GovEnergy Webinar Series: Budgeting, Funding, and Scoring

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What is Scoring?

- Scoring is the process of measuring the budgetary effects of pending and enacted legislation against a baseline (i.e., changes in government spending or receipts)
  - CBO/OMB baseline is a projection of federal spending and receipts under current law

- Measures spending actions taken by:
  - Legislative Branch
    - Keeping track of legislation that affects spending or receipts
    - Holding Congress accountable for its power of the purse
  - Executive Branch
    - Measuring execution of Congressional appropriations (apportionment and accounting)
    - Holding Agencies accountable for spending actions

Purpose of Scoring

- Scoring has two functions:
  - Information: To determine the effects of proposed legislation (i.e., changes to current law) on the budget
  - Enforcement: To assist in enforcing budget rules
    - Spending and revenue levels associated with budget resolution (Budget Act)
    - Statutory limits on discretionary spending (Budget Control Act of 2011)
    - Constraints on increases in deficit as a result of new direct spending and revenue legislation (Statutory PAYGO Act of 2010)

What Governs Scoring?

- **Baseline:** Section 257 of Balanced Budget and Emergency Deficit Control Act of 1985, as amended ("Gramm-Rudman-Hollings")
- **Scorekeeping Guidelines:** Joint explanatory statement accompanying the conference report to the Balanced Budget Act of 1997
  - Set of 16 rules/guidelines to ensure scoring is consistent with established conventions (and with requirements of budget rules)
  - Reviewed annually by scorekeepers; any changes must be agreed to by all scorekeepers
- **Other Guidelines:**
  - The Constitution
  - OMB Circular A-11
  - Antideficiency Act (codified in Chapters 13 and 15 of Title 31 of the United States Code)
  - Congressional Budget and Impound Control Act of 1974 (Public Law 93-344), as amended
  - Budget Enforcement Act of 1990
  - Government Performance and Results Act of 1993

Who Participates in Scoring?

- House and Senate Budget Committees
- Congressional Budget Office (CBO) – Focus:
  - LEGISLATIVE: What is the cost of new legislation? CBO checks to see if legislation exceeds congressional spending limits
- Office of Management and Budget (OMB) – Focus:
  - LEGISLATIVE: Checks to see check if legislation exceeds Congressionally-legislated limits
  - BUDGET EXECUTION: Looks at how much of an agency's appropriations will it have to use when it executes on Congressional appropriations (such as for leasing)
    - Guidelines for Capital projects are found in OMB Circular A-11, Appendix B
    - Implements **Antideficiency Act** – no agency can obligate the Government to pay more than the amount appropriated

Capital vs. Operating Expenditures

Operating Costs:

Costs that keep the government "operating"

Capital Costs:

Expenditures that are equivalent to the purchase of a capital, or fixed asset (such as a building, piece of machinery, aircraft carrier).

OMB A-11 defines capital assets as: land, structures, equipment, intellectual property that are used by the Federal government and have an estimated life of two years or more.

CBO "Third-Party Financing"

(from CBO Economic and Budget Issue Brief, **June 1, 2005)**

- **Third Party Financing:** "Intermediary other than the U.S. Treasury can raise money in private capital markets on behalf of a federal program…"

- Transactions include:
  - **Project financing** (example: when bonds are issued to raise capital to build military family housing or government office buildings)
  - **Contractor financing** (example: when contractors fund energy-conservation improvements in federal buildings)
  - **Customer financing** (example: when municipal utilities prepay the Tennessee Valley Authority for electricity)

- **"Relying on third-party financing generally increases costs to the government."**

- **CBO determines whether a project is governmental on a case-by-case basis, if the government:**
  - Initiates the project, selects the developer, and specifies the project's parameters;
  - Has significant economic interests as an owner, beneficiary, or lessor;
  - Retains substantial control over the project's assets, business operations, and management; and
  - Serves as the sole or primary source of capital backing the project's financing.

How does OMB Define "Alternative Financing"?

OMB Circular A-11 http://www.whitehouse.gov/omb/circulars_a11_current_year_a11_toc requires:

Agencies are **required to submit to their OMB representatives the following types of leasing and other non-routine financing proposals** for review of the scoring impact:

- Any proposed **lease** of a capital asset where total Government payments over the full **term of the lease would exceed $50 million.** It should be assumed that options to renew will be exercised.
- All **financing proposals that are non-routine** in nature and involve unique or unusual concepts or characteristics such as those listed below:
  - **Outlease-leaseback** mechanisms;
  - Establishment of public-private partnerships or limited liability corporations;
  - Issuance of **debt by a third party** that includes an explicit "full faith and credit" guarantee of debt repayment by the Government or an **implicit guarantee** of repayment from Federal funds that removes a substantial amount of the investor's risk.
  - **Special purpose assets** for which there is no real private sector market;
  - Enhanced-use leases with leasebacks with annual payments above threshold levels
  - Projects constructed or located **on Government land**

Examples of Alternative Financing Transactions

- Debt backed by full faith & credit of the US
- Capital leases
- Public/private partnerships
- Share-in-savings contracts
- Enhanced use leases
- Outlease/leasebacks

Common characteristic – defer cash payments while giving the Government the use of assets

Source: OMB

Public/Private Partnership Defined

- Applies only to government lease-backs from public/private partnerships with substantial private participation.
- Includes special purpose entities for which the Government is a beneficiary.
- Substantial private participation means:
  - Non-Federal partner has majority ownership share of the partnership and its revenues;
  - Non-Federal partner contributed at least 20 percent of the total value of the assets owned by the partnership; and
  - Government has not provided indirect guarantees of the project, such as a rental guarantee or a requirement to pay higher rent if it reduces its use of space.

