

Concise Summary of U.S. Department of Energy Loan Guarantee Program

As Amended by The American Recovery and Reinvestment Act of 2009

KEY ENACTMENTS

EPAct Title XVII¹

Authorizes the Secretary to issue loan guarantees for certain types and categories of projects.

ARRA Title IV²

Amends EPAct Title XVII by adding Section 1705 and appropriates \$6 billion for the cost of guarantees under the new Section 1705. For details, see Exhibit A.

Final Regulations³

The implementing regulations.

KEY PARTICIPANTS

Borrower

One who issues a Guaranteed Obligation to a Holder.

Eligible Lender

Must qualify under the Final Regulations (e.g., good standing with the Government, adequate experience in similar lending, etc.). FFB is also an Eligible Lender.⁴

FFB

The Federal Financing Bank.⁵

Holder

A person or entity that owns a Guaranteed Obligation.

Secretary

The Secretary of Energy.

Servicer

Servicing will be handled by an Eligible Lender, DOE, or a servicer with the Secretary's approval.⁶

KEY DOCUMENTS

Solicitation

Designates a specific subset of EPAct Title XVII technologies that will be eligible for guarantees. DOE must issue a Solicitation for a specific technology before Applications for that technology will be accepted.⁷ For a list of the five Solicitations (and thus qualifying technologies) issued to date, see Exhibit B.

Pre- Application

Only required if DOE requests.⁸

Application⁹

For details on the Application process, see Exhibit C.

Term Sheet

Issued by DOE and is subject to negotiation; when signed by all parties, it becomes the Conditional Commitment.¹⁰

Conditional Commitment

Understanding that when conditions precedent are met, parties will execute a Loan Guarantee Agreement; the Secretary still may terminate for any reason.¹¹

Loan Guarantee Agreement

Establishes the obligation of DOE to guarantee payment of a Guaranteed Obligation.¹² A form of the Loan Guarantee Agreement has not yet been issued by DOE.

Guaranteed Obligation

Any debt obligation for which DOE guarantees all or any part of principal and interest payments.¹³

ELIGIBILITY

Eligible Project¹⁴

- Located in the U.S.;
- Qualifies broadly as either a Section 1703 Project or a Section 1705 Project;
- Complies with the Final Regulations; and
- Qualifies specifically as a technology described in at least one Solicitation issued by DOE.

Section 1703 Projects

EPAct Title XVII § 1703 authorizes guarantees for projects that:¹⁵

- Avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and
- Employ New or Significantly Improved Technologies:
 - For production, consumption, or transportation of energy; and either
 - Recently developed, learned, or discovered; or
 - A meaningful and important improvement in productivity or value;¹⁶ and are
- Not a Commercial Technology:
 - Not in “general use” in the U.S.,
 - Meaning not installed or used in three or more commercial projects in operation for at least five years in the same general application as the proposed project.¹⁷

Section 1705 Projects

EPA Title XVII § 1705 authorizes guarantees for projects that commence construction by September 30, 2011 are any of following:¹⁸

- Renewable energy systems, including incremental hydropower, that generate electricity or thermal energy, and facilities that manufacture related components;
- Electric power transmission systems; or
- Leading edge biofuel projects (pilot or demonstration scale).

FINANCING STRUCTURE

Significant Equity Contribution

Borrower must make a significant equity contribution.¹⁹

Limited to 80% of Project Costs

The guarantee is limited to 80 percent of total Project Costs.²⁰

FFB to fund 100% Guarantees

Where DOE guarantees 100 percent of a Guaranteed Obligation, the loan must be funded by FFB.²¹

Stripping OK At or Under 90%

The guaranteed portion may be separated from the non-guaranteed portion only if DOE guarantees 90 percent or less of the Guaranteed Obligation.²²

Term

Up to the lesser of 30 years or 90 percent of expected useful life.²³

SECURITY

First Lien; Subordination

Any Guaranteed Obligation may not be subordinate to any other debt and must have a first lien position on all assets of the project and all additional collateral pledged as security for any project debt.²⁴

