



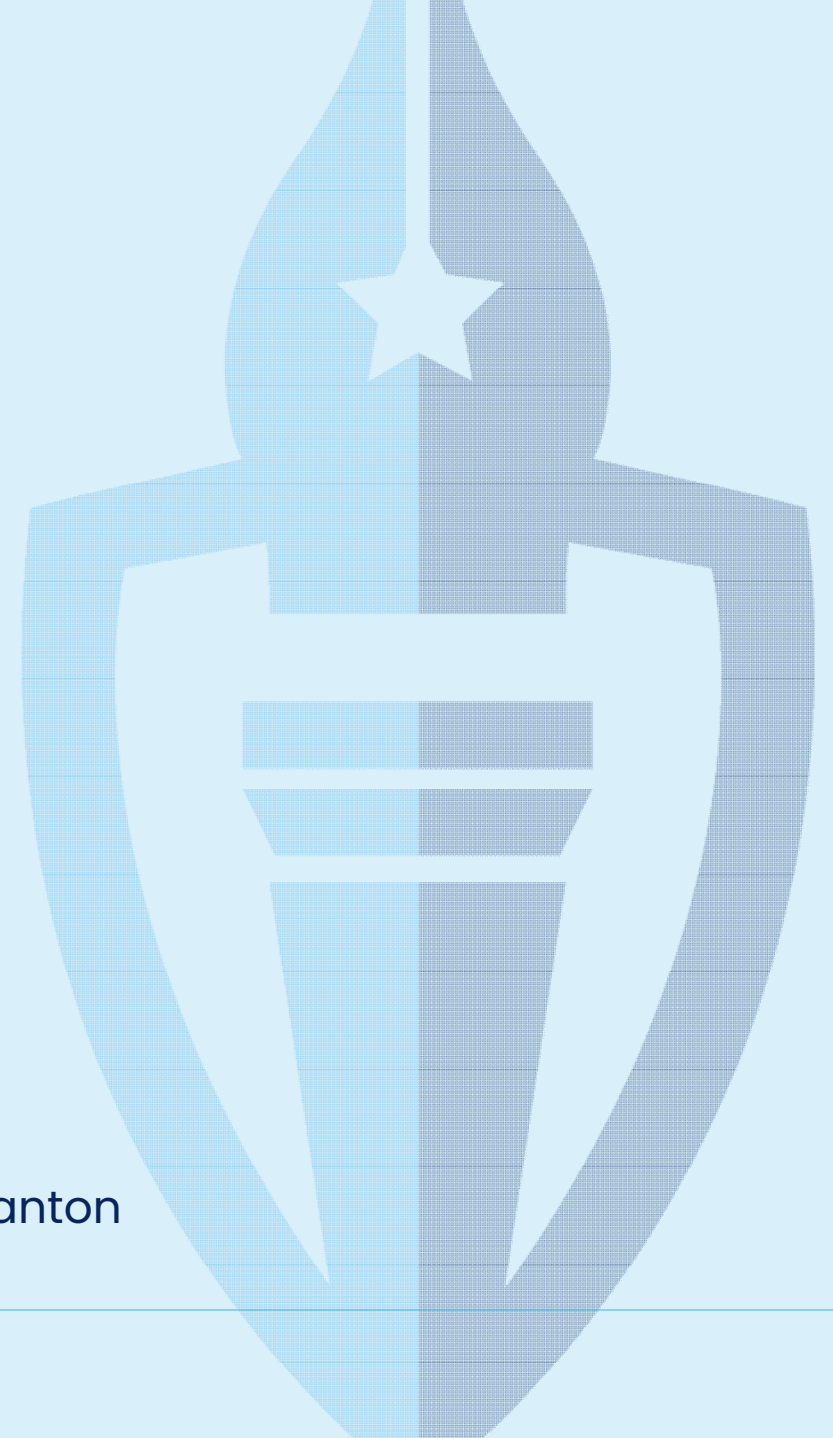
# The Sky's the Limit

## Using IIJA To Fund Long-lasting Decarbonization

**June 9, 2022: 10 AM PST/1 PM EST**

**Davis Wright Tremaine:** Derek Green, Shannon O'Neil, David Glanton

**L4GG:** Jillian Blanchard





- 1. Intro: L4GG and DWT**
- 2. IJJA Goal of the Day: SEP**
- 3. SEP Overview**
- 4. Financing Programs**
- 5. Q & A and Discussion**

