

## Treasury Awards Allocation for New Clean Renewable Energy Bonds

On Oct. 27, 2009, the U.S. Department of the Treasury announced the allocation of \$2,209,204,555 of issuing authority for New Clean Renewable Energy Bonds (New CREBs) to 805 applicants nationwide (Oct. 27 Announcement).<sup>1</sup> As a result, qualified issuers receiving a portion of such allocation may issue New CREBs to finance specified renewable energy electricity producing projects. These original allocations will revert to the IRS, if not used before the third anniversary of the award date. For purposes of New CREBs, this white paper discusses the allocations and certain governing rules. For a complete list of the recipients of New CREBs allocation by issuer type, amount, state and project type, click [here](#). Furthermore, please see the chart below that provides comparative information on allocation awards, including the range of such awards, for “old” Clean Renewable Energy Bonds (old CREBs) and New CREBs.

The New CREBs program is designed to deliver a subsidy in the form of annual federal tax credits to the holder of the New CREBs obligation. Eligible projects include facilities generating electricity from, among other sources, wind, solar, landfill gas, biomass, geothermal and hydro. Generally, the projects are owned by non-tax paying entities such as state and local governments, Indian tribes, mutual or cooperative electric companies, and public power providers. As detailed in the chart below, New CREBs differ in many ways from old CREBs.

In April 2009, Treasury issued Notice 2009-33 (New CREBs Notice) (click here to view the [Notice](#)) (IRB 2009-17, April 27, 2009) that contains rules applicable to New CREBs and application for the authorized \$2.4 billion of allocation. In furtherance of the governing statute, the New CREBs Notice requires the allocation to be split into thirds among governmental bodies (including Indian tribes), cooperatives, and public power providers – all of whom are qualified borrowers.

For governmental body-owned projects, the Oct. 27 Announcement reports that 997 applications were filed, requesting a total of \$3,067,934,792.47 in allocation. Eight hundred million in allocations were awarded to 739 projects using a smallest-to-largest methodology. For cooperative-owned projects, 31 applications were filed requesting a total of \$609,204,555 in allocation, and all requests were honored.<sup>2</sup> For public power provider-owned projects, 38 applications were filed requesting a total of \$1,445,771,056 in allocations, and \$800 million was allocated to 35 projects using a pro-rata methodology. Please see the chart below for a breakdown on the ranges of the awards and the types of projects awarded.

Holders of New CREBs (or in the event the tax credit is “stripped” as discussed below, the tax credit therefore), on each March 15, June 15, September 15 and December 15, and the last day the New CREBs are outstanding during a taxable year (each a “Credit Allowance Date”), are entitled, subject to certain limitations, to a credit against the federal income tax for such taxable year.

The amount of the tax credit allowable for each Credit Allowance Date is 25% of the annual credit with respect to the New CREB. The annual credit is 70% of the product of the applicable tax credit

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<sup>1</sup> Please note that the information available on the allocation awards is limited to those applicants who consented to disclosure of the same. As noted in the Oct. 27 Announcement, 805 approved applicants consented to such disclosure. See <http://www.irs.gov/taxexemptbond/article/0,,id=214748,00.html>

<sup>2</sup> Because this category was under-subscribed, the Oct. 27 Announcement reports that the IRS is considering a supplemental allocation round.

rate, as posted daily on the TreasuryDirect website (click [here](#) to view the tax credit rates), multiplied by the outstanding face amount of the New CREB.

In the event a New CREB holder is unable to use the tax credit during a taxable year, such tax credit may be carried over to the succeeding taxable year. In addition, subject to future Treasury regulations, the tax credit may also be stripped by the issuer or the holder. In essence, the entitlement to the tax credit may be separated from the ownership of the principal component of the obligation. In case of any such separation, the tax credit will be allowed to one who, on the Credit Allowance Date, holds the instrument evidencing entitlement to such tax credit.

Set forth below is a chart that provides information on old CREBs and New CREBs. This chart does not purport to be an exhaustive presentation of their attributes.

