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## The Stimulus Offers Vast Opportunities to the Well-Prepared

The passage of the American Recovery and Reinvestment Act of 2009 ("ARRA"), better known as the "Stimulus" (Pub. L. No. 111-5), means that, over the next few years, public and private entities operating in the energy, telecommunications, and transportation fields will see an aggregate influx of billions of dollars in grants, loans, and tax or bonding incentives. In seeking ARRA dollars, slow and steady will not win the race – unless you started running several years ago. The ARRA's emphasis is on fast-moving projects that can generate immediate job creation, reduce the nation's carbon footprint, increase our reliance on renewable and carbon-neutral energy sources, and create or rebuild our infrastructure. Thus, while the available funding amounts are unprecedented, those who can harness their resources to implement projects on a "hurry-up" basis are most likely to qualify for Stimulus dollars.

## Energy

The ARRA offers a wide array of opportunities relating to transmission, energy efficiency, renewable energy, and job creation. The Department of Energy ("DOE") alone has been allocated more than \$35 billion in funds to disperse, and Secretary Chu has pledged that 70% of those funds will be distributed by the end of next year. (In other words, \$24.5 billion will be distributed over the next 20 months, meaning that, during that time, an extraordinary average of more than \$40 million per day is to be spent on Stimulus-related energy projects.) Other agencies have significant pieces of the energy pie, as well. Some of the funds will go to states and provide a massive cash infusion for existing programs. Both the federal agencies and the states are likely to be scrambling to find good projects to fund, given the tight timelines for disbursement of moneys.

The ARRA commits \$16.8 billion to the Energy Efficiency and Renewable Energy Program at the DOE, including:

- \$3.2 billion in a block grant program for energy efficiency and conservation projects (mostly directly allocated to specific communities, but with \$400 million competitively available through the DOE);

- \$3.1 billion in additional funds to supplement the pre-existing State Energy Program ("SEP") (to use for energy efficiency, renewable energy and alternative transportation programs in states with some form of rate decoupling); and
- \$5 billion in grants to states for low-income weatherization assistance.

The ARRA also provides nearly \$10 billion dollars for the "greening" of various federal buildings and facilities and provides significant amounts for fuel efficiency and local transportation electrification efforts, as well as tax incentives for the use of fuel efficient or plug-in vehicles.

The ARRA offers significant funding for energy infrastructure development. Among these provisions are:

- enhanced borrowing authority of \$3.25 billion each for the Bonneville Power Administration and the Western Area Power Administration to build transmission in conjunction with accessing renewable energy resources;
- \$6 billion in loan guarantees to fund approximately \$60 billion worth of transmission or renewable energy projects; and
- \$4.5 billion that can be used for smart grid demonstration projects.

The bill also provides for workforce training in the energy industry, including \$500 million in "green jobs" and \$100 million for smart grid workforce training, with other significant pots of money available in other programs.

Finally, the ARRA promotes new or increased financing mechanisms for the development of renewable energy projects and offers increased opportunities for public-private partnerships. Under the Stimulus, last year's allocation of funds for New Clean Energy Renewable Bonds ("New CREBs") is increased by \$800 million, to a total of \$2.4 billion. There are also numerous significant tax incentives for renewable energy, including Renewable Energy Production Tax Credits ("PTC") and Investment Tax Credits ("ITC"), as well as enhanced opportunities for governmental entities to flow through tax credits to private developers. For more information, contact any of our [Energy Practice attorneys](#).

