



Public Finance Update

ALERT

New Clean Renewable Energy Bonds: IRS Notice 2015-12 Application Submission and Requirements

The Internal Revenue Service (“IRS”) recently released Notice 2015-12 (the “Notice”), which solicits applications for allocations of the approximately \$1.4 billion remaining available amount of national bond volume limitation authority to issue new clean renewable energy bonds (New CREBs). Applications for projects to be owned by public power providers must be filed with the IRS no later than June 3, 2015. Applications for projects to be owned by governmental bodies and cooperative electric companies may be submitted beginning March 5, 2015. This Notice also provides guidance on the following: (1) eligibility requirements that a project must meet to be considered for a volume cap allocation; (2) application requirements and the application form for requests for volume cap allocations; (3) the method that the IRS will use to allocate the volume cap; and (4) certain other aspects of the applicable law and interim guidance in this area.

The types of projects that can be financed with New CREBs include:

- Wind energy facilities
- Closed-loop biomass facilities
- Open-loop biomass facilities
- Geothermal energy facilities
- Solar energy facilities
- Small irrigation power facilities
- Landfill gas facilities
- Trash combustion facilities
- Marine and hydrokinetic energy facilities
- Qualified hydropower facilities

Project Eligibility Requirements

A facility financed with New CREBs must be owned by a public power provider, a governmental body or a cooperative electric company. A public power provider means a “State Utility” with a “Service Obligation” (as such terms are defined in Section 217 of the Federal Power Act). The New CREBs must be issued by “qualified issuers.” A “qualified issuer” is: (1) a public power provider; (2) a cooperative electric company; (3) a governmental body;

New Clean Renewable Energy Bonds (New CREBs)

Permitted Issuers

All types of state and local government issuers, municipal utilities, electric cooperatives and certain cooperative lenders.

Permitted Issue Types

Tax Credit Bonds--holder receives a credit against federal tax in lieu of interest payments equal to 70% of the published tax credit rate.

Direct Pay Bonds--issuer receives a payment from the federal government equal to 70% of published tax credit rate

Project Eligibility Requirements

A broad range of renewable generation facilities.

Allocation of Volume Cap

- Governmental bodies and cooperative electric companies:

Approximately \$597 million to projects owned by governmental bodies and approximately \$280 million to projects owned by cooperative electric companies.

Allocated on first-come, first-served basis subject to volume limit methodology.

- Public power providers:

Approximately \$516 million to projects owned by public power providers.

Allocated using a pro rata allocation method if oversubscribed.



(4) a New CREB lender; or (5) a not-for-profit electric utility that has received a loan or loan guarantee under the Rural Electrification Act. A New CREB lender means a lender which is a cooperative that is owned by, or has outstanding loans to, 100 or more cooperative electric companies and was in existence on February 1, 2002, including any affiliated entity which is controlled by such a lender.

Application Requirements

An application must be submitted by a qualified issuer. The application must identify the qualified issuer and must demonstrate that the entity constitutes a qualified issuer.

Each Application must contain the following information:

- i) **Qualified owner.** Each application must identify the public power provider, governmental body, or cooperative electric company expected to own the qualified renewable energy facility.
- (ii) **Qualified project.** Each application must describe in reasonable detail each of the qualified renewable energy facilities constituting the project to be financed with the proceeds of the New CREBs. The application must indicate the location of each project, the expected date that the acquisition and construction of each project will commence and the expected date that each project will be placed in service.
- (iii) **Regulatory approvals.** The application must provide that all necessary federal, state and local approvals for each project has been obtained or include a certification that the applicant reasonably expects to receive all required approvals in time to permit issuance of the New CREBS prior to the expiration of the allocation.
- (iv) **Plan of financing.** The application must contain a reasonably detailed description of the plan of financing for each project, including the amount of New CREBS, all reasonably expected sources of financing for the project and how all sources will be allocated to the project, and documentation from an independent third party knowledgeable about the marketability of municipal bonds, such as an investor, a credit enhancer, underwriter or financial advisor, evidencing that the proposed bonds are reasonably expected to be marketed prior to the expiration of the volume cap allocation.

Dollar amount of allocation requested. The application must specify the dollar amount of the volume cap requested for the project.

An application must be prepared and submitted in accordance with the Notice. The application must be prepared in substantially the form attached to the Notice as Appendix A. The Notice, including Appendix A may be found in [Bulletin No. 2015-12](#)



Application submission address. An Application must be submitted by hard copy accompanied by a copy of the application in PDF format on compact disc (“CD”) by US mail or private delivery service to:

Internal Revenue Service SE:T:GE:TEB CPM
Attention: Kenneth Stengel
1122 Town & Country Commons
Chesterfield, MO 63017

Allocation of Volume Cap

Allocation for governmental bodies and cooperative electric companies. The full amount of volume cap requested will be allocated on a first-come, first serve basis to governmental bodies and cooperative electric companies subject to a limit per applicant (or group of related applicants) equal to the greater of (a) \$40 million or (b) 20% of the amount available for projects to be owned by governmental bodies and cooperative electric companies, as applicable.

Allocation methodology for public power providers. The amount of volume cap allocated to a project for a public power provider will bear the same proportion to the national volume cap allocated to public power providers as the amount of volume cap requested for that project bears to the total amount of volume cap requested for all projects by public power providers that are received.

Expiration of allocation. An allocation of New CREBs volume cap is valid for 180 days from the date of the letter issuing the allocation. An allocation of unused volume cap will expire and revert back to the IRS on the first day following 180 days after the allocation date. The IRS does not expect to grant extensions of this expiration date.

For Further Information. This summary is designed to inform the reader, in a general manner, of the substance of this IRS Notice, and is not intended to be comprehensive. Anyone with questions should contact publicfinance@orrick.com, or one of the members of our Public Finance Tax Group listed below:

Andrea Ball	212-506-5089
Chas Cardall	415-773-5449
Richard Chirls	212-506-5250
Dean Criddle	415-773-5783
Richard Moore	415-773-5938
Ed Oswald	202-339-8438
Aviva Roth	202-339-8636
Scott Schickli	503-943-4830
Larry Sobel	213-612-2421
John Stanley	415-773-5713
Winnie Tsien	213-612-2336
George Wolf	415-773-5988

