

## **U.S. Department of Agriculture (USDA) to Play Key Role in Renewable Energy Finance in 2011**

***Broad Menu of USDA Programs Available for a Variety of Renewable Energy Sectors and Project Types, While Impending Changes to the Section 9003 Biorefinery Assistance Loan Guarantee Program Are Expected to Spur Interest in Advanced Biofuels Projects***

Please click [here](#) for a printable version of this WSGR Alert, including complete summaries of the USDA financing programs detailed below.

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With decades of loan guarantee experience, in-depth knowledge of the rural and agricultural markets central to many renewable energy projects, and relatively stable congressional funding, the U.S. Department of Agriculture (USDA) is poised to play a pivotal role in financing renewable energy projects in 2011 and beyond.

USDA's financial assistance programs have something for everyone, from biofuels and biopower to solar, wind, tidal, geothermal, and energy efficiency projects. The 2008 Farm Bill (the Food, Conservation, and Energy Act of 2008) authorized several USDA programs that provide grants and loan guarantees of interest to developers of renewable energy and energy efficiency projects. The programs, often referred to by the Farm Bill sections in which they are found, include the following:

**Section 9003:** **Biorefinery Assistance Loan Guarantee Program** - Loan guarantees for the development and construction or retrofitting of commercial-scale biorefineries to produce advanced biofuels. Size of guaranteed loan can be up to \$250 million.

**Section 9005:** **Payments to Eligible Advanced Biofuels Producers Program** - Payments to producers of advanced biofuels to encourage expanded production of such biofuels.

**Section 9007:** **Rural Energy for America Program (REAP)** - Loan guarantees for the development and construction of renewable energy systems or energy efficiency improvement projects. Also includes grants for energy audits and renewable energy development assistance and feasibility studies. Loan size is limited to \$25 million and grant size is capped at \$500,000. Applicants must be rural small businesses or agricultural producers.

**Section 9008:** **Biomass Research and Development Program** - Grants for research consortia (which can include companies) to study feedstock development, biofuels and biobased products development, and biofuels development analysis for up to four years.

**Section 9011:** **Biomass Crop Assistance Program (BCAP)** - Payments to agricultural and forest land owners and operators to assist with the collection, harvest, storage, and transportation of eligible biomass material for use in a biomass conversion facility; and payments to producers of eligible biomass crops used for conversion to bioenergy in selected BCAP project areas.

Additionally, USDA's longstanding **Business & Industry (B&I) Guaranteed Loan Program** provides credit enhancement for small- and medium-sized rural commercial projects that might not qualify under the Farm Bill programs listed above. In most cases, the B&I program limits the eligible loan size to \$25 million, but it may be combined with other USDA assistance (e.g., the REAP program).

Finally, USDA's **Rural Utility Service** provides loan guarantees to rural power supply providers such as cooperatives to finance distribution, transmission, and renewable energy projects, including solar, wind, hydropower, biomass, and geothermal projects.

The table below serves as a guide to program eligibility by clean energy sector, with further information on each program included in separate summaries that can be accessed through the hyperlinks above.

SECTOR		9003 BIOREFINERY (LOAN GUARANTEE)	9005 ADV. BIOFUELS (GRANT)	9007 REAP (GRANT)	9007 REAP (LOAN GUARANTEE)	9008 BIOMASS R&D (GRANT)	9011 BCAP (GRANT)	B&I (LOAN GUARANTEE)	RUS (LOAN GUARANTEE)
Biomass	Advanced Biofuels	X	X	X	X	X	X	X**	
	Biopower	X*		X	X			X**	X
	Bioproducts & Specialty Chemicals	X*				X		X**	
Wind				X	X			X**	X
Solar				X	X			X**	X
Energy Efficiency				X	X			X**	
Geothermal				X	X			X**	X
Hydropower				X	X			X**	X
Ocean				X	X			X**	
Electric Vehicles								X**	
Energy Storage				X	X			X**	

\* The proposed rules for the 9003 program contemplate that biorefineries may sell power and co-products, but to be considered an eligible project, the relevant biorefineries must generate more than 70 percent of their revenues from the sale of advanced biofuels.

\*\* Additional feasibility studies may be required for energy-related projects.

**Common Features of the USDA Financing Programs.** Although the USDA programs listed above have their own unique requirements and procedures, they also share many features. For example, the Section 9003, Section 9007, and B&I loan guarantee programs all rely upon eligible private sector lenders to package and service the guaranteed loans and to submit the loan guarantee application to USDA for evaluation and approval. Those programs rely heavily upon a lender's own due diligence in evaluating the creditworthiness of a project, and USDA's application process requires borrowers to submit, at a minimum, information that a prudent lender would require for projects of the same size and type.