Pari Passu

With partial guarantees, the Secretary may enter into arrangements to share the proceeds from the collateral with the lenders of the non-guaranteed portion of the Guaranteed Obligation, as long as DOE controls the disposition of all collateral.²⁵

Non-Guaranteed Portion Equality

The non-guaranteed portion of any Guaranteed Obligation must be repaid on a pro-rata basis and cannot be repaid on a shorter amortization period than the guaranteed portion.²⁶

GUARANTEE FEES & COSTS

Administrative Fees

DOE must collect fees to cover administrative expenses.²⁷ The Final Regulations require Borrower to pay a First Fee (application expenses),²⁸ Second Fee (expenses from Term Sheet issuance through closing),²⁹ and Third Fee (post-closing expenses).³⁰

Credit Subsidy Cost

Equals the net present value of the guarantee, taking into account:

- Estimated payments to cover defaults and

- Estimated receipts from fees, penalties, and recoveries.³¹

The amount may be subject to negotiation and will be adjusted to reflect any changes in the financing arrangements.³²

Borrower must pay the cost for Section 1703 Projects,³³ whereas Congress has made a \$6 billion appropriation to pay for the cost of Section 1705 Projects.³⁴

Project Costs

Costs incurred in the design, engineering, financing, construction, startup, commissioning, and shakedown of the project; but not including: fees for obtaining funds; parent corporation administrative expenses; goodwill; dividends and profit sharing; R&D; demonstration expenses; excessive or indirect expenses, including hedging instruments; costs after startup, commissioning, and shakedown before the facility has been placed in service; the Credit Subsidy Cost; administrative costs of guarantee; and operating expenses.³⁵

DEFAULT

Written Demand by Holder

A Holder may submit a written demand for payment for Borrower's:

- Default in paying principal and interest on a Guaranteed Obligation;³⁶ or
- Default for any other reason only if the Secretary agrees that such default has materially affected the rights of the parties and finds that the Holder should be entitled to receive payment.³⁷

Acceleration

In the event of a payment default, or in the event of a non-payment default where the Secretary finds a material effect, the Secretary may cause the principal and accrued interest to become immediately due.³⁸

Payment

Payment to the Holder will be made 60 days after receipt of a meritorious written demand, with interest accruing until full payment.³⁹

DOE Subrogation

The Secretary will be subrogated to the rights of the Holders upon payment of the Guaranteed Obligations.⁴⁰

Liquidate, Foreclose, or Operate

After payment to the Holder, the Secretary may:

- Jointly agree to liquidate the collateral, where the Loan Guarantee Agreement so provides;⁴¹
- Seek to foreclose;⁴² or
- Complete, maintain, operate, lease, or otherwise dispose of the facilities.⁴³

OTHER TERMS

Reasonable Prospect of Repayment

DOE must determine that there is a reasonable prospect of repayment by Borrower of the Guaranteed Loan, and the Applicant must certify to this effect.⁴⁴

Eligible Lender/Service Obligations

Eligible Lenders must evaluate the Project during the period prior to Application using the level of care and diligence that "a reasonable and prudent lender would exercise when reviewing, evaluating and disbursing a loan made by it without a Federal guarantee." Same standard of care applies during loan administration to the agent Eligible Lender or servicer, together with an obligation to promptly report to DOE any problems or irregularities it becomes aware of concerning the Project or Borrower's ability to pay debt.⁴⁵

No Fraud/Material Misrepresentation

Loan guarantees will be presumed valid except in the case of fraud or a material misrepresentation by the Holder. The scope of those representations will be uncertain until a form of the Loan Guarantee Agreement has been issued.⁴⁶

Transferability

A Holder may sell, assign or transfer a Guaranteed Obligation. Any assignment or transfer of any agent or servicing role must be approved in advance by DOE.⁴⁷

Principal and Interest Assistance

DOE may elect in some cases to make payments to Holder if Borrower cannot make payments and is not in default.⁴⁸

Credit Rating of the Project

If Project Costs exceed \$25 million, a preliminary credit assessment of the Project without a Federal loan guarantee is required with the Application⁴⁹ and a final credit rating of the Project without a Federal loan guarantee before closing.⁵⁰ The Secretary may require these ratings for less expensive projects.