Attributes	Old CREBs	New CREBs
Purpose <sup>3</sup>	Electricity Produced from certain Renewable Energy Sources	Electricity Produced from certain Renewable Energy Sources
Authorized Amount	\$1.2b	\$2.4b
Allocation Process (see "Allocation Award Information" below for more detail)	Awarded to governmental body and cooperative projects with no more than \$400m to cooperative projects <sup>4</sup>	1/3 each to (i) public power providers, (ii) governmental bodies, and (iii) cooperative electric companies <sup>5</sup>
Expiration and Reallocation of Allocation	Must issue before January 1, 2010 Per Notice 2009-33, no reallocation of unused amounts is expected.	Must issue within three (3) years of award date or it reverts to the IRS.  Per the Oct. 27 Announcement, there may be a supplemental allocation round for cooperative projects.  Per Notice 2009-33, the IRS plans to establish a program for relinquished or reverted allocation.
Credit Rate	Set by Treasury Daily <sup>6</sup>	Set by Treasury Daily <sup>7</sup>
Credit Amount	Face Amount of Outstanding Obligation	Face Amount of Outstanding

<sup>3</sup> New CREBs may not be used to refund prior debt. Old CREBs may be issued as refunding obligations for refunded debt issued after August 8, 2005.

<sup>4</sup> Allocation award information provided in IRS [Information Release 2008-016](#) and IRS [Notice 2006-181](#).

<sup>5</sup> Allocation information provided in IRS [Notice 2009-33](#).

<sup>6</sup> Rates can be found at <https://www.treasurydirect.gov/GA-SL/SLGS/selectCREBDate.htm>. As a result of Notice 2009-15, all rates are based on Treasury's estimate of the yields on outstanding bonds from market sectors selected by Treasury with a rating between A and BBB for bonds of a similar maturity. Notice 2009-15 can be found at [http://www.irs.gov/irb/2009-06\\_IRB/ar09.html](http://www.irs.gov/irb/2009-06_IRB/ar09.html).

<sup>7</sup> Rates can be found at <https://www.treasurydirect.gov/GA-SL/SLGS/selectQTCDDate.htm>. As a result of Notice 2009-15, all rates are based on Treasury's estimate of the yields on outstanding bonds from market sectors selected by Treasury with a rating between A and BBB for bonds of a similar maturity.

Attributes	Old CREBs		New CREBs
	<i>multiplied by Tax Credit Rate</i> <sup>8</sup>		Obligation <i>multiplied by Tax Credit Rate</i> <sup>6</sup> , Minus 30% <sup>6</sup>
Maximum Term	Set by Treasury Monthly <sup>9</sup>		Set by Treasury Monthly <sup>10</sup>
Allocation Award Information <b>Governmental</b>	<b>Round 1:</b> Range: \$23k to \$32m  Solar – 401 Wind – 99 Hydro – 8 Biomass – 1 LFGTE – 23	<b>Round 2:</b> Range: \$15k to \$2.95m  Solar – 128 Wind – 88 Hydro – 12 Biomass – 4 LFGTE – 41 Trash Combustion – 3	Range: \$21,769 to \$2,780,520  Solar – 694 Wind – 30 Hydro – 7 Biomass – 4 Geothermal – 4
<b>Cooperative</b>	<b>Round 1:</b> Range: \$120,548 to \$31m  Solar – 33 Wind – 13 Hydro – 6 Biomass – 12 LFGTE – 13 Refined Coal – 1	<b>Round 2:</b> Range: \$300k to \$30m  Solar – 1 Wind – 14 Hydro – 6 Biomass – 12 LFGTE – 14	Range: \$433k to \$100m  Solar – 4 Wind – 8 Hydro – 8 Biomass – 11
<b>Public Power Providers</b>	Not Applicable		Range: \$74,663 to \$140,046,217  Solar – 13 Wind – 9 Hydro – 12 Biomass – 1

<sup>8</sup> Calculated on each March 15, June 15, September 15 and December 15 and the last day bonds are outstanding. The annual credit equals the sum of the quarterly amounts. The annual credit is included in gross income. Generally, the credit may be used to offset Alternative Minimum Tax liability.

<sup>9</sup> Maximum maturities can be found at <https://www.treasurydirect.gov/GA-SL/SLGS/selectCREBDate.htm>.

<sup>10</sup> Maximum maturities can be found at <https://www.treasurydirect.gov/GA-SL/SLGS/selectOTCDate.htm>