

**Energy, Clean  
Technologies and  
Climate Change Group**

For further information on the Energy, Clean Technologies and Climate Change group or this update, please contact one of our members:

Stephen H. Armstrong  
312.977.4479  
sharmstrong@uhlaw.com

Thomas F. Brett II  
312.977.4879  
tfbrett@uhlaw.com

Ronald S. Cope  
312.977.4461  
rscope@uhlaw.com

Leslie M. Darling  
312.977.4383  
lmdarling@uhlaw.com

J. Timothy Ramsey  
312.977.4428  
jtramsey@uhlaw.com

Jamie A. Robinson  
312.977.4456  
jarobinson@uhlaw.com

Roger H. Stein  
312.977.4373  
rhstein@uhlaw.com

Robert S. Winner  
312.977.4326  
rswinner@uhlaw.com

Jennifer L. Zordani  
312.977.4142  
jlzordani@uhlaw.com

David R. Brown  
312.977.4426  
drbrown@uhlaw.com

Elizabeth A. Davis  
312.977.4457  
eadavis@uhlaw.com

Jon P. Sanders  
312.977.4484  
jpsanders@uhlaw.com

Daniel P. Strzalka  
312.977.4341  
dpstrzalka@uhlaw.com

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## Energy Update

### ***The USDA BioRefinery Assistance Program: Is the Program Working?***

*by Robert S. Winner*

#### **Background**

In June 2008, the U.S. Department of Agriculture (USDA) created a new program through which it offered loan guarantees and grants of up to \$250 million and \$150 million, respectively, for the development of commercial scale biorefineries producing "advanced biofuels," meaning fuel derived from renewable biomass such as cellulosic ethanol or butanol. This program, known as the BioRefinery Assistance Program, was approved under Section 9003 of the Food, Conservation and Energy Act of 2008 (the Farm Bill, Public Law No. 110-234). The initiative provides guarantees to qualified applicants who plan to develop, construct or retrofit viable commercial-scale biorefineries producing advanced biofuels using "first of a kind" technology, in a rural area. Commercial-scale biorefineries generally process roughly 700 tons or more of non-food feedstock per day, with an output of approximately 15-30 million gallons a year of biofuels. A rural area is defined under the notice of funds availability as an area of a state not in a city or town that has a population of 50,000 or more inhabitants, according to the latest census numbers.

The program was created to foster the development of new technologies to create advanced biofuels resulting in, according to commentary, numerous benefits to United States at large, including greater energy independence; better resource conservation and public health; diverse markets for agricultural products, forestry products and agricultural waste material; and increased economic development in rural America. There are other benefits as well. According to some, the program responds to those lenders that have expressed an unwillingness to offer loans to an industry without a commercial product. It also provides incentives for ethanol producers to move beyond corn-based ethanol, as many of those corn-based ethanol producers have failed because of poor bets on corn prices.

#### **Qualification and How it Works**

The application process is extensive and complex. Applicants must complete a written application form and provide information including, but not limited to:

- background information;
- a feasibility study;
- an economic analysis;
- a business plan;
- a technical assessment;
- environmental information;
- lender analysis; and
- financing and loan information.

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Once the application is submitted, the USDA performs its own due diligence, prepares a project evaluation report and makes a recommendation to the National Office Executive Loan (NOEL) committee as whether to issue a "conditional commitment" to the lender. An applicant's eligibility for loan guarantees or grants are based on the following factors: (a) technical and economic feasibility based on a study of the project conducted by an independent third party; (b) potential market for the fuel; (c) level of financial participation by the applicant; (d) whether applicant is using new feedstock; (e) whether applicant will work with producer associations or cooperatives; (f) whether the proposed process will positively impact resource conservation, public health, and the environment; (g) potential for rural economic development; (h) whether the proposed location for the biorefinery has other similar facilities; and, (i) if the project is replicable and scalable for commercial use.

The applicant will also need to pass a technical review from the USDA / DOE and an environmental review pursuant to the National Environmental Policy Act (NEPA). Each proposal is determined on a case-by-case basis to determine the level of review.

