as an application for weatherization, and LEAP has collected the above required documentation, clients do not need to duplicate this effort in order to receive their weatherization benefit.

- (3) Client Appeals Process-Included in the ESP Weatherization Application is the right for client appeal regarding eligibility and timeliness of approval/denial. Following are the processes and timelines to be followed regarding client appeals.

a. The client has the right to have their application processed in a timely manner (within 30 days). If a client's application is not processed in a timely manner, they may follow the appeals procedure as below in paragraphs b and c.

b. If the client has a hearing and still disagrees with the denial of services, the client has 15 days after written notification from the Program Manager or Executive Director of the LAA to appeal to the ESP Weatherization Program. Appeals should be in writing and addressed to:

ESP Weatherization Program  
Colorado Office of Energy Management and Conservation  
State Program Program Manager  
225 E. 16<sup>th</sup> Ave., Suite 650  
Denver, CO 80203



Policy 301.2 (Continued)

**NOTE:** Agencies have the authority to deny service to clients due to perceived risks to worker health and safety (see Policy 311). This determination is to be noted in the client file along with guidance informing the client of this determination and actions the client must take before services can be provided.

**(C) Documentation**

**(1) Via LEAP Eligibility:**

a. Via QLEAP Database: An applicant's name and address are on the QLEAP Database for the current LEAP program year. A copy of the client's Top Sheet Form from the Database is the preferred documentation of the eligibility and must be retained in the client file. All LEAP recipients that are eligible for weatherization shall not be required to fill out an additional application.

b. Via LEAP lists: An applicant's name and address are on the currently active LEAP list. Either a copy of this list must be retained in the client file, or the LEAP household number and income/%of poverty must be noted in the file, and the most recent cumulative list retained in the agency office. This form of LEAP eligibility documentation is acceptable when the LEAP recipient's information has not yet been translated to the QLEAP database.

c. Via LEAP award letters: A copy of the client's LEAP award letter is acceptable eligibility documentation and must be retained in the file. This form of LEAP eligibility documentation is acceptable when the LEAP recipient's information has not yet been transferred to the QLEAP database.

**NOTE:** If a LEAP recipient moves within the same county, they are still eligible for weatherization services until December 31<sup>st</sup> of the following LEAP program year. If a LEAP recipient moves to a new county, they remain on the original county's LEAP list. These households can be served at their new address by the LAA serving the new county. The LAA is to use the LEAP information from the original county as the basis for documenting eligibility. A staff person must note the change of address on the QLEAP Top Sheet Form.

**(2) Via Income Determination:**

a. Total income for the most recent three months immediately preceding eligibility determination, annualized, must be documented in the file. Annualized income is determined by multiplying the three months' gross income by four (4). For example, \$1,200 for three months times 4=\$4,800 annualized income.

b. Collect 12 months of documentation by the following methods:

(i) Copies of income check stubs (check stubs must contain pay period dates).

(ii) Copy of a signed income tax return form, or all IRS W-2s (withholding) forms for the year.

(iii) Letter or other verification of income from income sources.

(iv) When using tax forms documenting annual (calendar year) income, you can divide this amount by 12 to determine an average monthly income. Use this average for the months preceding the eligibility determination. If this approach yields a "not eligible"

Policy 301.2 (Continued)

determination, it may be due to the averaging. It is allowable to use another of these six options to avoid denying services.

(v) A client-signed affidavit as documentation of income is allowable when no other form of eligibility determination applies.

(vi) Most recent Federal tax return.

NOTE: All income eligibility determinations must be accompanied in the client file by a date signifying when eligibility was determined, and the signature of the agency staff person certifying eligibility.

(3) Via Title IV and Title XVI of the Social Security Act:

a. a copy of the award notification , written verification via the corresponding government agency, or a copy of a payment check stub which states the type of payment and contains a date are all acceptable forms of eligibility documentation, providing that they are dated within the last 12 months. A copy of the document must be retained in the file.

b. Obtain Medicaid eligibility verification through the E\$P State office. Agencies will need to provide the State office with the client's name and either their social security number or the State ID on their Colorado Access card. The E\$P State office will fax eligibility verification to the requesting agency and that documentation must be retained in the client file.

**(D) Duration of Eligibility**

At the end of the program year, agencies may have a backlog of eligible clients who have not received service. Client eligibility is transferable to the subsequent program year based on the following:

(1) If the client eligibility is based upon being a LEAP recipient, the client name and address must appear on the current year's Quantum LEAP Database, or on the most current LEAP list available at the time of eligibility determination. The last published LEAP list is valid until **December 31<sup>st</sup> of the year it was issued.**

**Ex: The April 1998 LEAP list may be used until December 31, 1998.**

(2) If the client eligibility is income-based, eligibility and documentation are valid for 12 months from the date of eligibility determination.

(3) If eligibility was based upon the client's receipt of OAP, SSI, TANF or some other entitlement under Title IV or Title XVI of the Social Security Act, the client is eligible for 12 months following the date on the document (printout of State eligibility document) which verifies that the client has received entitlement.

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*SUPPORTING REFERENCES:* 10 CFR 440.22 "Eligible dwelling units", Federal Poverty Income Guidelines.

*CROSS REFERENCES:*

*SUPPLEMENTARY RESOURCES*