Audit Provisions

The Secretary and Comptroller General will have access to pertinent books, documents, and records of the Borrower, Eligible Lenders, DOE, Holders, or other servicers. The Secretary will exclude or reduce costs deemed unnecessary or excessive.⁵¹

Tax-Exempt Debt Prohibited

The guarantee may not finance tax-exempt debt.⁵²

Deviations

DOE may authorize deviations from the Final Regulations that do not violate EPA Act Title XVII or any statutes, are essential to the program's objectives, and are clearly in the Government's best interest.⁵³

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FOR FURTHER INFORMATION

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CHANGES TO THE LOAN GUARANTEE PROGRAM BY TITLE IV OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA)

<p>TITLE XVII BEFORE THE ARRA</p>	<p>TITLE XVII AFTER THE ARRA</p>
<p><u>Only Section 1703 Projects Eligible:</u></p> <p>EPAct Title XVII Loan Guarantees were only available to Projects that qualified under Section 1703; i.e., projects that:</p> <ul style="list-style-type: none"> (a)(1) Avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gasses; and (a) (2) Employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued. 	<p><u>Section 1705 Projects Also Eligible:</u></p> <p>Now, EPAct Title XVII Loan Guarantees will also be temporarily available to projects that qualify under Section 1705; i.e., projects that commence construction not later than September 30, 2011 in the following categories:</p> <ul style="list-style-type: none"> (a)(1) Renewable energy systems, including incremental hydropower, that generate electricity or thermal energy, and facilities that manufacture related components. (a)(2) Electric power transmission systems, including upgrading and reconductoring projects. (a)(3) Leading edge biofuel projects that will use technologies performing at the pilot or demonstration scale that the Secretary determines are likely to become commercial technologies and will produce transportation fuels that substantially reduce life cycle greenhouse gas emission compared to other transportation fuels.
<p><u>No Appropriations for Credit Subsidy Costs:</u></p> <p>DOE has stated in the Supplementary Information to the Final Regulations that it had no intention of seeking appropriations to pay the cost required under Section 1702(b), leaving Borrower responsible for paying the Credit Subsidy Cost.</p>	<p><u>\$6 billion Appropriation for Section 1705 Projects' Credit Subsidy Costs:</u></p> <p>ARRA Title IV appropriates \$6 billion to pay the costs of guarantees made under Section 1705.</p>

