



April 29, 2009

The Stimulus Package:

STRATEGIES AND OPPORTUNITIES FOR INVESTORS

Speakers

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The Stimulus Package:

STRATEGIES AND OPPORTUNITIES
FOR INVESTORS

Table of Contents

Agenda

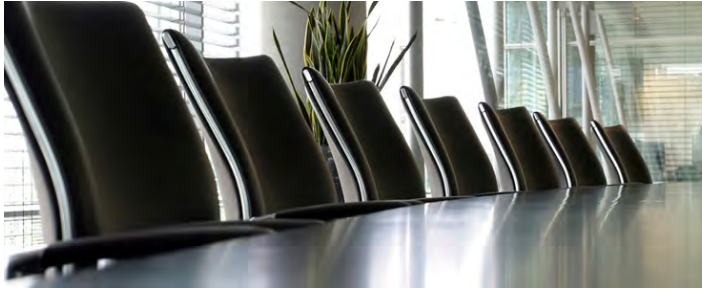
Presentation

Presenter Biographies

Additional Materials

“Broadband Funding in American Recovery and Reinvestment Act of 2009,” Akin Gump Client Alert, March 2009.....	Tab 1
“2009 Federal Stimulus Act: Opportunities and Risks,” Akin Gump Strauss Hauer & Feld, March 2009.....	Tab 2
“President’s Budget Supports Transition to Renewable Energy, Anticipates Cap-and-Trade Program in 2012,” Akin Gump Client Alert, March 2009.....	Tab 3
“American Recovery and Reinvestment Act of 2009: Stimulus Legislation Overhauls and Expands the Reach of the Federal HIPAA Regime Governing Health Information Privacy and Security,” Akin Gump Client Alert, February 2009	Tab 4
“\$787 Billion Stimulus Bill Containing Substantial Renewable Energy Measures Signed into Law,” Akin Gump Client Alert, February 2009	Tab 5
<i>Public Trust Monitor</i> , Public Strategies, Inc.	Tab 6

Agenda Tab



The Stimulus Package:

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FOR INVESTORS

Agenda

8:00 AM Registration and Networking Breakfast

8:30 AM Welcome Address and Introductions

Christine B. LaFollette, Partner, Energy and Global Transactions Practice

8:35 AM The Stimulus Package: Strategies and Opportunities for Investors

Tom W. Davidson, Partner, Akin Gump Strauss Hauer & Feld LLP

Susan Heck Lent, Partner, Akin Gump Strauss Hauer & Feld LLP

Jorge Lopez, Partner, Akin Gump Strauss Hauer & Feld LLP

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Moderated by:

Prakash H. Mehta, Partner, Akin Gump Strauss Hauer & Feld LLP

With public opinion commentary provided by:

David Iannelli, Managing Director, Public Strategies, Inc.

9:35 AM Q&A

10:00 AM Adjourn

Presentation Tab



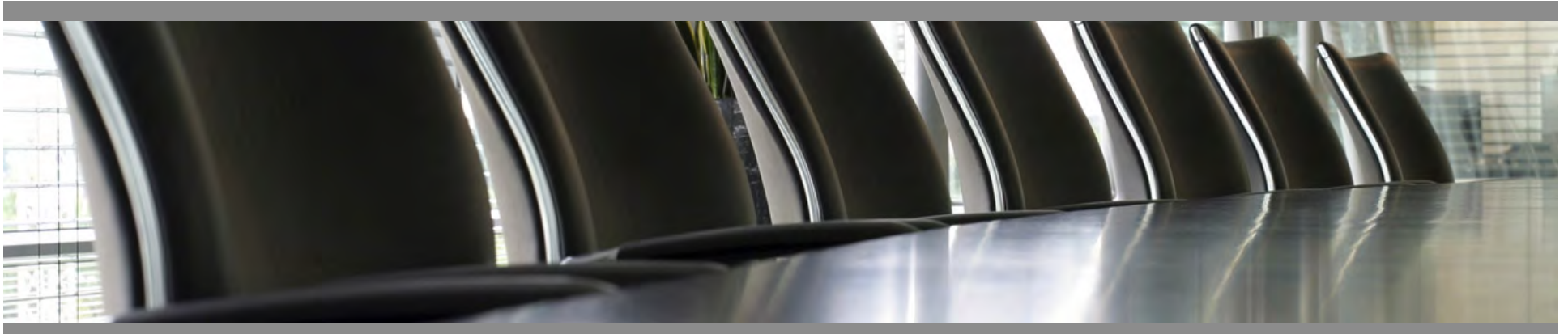
The Stimulus Package: Strategies and Opportunities for Investors

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AKIN GUMP
STRAUSS HAUER & FELD LLP

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Broadband Grants in Stimulus Bill

Tom Davidson



American Recovery and Reinvestment Act of 2009 Overview

- Adopted by the House of Representatives on January 28, 2009
 - \$819 billion in economic stimulus
 - \$7.2 billion – Broadband infrastructure deployment and mapping
 - Administered by:
 - \$2.5 billion - Rural Utility Service (RUS) for loans, loan guarantees and grants
 - \$4.7 billion - National Telecommunication and Information Administration (NTIA) for the Broadband Technology Opportunity Program (BTOP)
 - NTIA and RUS intend to closely coordinate their application and funding process with input from the FCC and state governments



American Recovery and Reinvestment Act of 2009 Overview

- Broadband funding in the Recovery Act has multiple objectives
 - stimulate the economy through short-term spending on jobs to produce, deliver, install and maintain new broadband infrastructure
 - have a “multiplier” effect such that \$1 spent on broadband returns \$10 in overall economic growth through jobs in sectors of the economy that rely on e-commerce
 - assist the U.S. to obtain parity with broadband access in other countries
- The Obama administration has noted that the Recovery Act only represents a piece of the whole
 - More regulatory reforms are expected from the FCC, including an extension of the universal service fund to cover broadband deployments
 - \$1.3 billion of additional broadband funding is allocated to RUS in the administration’s FY 2010 budget



Opportunity

- Nearly \$7 billion dollars of broadband funding will be available from NTIA and RUS on a very expedited timetable
 - Application guidelines and eligibility requirements are likely to be issued in the next 60 days
 - Initial funding decisions are likely to occur in mid to late 2009
 - A second and third round of funding will be distributed in late 2009 or early 2010 and in mid 2010, respectively
- To most effectively influence NTIA's and RUS's development of funding guidelines, including eligibility requirements and funding conditions, parties should commence a multi-faceted advocacy strategy immediately
- Parties interested in obtaining funding must begin defining their broadband projects immediately and must react quickly to the additional application guidance that will be issued in the next 60 days by RUS and NTIA



American Recovery and Reinvestment Act of 2009 Overview – NTIA Program

- Bulk of grant program will be used to provide grants for broadband infrastructure deployment and programs aimed at increasing broadband adoption, access and use by unserved and underserved communities and a variety of public service organizations
 - Over \$3.5B provided for broadband supply-side and demand-side grants
 - \$250M provided for “innovative programs to encourage sustainable adoption of broadband”
 - \$200M for “expanding public computer center capacity, including of community colleges and public libraries”
- Grants can be awarded to virtually any type of non-profit or state and local governmental organizations, and to for-profit entities to the extent NTIA determines it is in the public interest to do so (which NTIA is expected to do)
- Three rounds of grants to be awarded based on a competitive scoring system; applications anticipated to be due in: (i) July/August 2009, (ii) October/December 2009 and (iii) April/June 2010
 - Initial request for proposal expected in May/June will provide comprehensive eligibility guidelines, grant conditions and scoring criteria



NTIA Broadband Technology Opportunity Program (BTOP)

- Established and administered by NTIA in consultation with the FCC and state governments and in coordination with RUS
- Objectives include -
 - Provide broadband services to consumers residing in unserved areas and improve broadband services to consumers residing in underserved areas
 - Provide broadband education, awareness, training, access, equipment and support to (i) schools, community colleges and higher education institutions; (ii) libraries; (iii) medical and healthcare providers; (iv) community support organizations; (v) organizations and agencies that facilitate greater use of broadband service by low-income, unemployed, aged and otherwise vulnerable populations; and (vi) job-creating strategic facilities located in certain state and federal economic zones
 - Improve access to, and use of, broadband services by public safety agencies
 - Stimulate the demand for broadband, economic growth and job creation



Conditions on NTIA Grants

- Priorities for grant funding may include -
 - At least one grant awarded in every state
 - Increase the affordability of, and subscribership to, broadband by the greatest population of users
 - Provide the greatest broadband speeds possible to the greatest number of users
 - Enhance service for health care delivery, education and children
 - Not result in unjust enrichment if a project's non-recurring costs are also funded through another federal program
 - Whether grants are awarded to socially and economically disadvantage small businesses
- Conditions on grants will include -
 - Contractual non-discrimination and interconnection obligations
 - Grants must be spent within two years of being awarded and grantees are required to provide at least 20% of the funding for their proposed projects from other sources
 - Project would not be undertaken, but for NTIA grant



NTIA Strategy

- These grants are likely to be saddled with more ongoing conditions than RUS grants, but also may be used for a wider range of projects
- Until more information regarding grant program is issued in May/June, it is difficult to determine what types of providers will most benefit
 - Although grants must be technologically neutral, as a practical matter, certain technologies are likely to be favored by program requirements
- Applicants should consider working with state agencies and/or small businesses in preparing applications to obtain advantage
 - For example, California intends to shepherd applicants proposing projects in California through the NTIA grant application process
 - NTIA was encouraged by Congress to consider whether to provide grants to small and disadvantaged businesses, so consider partnering with same
- Eligibility and application requirements will be developed during the next two months; accordingly, parties interested in influencing development of the program must commence advocacy immediately
 - NTIA/RUS collected over 1500 comments in response to a request for information that it issued on March 9
 - NTIA/RUS held five public hearings in March regarding the programs



American Recovery and Reinvestment Act of 2009 Overview – RUS Program

- The Recovery Act provides \$2.5 billion to RUS to be used for loans, loan guarantees and grants for “open access broadband infrastructure in any area of the United States”
- According to RUS -
 - Loans and loan guarantees will be, at least in part, administered pursuant to the existing Rural Electrification Act of 1936 (REA), but it is not clear to what extent the existing program’s eligibility criteria will be revised for this new funding; no guidance yet on grant program
 - No guidance yet on percentage of funds that will be awarded through grants versus loans and loan guarantees; although, loan and grant combinations will be offered and loans and loan guarantees will be used to leverage available funds into a greater dollar amount of total broadband investment
 - Funding will be released in three batches, 3-4 months apart
 - Additional guidance regarding eligibility and application requirements expected to be issued in May or June



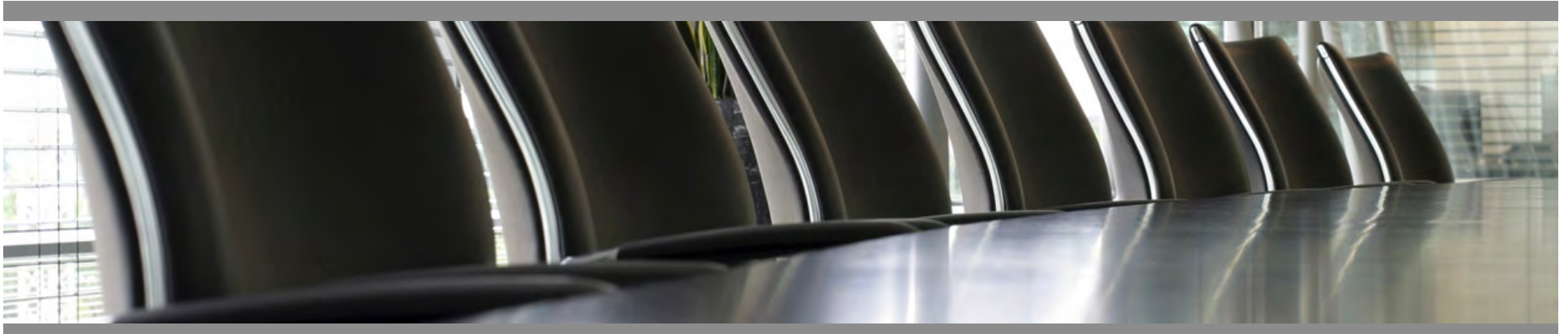
Criteria for Loans: RUS Program

- Most for-profit and non-profit entities are eligible, provided that they do not already serve more than 2% of the total number of subscriber lines in the U.S.; existing rural telephone companies that have previously received RUS funding have a preference
- Financing must be used to provide broadband services to areas that are at least 75% rural and that do not have sufficient access to high-speed broadband
- Preferences provided for applicants (i) serving the highest proportion of residents that do not currently have access to broadband, (ii) that will provide end users with a choice of more than one service provider and (iii) that can demonstrate that they will be fully funded and can begin proposed projects promptly following approval of application



RUS Strategy

- Funding is ideally suited for rural projects providing first and second broadband access choices to users
- To the extent that RUS channels new funding through existing loan and loan guarantee programs, applicants should review and understand application procedures and evaluation priorities currently used by RUS under the REA
- Due to preferences provided in the REA for existing rural telecom providers previously receiving REA loans, seek to partner with such rural providers to increase likelihood that application will be funded
- Eligibility and application requirements for grants will be developed during the next two months; accordingly, parties interested in influencing development of the program must commence advocacy efforts immediately



Energy and the Environment

Hank Terhune



A Quick Look Back

- Energy Policy Act of 2005
 - Political setting
 - George Bush, President
 - Republican control of Congress
 - Key policy provisions
 - Considerable focus on production
 - Incentives for nuclear and carbon capture and sequestration
 - First renewable fuels standard (RFS)

- Energy Independence and Security Act of 2007
 - Political setting
 - Followed 2006 midterm election
 - Democrats win control of Congress, narrowly
 - George Bush, President
 - Key policy provisions
 - Greatly expanded renewable fuels standard (RFS)
 - Increases in Corporate Average Fuel Economy (CAFE) standards
 - Substantial focus on energy efficiency



Where We Are Now

President Obama has declared renewable energy and climate change as among his top three domestic priorities.