# Agenda



# Lawyers for Good Government (L4GG)

125K+

Legal Advocates



Focused on Equal Justice,  
Equal Environmental  
Protection, & Human Rights



Runs Large Scale Pro  
Bono Programs

ISSUES:





# L4GG's Decarbonization and Resilience Funding Clinic

**Mission:** To help local and state governments obtain and use \$\$ from Biden's Infrastructure Law (BIL or IIJA) effectively for decarbonization, resilience, and long-lasting climate equity.

**Goal:** Get the \$\$ Where It's Needed Most

## **L4GG Webinars:**

- June 9, 2022: State Energy Program/State Administrators
- Summer/Early Fall – 5–7 webinars, technical assistance, FAQs
  - Equity/ Biden's J40 Initiative /Disadvantaged Communities
  - Funding Streams for Decarbonization
  - Funding Streams for Climate Resilience
  - 52-State Research Report & Model Policy on Disadvantaged Communities



## **Jillian Blanchard, Energy and Natural Resources**

Director Climate Change Program  
Lawyers for Good Government

**Email Jillian:** [Climatechange@lawyersforgoodgovernment.org](mailto:Climatechange@lawyersforgoodgovernment.org)

### **Legal Resources Available:**

- <https://www.lawyersforgoodgovernment.org/l4gg-climate-change-resources>
- <https://www.lawyersforgoodgovernment.org/funding-clinic-resource-signup>



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# **State Energy Program under IIJA: The Highlights**

- **Large Infusion of Funding from IIJA**
  - **Focus here: \$500 Million allocated for FY2022–2026**
  - **Formula Awards**
  - **Other significant programs established as well (Energy Efficiency Revolving Loan Fund Capitalization Grant Program, Energy Auditors Training Grant Program)**
- **Changed Criteria – and No State Match**
- **5 years – Planning is Key**
- **Climate Equity is a Must**
- ***More to Come: Additional DOE IIJA Guidance Expected Soon***



# Overview of State Energy Program (SEP)



- **Administered through US Department of Energy's (DOE) Energy Efficiency & Renewable Energy Office (EERE)**

EERE's Weatherization and Intergovernmental Program Office manages program.
- **Legal Authority**

Authorized under Energy Policy and Conservation Act, 42 U.S.C. 6321 et seq.

Key Regulations: 10 CFR Parts 420 and 600, and 2 CFR Part 200 as amended by 2 CFR Part 910.
- **Provides financial assistance and technical support to states**

Financial assistance: Formula Grants and Competitive Awards
- **State Plans: implement programs consistent with SEP goals and limits**

Subject to DOE review







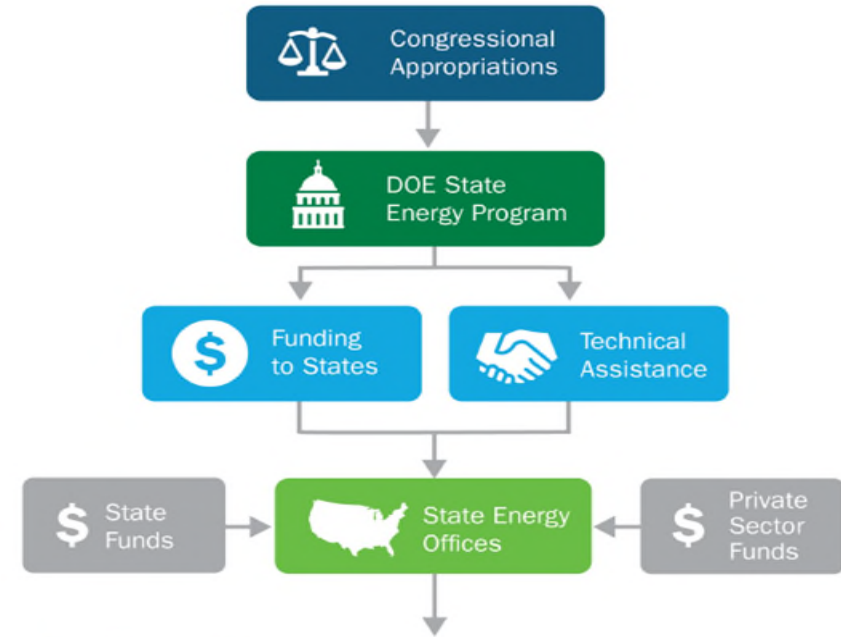
# SEP Overview & Priorities

enhance energy security

advance state-led energy initiatives

increase energy affordability

From US DOE's State Energy Program Operations Manual (2022), available at <https://www.energy.gov/eere/wipo/state-energy-program-guidance>





