

## CHIPS ACT UPDATE: NEW GUIDANCE ON FINANCIAL INFORMATION REQUIREMENTS

To Our Clients and Friends:

In an April 13, 2023 webcast, the CHIPS Program Office (“CPO”) at the Department of Commerce provided a deep dive on the Financial Information requirements for funding applications and pre-applications. We have provided a fulsome discussion of CHIPS Act funding in our previous alerts [here](#) and [here](#). The key takeaway from this most recent discussion is that applicants need to prepare thorough financial statements both for their pre-applications and even more so for their final applications. The financial analysis needs to give the government confidence that the projects already have solid financial backing and strong future prospects for financial success.

In particular, the CPO addressed the evaluation criteria for Financial Information, the differences—both in form and substance—between Financial Information submitted at the pre-application and application stages, and published resources and templates that can guide the preparation of these materials.

The CPO stressed that this guidance applies only to applicants applying for funding pursuant to its first Notice of Funding Opportunities (“NOFO”).<sup>[1]</sup> Detailed application instructions for other applicants will be released after the publication of the second and third NOFOs, in late spring and fall 2023, respectively.

### I. Evaluation Criteria for Financial Information

As discussed in our [previous alert](#), the CPO will evaluate all applications and pre-applications according to six key criteria: (1) economic and national security objectives; (2) commercial viability; (3) financial strength; (4) technical feasibility and readiness; (5) workforce development; and (6) projects’ broader impacts.<sup>[2]</sup> During the April 13th webcast, CPO staff emphasized that the Financial Information an applicant provides will be the primary source by which their application’s **commercial viability** and **financial strength** will be assessed.<sup>[3]</sup>

- Commercial Viability: To establish a project’s commercial viability, Financial Information should demonstrate:
  - a demand for the product;
  - the size and diversity of the product’s customer base;
  - expected volume and pricing dynamics;

- the stability of key supplies; and
- the project’s ability to counter potential technological obsolescence.

This reinforces a continuing CPO CHIPS Act tenet of deploying CHIPS Act capital to projects that have the optimal path for a combination of commercial success, onshoring of fabrication (particularly for leading nodes), and/or bolstering of sensitive industry verticals such as defense applications.

- Financial Strength: Applicants should use their Financial Information submissions to paint a clear picture of their own financial strength, as well as that of their project and their corporate parent (if applicable). Additionally, the CPO stressed that it will prioritize projects that demonstrate meaningful third party financial validation, and thus do not rely solely on CHIPS Act funding, but have secured commitments for concurrent third-party investments, loans and associate guarantees, and/or local or state government incentives.[4]

## **II. Differences Between Pre-Application and Application Financial Information**

At a high level, CPO staff described the difference between pre-application and final application financials as the level of necessary granularity. Because the pre-application’s primary objective is to create a dialogue and opportunity for feedback from the CPO, Financial Information at this stage needs only to provide “sufficient preliminary information on the proposed project(s)” to enable meaningful feedback from the CPO.[5] (CPO staff emphasized, however, that the more detail they receive at the pre-application stage, the better they can evaluate the project’s strengths and weaknesses.)[6] When judging the merits of a final application, on the other hand, applicants’ Financial Information must be extensive and detailed.

In addition to this high-level guidance, the CPO noted specific differences between the materials required to complete the Financial Information portions of the pre-application and the application, listed below:[7]

<b>Pre-Application</b>	<b>Full Application</b>
I. Financial Information Narrative	I. Financial Plan
II. Financial Ownership Structure	II. Sources and Uses of Funds
III. Sources and Uses of Funds	III. Project Cash Flow, Balance Sheet, and Income Statement Projections
IV. Company Financials	IV. Scenario Analyses
V. Summary Financials	V. CHIPS Incentives Request
VI. CHIPS Incentives Request	VI. CHIPS Loan or Loan Guarantee Request

For example, whereas both the pre-application and application require some form of summary narrative, the application specifically requires a financial plan for each proposed project, including narratives on cash flow projections, key equity return and debt service metrics, and sensitivity analyses.

Applicants should be sure to consult the NOFO and the CPO’s [Guiding Principles for Full Application Financial Model](#) to ensure that the final application’s Financial Information moves beyond “preliminary information” and provides the level of granularity necessary to obtain funding.

### **III. Resources and Templates**

The CPO has prepared and published a number of resources and templates for the preparation of applications and pre-applications under the first NOFO, including extensive materials on the Financial Information requirements.<sup>[8]</sup>

One of the most substantial aspects of the Financial Information is the need for a dynamic financial model including variable inputs for key assumptions. This model must be comprehensive, including variables such as funding sources and cash flows to (in the final application) scenario analyses, internal rates of return, and risk and debt service metrics. Companies are free to use their own financial models and plans to satisfy these requirements, but the CPO has also created a [Pre-Application Example Financial Model](#) (and accompanying [Pre-Application Example Financial Model White Paper](#)) to demonstrate the types of financial data needed at the pre-application stage. As applicants move to the final application stage, they should also consult the [Guiding Principles for Full Application Financial Model](#). These models demonstrate the level of specificity and types of data the CPO expects to see in an

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application’s Financial Information. CPO staff reiterated, however, that they are merely examples. Depending on an applicant’s unique business needs, additional data fields may be necessary.[9]

While these reference guides are illustrative examples of the financials CPO expects to review, applicants will be *required* to submit templates for certain parts of their pre-application and application Financial Information. These required templates are:

Pre-Application	Application
<ul style="list-style-type: none"><li>• Pre-Application Sources and Uses Template</li></ul>	<ul style="list-style-type: none"><li>• Full Application Offline Template Sources and Uses</li><li>• Full Application Offline Incentives Request</li></ul>

Guidance on how to use these templates can be found in the Pre-Application Instructions and the Sources and Uses of Funds Instructions.

Additional resources and templates can be found at the CHIPS for America Guides and Templates webpage.

#### IV. How Gibson Dunn Can Assist

Gibson Dunn has an expert team tracking implementation of the CHIPS Act closely, including semiconductor industry subject matter experts and our Public Policy Practice Group professionals. Our team is available to assist eligible clients to secure funds throughout the application process. We also can engage with our extensive contacts at the Department of Commerce and other federal agencies to facilitate dialogue with our clients and discuss the structure of future CHIPS Act programs being developed.

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[1] 5 U.S.C. § 4651(2); U.S. Dep’t of Commerce Nat’l Institute of Standards and Technology Notice of Funding Opportunity, CHIPS Incentives Program—Commercial Fabrication Facilities, [https://www.nist.gov/system/files/documents/2023/02/28/CHIPS-Commercial\\_Fabrication\\_Facilities\\_NOFO\\_0.pdf](https://www.nist.gov/system/files/documents/2023/02/28/CHIPS-Commercial_Fabrication_Facilities_NOFO_0.pdf) [hereinafter, NOFO]; Department of Commerce Webcast (Apr. 13, 2023).

[2] NOFO at 58–64.

[3] Department of Commerce Webcast (Apr. 13, 2023).

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[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] NOFO at 35–37, 43–47.

[8] CHIPS for America Guides and Templates: CHIPS Incentives Program—Commercial Fabrication Facilities (last accessed Apr. 13, 2023), <https://www.nist.gov/chips/guides-and-templates-chips-incentives-program-commercial-fabrication-facilities>.

[9] Department of Commerce Webcast (Apr. 13, 2023).



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