*But to truly transform our economy, to protect our security, and save our planet from the ravages of climate change, we need to ultimately make clean, renewable energy the profitable kind of energy. So I ask this Congress to send me legislation that places a **market-based cap on carbon pollution** and drives the production of more renewable energy in America. That's what we need. And to support -- to support that innovation, we will invest **\$15 billion a year** to develop technologies like **wind power and solar power, advanced biofuels, clean coal, and more efficient cars and trucks** built right here in America.*

*President Barack Obama
Speech to Joint Session of Congress
February 24, 2009*

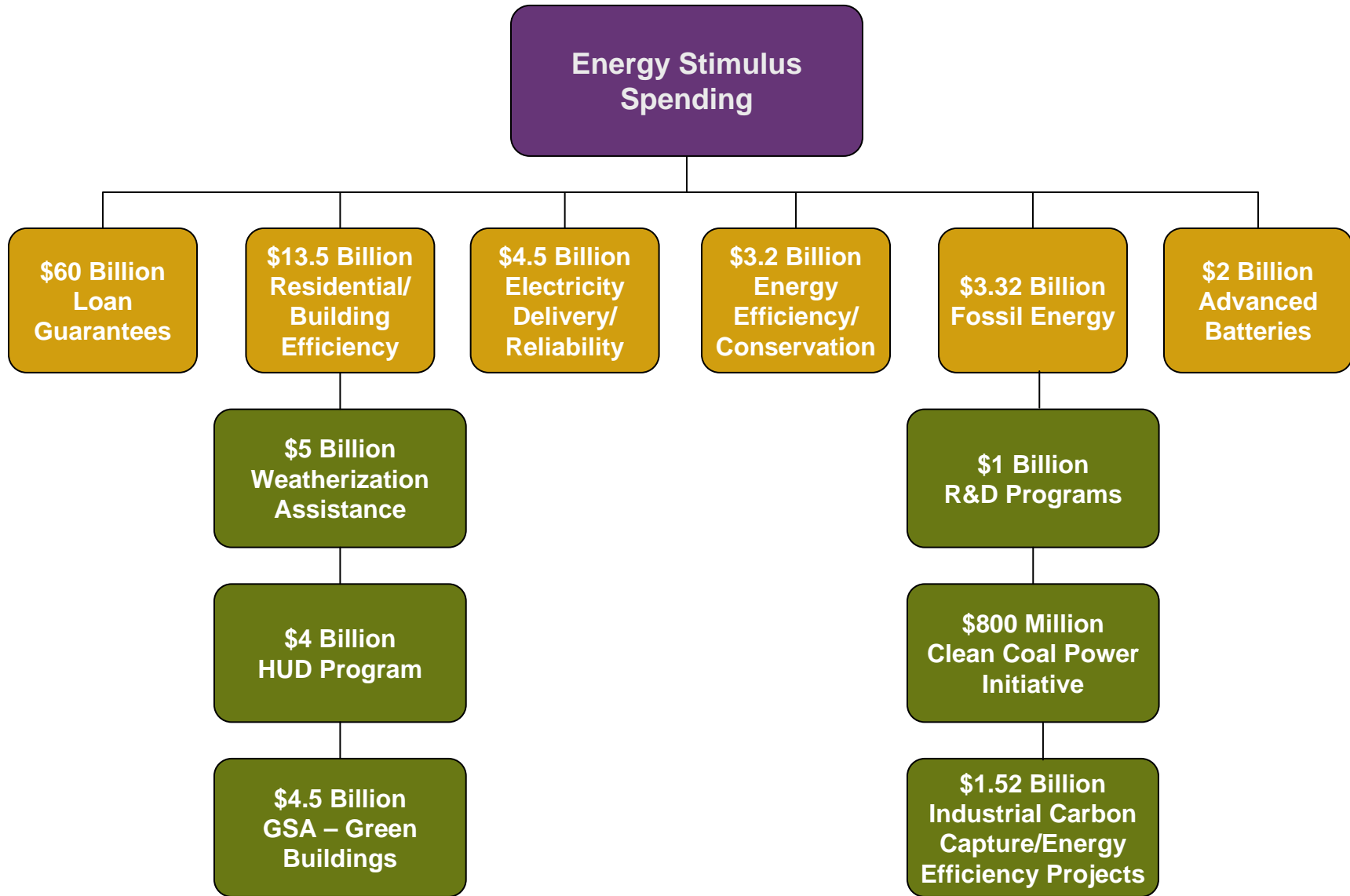
- Agenda in 111th Congress (2009-2010)
 - American Recovery and Reinvestment Act
 - Budget and spending bills
 - Energy bill
 - Climate legislation



Stimulus Bill: American Recovery and Reinvestment Act

- Energy stimulus in the form of –
 - Loan guarantees
 - Direct spending
 - Tax incentives
- Primary funding for –
 - Upgrading electric power grid
 - Renewable energy
 - Energy efficiency

Energy Stimulus Spending Chart





Stimulus Bill: American Recovery and Reinvestment Act

- Loan guarantees
 - \$6 billion included in bill, expected to support \$60 billion in loan guarantees
 - Eligible projects
 - Renewable energy
 - Electric transmission
 - Leading-edge biofuels (subject to limitation)
 - Construction must start by September 30, 2011



Stimulus Bill: American Recovery and Reinvestment Act

- Electricity delivery and reliability
 - \$4.5 billion to DOE for activities to modernize electric grid, integrate demand-response equipment and advance smart grid technologies
 - \$3 billion grant program announced by DOE – Smart Grid Investment Grant Program
 - \$500,000 to \$20 million, matching up to 50% of project cost, for smart grid projects; and
 - \$100,000 to \$5 million for grid monitoring device deployment
- Advanced batteries
 - \$2 billion towards grants to support manufacture of advanced battery systems and components in the United States



Stimulus Bill: American Recovery and Reinvestment Act

- Residential and building efficiency
 - \$5 billion to weatherization assistance program, increasing funding level to \$6,500 per home
 - \$4 billion to HUD program to rehabilitate and retrofit public housing
 - \$4.5 billion to GSA to convert federal buildings into high-performance green buildings
- Energy efficiency and conservation
 - \$3.2 billion to states, local and tribal governments to support energy efficiency and conservation



Stimulus Bill: American Recovery and Reinvestment Act

- Fossil energy
 - \$1 billion for R&D programs
 - \$800 million for Clean Coal Power Initiative
 - \$1.52 billion for industrial carbon capture and energy efficiency improvement projects



Stimulus Bill: American Recovery and Reinvestment Act

- DOE building capacity to move stimulus
 - Matt Rogers, Senior Advisor, former McKinsey director, overseeing process
 - Tension between need for near term stimulus and aggressive oversight
- Timing for stimulus spending
 - April/May – begin offering loan guarantees under pre-existing loan guarantee program
 - Early summer – begin offering loan guarantees under stimulus bill loan guarantee program
 - End of 2010 – disperse 70 percent of funding in stimulus bill



Stimulus Bill: American Recovery and Reinvestment Act

- Key tax provisions
 - Production tax credit (PTC)
 - Extended through 2012 for wind energy
 - Extended through 2013 for other renewable energy facilities (municipal solid waste, qualified hydropower, biomass and geothermal)
 - Concerns about limited market for tax credits led to additional constructs



Stimulus Bill: American Recovery and Reinvestment Act

- Additional Constructs to PTC
 - Investment tax credit
 - In lieu of PTC, bill allows owners of non-solar qualifying facilities to make one-time, irrevocable option to take 30% investment tax credit; option remains in effect during period of PTC extension included in the bill
 - Grant
 - Facility owner can receive grant equal to 30% of the tax basis of the facility



What's Next

- Budget and spending bills starting now
 - Fiscal year 2010 federal budget
 - Key annual (FY-10) spending bills
- Energy bills in spring/summer
 - Possible differing approaches by House and Senate
- Climate bills in summer/fall



Energy Bill Options/Overview

- Renewable Energy Standard
 - 20% by 2021 in Senate; 25% in House
 - Key issues:
 - What is renewable energy, and
 - Whether energy efficiency can qualify
 - States leading
- Transmission
 - Smart grid
 - Renewable power
 - Electric transmission infrastructure to connect renewable sources to grid
 - Enhanced federal authority for projects in “renewable energy zones”



Energy Bill Options/Overview

- Efficiency
 - Buildings and appliances
- Transportation
 - Harmonize state and federal emissions standards
- Clean energy investment fund
 - Senate proposal to replace existing loan guarantee program
 - To be administered by new Clean Energy Deployment Administration
- Tax
- Other
 - Oil and gas leasing and royalty programs
 - Energy market transparency
 - Regional refined product reserves
 - Carbon capture and storage



Climate Bill Options/Overview

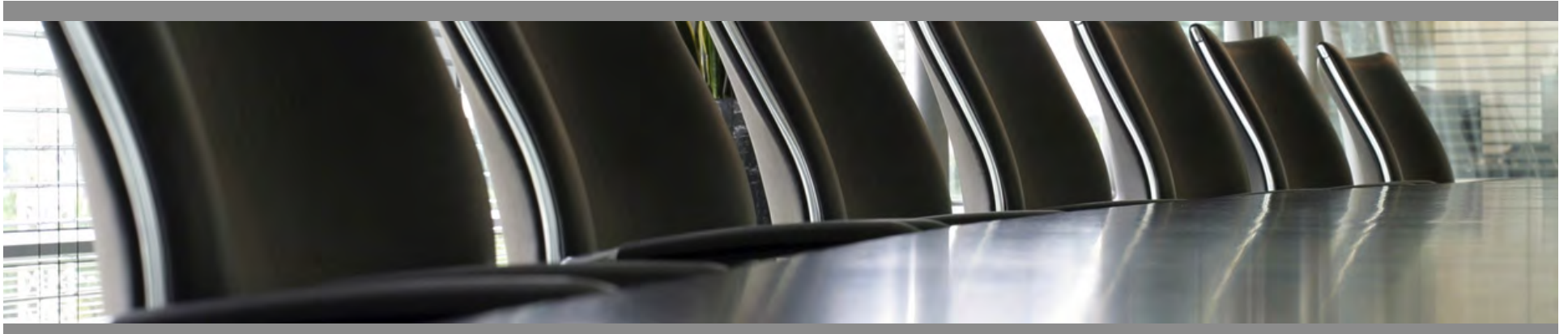
- Cap and trade
 - Carbon reduction goals
 - 2008 Senate bill: 19% reduction by 2020, 71% by 2050
 - Obama campaign: 80% reduction by 2050
 - 2009 House bill: 20% reduction by 2020, 83% by 2050
 - Many more economic stakeholders in play
 - Possible budget process
- Tax
 - Carbon tax advocated by some
 - Economists favor, most politicians don't



Climate Bill Options/Overview

■ Timelines

- EPA Mandatory Greenhouse Gas Reporting proposal issued for comment on April 10th
- EPA Endangerment Finding announced April 17th
- House to act first
 - Energy and Commerce Committee:
 - Week of hearings (week of April 20th)
 - Start committee mark up (week of April 27th)
 - Objective to have bill reported from committee by Memorial Day
 - Other House Committees will seek role in legislation
- Senate time line less certain
 - Likely not before fall



Transportation Infrastructure

Susan Lent



Transportation Infrastructure Opportunities Overview

- Increased federal spending on transportation infrastructure may create opportunities and incentives for private sector investment in toll roads, transit projects, high-speed rail, intermodal, port terminal and airport projects, as well as for businesses that serve the transportation sector



Federal Transportation Funding and Financing Programs

- The American Recovery and Reinvestment Act
- Annual Appropriations Legislation
- Surface Transportation Legislation



The American Recovery and Reinvestment Act

- \$64.1 billion for transportation -
 - \$27.5 billion for highways
 - \$8.4 billion for transit
 - \$1.3 billion for airports
 - \$1.5 billion discretionary program for surface transportation projects
 - \$9.3 billion for rail (Amtrak, high-speed rail, intercity passenger rail)
- State and local governments must commit funds to projects quickly
- State maintenance of effort requirement
- No local match



ARRA Tax and Financing Provisions

- \$200 million to pay subsidy and administrative costs of projects eligible for Transportation Infrastructure Finance and Innovation Act (TIFIA) financing
- Private Activity Bond interest excluded from Alternative Minimum Tax (AMT)
- Build America Bonds
 - Tax credit bonds, but state and local governments have option to receive direct payment from federal government equal to subsidy otherwise delivered through tax credit for bonds issued in 2009 through 2011
- Recovery zone bonds
 - New category of tax credit bonds allocated to states and distributed to local areas based on percentage of job losses compared to national average
 - Infrastructure is an eligible activity



FY-2009 Transportation Appropriations

- \$40.7 billion for highway program
- \$10.1 billion for public transportation
- \$3.5 billion for airports
- \$2.4 billion for rail (Amtrak, intercity passenger rail)



President's Fiscal Year 2010 Budget

- President's Budget does not increase transportation funding in 2010
- Proposes national infrastructure bank designed to deliver financial resources to priority infrastructure projects of national or regional economic benefit
 - Proposed bank will provide direct federal investment and foster coordination through state, municipal and private company investment in infrastructure
 - Transportation and other infrastructure initiatives will be eligible



Reauthorization of Surface and Aviation Laws

- Multiyear laws that authorize funding of surface transportation and aviation programs expire this year. Congress must pass new laws or extend existing laws to keep money flowing to programs.
- The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which funds highway and public transportation programs, expires on October 1, 2009. Federal gas tax, which funds the program, does not generate sufficient revenues to sustain program.
- Congress and Obama administration will consider options for funding infrastructure, including increasing or indexing gas tax, imposing container fees on port shipments and encouraging increased private sector investment in infrastructure.



Public Private Partnerships Involving Transportation

- Agreement between public and private entities that allows private sector to participate in delivery and/or financing of projects
- New versus existing facilities
 - New facilities – Private participation can range from design-build to design-build-operate-maintain or design-build-finance-operate-maintain
 - Existing facilities – Operations and maintenance concessions versus long-term leases



Federal Financing for Public Private Partnerships

- Congress may ease restrictions on Transportation Infrastructure Finance and Innovation Act (TIFIA) and Private Activity Bond financing, including increasing percentage of eligible project costs that receive TIFIA financing beyond 33% cap and expanding cap on Private Activity Bond financing beyond \$15 billion.
- Congress may authorize national infrastructure bank to provide direct subsidies, loans and loan guarantees to infrastructure projects some in Congress, however, do not want to cede control over transportation funding to independent bank.



Congress and Obama Administration May Expand Opportunities for Public Private Partnerships

- Toll Roads, High Occupancy Toll Lanes and Other Congestion Pricing Programs
 - Congress may eliminate prohibition on tolling interstate to fund new capacity, encourage more congestion pricing and establish other programs to encourage revenue generation. Congress also may expand eligible uses of toll revenues.
- Privatization/Long-Term Operating Agreements
 - Congress and the Department of Transportation may encourage private sector investment in airports, port facilities, passenger rail and federally assisted freight rail projects.