# SEP State Plans

42 U.S.C. 6322

## Optional (aka Ambitious) Program Activities

Energy Efficiency & Renewable Energy  
Capital Investments, projects, and programs

Promoting energy conservation to public

Transportation energy efficiency (including  
carbon emission reductions)

[New] Demand Response

Many more!

## Activities *Required* in Each State Plan

Vehicle idling reductions

Inter-governmental coordination

[NEW] Activities to support transmission and  
distribution planning

Lighting, thermal, and insulation efficiency  
standards

Ride-sharing promotion

Energy efficiency procurement standards



# SEP Under the IIJA

- **Funding:**
  - Authorized **\$500,000,000** in funding for FY2022–2026
  - **Not** subject to state match requirement for 5 years
- **New Mandatory Component of State Plans**
  - Transmission & Distribution planning
- **Revised Optional Components of State Plans**
  - Demand Response
  - Transportation Efficiency
- **State Energy Security Plans**
  - Mandatory for SEP funding in Fiscal Year
  - Focus on both physical and cybersecurity



**Yes, you can!**

**Federal Regulations and Guidance supports ambitious decarbonization projects**



## Office of Energy Efficiency and Renewable Energy

### **SEP GOALS**

- *Decarbonize the electricity sector*
- *Decarbonize transportation across all modes: air, sea, rail, and road*
- *Decarbonize the industrial sector*
- *Reduce the carbon footprint of buildings*
- *Decarbonize the agriculture sector, specifically focusing on the nexus between energy and water*

*~ State Energy Program Notice 22-01*



## **State Plans Can Include Ambitious Decarbonization Programs**

### **Funding Approved By Federal Law**

- **Financing Programs**

Loan programs “for leveraging of additional public and private sector funds”

Rebates, grants or other incentives “for the purchase and installation of energy efficiency and renewable energy measures”

Public or nonprofit buildings

- **Integrated energy plans**

- **Energy efficiency and economic development planning**

- **Supporting feasibility to facilitate access to renewable energy projects**



**Yes, you can!**

## **Authorization for Financing Renewable Energy Measures**

- ✓ Loan Loss Reserve Programs
- ✓ Revolving Loan Funds
- ✓ Commercial Property Assessed Clean Energy (PACE) Programs
- ✓ Administering renewable tax credit programs

## **Renewable Energy Measures**

*“means ANY CAPITAL INVESTMENT that reduces energy costs in an amount sufficient to recover the total cost of purchasing and installing such measure over an appropriate period of time and that results in the use of renewable energy to replace the use of non-renewable energy.”*

