

Applying for Federal Grants and Loans: Tips for Potential Applicants

The U.S. Department of Energy (DOE) and other federal agencies have been authorized by Congress to issue tens of billions of dollars in loans, loan guarantees, grants, and other forms of financial assistance to support renewable energy, energy efficiency, and many other initiatives.

In most cases, agencies award these funds through a competitive application process in which companies compete for a limited pool of funds. While the pool of available funding is large, the demand for this funding is even larger. Therefore, the application process is highly competitive. Based on our experience representing applicants, we have developed these practical tips for applicants who are considering applying for federal grants and loans:

1. *Preparing a successful application requires a significant investment of resources.* An application typically includes more than a dozen separate elements. Substantial lead time is needed to develop each of the required elements, to review them for accuracy and completeness, and to ensure that any confidential information (e.g., financial data) is appropriately handled. Failure to allow sufficient preparation time will likely result in the application being rejected as incomplete.
2. *Deadlines are short.* Many of the available funding opportunities were authorized in the American Recovery and Reinvestment Act of 2009 (ARRA), also known as the stimulus bill. The main purpose of ARRA is to stimulate economic growth quickly, so agencies typically set short deadlines for applications – often between 30 and 60 days. Applicants must be prepared to move quickly to identify and respond to these funding opportunities.
3. *Each program has unique requirements.* While there are common elements to most applications, each also has unique requirements. In some programs, the application requirements are defined in regulations; in others, they are defined only in funding opportunity announcements (FOAs) or other informal guidance. Agencies often update or modify application requirements, or issue supplemental information, while the application process is under way. Applicants must be alert to any such changes throughout the entire process. There is no single standard application form that can be prepared once and then used for every funding opportunity.
4. *The filing of the application is just the first step in a lengthy process.* An agency's process for reviewing and approving applications involves multiple steps, which can stretch over a year or more depending on the complexity of the requirements and the amount of funds requested. The filing of the application is just the beginning of the process. After an application is submitted, there are several additional hurdles that an applicant must overcome before being approved. The application process is a marathon, not a sprint.
5. *The first hurdle in any application process is a "completeness review."* The agency initially reviews applications to determine if the required elements have been included. Applications that are deemed substantially complete are then carried forward for more in-depth review; all

other applications are rejected. In one program, the DOE rejected two-thirds of the initial round of applications, because they were not substantially complete.

6. *The second major hurdle is an “eligibility review.”* This review can occur at the time of the completeness review or at a later step. The agency reviews the applications to determine whether the applicant and the proposed project meet the eligibility requirements for the funding opportunity. Eligibility may seem like a straightforward issue, but in fact eligibility requirements can be complex. Typically, there are separate criteria for determining (1) who is an eligible applicant and (2) what is an eligible project. Application materials should clearly and systematically demonstrate that all eligibility requirements have been met.
7. *The third major hurdle is “substantive review.”* The substantive review is conducted for applicants that have submitted complete applications and have met eligibility requirements. This is the step at which the agency actually decides whether to issue financial assistance, and on what terms. The agency has considerable discretion at this stage, because under most funding programs the pool of applicants far exceeds the pool of funding available. Applicants should prepare for this stage of the process by crafting an application that is not only technically and legally sound, but also presents a compelling case for federal assistance.
8. *Environmental reviews play a key role in the application process.* The approval of financial assistance is considered a “federal action” for purposes of the National Environmental Policy Act (NEPA), which means that an environmental impact assessment under NEPA is required. These reviews can be completed quickly for some projects, but others will require more extensive environmental study – for example, projects involving infrastructure development or manufacturing plants. A well-thought-out NEPA strategy is an essential element of any application for a federal grant or loan. To develop the NEPA strategy, applicants must be thoroughly familiar with the agency’s regulations and policies regarding NEPA compliance.
9. *Throughout the process, good relationships and good communication are essential.* ARRA provided billions of dollars for federal grants and loans, mostly under new or greatly expanded programs. Federal agencies are developing the internal capabilities and resources needed to handle this massive new workload, but they face a steep learning curve and major resource constraints. Applicants can gain a significant advantage through regular person-to-person communication, high-quality documentation, and immediate responsiveness to information requests. Conversely, applicants can undermine their applications through poor communication with agency staff or a lack of understanding of agency requirements.
10. *Know the FOIA requirements so that you can protect confidential information.* Applications for federal funding often include highly sensitive information, including company financial data, business plans, and descriptions of intellectual property. Applicants should be aware of the Freedom of Information Act (FOIA) requirements that apply to federal agencies, and should understand the steps that need to be taken in order to identify confidential information that the applicant seeks to have withheld from disclosure under FOIA. Failure to identify data as confidential could result in disclosure of confidential information.