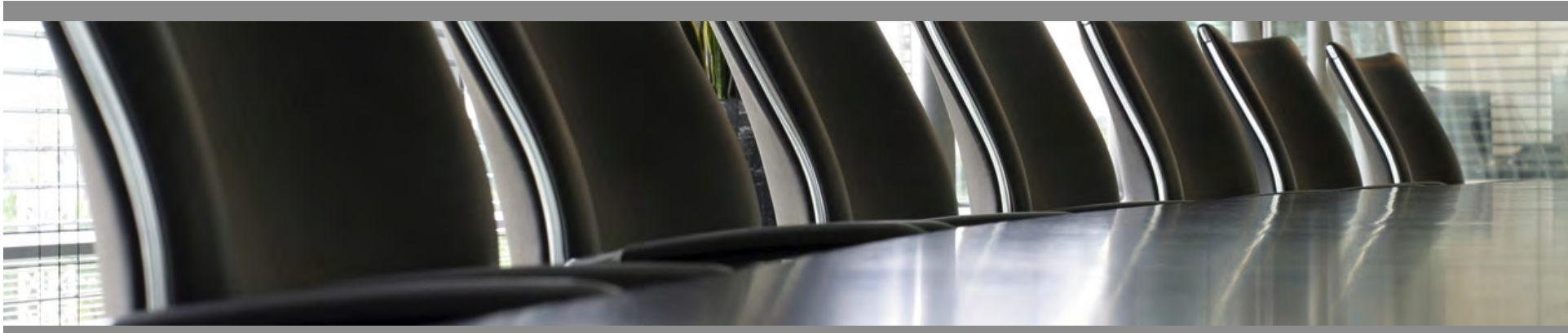
Opportunities of Public Private Partnerships

- Private sector entity can structure deal to meet financing objectives over specified timetable
- Federal money available through stimulus bill and new surface transportation legislation to leverage private investment
- Possible new and expanded financing programs, including TIFIA, Private Activity Bonds and National Infrastructure Bank, as well as new capacity for state and local governments to issue bonds



Risks of Public Private Partnerships

- Decreased revenue for toll roads, ports, intermodal facilities and airports due to economic downturn
- Congress may impose greater transparency and other regulatory requirements (particularly for concessions)
- Projects are competitively bid, which could result in upfront costs and time commitment when outcome is uncertain
- Deals involving foreign investment have been scrutinized
- Environmental, procurement, construction and other risks must be evaluated



Health Care

Jorge Lopez



Funding for HIT

"To improve the quality of our health care while lowering its cost, we will make the immediate investments necessary to ensure that, **within five years, all of America's medical records are computerized.**"

President Barack Obama
January 2009



Funding for Health Information Technology (HIT)

- \$17B in incentives through Medicare and Medicaid for certain health care providers (including hospitals and physicians) for electronic health record (EHR) adoption starting 2011
 - Penalties for those who do not adopt “certified EHR technology” by 2015
 - Some providers, including long term care hospitals (LTCHs) and inpatient rehabilitation facilities (IRFs), are not eligible for the additional payments
- Immediate funding for government agencies to strengthen HIT infrastructure, including support for providers not eligible for HIT incentive payments through Medicare and Medicaid
- Competitive grants to states for eligible providers to facilitate adoption of EHR technology
- Grants to states to facilitate and expand movement of health information
- Other HIT funding to promote widespread adoption -
 - HIT national and regional extension programs
 - HIT research centers



Funding for Prevention & Wellness

- \$1B total to create Prevention & Wellness Fund
 - \$650M for evidence-based clinical and community-based chronic disease prevention and wellness strategies (to be administered by CDC)
 - \$300M to CDC for state grants to provide vaccines to uninsured/underinsured
 - \$50M of funding is to states for activities designed to implement health care-associated infection reduction strategies



Funding for the National Institutes of Health (NIH)

- **\$10B total for NIH**
 - \$8.2B for research, including \$800M for research that can be completed in under two years
 - \$1.3B to the National Center for Research Resources (NCRR), including \$1B for renovation, improvement and construction of extramural research facilities
 - \$500M for construction/repair of NIH facilities in Bethesda, MD



Funding for Comparative Effectiveness Research

- **\$1.1B total** to support comparative effectiveness research
 - Includes funding for research regarding clinical outcomes, effectiveness and appropriateness of health care items and services, as well as development of clinical registries, data networks and other electronic health data
 - \$400M to NIH and \$300M to Agency for Healthcare Research and Quality to conduct or support research
 - \$400M in discretionary funding to Health and Human Services (HHS) Secretary for accelerated development and dissemination of research
- **Creates Federal Coordinating Council for Comparative Effectiveness Research** to assist in coordination of initiative and to advise President Obama and Congress
- **Authorizes HHS Secretary to make grants/contracts with other entities to conduct comparative effectiveness research**
- **Conference report states funding not intended to affect coverage, reimbursement or other policies for public or private payers**



Funding for Coverage

- \$86.6B for temporary increase in federal matching funding (i.e., FMAP) for state Medicaid programs
- \$24.7B for COBRA premium assistance to individuals who have lost jobs between 9/08 and 12/09; assistance may continue for up to nine months
- \$1.3B to states to extend transitional medical assistance (TMA) to low-income individuals no longer eligible for Medicaid because of increased incomes or hours of employment
- \$460M for temporary increase in Medicare payments to hospitals serving disproportionately high share of indigent patients (i.e., Disproportionate Share Hospital (DSH) payments)



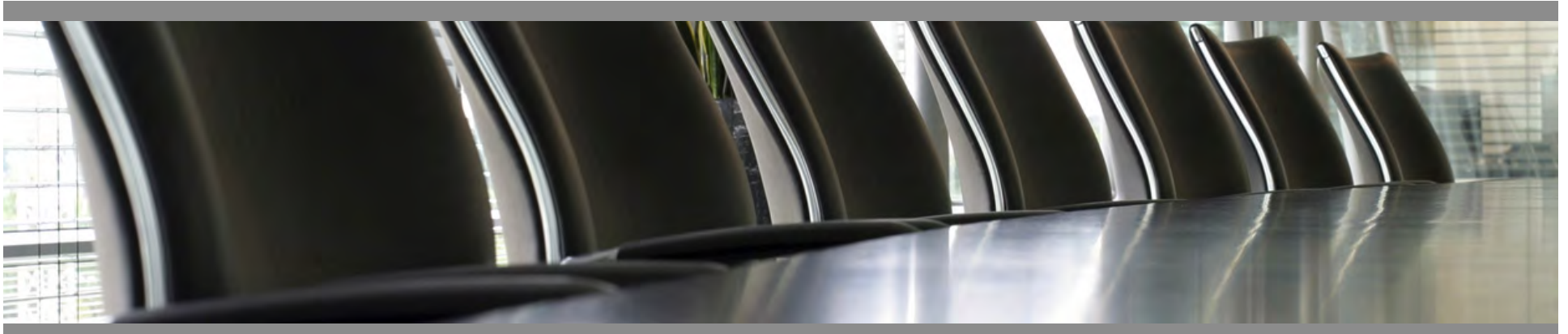
Stricter Privacy Standards

- Creates a new federal notification requirement for breaches of “unsecured” (e.g., unencrypted) personal health information (PHI) – HHS Secretary must issue regulations regarding kinds of technology acceptable to render information “secured”
- Expands obligations—and exposure—of business associates, creating direct, statutory obligations for business associates and applying civil and criminal penalties to business associates in the same manner as covered entities
- Requires covered entities and business associates to account for all disclosures of PHI
- Prohibits sale of PHI without authorization
- Narrows marketing exception for certain sponsored (i.e., paid) communications
- Creates new tiered increase in civil penalty amounts based on the level of intent and neglect, ranging from minimum of \$100 to a maximum of \$1.5M. Also, amends HIPAA’s civil penalty provisions to cover instances of “willful neglect”
- Requires HHS Secretary to conduct periodic audits to ensure compliance with HIPAA privacy and security standards
- Allows State Attorneys General to file suit on behalf of state residents for violations of HIPAA



What's Next

- Legislative agenda includes
 - Budget and spending bills (likely more \$\$ for HIT, NIH)
 - Medicare bill
 - Health care reform legislation (Congress may wrap Medicare and reform bill into one package)
- Enactment of health care reform legislation promised by some by end of year
 - White House earlier this year hosted health reform summit, inviting wide range of health industry stakeholders
 - House and Senate committees of jurisdiction continue to hold similar stakeholder forums, launching aggressive schedule of hearings to lay foundation for passage of bipartisan health reform legislation
- Potential for another “stimulus” if states still struggling?



Public Opinion Context and Guiding Principles

David Iannelli



Guiding Principles: The Political Environment

- Obama possesses a wealth of political capital and currently is without peer
- The public trusts government more than it trusts business
- Strong support exists for increased regulation of business
- Business needs to be part of the solution, or risks having solutions dictated to them



Guiding Principles: Infrastructure

- The current economic and political environment for PPP with foreign partners is even more hostile than previously
- The public need to be reassured as to continued public ownership of the asset
- Benefits of public private partnerships -- particularly jobs – must be emphasized
- Public private partnerships should be positioned as the solution to a problem



Guiding Principles: Energy & the Environment

- Energy and environment continue to be important issues to the public, even in the face of economic challenges
- The public is looking for the government to “do more” on the environment
- At the same time, the public is resistant to anything that (1) resembles a tax or (2) requires them to change their behavior
- The public is in a “wishful thinking” stage, looking for solutions from others, e.g. government and technology



Guiding Principles: Health Care

- Health insurance companies are held in very low regard
- Voters think the government should play a greater role in health care
- The public expects the Obama Administration to make progress on health care
- No public consensus exists about how long progress will take

Biographies Tab

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**Practice Areas: Communications and Information
Technology
Policy and Regulation**

Tom W. Davidson is the head of the firm's national communication and information technology practice. He represents clients in the domestic and international telecommunications and high-technology industries, including video program suppliers and distributors, fiber-optic network carriers, competitive local exchange and interexchange carriers, satellite systems, mobile and fixed wireless telecommunications operators, radio and television stations, cable television system operators, air-to-ground telephone systems, paging companies, equipment manufacturers, private radio operators and providers of new technologies and services. He also advises the financial community, including private equity debt and hedge funds, investment banks, issuers of private and public debt and equity, financial institutions, telecommunications equipment suppliers and other creditors of telecommunications and technology companies regarding transactional, valuation and regulatory issues related to the financing and securitization of telecommunications companies. In addition, Mr. Davidson advises intellectual property-focused, advanced technology companies in commercial transactions, licensing agreements and regulatory matters. He assists e-commerce companies with co-branding, registration, privacy, joint venture and licensing agreements, as well as relevant regulatory acquisitions.

Prior to joining Akin Gump, Mr. Davidson was a partner at Sidley & Austin, where he focused on communications law for more than 12 years. Previously, he served as a trial attorney in the Federal Communications Commission's Broadcast Bureau (now the Media Bureau).

Mr. Davidson received his B.A. with distinction in 1974 and his J.D. cum laude in 1977 from the University of Wisconsin. He is admitted to practice before the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. Supreme Court. Mr. Davidson is also a member of the American Bar Association, the Federal Bar Association and the Federal Communications Bar Association, and is a member of the Virginia, Wisconsin and District of Columbia Bars. Mr. Davidson is a frequent panelist at national communications seminars.



Bar Admissions

District of Columbia
Virginia
Wisconsin

Court Admissions

U.S. Supreme Court
U.S.C.A., DC Circuit
U.S.D.C., Western District of
Wisconsin

Education

J.D. University of Wisconsin Law
School, cum laude, 1977
B.A. University of Wisconsin -
Madison, with distinction, 1974

David Iannelli

Managing Director

His work with Public Strategies

David Iannelli is a member of Public Strategies' research practice group where he applies his nearly 20 years of experience conducting public opinion and marketing research for leading firms in the financial services, energy, health care, and telecommunications sectors. Iannelli conducts quantitative and qualitative public opinion research to inform strategy development for advocacy campaigns, as well as for litigation and crisis communications initiatives – with a special emphasis on research that contributes to the development and refinement of messages that have the ability to move public opinion. He has particular expertise in public opinion on issues including the environment, globalization, corporation reputation, and politics.

Recently, Iannelli conducted a national survey of public attitudes about foreign government investment in U.S. companies, the results of which were featured in *The Wall Street Journal*, CNBC and other news media outlets.

He also conducted polls tracking voter opinion leading up to the 2008 presidential primary in Texas on behalf of a major media company with television stations in four of the state's largest markets.

His earlier work

Before joining Public Strategies, Iannelli spent seven years as a colleague of noted pollster and strategist Robert M. Teeter. As Coldwater Corporation vice president and senior consultant, Iannelli worked with Teeter to advise multinational corporations and also directed *The Wall Street Journal*/NBC News Poll and other major research projects as part of the bipartisan Hart-Teeter research team.

Iannelli has directed international research projects for major corporations and NGOs, as well as for Mexican presidential candidate Vicente Fox. Iannelli began his public opinion research career at Market Strategies, has served as campaign manager for two U.S. congressional candidates, and has consulted on various other federal and state campaigns. He holds a bachelor's degree from Northwestern University with honors in political science, an MBA from the University of Chicago Graduate School of Business, and a master's degree from the Gerald R. Ford School of Public Policy at the University of Michigan.

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Practice Areas: **Public Law and Policy**
Transportation
Public Private Partnerships
Policy and Regulation
Renewable Energy



Susan Lent advises public and private sector clients on the development and implementation of infrastructure projects, including transportation, water and renewable energy projects.

Ms. Lent provides comprehensive advice on the development of large-scale infrastructure projects by assisting clients in securing federal funds through congressional earmarks and competitive grants, obtaining federal and other financing, negotiating project terms with the federal government and project partners and complying with the laws and regulations that apply to federally-funded projects, including the National Environmental Policy Act and procurement laws and regulations. Ms. Lent represents clients before Congress and the Department of Transportation. She also advises on laws and regulations applicable to transportation projects. She has significant experience with highway toll road, port, freight, airport, intermodal and transit new starts and joint development projects across the country. She advises on public private partnerships and financing under the Transportation Infrastructure Finance and Innovation Act (TIFIA) and through private activity bonds.

Ms. Lent also advises clients on a range of transportation policy matters. She will be actively involved on behalf of clients in the reauthorization of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which will authorize funding of highway and public transportation programs and establish laws governing these programs, and in the development of implementing regulations. She also advises clients on complying with a broad range of transportation regulations covering commercial motor vehicle operators, hazardous materials transportation, airports and airlines.

In addition to transportation, Ms. Lent advises clients on renewable energy and water infrastructure projects. She has experience advising on wind energy, hybrid vehicle systems and solar projects and the regulations governing these projects. She also has experience advising water utilities and agencies on water rights, water reclamation and groundwater clean up projects.

Before joining Akin Gump, Ms. Lent served as counsel to the Subcommittee on Surface Transportation and as counsel for investigations and oversight to the House Committee on Transportation and Infrastructure, where she was involved in all aspects of the enactment of the Transportation Equity Act for the 21st Century. Prior to joining the government, Ms. Lent was an attorney in private practice focusing on government contracts law.

Bar Admissions

District of Columbia
Maryland

Education

J.D. The George Washington
University Law School, 1986
B.A. Emory University, 1983

Ms. Lent earned her B.A. in political science and psychology in 1983 from Emory University and her J.D. in 1986 from the George Washington University. She is a member of the District of Columbia Bar.

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Practice Areas: **Health Industry**
 Policy and Regulation

Jorge Lopez Jr. heads the national health industry practice group at Akin Gump. The practice group's clients include major academic medical centers, health care systems, manufacturers of drugs and devices, managed care enterprises, lenders and investors involved with health industry projects, and various other health care-related enterprises.

Mr. Lopez has more than two decades' worth of experience advising these clients on a wide range of health regulatory and public policy issues. He has advised clients on many of the major Congressional health care initiatives considered in the past 20 years—including the Clinton Administration health care reform proposal, the Balanced Budget Act of 1997, the Balanced Budget Refinement Act of 1999, and the Medicare Modernization Act of 2003—and the implementation of many of these initiatives by the federal Centers for Medicare and Medicaid Services. He has particular experience in matters involving health care policy and regulation affecting cancer care, applications of the federal fraud and abuse laws to the hospital, pharmaceutical, pharmacy, and medical device industries, and issues relating to the Health Insurance Portability and Accountability Act (HIPAA) and other state and federal privacy laws.

From October 1991 until November 1992, Mr. Lopez served as a legal adviser to Bill Clinton's presidential campaign. He advised the campaign on delegate selection, ballot access, electoral college and other matters.

Mr. Lopez was nationally ranked as a top healthcare lawyer in the 2008 edition of *Chambers USA: America's Leading Lawyers for Business*. He is very active in charitable organizations in the Washington, D.C. community. He has served on the board of directors of the D.C.-area Catholic Charities or one of its affiliates since 1985. He was board chairman of one of these affiliates, Anchor Mental Health, a large provider of services to mentally disabled adults in the D.C. area, from April 2003 to June 2004.

