

News from our Clean Technologies Group

Stimulus Package to Boost Renewable Energy and Clean Technologies Industry

Recovery Act: frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf

Background

On February 17, 2009, President Barack Obama signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act). Many of the provisions in this Recovery Act, which constitutes the largest single economic stimulus program in U.S. history, open up new sources of funding and procurement opportunities for renewable energy facilities, energy infrastructure and energy efficiency programs. The clean-energy provisions are a central piece of the Recovery Act. Out of a total of \$787 billion in spending and tax incentives, the Recovery Act directs approximately \$43 billion to renewable energy and clean technology-related programs and includes approximately \$22 billion in energy-related tax incentives.¹

Funding levels unprecedented but details “TBD”

While the Recovery Act presents significant opportunities for clean technology companies—including grants for research and development, loans and loan guarantees for commercialization, funding increases for government procurement, tax incentives for investment in clean energy, and tax credits for consumers purchasing clean energy products—many critical details regarding the process for accessing the funds remain “TBD.” Recovery Act programs will be administered through multiple federal

agencies and, importantly, a large portion of the funds will be distributed through state and local governments. Much of the funding will be funneled through programs that will parallel existing Department of Energy (“DOE”) grant programs and funding mechanisms but are likely to involve new regulatory standards, solicitation procedures and reporting requirements.

This *Alert* provides a preliminary roadmap to Recovery Act programs and highlights resources for clean technology companies, investors and other market participants. Table I of this *Alert* (“Federal Financing Opportunities”) describes grant and loan/loan guarantee opportunities relevant to clean technology companies; Table II (“Federal, State and Local Procurement Opportunities”) describes opportunities for clean technology companies to sell into the government marketplace; and Table III (“Tax Incentives”) describes changes to key federal tax incentives, such as production and investment tax credits.

Since many details regarding Recovery Act programs are yet to be announced, interested parties may wish to register to receive email updates. (See “Where to Register for Announcements and Updates.”)

Timing of funding announcements

On February 19, 2009, Secretary of Energy Steven Chu announced a sweeping reorganization of the Department of Energy to expedite disbursement of Recovery Act funds. Secretary Chu noted, “We need to

start this work in a matter of months, not years.”² Further, Secretary Chu wants to accelerate the funding process for programs with existing award pipelines.³

The Office of Management and Budget (OMB) has instructed federal agencies to begin posting funding opportunity announcements within thirty days of the enactment of the Recovery Act.⁴ These opportunities will be posted at www.grants.gov. To date, a specific timeline for loan and loan guarantee announcements has not been published. Cooley’s clean

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technologies practice group recommends that companies determine how their strategic objectives align with federal policy priorities and be prepared to move quickly to define proposals and projects that map to such priorities. OMB has also instructed agencies to engage in “aggressive outreach” to potential applicants.

Next steps on federal energy policy

The Recovery Act is only an initial step in the Administration’s first term energy agenda. The Administration’s broader energy plans are expected to include the following:

- ▶ **California Waiver:** The U.S. Environmental Protection Agency (EPA) has been directed to reconsider and is expected by many observers to grant California’s request to impose more restrictive greenhouse gas emissions standards.⁵ More than a dozen other states have adopted or will adopt California’s proposed stricter restrictions, which would require automakers to cut emissions by 30 percent in new cars and light trucks by 2016.
- ▶ **Energy Bill:** Congress is expected to pass an energy bill in the second or third quarter of 2009. Provisions under consideration include increased national fuel-efficiency standards and adoption of a national renewable-portfolio standard requiring utilities to source a certain percentage of their electricity from renewable sources.⁶
- ▶ **Climate Change Legislation:** The President has signaled his support for a federal cap-and-trade system to reduce greenhouse gas (GHG) emissions and has stated a GHG reduction target of 1990 levels by 2020 and an additional 80% by 2050.⁷ (These targets are similar to those adopted by the State of California under AB 32—See *Cooley Alert* (December 2008) www.cooley.com/news/alerts.aspx?ID=000041495420.) ■

Where to Register for Announcements and Updates

All federal agencies and departments must post their plans for using Recovery Act funds—as well as announcements for grant competitions, allocations of formula grants, and awards of competitive grants using those funds—on the Recovery Act’s official website: www.recovery.gov.

