



## Deadline Approaching: U.S. Department of Energy Now Accepting Applications for \$25 Billion in Direct Loans

November 24, 2008

Earlier this month, the U.S. Department of Energy (the "DOE") began accepting applications from automakers and suppliers for loans to be issued under the \$25 billion Advanced Technology Vehicles Manufacturing Assistance Program. The goal of the program is to help automakers and suppliers obtain the financing they need to retool older plants and purchase equipment in order to produce energy efficient vehicles. While recent events in Washington have created some uncertainty regarding this program, we believe that suppliers interested in obtaining loans under the program should strongly consider submitting an application.

The DOE will accept loan applications in tranches based on calendar quarters. In order to be considered among the first tranche, suppliers must submit their applications by December 31, 2008. The DOE has not prescribed a specific form for the applications but, instead, has described the application requirements in recently released regulations. The timing for issuance of loan proceeds will depend on when applications are submitted, application thoroughness and attainment of any required permits or approvals. Dykema attorneys are available to assist suppliers in the preparation and submission of their applications in time to meet the upcoming deadline.

### Background

Section 136 of the Energy Independence and Security Act of 2007 ("EISA") authorizes the DOE to make grants and direct loans to eligible applicants for projects that reequip, expand, or establish manufacturing facilities in the United States to produce qualified advanced technology vehicles or qualifying components and also for engineering integration costs associated with such projects. The aggregate amount to be loaned under the program is \$25 billion.

In November, the DOE issued regulations to implement and administer the loan and grant programs authorized by Section 136 (the "Regulations"). The Regulations provide details regarding eligibility criteria, application procedures, loan terms and conditions, and interpretations of other provisions that Section 136 requires the DOE to address.

While Section 136 authorizes the DOE to issue both grants and loans, the Regulations focus primarily on the loan program and, as of the date of this alert, only the loan program has been funded. Therefore, this alert focuses on the loan program. Furthermore, Section 136 authorizes the DOE to make loans to both automobile manufacturers and suppliers. Domestic automobile manufacturers have already submitted to the DOE their applications for loans under Section 136, therefore, this alert focuses on loans available to suppliers.

### Automobile Suppliers — Qualifying Components

To be eligible for a direct loan, a supplier must use the proceeds toward the cost of reequipping, expanding or establishing manufacturing facilities in the U.S. to produce "qualifying components" or the costs of "engineering integration" performed in the U.S. related to qualifying components.

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A “qualifying component” is a component that is (1) designed for “advanced technology vehicles” and (2) installed for the purpose of meeting the performance requirements of advanced technology vehicles. In addition to being used in an advanced technology vehicle, a qualifying component may also be used in other conventional vehicles or in aftermarket sales. In making a determination on component eligibility, the DOE will consider factors such as the overall impact of the component and extent to which it contributes to the efficiency of advanced technology vehicles.

“Advanced technology vehicles” are passenger automobiles and light trucks that generally have at least 25% better fuel economy than vehicles with substantially similar attributes. At this time, no specific vehicles have been identified as being advanced technology vehicles.

“Engineering integration costs” include the cost of engineering tasks related to (1) incorporating qualifying components into the design of advanced technology vehicles and (2) designing tooling and equipment and developing manufacturing processes and material suppliers for production facilities that produce qualifying components or advanced technology vehicles.

## Qualifying Applicants

The Regulations require that:

- ▶ applicants be financially viable;
- ▶ the loan proceeds are expended efficiently and effectively; and
- ▶ applicants submit written assurance that laborers and mechanics employed by contractors or subcontractors during construction, alteration or repair of facilities are paid prevailing wages.

Section 136 requires the DOE to determine whether an applicant is financially viable. A “financially viable” applicant is defined as one having a reasonable prospect that it will be able to make payments of principal and interest on the loan when due and has a net present value that is positive, taking all costs, existing and future, into account. The Regulations describe a number of factors the DOE will consider when determining whether an applicant is financially viable. These include the applicant’s EBITDA, liquidity and financial projections as well as a number of ratios (including debt-to-equity, debt to EBITDA, interest coverage and fixed charge coverage).

In evaluating whether to approve a loan, the DOE will consider factors such as the technical merit of the proposed advanced technology vehicle or the related component with greater weight given to certain factors including the following:

- ▶ improved fuel economy above that required for an advanced technology vehicle;
- ▶ potential contributions to improved fuel economy of the U.S. light-duty vehicle fleet;
- ▶ promotion of advanced fuels (e.g. E85, ultra-low sulfur diesel);
- ▶ the likelihood that the loan will be repaid in full; and
- ▶ the age of the facilities, with priority given to facilities that are oldest or have been in existence for at least 20 years.

## Loan Terms

Loans issued under the program may fund up to 80% of a project’s overall cost and may be used to fund only costs not yet paid when the application is submitted to the DOE or incurred after closing of the loan.

Loans will have an interest rate equal to the cost of funds to the U.S. Department of Treasury for obligations of comparable

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maturity. The loans will have a term equal to the projected life of the funded project, not to exceed 25 years. The DOE also has the discretion to defer principal (but not interest) payments for a period up to five years after the funded project becomes operational. A supplier will be required to pay a fee of 10 basis points of the principal amount of the loan at the closing. No other fees will be collected; therefore, a supplier will not be assessed any fees if its loan application is not approved. The DOE will have a first lien on all property acquired with loan funds (this may be waived by the DOE) and on any other property pledged to secure the loan.

## Loan Applications

The DOE does not plan on issuing an application form but rather describes in the Regulations what information must be included in an application for a loan. An applicant will be required to provide extensive information regarding the proposed project including its cost, a related business plan and how it will meet the eligibility requirements of the loan program.

The applicant will also be required to submit to the DOE a comprehensive environmental report, with a level of detail commensurate with the complexity of the proposal and its potential for environmental impact.

## Dykema Advantage

Dykema is uniquely positioned to assist automotive suppliers wishing to take advantage of this loan program. Dykema has one of the most extensive automotive legal practices in the United States. We grew up with the automotive industry and have been an active player for more than 75 years, with over 60 automotive industry attorneys in Michigan alone ready to serve you. Our insider's knowledge of the automotive industry and its concerns allows us to effectively represent our clients in the boardroom, the courtroom or at the negotiation table.

This alert describes only the highlights of the Advanced Technology Vehicles Manufacturing Assistance Program, is not intended to be, and cannot be relied upon as legal advice for any purpose. Furthermore, the related DOE rules are only in interim status and may yet change based on comments received.

For more information on Dykema's Automotive practice, please visit [www.dykema.com/automotive](http://www.dykema.com/automotive).

If you have any questions about this program, please contact:

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