Mr. Lopez received his B.A. summa cum laude in 1980 and his M.A. in economics in 1981 from the Catholic University of America. He received his J.D. cum laude from Harvard Law School in 1984. Mr. Lopez is a member of the District of Columbia Bar and is admitted to practice before a number of federal district courts and circuit courts of appeals. He is also a member of the American Health Lawyers Association.



Bar Admissions

District of Columbia

Court Admissions

U.S.C.A., 11th Circuit

U.S.C.A., DC Circuit

U.S.D.C., District of Columbia

Education

J.D. Harvard Law School, cum laude, 1984

M.A. Catholic University of America, 1981

B.A. Catholic University of America, summa cum laude, 1980

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Practice Areas:
Investment Funds
Private Equity
Corporate
Mergers and Acquisitions
Renewable Energy
Distressed Real Estate Asset Services

Prakash Mehta co-chairs the firm's investment funds and private equity practice group.

Mr. Mehta regularly represents a broad range of investment management clients and also regularly advises on complex corporate transactions. He represents investment banks, private equity and hedge fund sponsors, and institutional investors including endowments, large foundations, multilateral organizations and multinational groups.

Mr. Mehta regularly advises some of the more prominent private investment fund sponsors and investment banks on all aspects of their business, from capital raising and fund formation to implementation of their business models via complex transactions. Mr. Mehta also advises clients on manager-level transactions such as seed investments in private investment fund managers, the creation of asset managers through joint ventures, and spin-outs of existing asset management teams (including proprietary trading desks). Mr. Mehta's representation of a broad range of asset managers and institutional investors allows him to keep abreast of emerging trends in the private equity, hedge fund and real estate industries, with such knowledge and experience particularly valuable as convergence across asset classes continues to play out in the marketplace.

Mr. Mehta's practice includes advising clients on investment and financing transactions, with particular emphasis on international or otherwise complex transactions. Mr. Mehta evaluates, structures and negotiates private equity-style investments (minority and control), exit transactions (strategic sale, recapitalization, IPO) and other M&A transactions (joint ventures, stock and asset sales). He provides ongoing counseling on investor and portfolio company matters and serves as corporate counsel to public and private portfolio companies.

Mr. Mehta has been recognized for his accomplishments in the investment management industry. Mr. Mehta is listed in *Chambers USA: America's Leading Lawyers for Business* and is on the advisory board of the Emerging Markets Private Equity Association. He has also been ranked by the *National Law Journal* as one of the [50 Most Influential Minority Lawyers in America](#), as well as by *Institutional Investor* as one of 10 Rising Stars of Private Equity and M&A Law. In addition, he is a regular panelist at the Emerging Market Private Equity



Bar Admissions
District of Columbia

Education

J.D. Georgetown University Law Center, magna cum laude, 1994
B.S. Georgetown University, summa cum laude, 1991

Forum, and participated as a speaker at the United Nations High-Level Dialogue on Financing for Development.

Mr. Mehta received his B.S.F.S. summa cum laude in 1991 from Georgetown University and his J.D. magna cum laude in 1994 from the Georgetown University Law Center, where he served as associate editor of *The Georgetown Law Journal*, participated on the Jessup International Law Moot Court Team and was elected to Order of the Coif. He is a member of the Indian-American Bar Association.

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Practice Areas: **Public Law and Policy**
 Climate Change
 Policy and Regulation
 Renewable Energy
 Committee on Foreign Investment in the
 United States (CFIUS)



Henry A. Terhune represents numerous clients on a variety of public policy matters, with an emphasis on energy, environmental and pharmaceutical/health care issues. In addition, he provides strategic counseling on major corporate transactions.

Prior to joining Akin Gump in 1987, Mr. Terhune was an associate staff member on the Committee on Rules, U.S. House of Representatives, where he worked with U.S. Rep. Butler Derrick (D-SC), the second-ranking majority member on the panel, handling all facets of committee business. The Rules Committee is the key House committee through which virtually all major legislation passes prior to consideration by the full House chamber. It establishes the terms and conditions under which such legislation is considered by the House, and also has original jurisdiction over a variety of issues, such as House Rules and the Congressional Budget Act. Mr. Terhune also served as Rep. Derrick's legislative director from 1983 to 1987, and held several other positions in that office dating back to 1979.

Mr. Terhune received his B.A. in political science and economics from the State University of New York at Cortland in 1980 and his J.D. from the George Washington University in 1986. He is a member of the New York and District of Columbia Bars.

Bar Admissions

District of Columbia
New York

Court Admissions

U.S.C.A., DC Circuit

Education

J.D. The George Washington
University Law School, 1986
B.A. State University of New York
College at Cortland, cum laude,
1980

Additional Materials Tab

Additional Materials Tab 1

COMMUNICATIONS AND TECHNOLOGY ALERT

BROADBAND FUNDING IN AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

The \$787 billion economic stimulus bill, the American Recovery and Reinvestment Act of 2009 (“Recovery Act” or the “Act”), was enacted by President Obama on February 17th after a fractious and largely party-line debate in Congress. The law contains \$7.2 billion of new spending on broadband infrastructure deployment and related broadband matters, of which \$4.7 billion will be administered by the National Telecommunications and Information Administration (NTIA) and \$2.5 billion will be administered by the Rural Utility Service (RUS), a division of the U.S. Department of Agriculture (USDA).

NTIA BROADBAND GRANT PROGRAM

As more fully set forth below, the NTIA’s broadband grant program will be used to provide grants for broadband infrastructure deployment and programs aimed at increasing broadband adoption, access and use by unserved and underserved communities and a variety of public service organizations, such as schools and colleges, libraries, medical and health care centers, and community support organizations. The grants, which must be awarded by the NTIA no later than September 30, 2010 and must be technologically neutral, can be provided to virtually any type of non-profit or state and local governmental organization or, upon NTIA’s approval, for-profit entity, and must be spent within two years of being awarded. Also, grantees are required to provide at least 20 percent of the funding for their proposed projects from other sources. The Act provides a variety of criteria that the NTIA must consider when awarding grants or that NTIA must impose as conditions of the grants, including non-discrimination and network interconnection obligations.

RUS BROADBAND FUNDING PROGRAM

The funds provided by the Recovery Act to RUS will be distributed as grants under a new program that will be established by RUS for that purpose and/or as loans and loan guarantees under existing RUS programs. RUS thus far has not provided any guidance regarding how it will divide the funding between grants and loans and loan guarantees. RUS has stated, however, that it intends to “leverage” its \$2.5 billion of funding through loans and loan guarantees to cause investment in excess of \$2.5 billion and that it may offer grant/loan combinations. All funding distributed by RUS under the Act, whether grants, loans or loan guarantees, is required to be used for projects which serve areas that are at least 75 percent rural. In addition, only one entity may receive financing from the program in any given rural area and no project that is financed through the program can also receive NTIA grants. The Act requires RUS to utilize existing broadband loan and loan guarantee programs but it is not clear to what extent, if at all, RUS will modify these programs when distributing the funds provided under the Act. RUS’s primary existing program provides broadband loans and loan guarantees to non-profit and for-profit entities, but generally excludes governmental organizations and entirely excludes telecom providers that serve more than two percent of the total number of subscriber lines in the United

States, such as Verizon, AT&T and Qwest. Financing under this RUS program is allocated based on certain preferences which favor deployments in unserved and inadequately served small, rural communities and favor entities that previously have received financing under a related RUS loan program aimed at rural voice telephony deployments.

NTIA AND RUS COOPERATION AND IMPLEMENTATION TIMETABLES

NTIA and RUS, in conjunction with the Federal Communications Commission (FCC), held a public hearing on March 10 regarding the broadband programs. In addition, NTIA and RUS released a Joint Request for Information and Notice of Public Hearing (RFI) on March 11 seeking public input regarding various issues related to their respective broadband programs and announcing six upcoming open public meetings that will be held in March.¹ The March 10 meeting and the RFI make clear that NTIA and RUS intend to closely coordinate the implementation of their respective programs. The two agencies intend to use similar timetables for awarding funding and may provide a streamlined means of apply for funding from their respective programs.²

Each agency intends to offer three tranches of funding with each tranche representing roughly one-third of the funding available. Applications for the first tranche of funding are likely to be due towards the end of the second quarter of 2009; applications for the second tranche of funding are likely to be due in the fourth quarter; and applications for the third tranche are likely to be due in the second quarter of 2010. Both agencies expect to issue eligibility criteria and application and project requirements in the next 60 to 90 days. This is both an aggressive and very tight timeline. Public comments on the RFI are due on April 13 and will need to be reviewed and evaluated by the agencies before they issue their respective program rules. Further, applicants will need a sufficient period of time after the rules are released to develop their applications. Accordingly, it is very possible that the application deadline for the initial tranche of funding will slip into the third quarter.

STRATEGY FOR SEEKING NTIA AND/OR RUS BROADBAND FUNDING

Because neither the Act nor the RFI contains firm requirements or procedures for awarding funding, we recommend that prospective applicants file comments in response to the RFI and undertake proactive advocacy with NTIA and/or RUS, interested congressional members, executive branch personnel and/or appropriate state agencies. Such advocacy should be aimed at ensuring that your positions are incorporated into the final rules and procedures adopted by the agencies. Also, applicants intending to seek first-tranche NTIA or RUS funding immediately should begin outlining their projects and developing any desired partnerships.

¹ Each meeting will feature a particular theme, such as (i) definitions that will need to be adopted for the broadband programs, (ii) the role of the states in the programs, (iii) the relationship between the agencies' respective programs, (iv) the application selection criteria and (v) the role of for-profit applicants in the broadband programs. Four of the meetings will be held in Washington, D.C. on March 16, 19, 23 and 24. Two meetings will be held on March 17 and 18 at other locations. Although the locations have not been confirmed, the meetings are expected to be held in Flagstaff, AZ and Las Vegas, NV. All of the meetings will be webcast.

² The Act specifically states that BTOP funding may not be used to fund projects in any "area" receiving RUS funding. However, NTIA and RUS representatives at the March 10 meeting stated that they may permit applicants to seek funds from both agencies' programs to fund "separate portions" of a single project.

CONTACT INFORMATION

If you would like assistance to participate in the NTIA and/or RUS rulemaking process or to develop projects appropriate for funding, please contact—

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Additional Materials Tab 2

2009 Federal Stimulus Act: Opportunities and Risks

February 2009

Executive Summary

Not since World War II has the federal government sought to spend so much money in so little time, with such a sense of urgency. The American Recovery and Reinvestment Act of 2009 (the “Recovery Act” or the “Act”) presents tremendous opportunities for companies involved in infrastructure, including engineering, construction and supply contractors. At the same time, the sprawling Act includes many specific requirements and compliance risks that companies need to understand. There are also many downstream oversight and enforcement risks associated with the funds provided by the Recovery Act. We have identified and summarized the most important opportunities and risks.

Section I: Opportunities

Section I is a table that provides a summary of the principal sections of the Act that provide funding for infrastructure and construction projects. We identify the amounts available, the method by which the funds are to be disseminated and the purposes for which the funds are intended. This table is intended as a useful guide to the Act, not an exhaustive summary.

Section II: Restrictions and Compliance Issues

Section II identifies and analyzes provisions in the Act that restrict uses of the funds, including the controversial Buy American provision, award preferences and environmental requirements. We also identify several compliance issues, including reporting requirements, and compliance program and mandatory disclosure provisions imposed by the Federal Acquisition Regulation.

Section III: Oversight and Enforcement Risks

Section III identifies and summarizes the risks that companies will face downstream after projects are awarded. These risks include inspector general audits, oversight by the newly constituted Recovery Accountability and Transparency Board, potential antitrust actions, lawsuits alleging fraud under the False Claims Act and congressional oversight and investigations.

Section I: Opportunities

The following table provides a summary of most of the funds made available by the Recovery Act for infrastructure and construction projects. We have grouped the funds by the disbursing agency and have identified the amount, likely method of distribution and intended uses for the funds. We have provided some of the more important restrictions the Act imposes on the use or dissemination of funds, but in some cases there are more detailed restrictions found in the Act. This table is intended as a useful guide to the Act, not an exhaustive summary.

Opportunities Under the American Recovery and Reinvestment Act of 2009

Program	Amount	Distribution Method	Uses and Restrictions
AGRICULTURE DEPARTMENT			
Agriculture Building and Facilities and Rental Payments	\$24 million	Federal contracts	Funds for construction, repair and improvement activities.
Agriculture Research Service Maintenance	\$176 million	Federal contracts	Funds for deferred maintenance on Agricultural Research Service facilities. Priority given to critical deferred maintenance and to projects that can be commenced and completed promptly.
Rural Water and Waste Disposal Program	\$1.38 billion	Discretionary federal grants and loans to rural communities	Funds for drinking water and wastewater treatment facilities with priority to smaller (10,000 or fewer) and poorer communities. Recipients to include municipalities, counties, special purpose districts, Indian tribes and nonprofits.
Rural Broadband Infrastructure Deployment	\$2.5 billion	Grants, loans and loan guarantees. The Rural Utilities Service will make competitive grants and loans through its distance learning, telemedicine and broadband programs.	Funds for broadband infrastructure in rural areas with insufficient access to broadband service to facilitate economic development. Priority given to projects that will provide end-users with competition, areas with the highest proportion of residents without broadband service and applications that demonstrate the project can be promptly commenced and completed.
Rural Community Facilities Program	\$130 million	Federal financing for local governments, nonprofit corporations and Indian tribes.	Funds for health care facilities, emergency services, libraries and other community needs such as child day care facilities.
Forest Service Capital Improvement and Maintenance	\$650 million	Federal contracts	Funds for road, bridge and trail maintenance, including related watershed restoration and ecosystem enhancement projects.
COMMERCE DEPARTMENT			
Economic Development Assistance Program	\$50 million	Funds to be transferred to federally authorized regional economic development commissions	

Program	Amount	Distribution Method	Uses and Restrictions
Broadband Technology Opportunities Program	\$4.7 billion (total)	Competitive grants to state and local governments, nonprofits and public-private partnerships	At least \$250 million for competitive grants for innovative programs to encourage sustainable broadband. At least \$200 million to upgrade technology and capacity at public computing centers (libraries and community colleges). Private entities, including broadband service and infrastructure providers, are eligible to receive grants under the program, if in the public interest.
National Institute of Standards and Technology: Scientific and Technical Research and Services	\$360 million	Federal contracts and competitive grants	\$180 million for construction of research facilities. \$180 million for grants for the construction of research science buildings.
National Oceanic and Atmospheric Administration: Operations, Research and Facilities	\$600 million	Federal contracts	Funds for procurement, acquisition and construction. Additional \$230 million for operations, research and facilities.

DEFENSE DEPARTMENT

Operation and Maintenance, Army	\$1.474 billion	Federal contracts	Funds to improve, repair and modernize Defense Department facilities; restore and modernize real property, including barracks; and invest in energy efficiency.
Operation and Maintenance, Navy	\$657 million	Federal contracts	Funds to improve, repair and modernize Defense Department facilities; restore and modernize real property, including barracks; and invest in energy efficiency.
Operation and Maintenance, Marine Corps	\$113 million	Federal contracts	Funds to improve, repair and modernize Defense Department facilities; restore and modernize real property, including barracks; and invest in energy efficiency.
Operation and Maintenance, Air Force	\$1.095 billion	Federal contracts	Funds to improve, repair and modernize Defense Department facilities; restore and modernize real property, including barracks; and invest in energy efficiency.
Operation and Maintenance, Army Reserve	\$98 million	Federal contracts	Funds to improve, repair and modernize Defense Department facilities; restore and modernize real property, including barracks; and invest in energy efficiency.