To receive federal government updates:

- Register at www.recovery.gov to receive Recovery Act updates by email.
- Register at www07.grants.gov/applicants/email_subscription.jsp to receive grant announcements by email.
- Email lgprogram@hq.doe.gov to subscribe to U.S. Department of Energy Loan Guarantee Program Updates.
- Register at apps1.eere.energy.gov/news/subscribe.cfm to receive updates from the U.S. Department of Energy—Office of Energy Efficiency and Renewable Energy.

Cooley plans to publish additional *Cooley Alerts* as critical new information and developments regarding the Recovery Act arise. To receive *Alerts* regarding major legislative and regulatory developments and event announcements relevant to the Clean Technology sector, register at cooley.com.

CIRCULAR 230 DISCLOSURE

The following disclosure is provided in accordance with the Internal Revenue Service’s Circular 230 (21 CFR Part 10). Any tax advice contained in this Alert is intended to be preliminary, for discussion purposes only, and not final. Any such advice is not intended to be used for marketing, promoting or recommending any transaction or for the use of any person in connection with the preparation of any tax return. Accordingly, this advice is not intended or written to be used, and it cannot be used, by any person for the purpose of avoiding tax penalties that may be imposed on such person.

NOTES

1 Website for accountability and transparency of the American Recovery and Reinvestment Act of 2009. Recovery.gov. “Where is Your Money Going?” www.recovery.gov/?q=content/investments (accessed February 25, 2009).

2 Press Release from the U.S. Department of Energy. DOE Secretary Chu Announces Changes to Expedite Economic Recovery Funding. February 19, 2009. www.energy.gov/news2009/6934.htm (accessed February 25, 2009).

3 Interview with Secretary of Energy Steven Chu. Stephen Power. “We’ve Got to Do This!” Wall Street Journal. February 6, 2009. online.wsj.com/article/SB123393841471357455.html?mod=googlenews_wsj (accessed February 25, 2009).

4 Memorandum for the Heads of Departments

and Agencies. Peter R. Orszag, Director of the Office of Management and Budget. “Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009.” www.recovery.gov/files/Initial%20Recovery%20Act%20Implementing%20Guidance.pdf (accessed February 25, 2009).

5 For the President’s request for the EPA to assess whether its decision to deny a waiver based on California’s application was appropriate in light of the Clean Air Act, see the Memorandum for the Administrator of the Environmental Protection Agency, “State of California Request for Waiver Under 42 U.S.C. 7543(b), the Clean Air Act,” January 26, 2009, www.whitehouse.gov/the_press_office/Presidential_Memorandum_EPA_Waiver/ (accessed February 25, 2009).

6 For the President’s energy plan agenda, see www.whitehouse.gov/agenda/energy_and_environment/ (accessed February 25, 2009).

7 For example, see the President’s remarks to the Bi-Partisan Governors Climate Summit, change.gov/newsroom/entry/president_elect_barack_obama_to_deliver_taped_greeting_to_bi_partisan_gover/ (accessed February 25, 2009).

