



ORGANIZATION FOR INTERNATIONAL INVESTMENT
INTERNATIONAL BUSINESS INVESTING IN AMERICA

May 26, 2009

The Honorable Steven Chu
Secretary of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

Dear Secretary Chu:


On behalf of the Organization for International Investment (OFII) and the more than 5 million American workers employed here by U.S. subsidiaries of foreign-based multinationals, I write to express concern about participation restrictions placed on these companies in a recent ARPA-E Funding Opportunity Announcement (FOA).¹ This discriminatory treatment of certain U.S. companies is not mandated by applicable law or regulation. Restricting the ability of these companies and their American workers to fully participate in the program and compete for program funds undermines the effectiveness of the program, calls into question the U.S. commitment to a nondiscriminatory environment for foreign investment, and invites similar protectionist retribution from other countries. We urge you to reconsider these restrictions and issue an amendment to the FOA that removes these restrictions and allows all U.S.-domiciled companies, regardless of ultimate ownership, to compete on a level playing field for available ARPA-E funds. Representatives of our member companies would be pleased to meet with you and your staff to provide further information on how their participation has benefited similar programs.

By way of further background, OFII is a business association representing the U.S. operations of many of the world's largest international companies. These operations directly employ more than 5 million Americans here in the United States and support an annual U.S. payroll of over \$364 billion. As evidenced by the attached membership list, many OFII members are household name companies with historic and substantial U.S. operations. Many are significant partners of your Department, and will be adversely affected by these new provisions.

The restrictions included in the ARPA-E FOA would limit the ability of numerous U.S.-incorporated companies to participate fully in this important program. Two restrictions are particularly troublesome. First, the FOA prohibits a foreign entity² from serving as the lead of a team competing for ARPA-E funds. Second, the FOA requires that “no

¹ APRA-E Funding Opportunity Announcement # DE-FOA-0000065.

² The FOA definition of a “foreign entity” is overly broad and includes any entity that is “directly or indirectly owned or controlled by a foreign company or government.”



more than 25% of the ARPA-E funds may be expended by the combination of all foreign entities on the project . . . regardless of whether the work is performed in the United States or a foreign location.” These restrictions are both surprising and onerous because, to the extent it is important that ARPA-E funded activities take place within the United States, the existing FOA requirement that 90% of the work be performed on U.S. soil would accomplish that goal.

As currently drafted, the restrictions on the participation of “foreign entities” will severely limit the ability of such significant DOE partners as Saint-Gobain, BASF, Philips Electronics, and Bosch from participating in the program. These companies employ thousands of American workers who work in research, production and office facilities throughout the United States. As such, the restrictions discriminate in favor of some U.S. companies and workers while disadvantaging other U.S. companies and workers. OFII Member Companies can make important contributions to the ARPA-E program and their participation would be of significant benefit to the Department and to the United States. Respectfully, restrictions that limit in any material way their ability to participate undermine the effectiveness of the program, make no economic sense, and will deprive U.S. taxpayers of the full value of their investment.

We would further note that these restrictions are not legally required. We understand that the restrictions were adopted by Departmental program officials believing they were “in the spirit” of the Buy America provisions in the American Recovery and Reinvestment Act. We are very concerned that the program officials did not appreciate the significantly adverse and public impact of these restrictions on U.S. companies, on the effectiveness of the ARPA-E program, and on U.S. trade policy more generally.

Setting aside any questions the restrictions raise under U.S. international agreements, they are also inconsistent with the longstanding and explicit U.S. policy to encourage foreign investment in the United States and accord nondiscriminatory treatment. The FOA invites discrimination against U.S. companies abroad, which is exactly what President Obama and the other G20 Leaders pledged to avoid through their commitment to “promote global trade and investment and reject protectionism.”

Finally, the restrictions currently set forth in the FOA are a disturbing example of what can happen when government crafts overtly protectionist policies. The atmosphere created by the “Buy America” provisions has encouraged officials to discriminate believing such discrimination is consistent with what appears to be prevailing policy. This is the very concern that we, along with dozens of companies and other trade associations, raised in our February 4th letter to the President opposing the Buy America provisions. In that letter, we warned that such a provision would “send the wrong message at the worst possible time.” Our fear was that the “wrong” message would be

received by other countries. It is now clear that the wrong message was heard by U.S. officials as well.

We strongly urge you to remove these unprecedented and unwarranted restrictions from the ARPA-E funding opportunity announcement, and to ensure that no similar restrictions are included in future FOAs for the ARPA-E program or other DOE programs.

Sincerely,



Nancy McLernon
President & CEO
Organization for International Investment

cc:

The Honorable Michael Froman
Deputy National Security Advisor for International Economic Affairs
and Deputy Assistant to the President

The Honorable Lawrence H. Summers
Director of the National Economic Council
and Assistant to the President for Economic Policy

Ambassador Ron Kirk
United States Trade Representative

The Honorable Gary Locke
Secretary of Commerce

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