Program	Amount	Distribution Method	Uses and Restrictions
Operation and Maintenance, Navy Reserve	\$55 million	Federal contracts	Funds to improve, repair and modernize Defense Department facilities; restore and modernize real property, including barracks; and invest in energy efficiency.
Operation and Maintenance, Marine Corps Reserve	\$39 million	Federal contracts	Funds to improve, repair and modernize Defense Department facilities; restore and modernize real property, including barracks; and invest in energy efficiency.
Operation and Maintenance, Air Force Reserve	\$13 million	Federal contracts	Funds to improve, repair and modernize Defense Department facilities; restore and modernize real property, including barracks; and invest in energy efficiency.
Operation and Maintenance, Army National Guard	\$266 million	Federal contracts	Funds to improve, repair and modernize Defense Department facilities; restore and modernize real property, including barracks; and invest in energy efficiency.
Operation and Maintenance, Air National Guard	\$25 million	Federal contracts	Funds to improve, repair and modernize Defense Department facilities; restore and modernize real property, including barracks; and invest in energy efficiency.
Defense Health Program	\$400 million	Federal contracts	Funds to improve, repair and modernize military medical facilities and invest in energy efficiency of military medical facilities.
Defense Environmental Cleanup	\$5.127 billion	Federal contracts	Environmental cleanup.
Army Corps of Engineers	\$4.6 billion	Federal contracts and discretionary grants	<p>Funds to accelerate ongoing work or begin new projects that can be completed in one year. The Corps must use funds for projects that can be executed quickly and without additional budget authority.</p> <p>\$2 billion for construction, of which \$200 million is for water-related environmental infrastructure assistance.</p> <p>\$375 million for the Mississippi River and tributaries.</p> <p>\$2.075 billion for operations and maintenance.</p> <p>\$100 million for formerly utilized sites remedial action program.</p>

Program	Amount	Distribution Method	Uses and Restrictions
Military Construction: Army	\$180 million	Federal contracts	\$80 million for design and construction of child development centers. \$100 million for design and construction of warrior transition complexes.
Military Construction: Navy and Marine Corps	\$280 million	Federal contracts	\$80 million for design and construction of child development centers. \$100 million for design and construction of troop housing. \$100 million for energy conservation and alternative energy projects.
Military Construction: Air Force	\$180 million	Federal contracts	\$80 million for design and construction of child development centers. \$100 million for design and construction of troop housing.
Military Construction: Army National Guard	\$50 million	Federal contracts	Funds for construction projects.
Military Construction: Air National Guard	\$50 million	Federal contracts	Funds for construction projects.
Military Construction: Defense-Wide	\$1.45 billion	Federal contracts	\$1.33 billion for construction of military hospitals. \$1.2 billion allocated for the Energy Conservation Investment Program.
Family Housing Construction: Army	\$34.5 million	Federal contracts	Funds for construction projects.
Family Housing Construction: Air Force	\$80 million	Federal contracts	Funds for construction projects.

EDUCATION DEPARTMENT

State Fiscal Stabilization Fund	\$39.5 billion	States receive funding based on a population formula	Funds allocated to enhance local school budgets. Funds may be used for school modernization, renovation or repair, including modification, renovation and repairs that are consistent with a recognized green building rating system.
Education for the Disadvantaged	\$13 billion	Formula grants to states to make awards to local education agencies (LEAs)	Funds for local school performance improvement. \$3 billion for school improvement grants.

Program	Amount	Distribution Method	Uses and Restrictions
Impact Aid Construction	\$100 million	Grants are awarded both by formula and competition to LEAs	Funds for emergency repairs and modernization for LEAs that receive Impact Aid.

ENERGY DEPARTMENT

Energy Efficiency and Conservation Block Grant Program	\$3.2 billion	Cities with populations over 35,000 and counties with populations over 200,000 receive funding by formula; local governments that do not receive formula funding are eligible for pass-through funding from states	Funds may be used for, among other purposes, the implementation and installation in government buildings of renewable energy technology that generates electricity from renewable resources. \$2.8 billion for formula grants. \$400 million for competitive grants.
State Energy Program	\$3.1 billion	Formula and discretionary grants	
Smart Grid	\$4.5 billion	Grants	Grant funds to electric utilities to support modernization of the electrical grid and enhance the security and reliability of the grid.
Non-Defense Environmental Cleanup	\$483 million	Federal contracts	Environmental cleanup.

ENVIRONMENTAL PROTECTION AGENCY

Hazardous Substance Superfund	\$600 million	Federal contracts	Funds for cleanup at existing Superfund sites and for initiation of construction at new sites.
Brownfields	\$100 million	Competitive grants to state and local governments	Funds for environmental site assessment and cleanup.
Leaking Underground Storage Tank Trust Fund	\$200 million	Grants to state and local governments	

Program	Amount	Distribution Method	Uses and Restrictions
GENERAL SERVICES ADMINISTRATION			
Real Property Activities: Federal Buildings Fund	\$5.5 billion	Federal contracts	\$4.5 billion for the conversion of GSA facilities to High-Performance Green Buildings. \$750 million for federal buildings and courthouses. \$300 million for border stations and land ports of entry.
HEALTH AND HUMAN SERVICES DEPARTMENT			
Indian Health Facilities	\$415 million	Federal contracts	Funds for health facilities construction projects.
Health Resources & Services Administration: Community Health Centers	\$2 billion	Formula and discretionary grants	\$1.5 billion for construction and renovation of facilities and IT equipment for public health centers, including community health centers. \$500 million for grants to health centers.
National Institutes of Health (NIH): National Center for Research Resources	\$1 billion	Federal grants or contracts	Funds to construct, renovate or repair existing non-federal research facilities.
NIH: Buildings and Facilities	\$500 million	Federal contracts	Funds for repair, construction and improvement projects for NIH facilities.
HOMELAND SECURITY DEPARTMENT			
Office of the Under Secretary for Management	\$200 million	Federal contracts	Funds for planning, design and construction associated with consolidation of the Department of Homeland Security headquarters.
U.S. Customs: Border Security Fencing, Infrastructure and Technology	\$420 million	Federal contracts	Funds for planning, management, design and construction at land border ports of entry.
Coast Guard: Alteration of Bridges	\$142 million	Federal contracts	Funds for the alteration or removal of obstructive bridges.
Federal Emergency Management Agency: State and Local Programs	\$300 million	Formula grants to state and local governments	Funds to upgrade security for infrastructure assets.

Program	Amount	Distribution Method	Uses and Restrictions
Firefighter Assistance Grants	\$210 million	Competitive grants to fire departments	Funds for modifying, upgrading or constructing fire stations.
Disaster Assistance Direct Loan Program Account		Loans to communities that have had their local economy significantly impacted by a presidentially-declared disaster	If a local government suffered a loss of 25 percent or more in tax revenues following a declared disaster, the entity is eligible to receive loans for amounts up to 50 percent of its pre-disaster annual operating budget.

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public Housing Capital Fund	\$4 billion	Formula and discretionary grants	Grants for public housing authorities. \$3 billion through existing formula. \$1 billion for competitive grants.
Community Development Block Grants	\$1 billion	Formula program	
Home Investment Partnerships	\$2.25 billion	Formula funding	Funds for state and local governments to expand supply of affordable housing to low-income and very-low-income persons.
Community Development Fund: Redevelopment of Abandoned and Foreclosed Homes	\$2.25 billion	Competitive grants to state and local governments and nonprofit entities	Grants to redevelop abandoned and foreclosed homes.
Assisted Housing Stability, Energy and Green Retrofit Investments	\$250 million	Grants and loans	Funds for energy retrofit and green investments in assisted housing.
Lead Hazard Reduction Program	\$100 million	Competitive grants to state and local governments	Funds to evaluate and reduce lead-based paint health hazards.

Program	Amount	Distribution Method	Uses and Restrictions
INTERIOR DEPARTMENT			
Bureau of Reclamation	\$1 billion	Discretionary grants or federal contracts	Funds for development, maintenance, management and restoration of water and related natural resources in 17 Western states. \$126 million to be used for water reclamation and reuse projects. \$60 million to be used for rural water projects, primarily water intake and treatment facilities. \$50 million may be used on projects authorized by the Central Utah Project Completion Act. \$50 million may be used for projects authorized by the California Bay-Delta Restoration Act.
Bureau of Land Management	\$305 million	Federal contracts	\$125 million for maintenance, rehabilitation and restoration of facilities and for remediation of abandoned mines and wells. \$180 million for construction and repair of roads, bridges, trails, and property, and for retrofitting existing facilities for energy efficiency.
Fish and Wildlife Service	\$115 million	Federal contracts	Funds for construction and repair of roads, bridges, trails and property, and for retrofitting existing facilities for energy efficiency.
U.S. Geological Survey	\$140 million	Federal contracts	Funds for repair, construction and restoration of facilities.
National Park Service	\$735 million	Federal contracts	\$146 million for deferred maintenance of facilities and trails and other repair and rehabilitation projects. \$589 million for construction and repair (and energy-efficient retrofits) of roads and facilities, as well as other critical infrastructure projects.
Bureau of Indian Affairs	\$450 million	Federal contracts	Funds for repair and restoration of roads, replacement school construction, school improvements and repairs, and detention center improvements and repairs.
Smithsonian Institution Facilities Capital	\$25 million	Federal contracts	Funds for repair and maintenance of existing facilities.

Program	Amount	Distribution Method	Uses and Restrictions
LABOR DEPARTMENT			
Office of the Job Corps	\$250 million	Federal contracts	Funds for construction, acquisition and rehabilitation of Job Corps centers.
NATIONAL SCIENCE FOUNDATION			
Academic Research Facilities Modernization Program	\$200 million	Grants	Funds for the repair or renovation of obsolete laboratories and research facilities at higher education institutions, nonprofit research institutions and research museums.
Major Research Equipment and Facilities Construction	\$400 million	Federal contracts	
SOCIAL SECURITY ADMINISTRATION			
Limitation and Administration Expenses	\$500 million	Federal contracts	Funds for replacement of the National Computer Center.
STATE DEPARTMENT			
Diplomatic and Consular Programs	\$90 million	Federal contracts	Funds for urgent facilities requirements for passport and training functions.
International Boundary and Water Commission	\$220 million	Federal contracts	Funds for repair and rehabilitation related to water quantity program.
TRANSPORTATION DEPARTMENT			
FAA Facilities and Equipment	\$200 million	Federal contracts	Funds for improvements to FAA infrastructure.
Airport Improvement Program	\$1.1 billion	Discretionary grants	Grant funds for airport construction projects. 50 percent of grants to be awarded within 120 days and the remainder within one year.

Program	Amount	Distribution Method	Uses and Restrictions
Highway Program	\$27.5 billion	Funds distributed by formula to states, with a portion suballocated to metropolitan areas	<p>After set-asides for federal lands, territories, oversight and other items, \$27.5 billion should be apportioned to states via formula. Half of the \$27.5 billion is apportioned to states through Surface Transportation Program formula and the other half is apportioned through the FY 2008 obligation limitation ratio distribution.</p> <p>States have 120 days after apportionment (apportionment must be made within 21 days of the law's enactment) to obligate the first 50 percent of their highway apportionments and until one year after apportionment to obligate the remainder. The 50 percent of the funds not obligated within that time will be redistributed to other states that have met their obligation requirement. Suballocated funds are <i>not</i> subject to the 120-day redistribution requirement. The secretary of transportation can exempt states from the redistribution requirement only with extreme circumstances and after giving notice to Congress.</p>
Supplemental Discretionary Grants	\$1.5 billion	Discretionary grants	<p>Grants to state and local governments and transit agencies for surface transportation projects of national, regional and metropolitan area impact. Highway and transit projects are eligible, as are passenger rail and freight rail transportation projects and port infrastructure investments, including multimodal port facilities.</p> <p>Maximum grant is \$300 million and minimum grant is \$20 million (but the secretary of transportation can waive the minimum size threshold).</p> <p>Not more than 20 percent of the \$1.5 billion can be allocated to any particular state.</p> <p>\$200 million of program is available to pay subsidy and administrative costs of projects eligible for TIFIA financing.</p>
Transit: Capital Assistance	\$6.9 billion	Urbanized and rural formula grants	<p>\$100 million for discretionary grants to make transit systems more energy efficient.</p> <p>Remainder is distributed 80 percent by urbanized area formula, 10 percent by the non-urbanized area formula and 10 percent by the high-growth and high-density formula.</p> <p>Same obligation and redistribution process as for highways applies.</p>

Program	Amount	Distribution Method	Uses and Restrictions
Transit: Fixed Guideway Infrastructure Investment	\$750 million	Fixed Guideway Modernization Formula	
Transit: Capital Investment Grants	\$750 million	New Starts discretionary grants	Priority given to projects under construction or able to obligate funds within 150 days.
High Speed Rail/Intercity Passenger Rail	\$8 billion	Discretionary grants	Grants for intercity passenger rail and high speed rail.
Amtrak	\$1.3 billion		Capital projects.
TREASURY DEPARTMENT			
Western Area Power Administration	\$3.25 billion	Borrowing authority. WAPA may borrow from the Treasury Department an amount, in the aggregate, not to exceed \$3.25 billion in outstanding repayable balances.	Funds for constructing, financing, facilitating, planning, operating, maintaining or studying construction of new or upgraded electricity power lines and related facilities with at least one terminus within the area served by WAPA. Funds for delivering or facilitating the delivery of power generated by renewable energy resources.
VETERANS AFFAIRS DEPARTMENT			
Veterans Health Administration: Medical Facilities	\$1 billion	Federal contracts	Funds for non-recurring maintenance for medical facilities, including energy projects.
State Extended Care Facilities	\$150 million	Grants	Funds to assist states to acquire or construct state nursing home and domiciliary facilities or to modify existing facilities.
BONDS AND CREDITS			
Private Activity Bonds			Interest on private activity bonds issued in 2009 and 2010 excluded from Alternative Minimum Tax (AMT). AMT relief for private activity bonds issued after 2003 and refunded in 2009 and 2010.
New Markets Tax Credit		Distributed by the Treasury Department	Increases available credits for each of 2008 and 2009 to \$5 billion from \$3.5 billion.

Program	Amount	Distribution Method	Uses and Restrictions
Recovery Zone Bonds		New category of tax credit bonds. Each state receives share of national allocation based on percentage of job losses to national average. State allocations are suballocated to local municipalities.	Authorizes \$10 billion in recovery zone economic development bonds and \$15 billion in recovery zone facility bonds. Bonds can be used to finance infrastructure, job training, education and economic development in areas with high poverty, unemployment and foreclosures.
Withholding Requirement and Certain Governmental Payments For Goods and Services			Delays requirement that governmental entities withhold three percent on payments for goods and services from contractors for one year. Delay is extended from December 31, 2010 to December 31, 2011.
Qualified School Construction Bonds		New category of tax credit bonds.	\$11 billion allocated for each of 2009 and 2010. Bonds available only if all proceeds used for construction, rehabilitation or repair of public school facilities or the acquisition of land for such facilities.
Qualified Zone Academy Bonds		Public schools in empowerment and enterprise zones designed to cooperate with businesses to enhance curriculum and increase graduation and employment rates are eligible.	Additional \$1.4 billion in issuing authority for state and local governments in 2009 and 2010 to issue tax credit bonds to finance expenses, including renovations, equipment purchases and teacher training.
Build America Bonds		Gives state and local governments the option to issue tax credit bonds or tax exempt bonds in 2009 and 2010.	Governments issuing tax credit bonds can elect to receive direct payment from federal government equal to subsidy that otherwise would have been delivered through federal tax credit.