I. Federal Financing Opportunities

PROGRAM (AGENCY)	PURPOSE	FUNDING
Innovative Technology Loan Guarantee Program <small>DEPARTMENT OF ENERGY</small>	Authorize loans/loan guarantees for renewable energy systems, electric power transmission systems, and leading edge biofuel projects. Projects must commence construction no later than September 30, 2011.	\$6 billion
Electricity Delivery and Energy Reliability <small>DEPARTMENT OF ENERGY</small>	Support electricity delivery and energy reliability activities to modernize the electric grid, including demand responsive equipment; enhance security and reliability of the energy infrastructure; increase energy storage research, development, demonstration; and deployment, and facilitate recovery from disruptions to the energy supply.	\$11 billion
Fossil Energy Research and Development <small>DEPARTMENT OF ENERGY</small>	Support carbon capture and sequestration technology demonstration projects, including: <ul style="list-style-type: none"> ▪ \$1 billion for Fossil Energy Research and Development programs; ▪ \$800 million for Clean Coal Power Initiative; and ▪ \$1.52 billion competitive solicitation for a range of industrial carbon capture and energy efficiency projects. 	\$3.4 billion
Energy Efficiency and Renewable Energy Research <small>DEPARTMENT OF ENERGY</small>	Support energy efficiency and renewable energy research, development, demonstration, and deployment activities to foster energy independence, reduce carbon emissions, and cut utility bills. Includes \$800 million for biomass and \$400 million for geothermal.	\$2.5 billion
Advanced Battery Loans and Grants <small>DEPARTMENT OF ENERGY</small>	Support the U.S.-based manufacturing of advanced batteries and components, including advanced lithium ion batteries, hybrid electrical systems, component manufacturers, and software designers. To be awarded to manufacturers of advanced battery systems and vehicle batteries that are produced in the United States.	\$2 billion
Advanced Research Projects – Energy (ARPA-E) <small>DEPARTMENT OF ENERGY</small>	Support grant program for research and development to overcome the long-term and high-risk technological barriers in the development of energy technologies.	\$400 million
Electric Transportation <small>DEPARTMENT OF ENERGY</small>	Create new grant program to encourage electric vehicle technologies.	\$400 million
Research, Development, Test, and Evaluation <small>DEPARTMENT OF DEFENSE</small>	Support research, development, test and evaluation into using renewable energy to power weapons systems and military bases.	\$300 million

II. Federal, State, and Local Procurement Opportunities

PROGRAM (AGENCY)	PURPOSE	FUNDING	CHANNEL
Energy Efficiency and Conservation Block Grants DEPARTMENT OF ENERGY	Help state and local governments make investments that make them more energy efficient and reduce carbon emissions.	\$3.2 billion	State and local
Weatherization Assistance Program DEPARTMENT OF ENERGY	Help low-income families reduce their energy costs by weatherizing their homes and making the country more energy efficient.	\$5 billion	State and local
State Energy Program DEPARTMENT OF ENERGY	Assist state energy conservation plans.	\$3.1 billion	State
Alternative Fuel Vehicles Pilot Grant Program DEPARTMENT OF ENERGY	Help state and local governments purchase efficient alternative fuel vehicles to reduce fuel costs and carbon emissions.	\$300 million	State and local
Federal Buildings Fund DEPARTMENT OF THE TREASURY	Support measures necessary to convert General Services Administration facilities to High-Performance Green Buildings.	\$4.5 billion	Federal
Energy-Efficient Federal Motor Vehicle Fleet Procurement DEPARTMENT OF THE TREASURY	Support capital expenditures and necessary expenses of acquiring motor vehicles with higher fuel economy, including: hybrid, electric, and plug-in hybrid vehicles.	\$300 million	Federal
State and Tribal Assistance Grants ENVIRONMENTAL PROTECTION AGENCY	Help states and tribes access clean and safe drinking water. Twenty percent of funds are dedicated to green infrastructure, water or energy efficiency improvements, or other environmentally innovative projects.	\$6.4 billion	State and tribal
Diesel Emissions Reduction ENVIRONMENTAL PROTECTION AGENCY	Provide grants and loans to state and local governments for projects that reduce diesel emissions, benefiting public health and reducing global warming. Includes technologies to retrofit emission exhaust systems on school buses, replace engines and vehicles, and establish anti-idling programs	\$300 million	State and local
Training and Employment Services DEPARTMENT OF LABOR	Support research, labor exchange and job training projects that prepare workers for careers in energy efficiency and renewable energy.	\$500 million	Federal and state
Assisted Housing Stability and Energy and Green Retrofit Investments DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	Provide grants and loans to HUD-sponsored low-income housing for energy retrofit and green investments.	\$250 million	State and local
Operation and Maintenance DEPARTMENT OF DEFENSE	Improve, repair, restore, modernize, and invest in energy efficiency for military facilities, including barracks.	\$3.84 billion	Federal
Health Program DEPARTMENT OF DEFENSE	Improve, repair, and modernize, and invest in energy efficiency for military medical facilities.	\$400 million	Federal