*10 CFR 420.2*

## **SEP Guidance on Financing Programs**

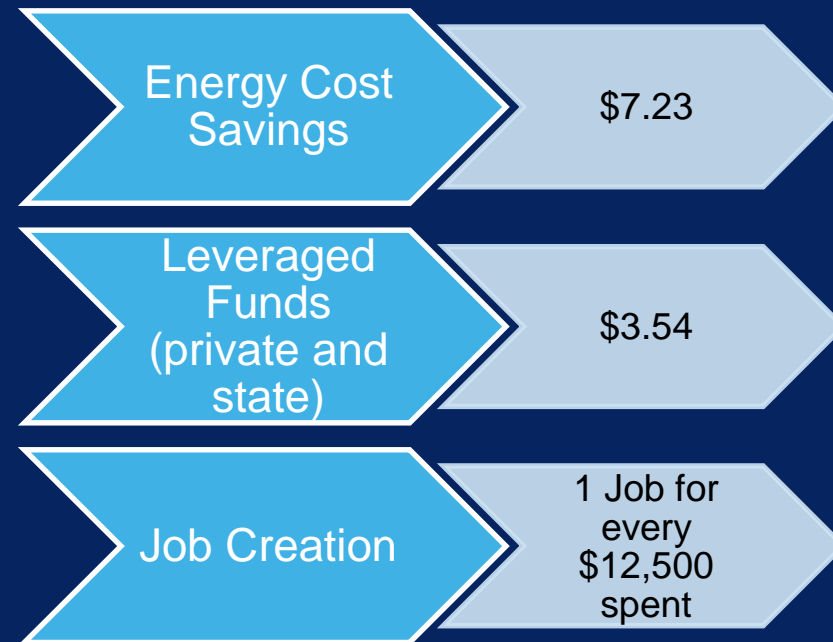
*“Grantees may establish Financing Programs (e.g., Loan Loss Reserves, Revolving Loan Funds, and Interest Rate Buy Down Programs). These programs may be administered by the grantee . . . And/or through an agreement with a third party.”*

*SEP Program Notice 10-008F (Nov. 2020)*



## Amplifying Impacts and Savings

Each dollar (\$1) of SEP funding utilized by states has an outsized impact on investment and energy cost savings



Source: State Energy Advisory Board (2015), [https://www.energy.gov/sites/default/files/2015/08/f25/Qualitative\\_Benefits\\_of\\_State\\_Energy\\_Program.pdf](https://www.energy.gov/sites/default/files/2015/08/f25/Qualitative_Benefits_of_State_Energy_Program.pdf)



# Historical Precedent And History of Success

## Green Bank of Kentucky

- Revolving Loan Funds
- Capitalized with ARRA SEP Funding

## Nebraska Energy Savings Loan Program

- Low interest loans provided by over 200 private lenders with more than 900 locations
- 7:1 leverage ratio of private to public capital
- 0.001% default rate on more than \$300 M in loans (as of 2013)

Sources: <https://www.ourenergypolicy.org/wp-content/uploads/2014/01/Unlocking-Demand.pdf>; [https://nebraskalegislature.gov/FloorDocs/107/PDF/Agencies/Environment\\_and\\_Energy\\_Nebraska\\_Department\\_of\\_/726\\_20220207-175810.pdf](https://nebraskalegislature.gov/FloorDocs/107/PDF/Agencies/Environment_and_Energy_Nebraska_Department_of_/726_20220207-175810.pdf)





# “Blue Sky” Ideas Examples

**Green Banks**

**Energy Efficiency and Renewable Energy  
Improvements in Buildings**

**Solar Loans, Incentives, Solar + Storage Programs**





# “Blue Sky” Ideas

## Green Banks

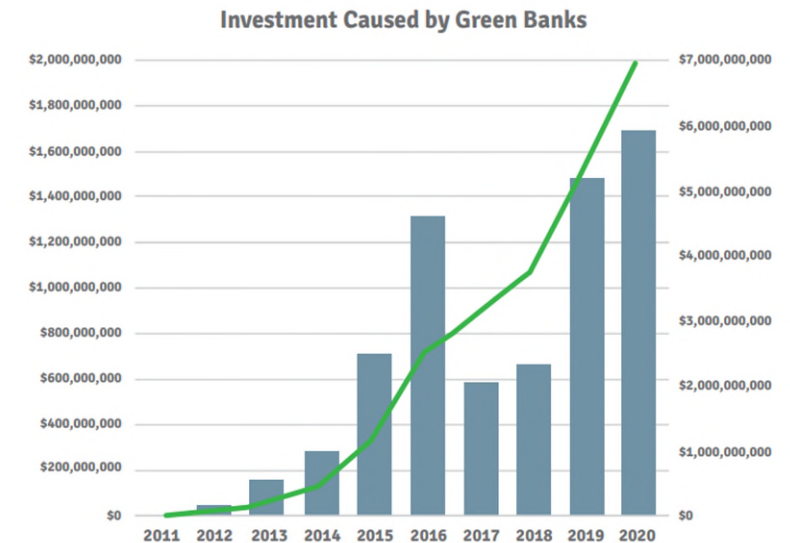
### Green Banks

*Securing low-cost capital (private and public) for clean energy projects by mitigating risk to investors*

