

FAQ: Community Benefits Agreements

What is a community benefits agreement?

A community benefits agreement is a *legally binding, negotiated agreement* between a project proponent/developer and a community, often represented by a coalition of community group(s)¹, outlining benefits they will receive in return for their support or non-opposition of a project. Community benefits agreements are increasingly used for large energy projects. DOE is not a party to community benefits projects but supports their use as a tool to reduce risks to DOE funded projects by securing local support and providing a vehicle for community to shape the benefits delivered.

How does a community benefits agreement address project risk?

Demonstration and deployment projects, including those funded by DOE, often require numerous and complex permits and land use approvals from local, state, and federal entities. Processes to obtain permits and approvals often include opportunities to challenge a project, which can cause project delays or failure. Under a community benefits agreement, the community parties commit to project support or non-opposition for the project through the permitting and regulatory approval process. Additionally, a community benefits agreement can provide a framework for community and developers to work together through key issues of a project, which may ultimately offer greater stability over the life of the project.

What are the “benefits” in a community benefits agreement?

What can be considered a “benefit” in a community benefits agreement depends on each community’s unique concerns and priorities. Some communities may benefit from improved community infrastructure such as community centers, greenspace, or services such as childcare or transportation. Other communities may prioritize energy efficiency upgrades, energy bill reduction, energy resiliency for low-income or disadvantaged communities, or investments in training programs that serve residents of disadvantaged communities.

For DOE funded projects specifically, it is important to consider cost allowability principles and limitations when developing a community benefits agreement to ensure certain activities or deliverables requested by the community or proposed by the developer can be funded as part of the federal award. See the following link for more information: <https://www.energy.gov/sites/default/files/2024-10/Guide%20to%20DOE%20Evaluation%20of%20CBP%20Costs.pdf>

Who should be part of developing a community benefits agreement?

Since the benefits included in the community benefits agreement are determined by the community itself, it is important that the community members, groups, and coalitions most directly affected and vulnerable to the effects of the project are part of community benefits negotiations and that these parties have surveyed their communities for their needs and concerns (for a list of typical parties to a community benefits agreement, see below). Negotiations will be most effective if the developer first works to understand community history and concerns prior to sitting down with community groups.

¹ Community coalitions can include organizations that represent a wide range of community members’ priorities. They often include but are not exclusive to, labor and worker-serving organizations, environmental justice groups, neighborhood associations, faith-based organizations, and other specific-interest groups.

Community parties should also seek to maintain frequent and transparent communication with their constituencies as negotiations take place and conditions possibly change.

What community groups are part of community benefits agreement process?

Parties to a community benefits agreement should represent a wide range of community priorities, often including² Tribal governments, unions and worker rights organizations, community-based organizations, neighborhood groups, and environmental and environmental justice groups. However, what this looks like will vary per community-rural vs urban etc. Because one of the values of a community benefits agreement is de-risking, care should be taken to include not just those groups already in support of the project. It is likewise important that parties are trusted and represent the needs of their communities—especially disadvantaged and hard-to-reach populations—so that the agreement ultimately reflects the interests of those who are most vulnerable and likely to be impacted

What are the key elements of a community benefits agreement? Although the benefits delivered vary, communities and developers should consider including the following elements in a CBA:

- **Commitment to support or not-oppose a project:** The primary consideration in a community benefits agreement is the commitment from the community to support, or not challenge, the project. Accordingly, it is important the community benefits agreement clearly define what the “project” is and what “support” or “non-opposition” means to provide certainty for all parties.
- **The community benefits agreement is a legally enforceable contract:** All parties to the Community Benefits Agreement, including community groups and developers, have the right to enforce the terms of the agreement.
- **Processes for dispute resolution:** The agreement should outline a clear process for resolving disputes or conflicts, such as including terms for holding meetings, arbitration, mediation, etc. This may help to avoid litigation and effectively resolve disputes between the parties. In addition to avoiding litigation, the process for dispute resolution can help create trust and address other issues around the construction and operation of the project.
- **Steering Committee:** A community benefits agreement will almost always include the establishment of a community governing body, such as a community benefits steering committee, which meets regularly to oversee agreement implementation (including processes for how and what purpose funds will be dispersed). This entity often has decision-making power to address other issues related to the project. This body should reflect the diversity of the community coalition and be identified by the coalition. In addition, the community benefits agreement should include specific terms regarding steering committee membership criteria, length of member terms, and process of appointment and approving members.