Section II: Restrictions and Compliance Issues

The Recovery Act includes a variety of restrictions imposed on funds appropriated or otherwise made available. In addition, there are several immediate compliance issues that companies need to heed as they compete for Recovery Act funds and perform work pursuant to Recovery Act programs.

Buy American Restrictions

The Act includes a controversial Buy American provision. As enacted, the Act provides—

None of the funds appropriated or otherwise made available by the Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

The Act provides two exceptions to this rule. First, the Buy American restriction does not apply if the head of a department or agency finds that: (1) the restrictions would be against the public interest; (2) iron, steel or relevant manufactured goods are not produced domestically in sufficient quantities or of satisfactory quality; or (3) use of domestic products would increase the cost of a project by more than 25 percent. Second, the Act provides that the Buy American restriction must be applied in a manner consistent with “United States obligations under international agreements.”

The effect of this Buy American provision will vary depending on the program and the agency providing the funding. First, the language of the statute provides significant wiggle room. By its terms, no restrictions are imposed on projects that involve activities outside the “construction, alteration, maintenance, or repair of a public building or public work,” and it is unclear how broadly “manufactured goods” will be interpreted. Second, and more significantly, the proviso requiring application consistent with U.S. trade obligations will be applied differently depending on the type of project, the agency providing the funding and the scope of trade agreements with various countries.

Companies receiving Recovery Act funds will need to read solicitations carefully and determine whether the Buy American provision applies to their projects and, if so, take steps to ensure compliance. Among other things, companies may need to identify their sources of supply for the work to be performed, determine what items might qualify as “manufactured goods” and review their procurement processes to ensure that iron, steel and manufactured goods are not procured in a noncompliant manner.

Preference for Competitively Awarded Fixed-Price Contracts

The Act provides that “to the maximum extent possible,” contracts funded under the Act “shall be awarded as fixed-price contracts through the use of competitive procedures.” The Act further indicates that federal agencies must award contracts using competitive procedures as specified in the Federal Acquisition Regulation (FAR), unless other statutes authorize non-competitive awards. Any contracts not awarded as competitively awarded fixed-price contracts are to be posted on the Recovery.gov Web site.

The Act does not require grants, cooperative agreements or other funding vehicles to be awarded through the use of competitive procedures, although the original Senate bill included such a requirement. However, the Office of Management and Budget (OMB) has issued preliminary guidance concerning the Recovery Act that, among other things, calls for awarding grants and cooperative agreements on a competitive basis “to the maximum extent practicable.” (*See* http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-10.pdf.)

Preference for Quick-Start Activities

The Act requires that a preference be given to infrastructure projects that can be “started and completed expeditiously”—the so-called shovel-ready projects. The Act identifies a goal of using at least 50 percent of the funds on projects that can be initiated within 120 days of enactment. The Act also provides that all grant funds should be deployed to maximize job creation and economic benefit. Certain programs have more stringent requirements. For example, for transportation infrastructure projects, a state *must* obligate 50 percent of its funds within 120 days or the Department of Transportation will reprogram the amount of the 50 percent not obligated to other states.

Companies interested in receiving Recovery Act funds will be well advised to make contact as quickly as possible with relevant personnel in the disbursing agencies and fund recipients, to assist them in determining which projects can be started and completed

“expeditiously” and which projects will lead to significant job creation. Given the speed with which agencies and fund recipients must obligate Recovery Act funds, early customer contact is critical.

Applicability of the National Environmental Policy Act

All projects funded under the Act must comply with the National Environmental Policy Act (NEPA) to the extent applicable. While this requirement is consistent with existing law, it will make it more difficult to move projects forward—particularly those that have only been through state environmental review. While there was an effort to streamline the NEPA review process, the Act provides only that adequate resources within the funds made available must be devoted to ensuring that applicable reviews are conducted under NEPA. The Act provides that the “shortest existing applicable process” under NEPA shall be utilized. As a result, only projects that have already completed the NEPA process or that are eligible for a categorical exclusion likely will qualify.

Wage Rate Requirements

The Act provides that the prevailing wage requirements of the Davis-Bacon Act apply to all laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part under the Act. Companies that are not familiar with the Davis-Bacon Act must take steps to understand and comply with its requirements.

Period of Availability of Funds

All appropriated funds will remain available for obligation until September 30, 2010, unless an earlier or later date is specified in the Act.

Use Limitations

No funds may be used by a state or local government, or any private entity, for a casino, aquarium, zoo, golf course or swimming pool.

Central Contractor Registration Database

All funding recipients must register with the federal government’s Central Contractor Registration database. This requirement applies both to public entities and to contractors.

Federal Contractor Compliance Program Requirements

All contractors and subcontractors performing under contracts subject to the FAR must comply with a new FAR provision that imposes requirements concerning compliance programs. At a minimum, contractors’ compliance programs must include provisions for: (1) effective training programs; (2) screening of company “principals” to ensure that they have not engaged in conduct that would conflict with the company’s ethics code; (3) high-level management responsibility; (4) adequate resources for ethics and compliance; and (5) “full cooperation” with government agencies performing investigations.

Most companies that have done work as contractors or subcontractors have existing compliance programs. But in light of the new FAR regulation, almost all companies will need to update their compliance programs and practices to ensure compliance with the new rule.

Federal Contractor Mandatory Disclosure Requirements

Under the same new FAR rule, all contractors with FAR-covered contracts must timely disclose to the Inspector General “credible evidence” of criminal violations, violations of the civil False Claims Act or any significant overpayments received under the contract. The rule provides that a contractor must disclose not only its own conduct, but also the conduct of any “principal, employee, agent, or subcontractor.” Contractors have an obligation to disclose credible evidence of violations on all ongoing contracts, as well as on all contracts that have been closed within the past three years. Importantly, the failure to make timely disclosure of credible evidence is cause for suspension or debarment.

This new mandatory disclosure rule requires all contractors to consider revisions to their compliance programs. First, contractors need to consider adopting methods by which they ensure that they can periodically identify information known to company officers and employees about possible criminal violations, FCA violations and significant overpayments on the part of their own company and their subcontractors. Second, contractors need to consider adopting procedures for investigating whether such information rises to the level of “credible evidence” that must be reported. Third, contractors need to determine how they will comply with the requirement to “look back” to conduct under all contracts that have been closed for less than three years.

Certifications by Recipients of Funds

The Act specifies that, for all funds provided to states and local governments for infrastructure investments, the governor, mayor or other chief executive must certify that the infrastructure investment has been fully reviewed as required by law and is an appropriate use of taxpayer dollars. The certification shall include a description of the investment, the estimated total cost and the estimated total amount of funds to be used. All certifications must be posted on a government Web site, and no funds will be made available until an appropriate certification is made. This certification requirement will likely mean that state and local governments will oversee projects more carefully than usual.

Reports on Use of Funds

The Act provides that all recipients of funds under the Act must submit reports to the federal agency that provided the funds, whether the recipient is a contractor, grantee, or state or local government. The reports must identify: (1) the total funds received; (2) the amount expended or obligated; (3) a list of projects or activities with details on completion status (and, for state and local governments, the purpose, total cost and rationale for the project), the estimated number of jobs created and retained and the name of a person to contact if the federal agency has any concerns; and (4) detailed information on subcontracts or subgrants awarded. These reports must be made publicly available, and the Congressional Budget Office and Government Accountability Office (GAO) must comment on these reports. All fund recipients must submit their first report within 180 days of the Act’s enactment.

These mandatory reporting requirements will impose important record-keeping requirements on contractors and grantees that receive funds directly from a federal agency. All companies that receive such funds directly must take care to ensure they have adequate records to support the information that they are obligated to provide, including accurate information as to project completion status and detailed information on subcontracts and subgrants awarded. Moreover, the mandatory reporting requirements imposed on state and local government recipients will likely lead them to scrutinize and oversee projects with particular care.

Potential Need for Compliance with the E-Verify Program

All federal contractors and subcontractors will need to comply with the E-Verify program of the Department of Homeland Security (DHS) after May 21, 2009, unless the program is delayed or canceled. The E-Verify program will require all contractors and subcontractors to check the immigration status of all employees on all projects over \$100,000. As currently structured, the program would require contractors to perform immigration checks within 30 days of receiving a new contract and within three days of assigning a new employee to an ongoing contract. Subcontractors would be required to perform immigration checks on all projects over \$3,000.

In December 2008, the U.S. Chamber of Commerce filed suit in U.S. District Court challenging the government’s authority to mandate the E-Verify program. DHS accordingly delayed implementation of the program until May 21, 2009. The new administration might further delay implementation, or modify or cancel the program altogether.

If the E-Verify program becomes mandatory, contractors and subcontractors will need to review the E-Verify program requirements carefully and ensure compliance. The process can be burdensome and time-consuming, but failure to comply could lead to drastic consequences.

Future Compliance with GSA Database Reporting Requirement

Sometime in 2009, a new FAR provision will be promulgated imposing very significant reporting requirements on all companies that receive contracts or grants over \$500,000 in value. Although the rule has not yet been promulgated, the statute mandating its promulgation requires that companies must report information relating to several types of “proceedings,” including civil, criminal and administrative proceedings relating to federal grants and contracts, if such proceedings result in a finding of fault or liability or

result in a settlement. The statute also requires reporting of any suspensions, debarments, or administrative agreements that resolve suspension or debarment proceedings, as well as reporting of any default terminations. Furthermore, the statute requires disclosure “to the maximum extent practical” of similar information with respect to *state* contracts and proceedings. The statute specifies that this information must be provided for the most recent five-year period, and most companies must keep the information updated on a semiannual basis. All of this information is to be included in a database that will be maintained by the General Services Administration and made available to contracting officers and other government personnel.

Although the FAR rule has not been promulgated, it is likely to impose significant new burdens on recipients of Recovery Act funds. Companies will likely need to adopt procedures to ensure they collect the required information as to all state and federal contracts and grants going back five years and collect the required information on a timely basis for future semiannual reporting. Moreover, companies will need to assess carefully how to report the information in order to minimize the risk that information will be released under the Freedom of Information Act (FOIA) or unnecessarily affect determinations of present responsibility. We strongly urge all recipients of Recovery Act funds to pay close attention to this impending FAR rule, which could have far-reaching consequences.

Section III: Oversight and Enforcement Risks

The Act includes several provisions designed to guarantee that funds are used for their intended purposes and contemplates a great deal of oversight. Moreover, it is very likely that the disbursing agencies, the Department of Justice (DOJ) and Congress will employ extensive resources to guard against waste, fraud and abuse in connection with Recovery Act funds.

Recovery Accountability and Transparency Board Oversight

The Act establishes a Recovery Accountability and Transparency Board (the “Recovery Board”) to coordinate and conduct oversight of funds to prevent waste, fraud and abuse. The Recovery Board will be supported by OMB and will include as its members the inspectors general of each agency that has received Recovery Act funds. The Recovery Board is expected to review whether competition requirements and other requirements for use of Recovery Act funds have been met, oversee interagency collaboration, conduct its own audits and identify instances of waste, fraud or abuse that should be investigated by the appropriate agency. The Recovery Board is also empowered to hold public hearings and issue subpoenas to compel testimony of non-federal witnesses.

In addition, the Act provides for a Recovery Independent Advisory Panel consisting of five members appointed by the president, to provide recommendations to the Recovery Board on additional actions to be taken to prevent waste, fraud and abuse.

The OMB has issued a 62-page memorandum concerning the Recovery Act that, among other things, provides guidance to agencies on risk management measures to be adopted. (See http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-10.pdf) The guidance confirms that each agency is expected to adopt risk mitigation strategies, to adopt audit and investigation protocols to oversee Recovery Act funds and to implement record-keeping systems that will permit tracking of all Recovery Act funds.

Inspector General Reviews

The Recovery Act provides additional funding for the inspectors general of all the federal agencies that will disburse the stimulus funds. For example, \$20 million is provided to the Department of Transportation (DOT) inspector general and \$15 million to the Department of Housing and Urban Development (HUD) inspector general. Inspectors general are authorized to examine the records of any contractor or grantee, or any subcontractor or subgrantee, and to interview any officers or employees of a company that has received Recovery Act funds.

The Act also specifies that federal inspectors general shall review concerns raised by the public about Recovery Act funds and shall provide findings both to the relevant agency and to the public on a Web site linked to the Recovery.gov Web site. Findings made available to the public may be redacted to remove information exempt from disclosure under FOIA.

It is likely that inspectors general will be particularly diligent in conducting reviews, audits and investigations and in investigating “tips” provided by members of the public. Given the additional funding provided by the Act, the existence of the Recovery Board and the likelihood of congressional oversight of any perceived failures, inspector general offices can be expected to oversee Recovery Act projects with particular diligence. It will therefore be particularly important for contractors and grantees receiving Recovery Act funds to follow stringently their company policies and compliance processes, including record keeping, quality assurance, time charging, cost accounting and billing policies and processes.

False Claims Act Enforcement

The civil False Claims Act likely applies to all funds available under the Recovery Act. In brief, the False Claims Act imposes treble damages and penalties for the knowing submission of false claims or for the use of false statements to get false claims paid, where federal funds are involved. An action to recover these damages and penalties can be asserted either by the United States, or by a person acting as a “qui tam” plaintiff. A successful qui tam plaintiff can recover up to 30 percent of the amount awarded the government, as a bounty.

Importantly, the False Claims Act may be amended this year in several ways that would increase the potential for liability, curtail available defenses and increase the likelihood of qui tam lawsuits. Specifically, there are proposals that the statute should be amended to clarify that it encompasses claims made to states and other third parties, as long as the federal government provided the funds. There are also proposals that would effectively eliminate the requirement that qui tam plaintiffs comply with Rule 9(b) of the Federal Rules of Civil Procedure, and eliminate the requirement that qui tam plaintiffs demonstrate their actions are not based on

public disclosures of information. Finally, there are proposals that would increase the statute of limitations from six years to eight or 10 years, permit the increased use of civil investigative demands (including pre-litigation depositions) and authorize government employees to bring qui tam suits, under certain circumstances.

Because of the huge sums of money being disseminated under the Recovery Act, it is likely that plaintiffs' lawyers will be focused on bringing qui tam lawsuits concerning Recovery Act programs. To minimize the possibility of False Claims Act lawsuits, companies receiving Recovery Act funds must, of course, follow all contract and grant requirements carefully, and follow normal company policies and compliance processes. Moreover, there are certain labor practices and strategies that can be adopted to minimize the risk that employees will file qui tam lawsuits. FAR-covered contractors must adopt and follow compliance processes to ensure that allegations of False Claims Act violations are investigated and any "credible evidence" of such a violation is disclosed to the inspector general. Finally, all contractors and grantees should stay tuned to the possibility of amendments to the False Claims Act, which may require changes in their compliance programs and labor policies.

Whistleblower Claims

The Act prohibits any form of retaliation against any whistleblower employed by a state or local government, contractor or other recipient of Recovery Act funds for engaging in protected activity. The protected activity includes making any disclosure to the Recovery Board, an inspector general or other federal or state official concerning potential waste, fraud or abuse; danger to the public; or violations of laws, rules or regulations related to contracts and grants. These anti-retaliation protections are not extended to federal government employees. The Act provides that the inspectors general must investigate all non-frivolous complaints of retaliation and specifies that, in the absence of agency action, a whistleblower can file an action in federal District Court seeking compensatory damages. The Act provides a relatively lenient burden of proof, permitting recovery if the whistleblower can demonstrate that the protected activity was a "contributing factor" in the reprisal and permitting proof to be made by circumstantial evidence.