At least sixteen (16) states have developed green banks and many others are exploring legislation to follow suit

Early adopters have successfully accelerated the deployment of private capital;

1. built up healthy balance sheets; and
2. generated favorable returns on invested capital



<b>Total Investment Caused</b>	<b>\$7.0 b</b>
<b>Total Green Bank Investment</b>	<b>\$1.9 b</b>
<b>Total Private Co-investment</b>	<b>\$5.1 b</b>
<b>Mobilization Ratio (Overall Project Investment/Green Bank Investment)</b>	<b>3.7</b>

Image Source: Green Banks in the United States, 2021, U.S. Green Bank Annual Industry Report, Coalition for Green Capital and American Green Bank Consortium (May 2021)



# “Blue Sky” Ideas

## Green Banks

### Green Banks



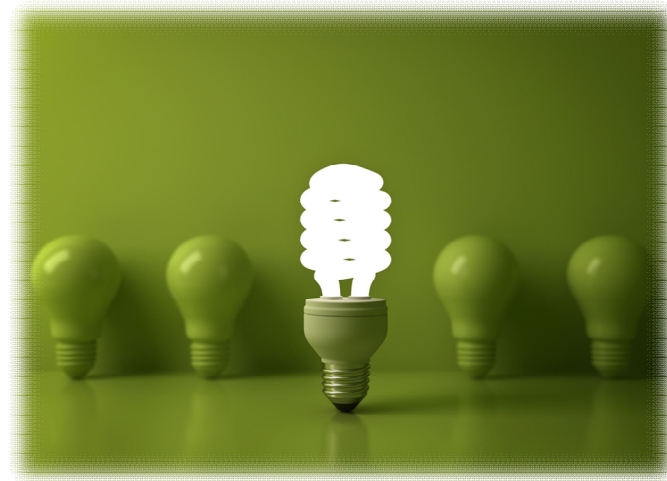


## “Blue Sky” Ideas

# Energy Efficiency and Renewable Energy Improvements in Buildings

### Energy Efficiency and Renewable Energy Improvements

Energy management programs and technologies can be implemented and adapted to increase efficiency and incorporate demand response