If the applicant is approved, the NOEL committee and the USDA draft a conditional commitment to memorialize the guarantee amount. Then the lender and borrower review the loan documents, the USDA issues a Loan Note Guarantee (LNG) to the lender and the parties close the deal.

For grants, funding cannot exceed an amount equal to 30 percent of the cost of each project. For loan guarantees, funding cannot exceed 80 percent of the project costs if the loan amount is equal to or less than \$80 million. If the loan amount is between \$80 million to \$125 million, the maximum guarantee is 70 percent for the amount in excess of \$80 million. If the loan amount is equal to or greater than \$125 million, the maximum guarantee allowed is 60 percent for the entire loan amount. The length of a loan guaranteed would be the lesser of 20 years or 85 percent of the useful life of the project.

### Current Status

During the previous two application periods ending December 31, 2008 and April 30, 2009, the USDA received about seventeen applications, five during the first application and twelve during the second application period. To date, only three loan guarantees have been approved<sup>1</sup>, four are currently being reviewed and ten were rejected (due to incomplete applications, failure to find a lender, or ineligibility). Of the seventeen applications received, eight requested loan guarantees of less than \$50 million, four requested loan guarantees between \$50 million and \$100 million, and five requested loans of over \$100 million. It is estimated that of the four applications currently under review, only one or two will be accepted because of limited available funds. Lenders have responded to the USDA asking for an increase in the amount guaranteed.

### Future of the Program

Although substantively the future of the Program looks bright, there are some legislative and political hurdles its sponsors must overcome. The grant aspect of the Program may not continue into the next fiscal year because financial support for grants under the Farm

CHICAGO  
3500 Three First National Plaza  
70 W. Madison Street  
Chicago, IL 60602  
312.977.4400  
312.977.4405 fax

SPRINGFIELD  
400 East Jefferson Street  
Suite 1200  
Springfield, IL 62701  
217.544.7000  
217.544.7950 fax

WASHINGTON, D.C.  
1500 K Street, NW  
Suite 250  
Washington, DC 20005  
202.639.7500  
202.639.7505 fax

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Bill is based primarily on discretionary funding. In order to provide grants next year, Congress must first reapprove the grant funds. In contrast, the guaranteed loan portion of the Program will likely continue, at least into the next fiscal year. These guarantees are based upon mandatory funding of \$75 million and \$245 million allotted for fiscal years 2009 and 2010, respectively. The Farm Bill mandates that funding for loan guarantees be available through fiscal year 2012. However, Congress could ultimately rescind the mandatory funding allocation and convert to discretionary funding. This could cause the loan guarantee program to be discontinued.

Assuming the guarantee program will be renewed, the USDA will be accepting public comments starting October 3, 2009 on how to administer new regulations related to the Program. It is expected that there will again be additional application deadlines; however, to date, no such dates have been set.

*For more information about the BioRefinery Assistance Program, contact Robert Winner at 312.977.4326 or [rswinner@uhlaw.com](mailto:rswinner@uhlaw.com).*

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<sup>1</sup> On January 16, 2009, the USDA agreed to provide an \$80 million loan guarantee to Range Fuels, Inc. of Soperton, Georgia. Range Fuels focuses on low carbon fuels and the production of cellulosic ethanol. The loan guarantee will fund the construction of a commercial cellulosic ethanol plant, which will begin production in 2010. On June 24, 2009, the USDA approved a second loan guarantee of \$25 million to SoyMor Biodiesel, LLC of Minnesota. The guarantee will fund SoyMor's development of technology used in converting various types of feed stocks, such as unrefined corn oil waste product from ethanol facilities, into biodiesel. Most recently, on December 4, 2009 the USDA approved a third loan guarantee of \$54.5 million to Sapphire Energy to demonstrate an innovative integrated algae biofinery process.

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CHICAGO  
3500 Three First National Plaza  
70 W. Madison Street  
Chicago, IL 60602  
312.977.4400  
312.977.4405 fax

SPRINGFIELD  
400 East Jefferson Street  
Suite 1200  
Springfield, IL 62701  
217.544.7000  
217.544.7950 fax

WASHINGTON, D.C.  
1500 K Street, NW  
Suite 250  
Washington, DC 20005  
202.639.7500  
202.639.7505 fax