The anti-retaliation provisions of the Recovery Act supplement the anti-retaliation provisions of the False Claims Act, and companies can expect that, in some circumstances, they could be subjected to claims under both statutes. It appears that the lessened burden of proof and the broad definition of protected activity found in the Recovery Act will, in some circumstances, afford whistleblowers an avenue of relief where no claim would be available under the False Claims Act. Companies receiving Recovery Act funds should review their employment and labor policies to determine if changes are desirable to minimize the risks of whistleblower claims.

Antitrust Enforcement

The antitrust laws, obviously, will apply to all corporate activities aimed at securing funds made available by the Act. There is reason to believe that the DOJ Antitrust Division is gearing up for increased enforcement of the antitrust laws in connection with the Recovery Act funds.

To avoid an investigation or enforcement action, any company competing for projects funded by the Recovery Act must avoid all appearance of collusion or other anticompetitive actions. Most importantly, companies must avoid any actions that might lead to inferences of bid-rigging, market allocation, price-fixing or other anticompetitive behavior.

Congressional Investigation and Oversight

The sheer size of the Recovery Act—to say nothing of the speed with which it has been constructed—makes the program a prime target for vigorous congressional oversight in the 111th Congress. Just as the recent TARP legislation has already led to numerous congressional oversight hearings this year, a number of senior congressional leaders have already promised similar oversight for the Recovery Act. For example, Rep. Edolphus Towns (D-NY), chairman of the House Oversight and Government Reform Committee, has pledged to conduct oversight of the use of stimulus funds. He has promised that his committee will be watchful of the stimulus package "to see if it's doing what it should be doing," because "I'm concerned about some things we're hearing about contractors who will get a contract and then they won't even pay the taxes on their contract And, of course, the other part, aside from that, is the waste, fraud and abuse that goes on in our contracts." His concerns were recently echoed by Ranking Member Darrell E. Issa (R-CA), who also called for "rigorous oversight of stimulus funds."

Likewise, leading Democratic senators have already announced new oversight of federal contracting and procurement. Senate Homeland Security Committee Chairman Joseph Lieberman (I-CT) has created a new subcommittee, chaired by Senator Claire

McCaskill (D-MO) (a former prosecutor), charged with overseeing and investigating the terms of federal contracts. Senator McCaskill said, “last year we made major strides in contracting accountability by establishing the Wartime Contracting Commission, and while I look forward to those investigations, we all know that outrageous contracting abuses occur in every facet of government. I can’t wait to get to work saving huge money for taxpayers. They deserve it.”

Such oversight will focus not only on traditional procurement issues but also on any charges that Congress may view as inappropriate. As seen in recent criticisms of the TARP recipients, this may involve salaries and bonuses, bills for parties, luxury travel and marketing items. Just recently the DOT inspector general released a report to Congress critical of such expenses incurred by Federal Highway Administration contractors. In response, both the inspector general and Rep. James Oberstar (D-MN), chairman of the Transportation and Infrastructure Committee, announced plans for continued oversight of such “inappropriate charges” under the new Recovery Act.

Criminal Enforcement

Federal and, where applicable, state criminal laws will apply to corporate activities concerning Recovery Act funds. Given the high profile of the Recovery Act funds and the likelihood of congressional oversight, federal and state prosecutors can be expected to devote significant attention to allegations of fraud or other criminal activity related to these funds.

Conclusion

Akin Gump is ready to help you realize the opportunities and manage the risks.

We frequently assist companies in exploring contracting opportunities and expanding their sales to the federal government as well as to state and local governments. We help develop access strategies, work with buyers, respond to solicitations and negotiate contracts and agreements. We also advise clients on the laws and regulations that apply to federal, state and local government contracts and help clients adopt and revise compliance programs. Our team includes former members of Congress, cabinet and White House officials, and congressional and executive branch staff members.

Our lawyers also help manage the risks and disputes that can arise in connection with government contracts. We routinely handle bid protests and disputes and have extensive experience with defending antitrust, false claims and debarment issues. We have also helped many clients respond to investigations conducted by inspectors general and Congress. Our team includes lawyers who have previously worked in every relevant government agency and office, including congressional investigative staff, and the antitrust, civil and criminal divisions of the DOJ.

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Additional Materials Tab 3

RENEWABLE ENERGY ALERT

PRESIDENT'S BUDGET SUPPORTS TRANSITION TO RENEWABLE ENERGY, ANTICIPATES CAP-AND-TRADE PROGRAM IN 2012

On February 26, 2009, President Obama submitted his first budget to Congress, demonstrating spending priorities dedicated to advancing renewable energy and climate change goals. While the president's budget is not binding, it outlines policy priorities through the remainder of his term. The president's energy priorities reflect a shift away from fossil fuels to lower-carbon and renewable sources. The budget seeks to double renewable energy capacity, support expansive energy efficiency investments and create millions of "green" jobs. The budget would impose additional costs upon fossil fuels beginning in 2011, after anticipated economic recovery. Specifically, the proposed budget establishes new leasing costs and fees on mineral development on federal lands and anticipates revenues from an economy-wide greenhouse gas cap-and-trade program beginning in 2012.

PRESIDENT'S BUDGET SEEKS SPENDING TO STRENGTHEN THE RENEWABLE ENERGY INDUSTRY

The president's budget characterizes investments in the renewable energy sector as providing three main benefits. First, as technology, it will allow the United States to shift away from foreign oil and other fossil fuels, providing a benefit to national security. Second, the budget looks to the sector as a catalyst for domestic innovation, international competitiveness and job growth. Third, it looks to renewable energy as a resource to limit greenhouse gas emissions.

Under the budget, investments in clean and renewable energy are funded primarily through the Department of Energy (DOE) programs. The proposed DOE budget builds upon the approximately \$39 billion in appropriations made through the American Recovery and Reinvestment Act of 2009 ("stimulus bill") and seeks to position the United States as a world leader in clean energy and climate change technology. Within the DOE, the budget's spending priorities mirror those established in the stimulus bill. Specifically, the budget provides support for loan guarantees for innovative energy technologies that will reduce greenhouse gas emissions. Funding is made available to modernize U.S. transmission and distribution infrastructure. The budget supports extensive research and development, demonstration, deployment and commercialization of clean energy technologies, including biofuels, renewable energy and energy efficiency projects.

Beyond the DOE, the budget allocates additional agency funding that will support the renewable energy industry. The Department of Interior receives \$50 million to conduct environmental impact assessments and other technical studies to allow for increased renewable energy development on federal lands. Funding is also made available to the Department of Labor to provide renewable energy job training programs. To support rural renewable energy programs, the Department of Agriculture receives \$250 million for loans and grants for renewable energy projects, including wind energy and biofuel development.

Beyond 2010, the budget anticipates funding for renewable energy through greenhouse gas cap-and-trade program revenues. Beginning in fiscal year 2012, the proposed budget allocates \$15 billion per year from greenhouse gas cap-and-trade revenues to support investments in clean energy technologies, totaling \$150 billion over 10 years.

PROPOSED FEDERAL BUDGET COMMITTED TO REDUCTION OF GREENHOUSE GASES, ANTICIPATES CAP-AND-TRADE

Throughout the federal budget, President Obama's commitment to understanding and addressing climate change is evident. Most significantly for the energy industry, the budget anticipates that a domestic greenhouse gas cap-and-trade program will go into effect by 2012. To prepare for the cap-and-trade program, the proposed budget provides \$19 million in funding to the Environmental Protection Agency to develop an emissions inventory.

The proposed budget provides a few specifics of the anticipated cap-and-trade program: the program would establish greenhouse gas emission reduction targets of 14 percent below 2005 levels by 2020 and 83 percent below 2005 levels by 2050, while 100 percent of emissions allocations would be auctioned to prevent "windfall profits" to the energy sector. The budget does not provide detail regarding which sectors would be covered under the cap-and-trade; the energy sector, however, is a target.

The budget anticipates the government will receive \$646 billion in emission revenues between 2012 and 2019. Of that amount, \$15 billion will annually fund investments in clean energy technologies. The budget allocates the remainder of emission revenues to the Making Work Pay program and states this allocation will ultimately help vulnerable families and businesses transition to a clean energy economy.

BUDGET SEEKS TRANSITION TO CLEANER FOSSIL FUELS, IMPOSES ADDITIONAL FEES ON MINERAL DEVELOPMENT FOLLOWING ECONOMIC RECOVERY

With respect to fossil fuels, the budget seeks a transition to cleaner and less-emitting technologies. In particular, it supports DOE funding to research and demonstrate carbon capture and storage technologies for low-emission coal power projects. The budget anticipates economic recovery in 2011 and seeks revenue-generating policy changes to eliminate oil and gas company preferences in federal mineral development.

The budget directs Interior to increase fees, royalties and other payments related to gas, coal, oil and other mineral development on federal land. In particular, the budget proposes—

- a new excise tax on offshore oil and gas production in the Gulf of Mexico beginning in 2011
- a fee for non-producing leases in the Gulf of Mexico
- user fees for processing oil and gas drilling permits
- new royalties and rates to increase the return from oil and gas production on federal land.

Separately, the budget proposes re-establishing a Superfund fee in 2011 to pay for hazardous waste site remediation. The Superfund fee is expected to impact the oil and gas industry.

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Additional Materials Tab 4

HEALTH INDUSTRY ALERT

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009: STIMULUS LEGISLATION OVERHAULS AND EXPANDS THE REACH OF THE FEDERAL HIPAA REGIME GOVERNING HEALTH INFORMATION PRIVACY AND SECURITY

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (Recovery Act), which includes provisions making major changes to the federal health information privacy and security regime established pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This legislation substantially broadens the scope and expands the reach of requirements concerning the privacy and security of health information. These changes will have a major impact on many health sector participants, including individuals and entities currently treated as “Covered Entities” (defined as including certain health care providers, as well as health plans and health care clearinghouses) and the “Business Associates” that perform functions or services on their behalf.

Key changes to the existing HIPAA privacy and security regime enacted through the stimulus legislation include, but are not limited to, the following—

- **Expanding obligations—and exposure—of Business Associates.** Under existing federal law, Business Associates only need to comply with a discrete list of privacy and security obligations that can be enforced by the Covered Entity through contract. Not only has this list of obligations expanded, but in a sea change for Business Associates, the Recovery Act creates direct, statutory obligations for Business Associates. The stakes are high, as the Recovery Act applies civil and criminal penalties to Business Associates.
- **Establishing a federal breach notification requirement.** While many states have adopted security breach notification laws, existing federal law does not require notice of data breaches involving protected health

information (PHI). The Recovery Act establishes an expansive protocol for providing notice in the event that an individual's unsecured PHI has been (or is reasonably believed to have been) accessed, acquired or disclosed as a result of a data breach. This new federal regime is more prescriptive and onerous than data breach notification laws presently in place in many states. For example, the legislation goes so far as to require that in addition to notifying individuals, both the Secretary of the U.S. Department of Health and Human Services (Secretary) and prominent local media outlets must be notified of data breaches under certain circumstances.

- **Calling for refinement of the “minimum necessary” standard.** Covered Entities are presently required to use, disclose and request only the “minimum necessary” PHI in many situations. The Recovery Act calls for new regulations on what constitutes “minimum necessary” for purposes of the HIPAA privacy provisions, and establishes a transitional standard that will remain in effect until the Secretary issues the required guidance.
- **Expanding the types of disclosures subject to accounting requirements.** Individuals currently have the right to receive an accounting of disclosures of their PHI made by a Covered Entity in the past six years, with certain exceptions. One important exception is for disclosures to carry out treatment, payment and health care operations. The Recovery Act eliminates this exception for Covered Entities using electronic health records. The legislation requires such Covered Entities to account for these types of disclosures, to the extent they are made through an electronic health record, for the three years preceding the date of the accounting request.
- **Limiting the sale of protected health information.** Existing privacy regulations do not provide extensive guidance concerning situations in which the sale of PHI would be prohibited without authorization. The Recovery Act expressly prohibits Covered Entities and Business Associates from directly or indirectly receiving remuneration in exchange for PHI without the individual's authorization, subject to several exceptions. Specifically, the legislation carves out exceptions for public health activities, treatment, the merger or acquisition of the Covered Entity, research (if remuneration is limited to the cost of preparation and transmittal of data) and certain Business Associate functions, as well as for the purpose of allowing individuals to copy their PHI when exercising their access rights. The legislation allows the Secretary to create additional exceptions that are similarly necessary and appropriate.
- **Restricting marketing communications.** HIPAA regulations currently carve out commercial communications related to treatment and certain health care operations from the definition of “marketing,” thus allowing these communications to be conducted without authorization from the individual. The Recovery Act adds a new degree of complexity to the marketing analysis, further limiting the situations in which such communications may be made without authorization.

- **Fine-tuning requirements concerning fundraising activities.** Currently, Covered Entities may use and make limited disclosures of a restricted set of PHI for their own fundraising purposes, without authorization, provided that any fundraising materials sent to an individual expressly describe how the individual may opt out of receiving further fundraising communications. While Congress considered changes that would have required authorization for all uses and disclosures of PHI for fundraising purposes, the Recovery Act, in its final form, instead only clarifies the existing regime. Specifically, the Recovery Act calls for regulations requiring that written fundraising communications provide, in a clear and conspicuous manner, an opportunity for the recipient of the communication to elect not to receive any further such communications. The Recovery Act also provides that an individual's exercise of the opt-out right will be treated as a revocation of authorization.
- **Enhancing penalties and strengthening enforcement of privacy and security requirements.** HIPAA enforcement efforts to date have been weak, with far fewer Covered Entities being penalized for compliance lapses than anticipated. The Recovery Act takes numerous steps to reverse this trend, including allowing state attorneys general to file suit on behalf of their residents for violations of HIPAA, requiring the Secretary to conduct audits of Covered Entities and Business Associates to ensure compliance with privacy and security requirements, calling for a mechanism to allow individuals harmed by a privacy or security violation to receive a percentage of any civil monetary penalties or settlement amounts collected in connection with the offense, clarifying that criminal penalties established by HIPAA may apply to employees of a Covered Entity or Business Associate, and creating a tiered civil monetary penalty system based on the level of intent or neglect (with penalties ranging from \$100 to \$50,000 for each individual violation, subject to various caps).
- **Contemplating expanding the HIPAA regime to apply privacy and security standards to additional types of entities.** Existing law focuses primarily on health care providers, health plans and health care clearinghouses, bringing certain service providers into the fold through the Business Associate contracts. The Recovery Act looks beyond Covered Entities and Business Associates. Specifically, the legislation requires the Secretary, in consultation with the Federal Trade Commission, to study and report on the extent to which privacy and security requirements should apply to entities that are not currently considered Covered Entities or Business Associates, including vendors of personal health records and other such entities.

Many stakeholders in the health care industry are still grappling with HIPAA's already arduous rules, and fear that adding a fresh layer of complexity through statutory changes and new rulemakings could negate some of the positive benefits of health information technology (HIT) adoption. Covered Entities and Business Associates will need to devote time and resources to bringing their operations into compliance with the new privacy and security regime. All Business Associate agreements will need to be amended, policies and procedures will need to be created or updated, and current patterns of use and disclosure will need to be reassessed to ensure compliance. The landscape is likely to continue shifting as the Secretary develops and implements the myriad regulations permitted or required by the law.