III. Tax Incentives

TAX INCENTIVE	TARGETED INDUSTRIES	CHANGE UNDER RECOVERY PLAN
§ 45 Production Tax Credit (“PTC”)	Wind	Extended through 2012
§ 45 PTC	Geothermal, biomass, hydropower, marine and hydrokinetic, municipal solid waste	Extended through 2013
§ 48 Investment Tax Credit (“ITC”)	Solar, geothermal, fuel cells, microturbine, small wind, combined heat and power	Eliminates rule reducing credit for financing from subsidized energy bonds or private activity bonds. Removes \$4K annual credit cap on small wind property.
§ 48 ITC	Wind, geothermal, biomass, hydropower, marine and hydrokinetic, municipal solid waste	With respect to facilities otherwise eligible for § 45 PTC, allows taxpayers to elect 30% ITC instead.
§ 45 PTC, § 48 ITC, ARRA § 1603	Wind, geothermal, biomass, hydropower, marine and hydrokinetic, municipal solid waste, solar, geothermal, fuel cells, microturbine, small wind, combined heat and power	In lieu of tax credit, authorizes Secretary of Treasury to make grant equal to 30% of credit basis of property otherwise eligible for § 45 PTC or § 48 ITC (10% in the case of geothermal, microturbine, or combined heat and power property).
§ 54C New Clean Renewable Energy Bonds	State and local governments, certain utilities, and clean renewable energy bond lenders	Creates \$1.6 billion in new funding to be used in financing renewable energy production facilities eligible for § 45 PTC.
§ 54D Qualified Energy Conservation Bonds	State and local governments	Creates \$2.4 billion in new funding and expands program to cover grants, loans, and other repayment mechanisms to implement green community programs.
§ 142(i) High-Speed Intercity Rail Facility Bonds	State and local governments	Expands eligible facilities to include facilities using vehicles capable of attaining maximum speed over 150 miles per hour.
§ 25C Nonbusiness Energy Property Credit	Residential qualified energy efficiency property	Extends provision through 2010, increases credit rate to 30%, replaces lifetime caps with \$1,500 aggregate cap for property placed in service in tax years beginning in 2009-10, modifies efficiency standards for qualifying property, and makes expenditures from subsidized energy financing eligible for credit.
§ 25D Residential Energy Efficient Property Credit	Residential solar, geothermal, small wind, and fuel cell property	Eliminates (i) credit caps for solar hot water, geothermal, and wind property and (ii) reduction in credits for property funded from subsidized energy financing.
§ 30C Alternative Fuel Vehicle Refueling Property Credit	Motor vehicles running on electricity or clean-burning fuels	For business property placed in service in tax years beginning in 2009-10, increases maximum credit to \$200K for qualified hydrogen refueling property and \$50K for other property. For nonbusiness property that is not hydrogen refueling property, maximum credit is increased to \$2K. Credit rate is increased from 30% to 50%, except in case of hydrogen refueling property.
§ 30 Credit for Certain Plug-in Electric Vehicles, § 30B Alternative Motor Vehicle Credit, § 30D Plug-In Electric Drive Motor Vehicle Credit	Plug-in, electric drive motor vehicles	Creates new 10% credits for (i) low-speed vehicles, motorcycles, and 3-wheeled vehicles and (ii) certain conversions of nonqualified vehicles into qualified vehicles. Caps § 30B credit at \$7,500 regardless of vehicle weight, eliminates credit for low-speed plug-in vehicles and vehicles weighing 14K pounds or more, and replaces aggregate vehicle credit limit with a per-manufacturer vehicle credit limit. Provides that credits may reduce the AMT.

TAX INCENTIVE	TARGETED INDUSTRIES	CHANGE UNDER RECOVERY PLAN
§ 132 Qualified Transportation Fringe Benefits	Employers providing, and employees receiving, qualified transportation fringe benefits	Increases monthly exclusion for employer-provided transit and vanpool benefits to same level as exclusion for employer-provided parking (in 2009, up to \$230 per month).
§ 48C Credit for Investment in Advanced Energy Property	Manufacturing of certain renewable energy or energy efficient property	Creates new 30% investment tax credit for property used in a project that re-equips, expands, or establishes manufacturing facility for production of types of renewable energy or energy efficient property. Authorizes \$2.3 billion in credits.