Building energy  
assessments

Community  
improvements

Workforce  
development

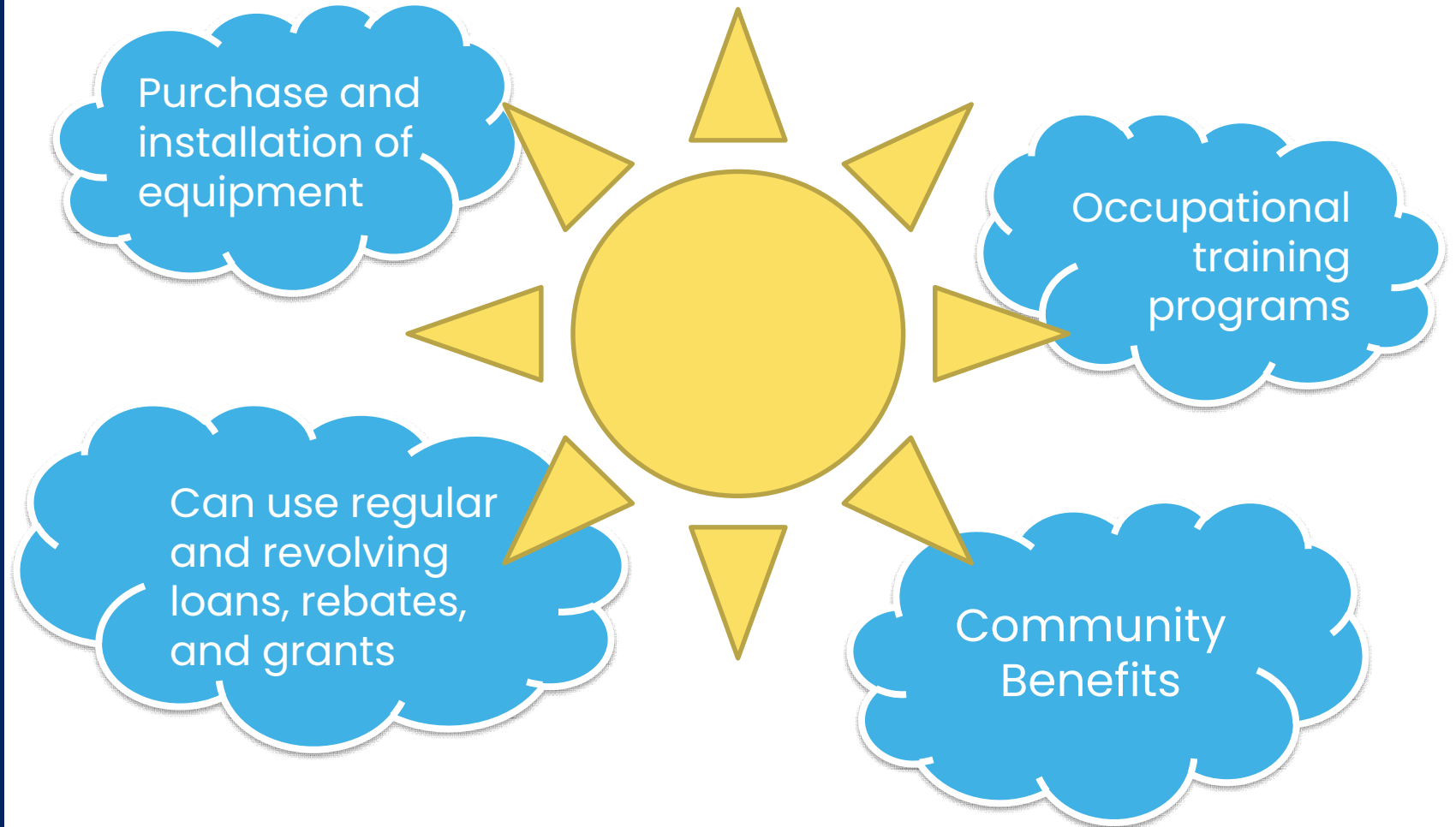
Public building  
retrofits



## “Blue Sky” Ideas

## Investments in Solar

### Solar Loans, Incentives, Solar + Storage Programs





# ... But there are some limitations.

## **Prohibited Uses of SEP Funding:**

- funding mass-transit systems or exclusive bus lanes
- constructing or repairing buildings or structures
- purchasing land, buildings, or structures
- subsidizing fares for public transportation
- subsidizing utility rate demonstrations or state tax credits for energy conservation or renewable energy measures
- conducting research, development, or demonstration of energy efficiency or renewable energy techniques and technologies not commercially available
- Supplanting state & local funds

## **Individual State Limitations – know your state!**

- Legislative authority
- Agency limitations



# Prioritizing Equity

## Justice 40 Initiative

- Established by Executive Order in January 2021, sets a goal of delivering 40% of benefits of federal investments to disadvantaged communities
- Interim Guidance (OMB, M-21-28) July 20, 2021: J40 Applies to any Federal program in climate change, clean energy and energy efficiency, clean transportation, training and workforce development





# Definition of Disadvantaged Community (DAC)

- **Community** – “Group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where group experiences common conditions.”
- **Disadvantaged** –
- The DOE working definition developed by collaborative research process and includes thirty-six (36) indicators collected at the census tract level, grouped across following categories:
  - Fossil Dependence (2)
  - Energy Burden (5)
  - Environmental and Climate Hazards (10)
  - Vulnerability (socioeconomic, housing and transportation burdens, etc.) (19)
  - DAC eligibility further restricted by Income
- **DOE Office of Economic Impact and Diversity – Guidance on J40:** Energy Justice Dashboard (BETA) to review DACs identified by DOE

\*\*Confirm Your State Definition and whether it currently applies to SEP (L4GG Report coming August 2022)





# SEP Equity Considerations – From March 2022 Guidance

1. **Environmental Justice**: Build the clean energy economy in a way that benefits all Americans. Address environmental injustices that disproportionately affect communities of color, low-income communities, and indigenous communities.
2. **Fostering a Diverse Workforce**: Increase awareness of clean energy job opportunities at minority institutions
3. **Engagement\*\***: Inclusion from very beginning – equity task force, community leaders, local government partners

**SEP Training**: September 27–29, 2022 – peer sharing, the exchange of ideas, understanding complex regulatory requirements, and Q & A



