

Commerce Department Announces First Wave of \$39 Billion CHIPS Act Funding Opportunities and Deadlines

March 1, 2023

On February 28, 2023, the Department of Commerce (DOC) announced the first round of manufacturing incentives related to the CHIPS and Science Act. Passed by Congress in August 2022, the CHIPS Act provides \$39 billion in federal funding for companies across the semiconductor value chain to bolster domestic production capabilities.

This marks DOC's first phase of funding and targets companies seeking U.S. government assistance to construct, expand, or modernize commercial facilities for the production of leading-edge, current-generation, and mature-node semiconductors. These projects include both front-end wafer fabrication and back-end packaging, assembly, and testing. Two additional semiconductor development funding phases will be forthcoming this year: one in late spring specific to upstream suppliers and equipment manufacturers, and one in the fall for semiconductor research and development initiatives.

Applicants for the first phase of funding constitute two groups: (1) manufacturers seeking to build leading-edge facilities, and (2) manufacturers seeking to build current-generation, mature-node, and back-end facilities. Applicants interested in funding under any of the three phases are required to submit a Statement of Interest before submitting a Pre-Application. DOC will then provide feedback and a preliminary assessment of its interest in funding the applicant and, if positive, will move the applicant toward the submission of the full application. DOC is also requiring that an applicant's Statement of Interest be submitted at least 21 days prior to the submission of the

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Pre-Application or full application submission, and the portal for receiving such filings officially opened on February 28, 2023. Manufacturers of leading-edge semiconductors may begin submitting Pre-Applications and full applications starting March 31, 2023, while all other applicants for the first funding wave may begin submitting Pre-Applications starting May 1, 2023 and full applications starting June 26, 2023.

Applications are reviewed on a rolling basis and will be evaluated according to several key criteria. DOC will view an applicant's ability to meet U.S. economic and national security objectives as the "primary focus" in assessing applications. Projects will need to demonstrate that they are able to successfully build domestic capacity that is sustainable and reduces America's reliance on imports from vulnerable sources. Applicants must also demonstrate that their projects will enhance supply chains used by government organizations, contractors, and critical infrastructure, and protect against vulnerabilities and threats from foreign entities of concern. Additionally, projects must support equitable workforce development, must demonstrate technical and financial viability, and must promote the Administration's climate change goals while minimizing and/or mitigating potential adverse environmental impacts. DOC anticipates that award amounts will account for approximately 5-15% of each project's total costs but cautioned that the government's portion of the cost-share will not exceed 35%.

Successful applicants will be subject to numerous restrictions, whether statutory or imposed by DOC through the implementation of the CHIPS Act. For example, award recipients must agree not to expand specific types of semiconductor manufacturing operations in any foreign country of concern for 10 years after the date of receiving the award. DOC may subpoena award recipients' documents to ensure compliance, and clawback provisions exist for construction delays or non-compliance with relevant prohibitions. Further, to qualify for awards, applicants are required to provide childcare for workers, and entities that receive more than \$150 million in awards must pay the government a portion of their profits if their projects are more profitable than expected.

Along with the funding announcement, DOC also released its "Vision for Success" for the first phase of CHIPS Act awards. DOC aims to reach the following goals by the end of the decade:

- (1) establish at least two, new large-scale clusters of leading-edge logic chip fabs,
- (2) operate multiple, high-volume, domestic advanced packaging facilities,
- (3) produce high-volume leading-edge memory chips, and
- (4) increase production capacity for current-generation and mature-node chips, especially for critical domestic industries.

Applicants are encouraged to develop proposals consistent with DOC's long-term goals.

Wiley's International Trade, Supply Chain, and National Security teams have unparalleled experience and expertise representing a broad range of U.S. and multinational clients in supply chain and government funding matters. For more information on the CHIPS Act and the recent funding announcement, please contact

one of the attorneys listed on this alert.

To view the first installment of Wiley's Federal Infrastructure Webinar Series, where we provide an overview of the key federal funding opportunities including the CHIPS and Science Act, **click here**.