Source: OMB

Public/Private Partnerships (continued)

- Total value includes assets contributed by Government (except land) and all improvements made to the asset.
- Contributions by the non-Federal partner of cash, real assets, and loans for which the non-Federal partner is responsible for repayment count towards meeting the 20 percent threshold.
- Federal direct loans or loan guarantees do not count towards the 20 percent threshold.

Source: OMB

“Traditional Scoring”

OMB:

- If part governmental, considered totally governmental
- Treat borrowing by the partnership as Federal borrowing
- Require agency to obligate BA equal to the amount borrowed

CBO:

- Scores full cost (plus additional costs, such as costs of borrowing) when scoring proposed legislation

ESPC Example

OMB:

- Memo from Jack Lew, July 25, 1998 (see following page)
- Annual treatment of Budget Authority and Outlays
- Discretionary spending

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

July 25, 1998

M-98-13

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

FROM: Jacob J. Lew
Acting Director

SUBJECT: Federal Use of Energy Savings Performance Contracting

BUDGET TREATMENT: Obligations, budget authority, and outlays will be recognized on an annual basis. There must be sufficient discretionary budgetary resources to complete the first fiscal year's contract costs. For each of the subsequent fiscal years, discretionary budget authority and outlays will be recognized annually to the extent that payments are made on the contract. It is expected that energy costs will be reduced, reflecting ESPC savings and retained savings. All budget authority and outlays associated with ESPC will be classified as discretionary and will be subject to the discretionary caps under the Balanced Budget Agreement (BBA).

Legislative Authorities for Acquisition of On-Site Renewable Energy Projects

General: Alternate Finance Investments involve private sector entity borrowing money to make investments on Army asset, paid back over time from savings or power sales:

- Energy Savings Performance Contracts (ESPCs) – Contractor improves Army facilities, paid back out of energy savings
- Power Purchase Agreement (PPA) – Army contracts for long-term delivery of renewable power, private investor builds plant to meet this need
- Enhanced Use Lease (EUL's) – Army makes available land for renewable power generation, private investor builds plants, sells some power and Army receives in-kind payment i.e. power
- Utility Energy Service Contract (UESC) – Local utility invests in Army facilities, paid back through reduced demand

Each process is complex and governed by different authorities, but all require energy project development expertise

How Does Scoring Apply to Energy Projects?

<table>
<tr><th>Acquisition Approaches</th><th>Potential Scoring Triggers</th></tr>
<tr><td>Power Purchase Agreement (PPA)</td><td>Government has an implicit guarantee
Service contracts where the contractor is required to acquire or construct assets valued over $50M</td></tr>
<tr><td>Energy Service Contracts (ESC)</td><td>Government has an implicit guarantee</td></tr>
<tr><td>Energy Savings Performance Contracts (ESPC)</td><td rowspan="2">Exempt from scoring per “Federal Use of Energy Savings Performance Contracting” (memorandum from Jacob Lew to the heads of executive branch departments and agencies, July 25, 1998)
Full cost of Federal investment for improvements is covered by savings to be generated
Sufficient discretionary budgetary resources are required to complete the first fiscal year’s contract costs; discretionary budget authority and outlays are recognized annually for subsequent years</td></tr>
<tr><td>Utility Energy Service Contracts (UESC)</td></tr>
</table>

How Does Scoring Apply to Energy Projects?

Land and Realty Outgrant Agreements	Potential Scoring Triggers
Energy EUL with a Portion of Power Purchased (or with Power Provided In-Kind)	• Government has an implicit guarantee • Government participates as a partner in a joint venture or LLC • Service contracts where the contractor is required to acquire or construct assets valued over $50M • Share in savings that result in acquisition of real property
Energy EUL with 100% Power Purchased	• Government has an implicit guarantee • Service contracts where the contractor is required to acquire or construct assets valued over $50M • Share in savings that result in acquisition of real property
Easement	Do not trigger scoring unless they result in a capital investment or are used in conjunction with a PPA or ESPC
License / Permit	
Lease	

Army Energy Scoring Do's and Don'ts

Allowable under OMB A-11	Not Allowable under OMB A-11
Can provide ground lease underutilized real property / assets to developer (can be 50 years)	Cannot link land agreement to PPA or ESC
Must transfer ownership risks and costs to developer	Cannot provide federal guarantee of financing of developer
Ground lease "in-kind rent" can include provision of services or power	Variable/contingent rent on ground lease could trigger capital lease on lease back
Power must be secured through competition under "operating lease" guidelines	Cannot have link between decision-making on acquisition agreement and contingent power purchase

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Consequences if Scoring is Triggered

- Budget authority used more rapidly than expected
- Retroactively found to violate the Anti-Deficiency Act (ADA)

Thank You

- Questions
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