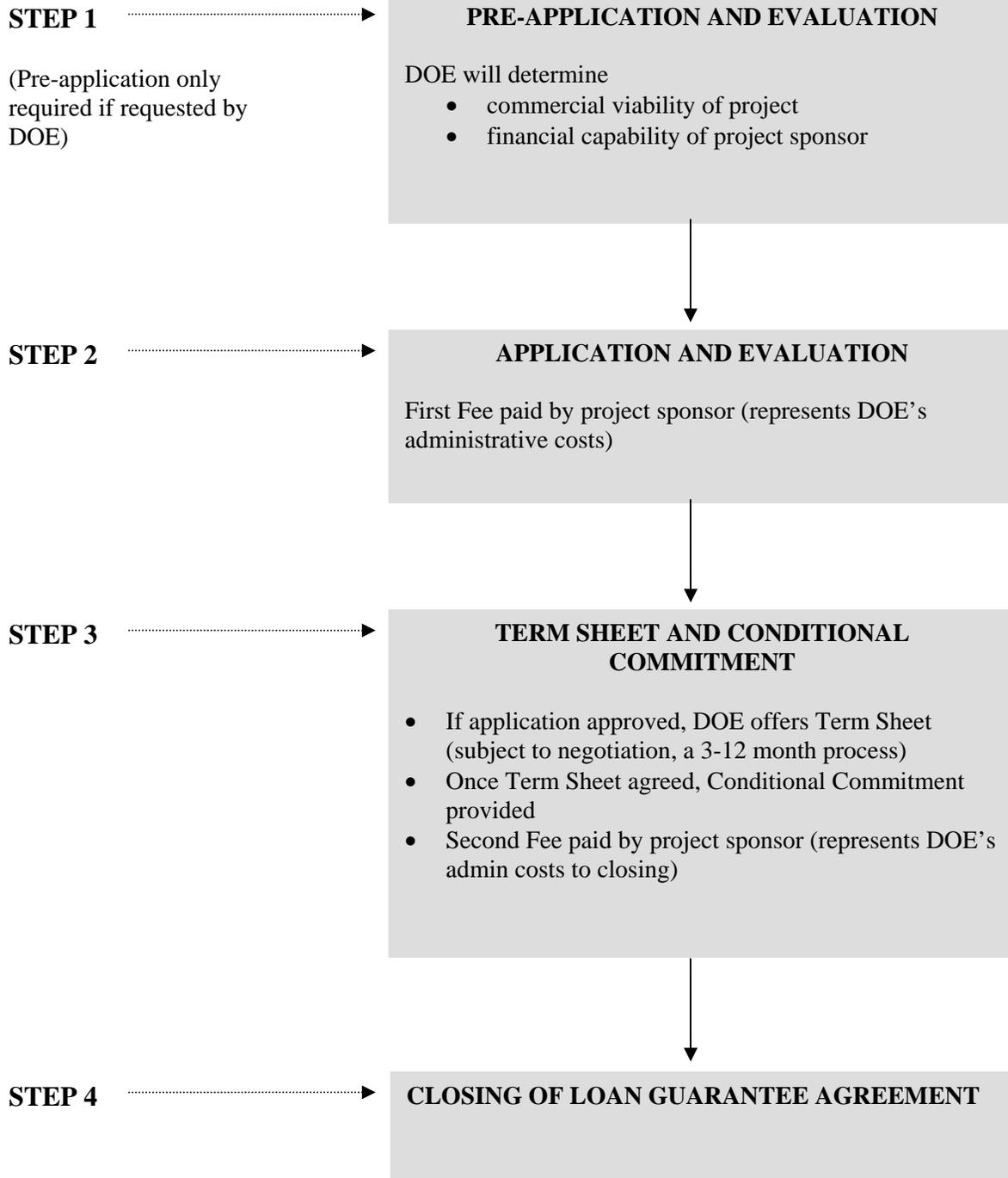
LOAN GUARANTEE SOLICITATION AMOUNTS

Before accepting any applications, DOE must issue a Solicitation that outlines the parameters (e.g., technology type, dollar amount available, deadlines, fees, etc.) for loan guarantees. Each Solicitation describes the particular subset of EPAct Title XVII technologies for which DOE has received specific authorization from Congress. Any Application must comply with the requirements of at least one Solicitation.

Round	Title	Tide XVII Authority	Solicitation Number	Due Dates	Authorized Funds	Expiry
First (8/8/06)	Federal Loan Guarantees for Projects That Employ Innovative Technologies in Support of the Advanced Energy Initiative	§ 1703	DE-PS01-06LG00001	12/31/06	\$4 billion	None
Second (10/29/08)	Federal Loan Guarantees for Projects That Employ Innovative Energy Efficiency, Renewable Energy, and Advanced Transmission and Distribution Technologies	§1703	DE-FOA-0000005	Part I: 2/26/09 Part II: TBD ⁵⁴	\$10 billion (increased to \$18.5 billion in the FY 2009 budget)	None
Second (7/11/08)	Federal Loan Guarantees for Nuclear Power Facilities	§1703	DE-FOA-0000006	Part I: 9/29/08 Part II: 12/19/08	\$18.5 billion	None
Second (7/11/08)	Federal Loan Guarantees for Front End Nuclear Facilities	§1703	DE-FOA-0000007	Part I: 9/29/08 Part II: 12/2/08	\$2 billion	None
Third (9/22/08)	Federal Loan Guarantees for Coal-Based Power Generation and Industrial Gasification Facilities That Incorporate Carbon Capture and Sequestration or Other Beneficial Uses of Carbon and for Advanced Coal Gasification Facilities	§1703	DE-FOA-0000008	Part I: 12/22/08 Part II: 3/23/09	\$8 billion	None