# SEP Guidance on Disadvantaged Communities (DACs)

- DOE is looking to States for Help to Implement J40 – DAC Template Asks:
  - How Your State defines DACs
  - How Do You Plan to engage DACs
  - How Much of Annual SEP Funding Will Be Delivered to DACs & How Will You Measure?
  - Do You Plan To Partner With Community-Based Orgs That Benefit DACs?
  - What Outcomes Are You Planning To Deliver?
  - What Resources/Guidance Do You Need From DOE to Support State Priorities Related to DACs
- **Now is the time to make bold moves and establish climate equity framework with REAL \$\$\$**
- Consider Ways to Promote Equity, Engage Community, and Foster Partnerships



# Now is the Time to Lead on Climate Equity

- 1. Identify** state definition for DAC – Is there one in the Climate Equity Space?
  - If no state definition, check federal mapping tool
  - Climate and Economic Justice Screening Tool – Feb 2022
- 2. Engage:** Identify Community Leaders/Local Gov't, NGOs to identify projects, potential partners, workforce, and educate about opportunities
- 3. Prioritize** DACs: \*\* CONSIDER END USERS – direct funds, indirect benefits, highlight this in your application
- 4. Review** unintended consequences: Determine whether your program could indirectly impact DACs
- 5. Consider** six Qs in SEP Application – what do you have, how will you prioritize DACs, what do you need to build out equity
- 6. Fund**\*\*Include funding for technical assistance and community leaders to ensure that communities that need it most benefit and use the program

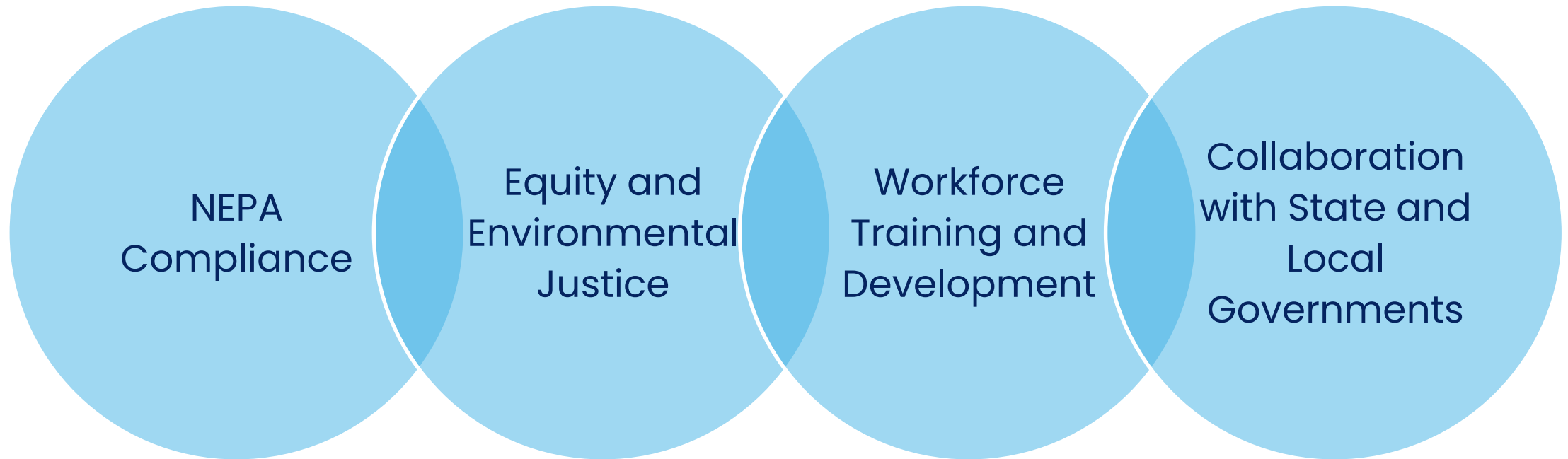


# Key Takeaways

- **Don't leave money on the table**
- **Evaluate the components of your existing plan to ensure you're covering your bases**
- **Consider the needs of traditionally underserved communities**
- **Get creative and think big!**



# Additional High-Level Considerations





# Polling Questions!



## More Information:

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