Furthermore, eligible projects typically must be located in rural areas (for most programs, this generally means areas with a population less than 50,000), although in some cases USDA may exercise discretion in defining a rural area. USDA also permits project developers to combine assistance from multiple government sources (including other USDA programs), subject to aggregate limits that vary across USDA's programs. USDA strongly encourages borrowers and lenders to confer with USDA program staff, typically at the state level, early in the project development process for guidance on program eligibility and application procedures.

**Impending Rule Changes for Section 9003 Biorefinery Assistance Loan Guarantee Program.** In April 2010, USDA Rural Development issued proposed rules for the Section 9003 program that mirror many of the rules applicable to the B&I loan guarantee program, but with some notable differences that USDA attributed to the much larger potential size of the Section 9003 biorefinery projects. Public comments submitted to USDA at the time identified more than a dozen issues in the design of the proposed rules with the potential to undermine the program's effectiveness. The most noteworthy issues raised in the comments generally reflected desires for greater flexibility in the program and stronger incentives for lender participation.

For example, many commenters expressed serious concerns about:

- the lack of express authorization and a clear mechanism for the loan guarantee to be applied to bond financings (which would greatly expand the available pool of capital for such projects);
- USDA's decision to cap the guarantee at 80 percent of the loan amount and to have a lower cap of 60 percent for larger projects, rather than the 90 percent level authorized in the Farm Bill;
- the requirement that the lender retain in its portfolio at least 50 percent of the unguaranteed portion of the loan (unlike the B&I and REAP loan guarantees, which only require lenders to retain 5 percent of the unguaranteed loan);
- the requirement that the guaranteed and unguaranteed portions of the loan carry a blended interest rate no more than 1 percent higher than the interest rate of the guaranteed portion (which would significantly constrain lenders' abilities to price the unguaranteed portion commensurate with its risk);
- the first lien on project collateral granted to USDA for its guarantee and the absence of collateral carve-outs for working capital; and
- the U.S. citizenship and rural area requirements, which can preclude beneficial projects from being undertaken.

There are preliminary indications that USDA may address some or all of those concerns in the final rule, which is expected to be issued by early January. Other actions USDA may take to modify the proposed rules in response to the public comments include:

- relaxing the requirement that all interest rates for a loan be harmonized as either fixed or variable;
- expanding the definition of "eligible project costs" to include professional service fees and borrower contributions of property and equipment;
- broadening the cash equity requirement to include borrower-owned processor technology (including intellectual property) contributed to a project;
- changing the requirement that 70 percent of project revenues be derived from the sale of advanced biofuels to one based on the energy content of a project's production (to avoid complications arising from price volatility of biorefinery products); and
- expanding the preference for local ownership of a project beyond the 20-mile radius defined in the proposed rule.

With moderate changes consistent with such comments, USDA's Section 9003 program may become the most viable government loan guarantee option for large-scale advanced biofuels projects. Consequently, many eyes will be on USDA to see what steps it takes to address the program design issues raised by industry participants so as to make the program more effective and attractive to private sector participation.

**FY 2011 Funding Levels and Upcoming Reauthorization of the Farm Bill.** The budgetary stalemate in Congress has created uncertainty about the levels of discretionary (or annually appropriated) funding in FY 2011 that will be available for the USDA programs described in this WSGR Alert. Owing to fiscal pressures, some reduction in discretionary funding is likely from FY 2009 and FY 2010 levels, but the mandatory funding provided by the 2008 Farm Bill is expected to provide relatively stable funding through FY 2012, when the Farm Bill and its energy-related programs will be up for reauthorization. We expect that industry participants will also have a keen interest in the 2012 Farm Bill reauthorization process to ensure that energy programs remain a focus of USDA's efforts.

Wilson Sonsini Goodrich & Rosati's energy and clean technology practice would be pleased to help you evaluate the opportunities associated with the USDA programs addressed in this WSGR Alert.

Wilson Sonsini Goodrich & Rosati also maintains the Clean Tech Resource Center, an online tool that provides clean technology entrepreneurs and companies with a searchable, easy-to-use source for federal and state government funding opportunities and guidance. The Clean Tech Resource Center is located at <http://www.wsgr.com/cleantech>.

For further information, please contact one of the project finance or government initiatives experts listed below.

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