

## **CLEAN RENEWABLE ENERGY BONDS**

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Under the recently enacted federal Clean Renewable Energy Bond (“CREB”) program, electric cooperatives, public power systems and municipal utilities can issue or benefit from the issuance of clean renewable tax credit bonds (“CREBs”) to finance renewable energy projects as a less expensive alternative to traditional tax-exempt bonds. To a large extent, the CREB program is modeled after the Qualified Zone Academy Bond (QZAB) program enacted in 1998 to provide tax incentives for the rehabilitation of public school buildings.

### **Key Elements of the CREB Program**

- **Bond Authorization** – Limited to \$800 million for the time period between January 1, 2006 and December 31, 2007 and allocated by the Secretary of the U.S. Treasury Department (the “Secretary”) with the limitation that no more than \$500 million of CREBs can be allocated for projects of governmental entities.
- **Allocation from Secretary** – The issuer of CREBs must receive an allocation from the Secretary of the \$800 million available for CREBs. The Secretary will presumably promulgate regulations regarding how the \$800 million will be allocated. Legislation does not provide for any specific state-by-state allocation.
- **Qualified Issuer** – The following entities can issue CREBs:
  - A clean renewable energy bond lender;<sup>1</sup>
  - A cooperative electric company;<sup>2</sup> or
  - A governmental body.<sup>3</sup>
- **Qualified Borrower** – The following entities can borrow CREB proceeds from the qualified issuer:
  - A mutual or cooperative electric company (as described above); or

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<sup>1</sup> A clean renewable energy bond lender is a lender which is a cooperative which owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and shall include any affiliated entity which is controlled by such lender.

<sup>2</sup> A cooperative electric company is a mutual or cooperative electric company described in section 501(c)(12) or section 1381(a)(2)(C), or a not-for profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act.

<sup>3</sup> A governmental body is any State, territory, possession of the United States, the District of Columbia, Indian tribal government and any political subdivision thereof.

- A governmental body (as described above)
- Federal Tax Credit – An owner of a CREB is entitled to a tax credit which is designed to be in lieu or substitution for any interest payments on the CREBs. The Secretary will set the rate of the credit on a daily basis at an amount that permits the issuance of the CREBs with a specified maturity or redemption date without discount and without interest cost to the issuer.
- Value of Credit is Income – A CREB holder is able to deduct the amount of the tax credit from its total income tax liability. However, the value of the tax credit is treated as taxable income. Therefore, if the credit is worth \$100 and the bondholder is in the 35% tax bracket, the effective value of the credit would be \$65.
- Principal and Tax Credit Cannot be Separated – The legislation does not permit the CREB principal to be stripped from the tax credit and the components to be sold separately.
- Ratable Principal Amortization Required – A CREB must provide for an equal amount of principal to be paid by the qualified issuer during each calendar year that the CREB issue is outstanding.
- Use of Proceeds– 95% or more of the CREB proceeds must be used for capital expenditures by qualified borrowers for qualified projects. “Qualified projects” means any of the following qualified facilities that produce electricity (generally required to be placed in service before January 1, 2009):
  - Wind facilities;
  - Closed-loop biomass facilities;
  - Open-loop biomass facilities;
  - Geothermal or solar energy facilities (for solar energy facilities placed in service before January 1, 2006); and
  - Small irrigation power facilities.
- Refinancing of Qualified Project with CREBs - A qualified project may be refinanced with proceeds of CREBs if the indebtedness being refinanced was incurred by the qualified borrower after the date of enactment of the CRE legislation.
- Reimbursement of Qualified Borrower – CREBs may be used to reimburse a qualified borrower for amounts paid after the date of enactment of the CRE legislation if:
  - The qualified borrower declares its intent to reimburse its expenditures with CREBs prior to the payment of the original expenditure;

- Not later than 60 days after payment of the original expenditure, the qualified issuer adopts an official intent to reimburse the original expenditure with CREB proceeds; and
- The reimbursement is made not later than 10 months after the date the original expenditure was paid.
- Maximum Term of CREBs – In each calendar month, the Secretary shall determine the maximum term for the CREBs issued during the following calendar month. The maximum term will be the term the Secretary estimates will result in the present value of the obligation to repay the principal on the CREBs being equal to 50% of the face amount of the CREBs. This present value shall be determined without regard to the requirement that a CREB must be part of an issue which provides an equal amount of principal to be paid by the qualified issuer during each calendar year that the issue is outstanding. This present value will be determined using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. (If the term so determined is not a multiple of a whole year, such term will be rounded to the next highest whole year.)
- Pooled Financing Bonds – The qualified borrower must enter into a written loan commitment for any portion of a pooled financing CREB issue before such CREBs are issued.
- Use of CREB Proceeds – The qualified issuer of the bonds must reasonable expect that:
  - at least 95% of the CREB proceeds must be spent for one or more qualified projects within 5 years from the date of issuance;
    - Upon a request submitted prior to the 5 year spend-down period, the Secretary may extend such period if the issuer demonstrates that the failure to satisfy the 5-year requirement was due to reasonable cause and the related projects will continue to proceed with due diligence.
    - To the extent that less than 95% of the proceeds of the CREB issue is spent within 5 years of the date of issuance (of if an extension has been obtained by the end of the extension period), the issuer must redeem the CREBs within 90 days after the end of such period (The amount of the nonqualified CREBs required to be redeemed shall be determined in the same manner as section 142 of the Code).
  - a binding commitment with a third party to spend at least 10% of the CREB proceeds will be entered into within 6 months from the date of

issuance or, in the case of a clean energy bond the proceeds of which are to be loaned to 2 or more qualified borrowers, such binding commitment will be entered into within the 6-month period beginning on the date of the loan of such proceeds; and

- such projects will be completed with due diligence and the CREB proceeds will be spent with due diligence.
- Arbitrage Requirements Apply to CREBs – The issuer must satisfy the “arbitrage” requirements of section 148 of the Code with respect to the proceeds of a CREB issue or bonds of such issue will not be considered CREBs.
- Issuers Must Submit Reports – Issuers of CREBs must submit information reports similar to those required by section 149(e) of the Code.
- Differences from QZAB Program – Under both the QZAB and CREB programs, investors in QZABs and CREBs receive a federal tax credit in lieu of receiving tax-exempt interest. Unlike QZABs, CREBs do not have a requirement for private contribution. Further, any taxpayer, including individual investors, can qualify for tax credits under the CREB program. Under the QZAB program, the only taxpayers that qualify for tax credits are banks, insurance companies and corporations actively engaged in the business of lending money.
- Other Tax Considerations--The credit on CREBs is measured in quarterly installments (March 15, June 15, September 15 and December 15). The CREB credit allowed in any taxable year shall not exceed the excess of: the sum of the regular tax liability plus the tax imposed by section 55 of the Code; over the sum of certain allowable credits.