

# CHIPS Act – Upstream Supply Chain Projects: Notice of Funding Opportunity Released

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On June 23, 2023, the U.S. Department of Commerce released revisions to the original CHIPS Act Notice of Funding Opportunity (NOFO) to detail the application requirements for upstream suppliers seeking financial assistance for construction, expansion or modernization of commercial facilities for (1) semiconductor materials and manufacturing equipment facilities for which the capital investment equals or exceeds \$300 million and (2) wafer production facilities. The Department also released a “strategic vision” document for semiconductor supply chain projects.

While the Department’s release of the latest NOFO was expected, a number of important elements were not, including the division between large and small supply chain projects, the timeline for applicants of both kinds of projects and the release of a new strategy document for upstream supply chain projects, among other items.

Interest in the CHIPS manufacturing incentives program continues to be high with almost 400 statements of interest submitted to the Department to date.

This client alert reviews the application process for large upstream supply chain projects, the anticipated process for smaller upstream supply chain projects, clarifications to the evaluation criteria and the application process for large upstream supply chain projects, and other key insights from the newly released documents.

For additional information and resources regarding the CHIPS Act, please visit the [Akin CHIPS Act Thought Leadership Page](#).

## Important Dates

- [September 1, 2023](#) - Pre-applications, which are optional but recommended, for large materials and manufacturing equipment supplier facility projects with capital investments equal to or exceeding \$300 million, and all wafer manufacturing facilities may be submitted starting on this date.
- [October 23, 2023](#) - Full applications for larger materials and manufacturing equipment supplier facility projects with capital investments equal to or exceeding \$300 million, and all wafer manufacturing facilities may be submitted starting on this date.
- [“In the fall”](#) - The Department will release details of a two-phase application process for smaller materials and manufacturing equipment supplier facility projects with capital investments less than \$300 million.
- [“At a later date”](#) - Although the Department had noted previously that it anticipated releasing a separate funding opportunity for commercial research and development facilities in “early fall 2023”, the amended notice of funding opportunity (NOFO) specifies that it will be released “at a later date.”

## Application Process

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Rather than release a new notice of funding opportunity for upstream supply chain projects, Commerce amended the existing notice of funding opportunity for commercial fabrication facilities to allow large supply chain projects and wafer manufacturers to use the same application process. The application process still consists of five parts: (1) statement of interest, (2) pre-application (optional but recommended), (3) full application, (4) due diligence and (5) award preparation and issuance.

According to the amended notice of funding opportunity, upstream supply chain projects include “wafer manufacturing facility applications” and “applications for eligible semiconductor materials and manufacturing equipment facilities provided that the capital investment ... equals or exceeds \$300 million.” The \$300 million threshold is not used for wafer manufacturing. Consequently, applicants for wafer manufacturing facilities of any size may apply using the newly amended NOFO.

Each of these key terms - wafer manufacturing, facilities, semiconductor materials facilities and semiconductor manufacturing equipment facilities - are further defined in the amended NOFO.

- Wafer manufacturing facilities includes wafers made from silicon, silicon carbide and gallium nitride.
- Semiconductor materials facilities include those for the manufacture, production, growth or extraction of chemicals, gases or other raw and intermediate materials used in semiconductor manufacturing like photoresists, ancillaries and sputter targets.
- Semiconductor manufacturing equipment includes specialized equipment integral to the manufacturing of semiconductors like deposition, etching, lithography, wafer slicing and dicing, inspection and measuring, and ion implantation and diffusion/oxidation furnaces.

The evaluation criteria largely remain the same from the original NOFO with some additional information to clarify the importance of geographic location for upstream supply chain projects to support clustering with fabs and “reduce vulnerabilities with geographic concentration, supply chain bottlenecks, and/or production in foreign countries of concern.” Like the criteria for commercial fabs, applicants will be evaluated based primarily on the extent to which the application addresses the program’s economic and national security objectives, but they will also be evaluated based on commercial viability, financial strength, project technical feasibility and readiness, workforce development, and broader impacts.”

The evaluation process also remains largely the same from the original NOFO with the primary additional step of a term sheet during the Due Diligence phase. The amended NOFO notes that when the due diligence phase is “substantially complete” the Department and applicant will negotiate the applicable terms of a Long-form Term Sheet. This may be different from the previously offered preliminary memorandum of terms and will be more detailed. The Long-form Term Sheet is expected to be close to the final award, if one is offered.

The original NOFO noted that applicants should generally expect that a CHIPS grant will only cover 5 to 15 percent of a project’s capital expenditures. The amended NOFO does not adjust that range with respect to wafer manufacturing or large supply chain projects, but reiterates that “this range accounts for the expectation that most projects will be eligible for the Investment Tax Credit” and that “the range may be higher if a project is not eligible for the Investment Tax Credit, such as for projects related to semiconductor materials facilities.”

Last, the newly released CHIPS for America **fact sheet** notes that the funding opportunity for smaller projects will utilize a slightly different application process than is now open for the commercial fabs and large supply chain projects. According to the fact sheet, “applicants will be asked to submit a concept plan describing how the proposed project addresses core program priorities” and then the Department will invite “a certain number of promising applicants to the second phase, where they will have the opportunity to submit a full application.” Moreover, small project applicants that only advance the third objective of the upstream supply chain NOFO -

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supporting vibrant U.S. fab clusters - will be encouraged to consider applying as part of a consortium rather than submitting their own application.

### Strategic Vision

The Department also released a narrative strategic vision document that is intended to supplement the amended NOFO by providing more context on what the Department is seeking to accomplish with funding for upstream supply chain projects. The “**Vision for Success: Facilities for Semiconductor Materials and Manufacturing Equipment**” white paper lays out three broad goals it plans to advance with grants for upstream projects: (1) strengthening supply chain resilience, (2) advancing U.S. technology leadership and (3) supporting vibrant fab clusters.

Woven through the discussion of these three goals, however, are some clues as to how robust the funding for upstream projects will be. On page 6, the document notes that “the CHIPS Program Office will reserve a significant majority of its investments” for the fabs, while only planning on “targeted investments” in upstream supply chain projects that “would not happen without CHIPS Incentives Program funding.” An earlier **strategy document** published by the Department in September 2022 had noted its intention to spend roughly \$28 billion of the total \$39 billion of incentive funding on large scale investments in leading-edge logic and memory manufacturing clusters and the remaining \$10 billion on mature node and current-gen fabs as well as upstream suppliers. This numerical split has not been repeated in subsequent strategy documents. In fact, the strategic vision for upstream supply chain projects further notes that “[t]he CHIPS Program Office aims to reserve its investments for the rare cases where suppliers would be unwilling or unable to move to the United States in the absence of CHIPS Incentives Program funding.”

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