11. *Consider potential risks to ownership of your IP.* Applicants seeking federal grants or loans should consider the possibility that acceptance of federal funding could give federal agencies a claim to ownership of intellectual property generated by activities funded with those grants or loans. In addition, the public disclosure of information about an invention could compromise claims to patentability. The time for applicants to consider IP risks is *before* they have submitted information to the government.
12. *Register early with FedConnect.* The federal government has established a website, www.fedconnect.net, for posting funding opportunities and receiving applications. With few exceptions, applicants are required to submit their applications through this website. Registration can take weeks, so applicants should register well before the deadline. In addition, applicants should become familiar with FedConnect well before the filing date, to make sure that technical difficulties do not prevent timely filing of the application.
13. *Understand the ARRA reporting requirements.* The acceptance of federal funds under ARRA brings with it the obligation to file detailed quarterly reports, disclosing the amount of funds received, the amount spent, the jobs created, the payments made to vendors, and even the compensation of the top five executives of any recipient or sub-recipient of the grant or loan funds. The reports must be filed through a website, www.FederalReporting.gov, and the data is then published on another website, www.Recovery.gov. Before seeking federal funds, applicants should be familiar with these requirements. For additional information on these requirements, see this [Update](#) on our website.

How We Can Help

1. *Identifying and evaluating funding opportunities.* We have a comprehensive understanding of the federal funding programs and are experienced in helping clients identify specific opportunities to pursue. We regularly track funding solicitations issued by federal agencies. We can quickly assess new opportunities to determine (1) the funding levels, (2) what types of entities and projects are eligible, (3) the level of effort required to submit an application, and (4) critical tasks that must be completed in order to meet application deadlines.
2. *Preparing and filing applications.* We have direct, hands-on experience preparing and filing applications for federal grants, loans, and loan guarantees under several different programs. When an application is being prepared, we help our clients ensure that their applications (1) meet the requirements for substantial completeness; (2) demonstrate compliance with all eligibility requirements; and (3) present a compelling case for funding, consistent with the mission objectives of the applicable program. We also counsel clients throughout the application process on a range of related legal issues, including intellectual property protection and consideration of Freedom of Information Act (FOIA) requirements.
3. *Completing all of the steps in the application process.* After an application is filed, we work with clients to ensure that the agency receives any additional information that it needs to reach a final decision on the application. In many cases, after an application is deemed substantially complete, an agency will request additional information to supplement the initial application. In addition, the agency will often give the applicant an opportunity to

assist in developing the necessary NEPA documentation. We work with our clients throughout this stage of the process to keep the application moving forward.

4. *Closing the grant or loan agreement.* If a grant or loan application is approved, we work with our clients to negotiate and finalize the financial transaction, including negotiation of the term sheet and drafting of the grant agreement or loan documents.

Our Experience

To date, we have assisted clients in submitting applications for approximately \$1.5 billion in federal loans and loan guarantees, and an additional \$150 million in federal grants under the following programs:

- Advanced Technology Vehicles Manufacturing (ATVM) loan program
- Title XVII Loan Guarantee Program
- Advanced Research Projects Administration-Energy (ARPA-E) program
- Electric Drive Vehicle Battery and Component Manufacturing Initiative

In addition to our direct experience with grant and loan applications, we have deep experience in many related areas that are relevant to our clients' applications. These include:

- Financial transactions
- Government contracts
- Intellectual property
- Renewable energy and energy efficiency technologies
- Infrastructure project development (energy, water, transportation)
- Environmental, natural resources, land use, and public lands law
- Climate change law and policy

Our Approach

For each application, we assemble an appropriate team given the nature of the application process and the client's preferred approach. In some cases, we are extensively involved in preparing sections of the application; in others, our role focuses more on reviewing documents prepared by the clients and providing advice on specific issues, such as preserving confidentiality of sensitive information. In every case, we tailor the services we provide in order to maximize efficiency and value for the client.

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