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Additional Materials Tab 5

RENEWABLE ENERGY ALERT

\$787 BILLION STIMULUS BILL CONTAINING SUBSTANTIAL RENEWABLE ENERGY MEASURES SIGNED INTO LAW

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (the “stimulus bill”), a \$787 billion emergency stimulus legislation containing substantial tax and spending provisions for the renewable energy industry. The stimulus bill’s renewable energy spending provisions include loan guarantees and grants for renewable energy projects and infrastructure. The stimulus bill substantially revises the tax code, extending the production tax credit deadline, offering flexibility to renewable projects to choose between a tax credit on production or investment, and establishing a program by which a renewable project developer may receive a grant in lieu of tax credits. Tax credits are also made available to manufacturers of clean technology equipment. This client alert provides an overview of the renewable energy spending and tax provisions.

STIMULUS BILL EXPANDS DEPARTMENT OF ENERGY RENEWABLE ENERGY GRANT PROGRAMS, SUPPORTING STATE AND LOCAL RENEWABLE ENERGY AND EFFICIENCY PROGRAMS

The stimulus bill allocates \$16.8 billion in additional funding to the Department of Energy’s (DOE) Energy Efficiency and Renewable Energy grant programs. These programs include the Renewable Energy Research, Development, Demonstration and Deployment Program, of which \$2.5 billion is allocated to fund research and demonstrations of renewable energy technologies. The majority of funding is allocated to investment into state- and local-level energy efficiency and building retrofits, low-income weatherization, state energy program funds and grants for advanced battery technologies to support the manufacture of advanced vehicle batteries and components.

STIMULUS BILL EXPANDS THE DOE LOAN GUARANTEE PROGRAM

The stimulus bill includes \$6 billion in additional funding for the DOE Innovative Technology Loan Guarantee Program, supporting loans for the rapid deployment of new or significantly improved renewable energy and electric power transmission systems. The increased loan guarantee program will provide capital for renewable construction and transmission projects postponed due to the current contraction in the credit market. The stimulus bill requires that renewable energy systems, electric transmission systems and pilot biofuel projects funded through the \$6 billion in additional funding commence construction by September 30, 2011.

BILL AUTHORIZES SPENDING FOR SMART GRID AND EXPANDED ELECTRICAL INFRASTRUCTURE INVESTMENTS

The stimulus bill authorizes a total of \$11 billion in spending to upgrade the U.S. electrical transmission and distribution systems. In particular, \$4.5 billion is allocated toward investments in a Smart Grid System, including research and demonstration projects. The DOE Smart Grid Investment Program will deploy digital technologies in the transmission grid to save energy and costs, facilitate demand response and improve power quality. The stimulus bill provides 50 percent matching grants for Smart Grid demonstration projects to utilities, and the solicitation process will begin within 60 days of enactment of the stimulus bill.

The stimulus bill also authorizes the Bonneville Power Administration and the Western Area Power Administration to each borrow an additional \$3.25 billion from the Treasury to finance grid improvements in their respective jurisdictions. The Western Power Administration may use that amount to construct, finance or study upgraded transmission lines and upgrading power delivery systems for renewable energy resources. The Bonneville Power Administration is authorized to incur lending to construct, acquire and replace its transmission system.

BILL EXTENDS PRODUCTION TAX CREDITS AND OFFERS ADDITIONAL FLEXIBILITY

The stimulus bill contains three major modifications regarding renewable energy tax incentives, estimated to provide over \$20 billion in benefits to the renewable energy industry. First, it extends the placed-in-service date for all technologies receiving production tax credits. Second, it allows certain renewable energy facilities to receive an investment tax credit instead of the production tax credit. Third, it establishes a temporary grant program in lieu of tax credits, whereby the Department of the Treasury reimburses expenditures in renewable energy facilities after those facilities are placed into service.

The Production Tax Credit (PTC) is a cent-per-kilowatt hour (kWh) credit on renewable energy production for eligible facilities, generally lasting for 10 years after the project is placed into service. For wind energy, the PTC is a 1.5 cents per kWh credit, indexed for inflation, and is currently 2.1 cents/kWh. The stimulus bill extends the PTC placed-in-service date for wind facilities to December 31, 2012. For other eligible renewable technologies, such as biomass and geothermal facilities, the bill extends the placed-in-service date to December 31, 2013. The PTC was set to expire at the end of 2009 for wind and at the end of 2010 for other PTC-eligible projects.

The stimulus bill responds to current market conditions that make uncertain the appetite for PTCs by allowing technologies that traditionally qualify for the PTC to instead receive an Investment Tax Credit (ITC) on renewable facility expenditures. The ITC is made available once the facility is placed into service. Previously, only certain solar, geothermal and micro turbine facilities qualified to receive the ITC. The stimulus bill provides the option to receive a 30 percent ITC on expenditures on wind, biomass, landfill gas, trash combustion and marine renewable electricity facilities. The option is available through 2012 for wind and through 2013 for other PTC-eligible renewable technologies. Separately, the stimulus bill modifies the ITC to allow the basis of the property upon which the tax credit is based to include government grants and incentives, thereby increasing the amount of the credit.

Responding to the lack of appetite for tax credits in a down economy, the stimulus bill also adopts a temporary grant program through the Department of the Treasury for a project developer to receive a grant in lieu of receiving tax credits. The Treasury grant program reimburses a certain percentage of investments in eligible renewable energy properties placed into service in 2009 and 2010 and projects placed into service after that date where construction began in 2009 or 2010. The Treasury grant consists of up to 30 percent of the basis of eligible wind, biomass, geothermal and solar property. Other eligible technologies are eligible to receive a 10 percent grant. Participation in the grant program prohibits the facility from subsequently claiming tax credits under the PTC or the ITC. The Treasury would award the grant after the facility is placed into service; its grant review period is 60 days.

TAX INCENTIVES FOR INVESTMENTS IN CLEAN TECHNOLOGY MANUFACTURING

The stimulus bill also provides \$2.3 billion in tax credits for clean technology manufacturers. Manufacturers may receive a 30 percent credit for re-equipping, expanding or establishing facilities that manufacture advanced energy technologies—such as those supporting renewable energy systems, renewable transmission and storage, energy efficiency, renewable fuel blending, and carbon capture and sequestration. Qualifying equipment may be later expanded to include other advanced energy property designed to reduce greenhouse gas emissions. The stimulus bill requires the treasury secretary, in consultation with the energy secretary, to certify facilities to receive the credits. Facility certification will take into consideration factors such as job creation, commercial feasibility, greenhouse gas reduction potential and project timeline. The clean technology credit is not available to manufacturers who also receive the ITC.

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Additional Materials Tab 6



The Stimulus Package:

STRATEGIES AND OPPORTUNITIES
FOR INVESTORS

Public Trust Monitor

Introduction

The *Public Trust Monitor* is Public Strategies' quarterly survey of American opinion on issues at the intersection of the public and private sectors.¹ We are using this research to track the evolution of key attitudes about the balance between government activism and the free market. We partner with POLITICO to share our findings.

The goal of our *Public Trust Monitor* is to develop a deeper understanding of the public's attitudes about government and business. Our inaugural poll, released in January of 2009, found that the majority of the public had lost confidence in government and business over the preceding year. Today, we see that the public mood about government and business has improved, but more for government than for business. Below is a closer look at some of the key results of this nationwide survey, which was conducted online among a representative sample of 1,000 registered voters and has a margin of sampling error of +/- 3.1 percentage points.

Key Findings

Trust in government has increased since the end of 2008, fueled principally by gains among Democrats. Trust in corporations remains unchanged. In fact, the government has pulled even with corporations on the issue of managing finances responsibly, and widened its lead over business on being trusted "to do what is right."

Despite this, there are signs of improved opinions about business as our poll found a notable increase — from 28% to 40% — in the number of Americans who think that business is on the right track. This change too, however, is due in large part to a 21-point increase in Democrats saying that business is on the right track.

Barack Obama enjoys a strong base of support among both Democrats and Independents. Further, relatively low levels of trust in the private sector, and the lack of a well-known spokesperson in the Republican opposition have left him without a counterbalance for the time being.

These factors all suggest that Barack Obama will continue to be a considerable force with a governing coalition that will allow him to continue to drive policy.

¹ Public Strategies conducted a national public opinion poll of 1,000 registered voters, March 27-31, 2009.

Analysis of Findings

1. **Trust in government has increased since the inaugural Public Trust Monitor at the end of last year, while corporations have held their ground.** Trust ratings in government “to do what is right” and to “manage its finances responsibly” both increased in Q2, while trust ratings on the same dimensions for corporations did not change.

Table 1: Change in Trust Percent “Great Deal+Some”			
	12/08	3/09	Change
How much do you trust the United States government to do what is right?	57	63	+6
How much do you trust the United States government to manage its finances responsibly	34	40	+6
How much do you trust corporations to do what is right?	37	37	--
How much do you trust the corporations to manage their finances responsibly?	40	39	-1

The gains in trust seen in Table 1 come primarily from increased trust in government among Democrats. Among Democrats, trust in the United States government to do what is right increased from 61% to 76%, while trust in the United States government to manage its finances responsibly increased from 39% to 56%. Trust measures among Independents were unchanged and trust among Republicans slipped slightly for the government’s handling of its finances.

2. **The public mood about government and business has improved, but more for government than for business.** A 54% majority of Americans think things in the federal government are headed in the right direction, up from 35% in December. Opinions of the federal government improved most among Democrats (+36 points), 35-49 year olds (+34 points), seniors (+21 points) and college graduates (+21 points).

Asked the same question about things in business, 40% say things are headed in the right direction, up from 28%. Business made its largest gains among Democrats (+21 points), seniors (+20 points) and those with some college education (+20 points).

3. **Barack Obama is without peer in the public sector.** When it comes to who the public trust to “identify the right solutions to the problems we face as a nation,” Barack Obama receives higher marks than any other individual or institution tested. He continues to fare well with nearly unanimous support among Democrats as well as strong support among Independents.
 - An overwhelming 93% of Democrats and 64% of Independents trust him a great deal or some along with 31% of Republicans. Obama’s continued strong support among Independents will be key to maintaining his governing coalition now and in the future.
 - Nearly three-quarters (73%) of 18-49 year olds say they trust Barack Obama a great deal or some, compared to 57% of those 50 or older.

Table 2: Trust Ratings by Party Identification				
Percent Rating Trust "A Great Deal + Some"				
	Total (1000)	Democrats (303)	Independents (402)	Republicans (215)
Barack Obama	66	93	64	31
The Democratic Party	52	85	48	19
The Republican Party	40	15	41	79
Sarah Palin	38	17	40	69
Mitt Romney	36	20	39	60
Rush Limbaugh	28	10	27	57
Nancy Pelosi	26	43	24	12

The Democratic Party is the only other individual or institution tested that a majority of Americans say they trust (52%-42%) to identify the right solutions. When the same question was asked about the Republican Party, the result was 40%-54%. Rush Limbaugh and Nancy Pelosi are at the bottom of the list with 28% and 26% trust ratings respectively.

Selected business leaders rival Barack Obama when it comes to credibility on the economy. We asked people to rate 11 individuals on their credibility as a source of information on the U.S. economy. Bill Gates topped the list with 80% rating him either very or somewhat credible. President Barack Obama and Investor Warren Buffett virtually tie for second with ratings of 71% and 70% respectively. Republicans Senator Mitch McConnell and Congressman John Boehner – receive the lowest marks with credibility ratings of 48% and 46% respectively.

- Much of Barack Obama’s high credibility rating comes from a strong showing among Democrats, while Gates and Buffett enjoy solid credibility ratings that bridge partisan differences.
- Barack Obama receives his strongest credibility rating from women as 42% see him as a *very* credible source of information on the economy compared to 28% among men.

Table 3: Credibility as a Source of Information on the Economy by Party Identification				
Percent "Very + Somewhat Credible"				
	Total (1000)	Democrats (303)	Independents (402)	Republicans (215)
Microsoft Chairman Bill Gates	80	84	80	78
President Barack Obama	71	93	70	43
Investor Warren Buffett	70	69	74	72
Federal Reserve Chair Ben Bernanke	60	68	61	54
New York Mayor Michael Bloomberg	59	61	61	56
Former President Bill Clinton	58	84	55	26
Treasury Secretary Timothy Geithner	56	73	57	31
Former MA Governor Mitt Romney	56	47	56	71
Former GE Chairman Jack Welch	52	47	56	53
Senator Mitch McConnell	48	49	48	49
Congressman John Boehner	46	49	44	44

4. **Business receives low marks for how they are interacting with government currently, particularly among Republicans.** Overall, 37% approve and 54% disapprove of the job corporations are doing in working with government to solve the problems facing the United States.

Among Republicans, 58% disapprove, while 57% of Independents and 50% of Democrats disapprove. Additionally, a 55% majority believes government will go too far in providing assistance to corporations, including 71% of Republicans and 61% of Independents.

5. **Americans divide evenly on their trust in the news media to do what is right.** This is another question that reveals a notable partisan divide. While 63% of Democrats trust the media a great deal or some, majorities of Independents (55%) and Republicans (62%) say they trust the news media either not very much or not at all. The public continues to give families high marks for managing their finances responsibly as 83% say they have a great deal or some trust in families.
6. **The public is mixed in their outlook for regulation of the financial sector.** While 31% think that the government is more likely to go too far in regulating financial institutions, 35% think they will not go far enough, and another 35% think they will regulate financial institutions about the right amount. Again, we see strong partisan and age differences in these results.
- While about half (49%) of Democrats think the government will regulate financial institutions about the right amount, 58% of Republicans think the government will go too far. Independents are nearly evenly divided across the three choices.
 - At least three-quarters of 18-34 year olds think the government will regulate financial institutions about the right amount or will not go far enough, while the plurality of those 50 and older think the government will go too far.
7. **The public rates the economy as weak.** Whether rating the national economy, their state economy, or the economy in their local area, large majorities of the public rate the economy as “weak.” Many characterize the economy in each of the geographic designations as “very” weak – 42% for the U.S. economy, 37% for their state, and 27% for their local area.

Overall, half of the public believe their state’s economy will improve at the same time as other states. People in Southern states have the most optimistic outlook as 26% of people in the South say their state will be ahead of other states, while Midwesterners have the most pessimistic outlook with 37% saying their state will be behind most other states.

On average, homeowners surveyed expect it will take 19 months for the housing market in their area to recover such that they could sell their current house in a reasonable amount of time. Those working either full or part time expect the same amount of time for the job market to recover such that they could find another job within six months making their current salary.

8. **People expect the stimulus to do more for the nation than for them personally.** Overall, 56% think the stimulus will have a positive impact on the nation’s economy. While 36% think the stimulus package will have a positive impact on them personally, another 45% think it will have no impact on them and 20% think it will have a negative impact on them.
9. **Partisan attitudes extend to opinions about science and religion.** We asked people how much confidence they have in the answers and explanations that the scientific community and religious institutions offer on the problems we face as a society. Overall, 64% say they have a great deal or some confidence in the scientific community compared to 54% for religious institutions. The following table illustrates the interesting partisan differences.

Table 4: Confidence Ratings by Party Identification				
Percent “Great Deal + Some”				
	Total (1000)	Democrats (303)	Independents (402)	Republicans (215)
The scientific community	64	73	65	51
Religious institutions	54	48	52	67