LOAN GUARANTEE APPLICATION PROCESS

After the issuance of a Solicitation, the Application process is as follows:



CITATIONS AND REFERENCES

- 1 Title XVII of The Energy Policy Act of
2005, as amended by Title IV of The
American Recovery and Reinvestment Act
of 2009 (hereinafter “EPAAct Title XVII”).
- 2 Title IV of The American Recovery and
Reinvestment Act of 2009 (hereinafter
“ARRA Title IV”).
- 3 10 C.F.R. § 609.
4 10 C.F.R. § 609.2.
5 Federal Financing Bank Act of 1973, as
codified at 12 U.S.C. § 2281 et seq.
6 10 C.F.R. §609.11(c).
7 10 C.F.R. § 609.3.
8 10 C.F.R. § 609.4.
9 10 C.F.R. § 609.6.
10 10 C.F.R. § 609.8.
11 10 C.F.R. § 609.2.
12 10 C.F.R. § 609.2.
13 10 C.F.R. § 609.2.
14 10 C.F.R. § 609.2.
15 EPAAct Title XVII § 1703(a).
16 10 C.F.R. § 609.2.
17 10 C.F.R. § 609.2.
18 ARRA Title IV §406.
19 10 C.F.R. §609.10(d)(5).
20 10 C.F.R. §609.10(d)(3).
21 10 C.F.R. §609.10(d)(4)(i).
22 10 C.F.R. §609.10(d)(4)(ii) & (iii).
23 10 C.F.R. §609.10(d)(6).
24 10 C.F.R. §609.10(d)(13).
25 10 C.F.R. §609.15(1).
26 10 C.F.R. §609.10(d)(6).
27 EPAAct Title XVII § 1702(h).
28 10 C.F.R. §609.6(b)(2).
29 10 C.F.R. §609.8(e).
30 10 C.F.R. §609.10(d)(15).
31 10 C.F.R. § 609.2.
32 10 C.F.R. § 609.9(g).
33 EPAAct Title XVII § 1702(b) (requiring that
the cost be paid by either an appropriation or
Borrower); 10 C.F.R. Supp. Info. § II.E
(stating, before Congress passed ARRA
Title IV, that the DOE has no intention of
seeking appropriations to cover Credit
Subsidy Costs).
34 ARRA Title IV
35 10 C.F.R. §609.12.
36 10 C.F.R. §609.15(a).
37 10 C.F.R. §609.15(b).
38 10 C.F.R. §609.15(c).
39 10 C.F.R. §609.15(f).
40 10 C.F.R. §609.15(g).
41 10 C.F.R. §609.15(h).
42 10 C.F.R. §609.15(i).
43 10 C.F.R. §609.15(j).
44 10 C.F.R. §609.10(d)(9) & 609.6(b)(28).
45 10 C.F.R. §609.11(b) &(c).
46 10 C.F.R. §609.14.
47 10 C.F.R. §609.10(g)(1).
48 10 C.F.R. §609.13.
49 10 C.F.R. §609.6(b)(21).
50 10 C.F.R. §609.9(f).
51 10 C.F.R. §609.17.
52 10 C.F.R. §609.10(d)(7) (referencing I.R.C.
§ 149(b) (disallowing the exclusion from
gross income of interest from state or local
bonds if a bond is federally guaranteed)).
53 10 C.F.R. §609.18.
54 DOE will establish due date for Part II in a
written notification to applicants. The due
date may not be later than 11:59 p.m. (ET)
on April 30, 2009.