## Telecommunications

The Stimulus offers unique funding opportunities for broadband infrastructure and related projects. Under the ARRA, \$4.7 billion dollars is appropriated to the Department of Commerce's National Telecommunications and Information Administration ("NTIA") for a new "Broadband Technology Opportunities Program,"

("BTOP"), and \$2.5 billion dollars to the Department of Agriculture's Rural Utility Service ("RUS") for grants, loans, and loan guarantees for broadband infrastructure. The ARRA also directs the Federal Communications Commission ("FCC") to complete, within a year of enactment, a national broadband plan. Implementation of the ARRA's broadband grant provisions is moving rapidly. The NTIA and RUS are holding a series of joint public meetings to discuss the ARRA's broadband programs, and written public comment on how the NTIA and RUS should implement those programs, including comment on grant application requirements and application evaluation criteria, are due by April 13. For additional information, please read our [Memorandum on Broadband-Related Provisions of the American Recovery and Reinvestment Act of 2009](#) and/or contact any of our [Telecommunications Practice attorneys](#).

## Transportation

The ARRA provides a short-term boost for "shovel-ready" projects in all transportation modes, with high-speed rail projects getting the largest increase (to \$8 billion) because of President Obama and Vice President Biden's interest in high-speed rail. Funds for highway projects, which are generally being apportioned to state agencies, total \$27.5 billion, a 66% increase over this year's appropriation level. Mass transit grants for rail and bus systems total \$8.4 billion, an 82% increase over current appropriations, and Amtrak subsidies total \$1.3 billion, up 87%. The firm's public airport clients became eligible for an extra \$1.1 billion in Federal Aviation Administration ("FAA") airport grants, just a 31% increase over current funding. Most all funding flows into established transportation accounts at the Department of Transportation ("DOT"), but Congress has added \$1.5 billion for a new competitive grant program for highway, bridge, mass transit, passenger or freight rail, and port infrastructure projects, "or some combination thereof."

DOT Secretary LaHood quickly formed a Transportation Investment Generating Economic Recovery ("TIGER") team to assure that economic recovery funding is rapidly made available to eligible agencies and that project spending is monitored and transparent. Each of the modal administrations within the DOT has been developing criteria for determining eligible projects. At the Department of Homeland Security, Secretary Napolitano has been establishing priorities for spending \$1.1 billion in ARRA funding to construct baggage screening systems in the basement of airline airports, and planning an additional \$150 million for (sea)port security grants and \$200 million for installing non-intrusive detection systems at ports.

In addition to the ARRA funds, which are generally 100% "no match" grants from Treasury General Funds, the FY 2009 Omnibus Appropriations Act includes \$71.5 million for transportation programs, an approximately 4.9% increase over FY 2008, and

includes 1,293 earmarked projects totaling \$2.912 billion. That legislation provides funding from March through September 2009.

On February 26, President Obama released his FY 2010 Budget Outline, which raised concerns from Congressional transportation leaders and from industry/user groups. Detailed information on all transportation accounts is promised for April. At the “inside-the-Beltway” level, the Administration proposes to delete the “firewalls” within the budget process that have protected airport, highway and transit funding levels from having to compete with all other government “discretionary” programs. Transportation program advocates plan to challenge this controversial proposal. The only important emphasis in the FY 2010 proposal within aviation is for increased funding (totaling \$800 million) for the NextGen air traffic control modernization program. In addition, there is a promise of a revised formula for Essential Air Service (EAS) subsidies for airlines serving isolated areas. For more information regarding the transportation provisions of the Stimulus, please contact any of our [Transportation Practice attorneys](#).

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The firm is assisting clients on these Stimulus opportunities. If you would like further information, please contact any Spiegel attorney with whom you work or a member of the appropriate practice area.

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SPIEGEL & MCDIARMID LLP

From the firm’s founding in 1967, the lawyers of Spiegel & McDiarmid LLP have sought to practice law in accordance with three very basic propositions:

- ▶ Public sector and consumer-owned entities are entitled to legal representation of the highest quality, at a cost they can afford. No public agency or consumer-owned enterprise should be forced to operate from a position of weakness because of its legal representation.
- ▶ In any technical area, lawyers should be conversant with more than just the fine points of the law. We must be able to communicate effectively with clients, expert witnesses, judges, and others about highly technical matters.
- ▶ Our clients are entitled to lawyers who approach problems with a broad perspective. Narrow thinking leads to narrow solutions, and narrow solutions are usually poor solutions.