² Some entities may be part of a coalition or kept updated around community benefits agreements but may not ultimately sign an agreement. For example, Indian Tribes as sovereign nations are not “community stakeholders” but their concerns are critical and they may ultimately sign a separate agreement which reflects their roles as sovereign nations such as a Tribal Agreement. Labor unions are often part of community coalitions, which may be included in discussions regarding the formation of a community benefits agreement, but may ultimately decide to be part of a complimentary project labor agreement. Similarly, local government entities or economic development entities may have a role in implementing the community benefits agreements, but would generally not be a party to a community benefits agreement.

- **Secondary enforcement:** A best practice is to incorporate community benefits agreement terms into a land use approval or permit as mitigation measures or in conditions of a development agreement to create a second layer of enforceability. Within the DOE context, the **commitment** to negotiate and execute a community benefits agreement (not the agreement itself) may be incorporated as a goal or milestone into the final funding award, including community benefits agreement reporting and certain activities or deliverables that might be noted in a community benefits agreement (subject to allowable costs determinations). Additionally, specific terms may be incorporated into NEPA documentation as appropriate.
 - **Reporting:** The community benefits agreement should outline how the developer will report compliance with the terms, including a reporting timeline to demonstrate when commitments have been met.
 - **Specific and measurable terms:** Community benefits agreement commitments should be clear, obtainable, and measurable so that agreements have tangible outcomes that are easy for all parties and the public to track and examine.
 - **Start-up funds and support for participation:** Developing and implementing community benefits agreement governance structure, as well as working to identify the terms that communities need, can require significant time, money, and resources from community members who are often resource and capacity constrained. Accordingly, community benefits agreements will often include start-up funding and compensation for ongoing participation in a steering committee, as well as funds for administrative support and a third-party administrator.
 - **Commitments to transparency:** Best practices suggest the community benefits agreements should be shared publicly to build trust and improve opportunities for accountability. Reports that provide details for implementation and benefit delivery are also helpful. Finally, steering committee meetings should be public.
- Operating principles:** Another best practice is to include a preamble in a community benefits agreement that features a legally-binding declaration of common intent and shared values by all parties to the agreement.

What is the difference between a Community Benefits Agreement and a Community Benefits Plan (CBP)?

A CBP is document provided by an applicant for DOE funding that is evaluated during the merit review process for nearly all Bipartisan Infrastructure Law (BIL) and Inflation Reduction Act (IRA) funding announcements and loan applications. The CBP addresses community and labor engagement, good jobs, diversity, equity, inclusion, and accessibility (DEIA), and the Justice40 initiative. If an applicant is selected for DOE funding, the DOE and applicant will integrate community benefits commitments into the final award agreement.

A community benefits agreement can be one of the CBP commitments outlined in the final DOE award – with milestones tied to negotiations, execution and implementation. Because community benefits agreements represent an enforceable agreement between affected stakeholders and a project developer, a commitment to negotiate and execute a community benefits agreement indicates firm intent to engage and effectively address community concerns as required by the CBP, and they can also be a vehicle to deliver benefits related to equity, jobs and Justice 40. Thus, community benefits

agreements are a valuable tool that helps ensure viability by securing project support in the community while building long term trust and a foundation for engagement and communication.

What is the difference between a Community Benefits Agreement and a Community Workforce Agreement (CWA)?

A community benefits agreement is a legally-enforceable agreement between a developer and a community while a CWA is a formal *labor* agreement between an employer and a union or unions representing workers that includes community and equity provisions. Formal labor agreements, known as collective bargaining agreements, in addition to district courts, have an additional layer of enforcement by the National Labor Relations Board. Community Benefits Agreements and labor agreements ideally work together. For example, the commitment to execute a community workforce agreement to address the needs of workers and labor can be an important outcome of a community benefits agreement.