

# NEW EXEMPT FACILITIES CATEGORIES FOR RENEWABLE ENERGY & ENERGY EFFICIENCY PROJECTS

## Putting Traditional Infrastructure Financing Models to Work for Energy Independence

Tax-exempt bonds have financed 4,000,000 miles of roadway, 500,000 bridges, 70,000 dams, 16,000 airports, 1,000 mass transit systems, and thousands of other components of American infrastructure. Many of these projects were completed with direct private sector involvement and were specifically financed with private activity bonds.

Unfortunately, the current Internal Revenue Code ("Code") prevents the same private activity bond tools from being used to finance a now-critical element of America's infrastructure: energy independence.

Clean energy facilities and energy efficiency improvements are crucial to the future success of our country and deserve to be on a financial footing equal to other components of American infrastructure. The Clean Energy + Bond Finance Initiative (CE+BFI), a partnership of Clean Energy Group and the Council of Development Finance Agencies, proposes a bill that would make simple tweaks to the Code and enable equitable treatment of these infrastructure projects in the municipal bond markets.

## New Types of Exempt Facilities

Exempt facility bonds are federally tax-exempt private activity bonds, the proceeds of which are used to finance or refinance certain qualifying facilities or projects. Under Section 142 of the Code, exempt facilities allow for a variety of important infrastructure financing options. Unfortunately, explicit provisions for renewable clean energy and energy efficiency projects are not allowed. This lack of clarity has resulted in virtually no use of exempt facility bonds for the purpose of private activity bond finance in clean energy development.

CE+BFI's recommended modifications to the code include the creation of two new categories of "exempt facilities" eligible to be financed or refinanced with the proceeds of exempt facility bonds under Section 142 of the Code.

As specifically described below, the proposed new categories are (i) renewable energy resource facilities and (ii) conservation and efficiency facilities and projects.

### ***New Exempt Facilities Categories Proposal at a Glance:***

- Tax-exempt bonds, and private activity bonds in particular, are a historically critical component of American infrastructure finance.
- The current Internal Revenue Code impedes America's energy independence by not qualifying clean energy or energy efficiency for private activity bonds.
- Adding *Renewable Energy Resource Facilities* and *Conservation and Efficiency Facilities and Projects* as qualified purposes to the Code would address this shortcoming.
- The additions add to over a dozen purposes already allowed under the Exempt Facilities category of private activities bonds.
- These changes do not require additional appropriations and can be implemented under the bond volume cap to limit the total impact to the federal budget.

## **NEW EXEMPT FACILITIES CATEGORIES FOR RENEWABLE ENERGY & ENERGY EFFICIENCY PROJECTS**

### ***Renewable Energy Resource Facilities***

Renewable energy resource facilities are facilities used to produce electric or thermal energy (including a distributed generation facility) from (i) solar, wind or geothermal energy, (ii) marine and hydrokinetic renewable energy, (iii) incremental hydropower, (iv) biomass or (v) landfill gas. In addition, any facility or project used for the manufacture of facilities referred to in the foregoing qualifies as a renewable energy resource facility.

### ***Conservation and Efficiency Facilities and Projects***

Conservation and efficiency facilities and projects include (i) any facility used for the conservation or the efficient use of energy, including energy efficient retrofitting of existing buildings, or for the efficient storage, transmission, or distribution of energy, including any facility or project designed to implement smart grid technologies and (ii) any facility used for the conservation of or the efficient use of water (except for facilities and projects that store water), including any facility or project, or any individual component thereof, designed to (a) reduce the demand for water, (b) improve efficiency in use and reduce losses and waste of water and (c) improve land management practices to conserve water. Additionally, any facility or project used for the manufacture of the foregoing qualifies as a conservation and efficiency facility and project.

### **Volume Cap Not Required**

These new categories would be subject to private activity bond volume cap in accordance with the current Code. No changes are recommended here.

### **Effective Date**

The changes to the Code made by the bill would apply to obligations issued after the date of the enactment.

### **For More Information**

**About the Council of Development Finance Agencies (CDFA):** CDFA is a national association dedicated to the advancement of development finance concerns and interests. CDFA is comprised of the nation's leading and most knowledgeable members of the development finance community. For more information, visit [www.cdfa.net](http://www.cdfa.net).