

Client Alert

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Department of Energy Loan Guarantee Program Significantly Expanded by American Recovery and Reinvestment Act of 2009**Areas of Interest****Energy****Projects****Climate Change****United States**

Title XVII of the Energy Policy Act of 2005 authorized the US Department of Energy (DOE) to provide loan guarantees for the development of innovative technologies (i.e., technologies that are not yet commercially available at the time the guarantee is issued). Title III of the American Recovery and Reinvestment Act of 2009 (the "Recovery Act") expanded this program. The additional \$6 billion in appropriated funds provided by the Recovery Act is expected to support more than \$60 billion in loans for these projects, according to US Congressional commentary.

Under the 2005 program, an "Eligible Project" for a loan guarantee is a project located in the United States that employs a "new or significantly improved technology that is not a commercial technology." The DOE implemented this program with a number of solicitations for pre-applications and selection of projects for submission of full applications during the 2006 – 2008 time frame.

Approximately 143 pre-applications were submitted during this period. The pre-applications covered a broad spectrum of energy technologies including: (i) biomass projects (49 percent of pre-applications); (ii) advanced fossil energy technology, including Integrated Gasification Combined Cycle (IGCC) (16 percent); (iii) solar (12 percent); and (iv) industrial energy efficiency (6 percent). Of these pre-applications, 16 applicants were invited to submit full loan guarantee applications for projects involving, IGCC, fuel cells and alternative fuel vehicles projects, as well as multiple biomass projects. Some of these projects are in the final stages of negotiations on the loan guarantees; however, to date, no loan guarantees have been issued.

Under the 2005 program, the DOE process for approving a loan guarantee (for the non-nuclear proposals) has had several distinct steps: (i) Pre-Application; (ii) Application; (iii) Term Sheet; (iv) Execution of a Conditional Commitment; and (v) closing on the Loan Guarantee Agreement. During this evaluation, the DOE compared various pre-applications and selected the most meritorious to submit a full application. Key factors that the DOE considered included: to what measurable extent the project avoids, reduces or sequesters air pollutants or anthropogenic emissions or greenhouse gases; and to what extent the new or significantly improved technology, as compared to technology in general use in the United States, is ready to be employed commercially in the United States, can be replicated, yields a commercially viable project or service in the use proposed in the project, has the potential to be employed in other commercial projects in the United States, and is, or will be, available for further commercial use in the United States. The DOE also considered a number of factors with respect to the sponsors financial strength and track record.

In July 2008, under a parallel process, but through separate solicitations focused only on nuclear technology, the DOE requested proposals for loan guarantees to support the construction of nuclear

power plants and “front end nuclear facilities.” A two-part application was included in the solicitation requirements, which also set forth detailed guidelines on how the DOE would evaluate and rank each project. The DOE received 19 applications to support the construction of 14 nuclear power plants. The applications involved five distinct reactor designs, all of which have been certified, or are under review by the Nuclear Regulatory Commission for certification. The evaluation criteria include technical review, a programmatic review focusing on construction and legal and regulatory matters, and a review of the creditworthiness of the project.

The Recovery Act, along with a number of policy statements concerning implementation made by Secretary of Energy Stephen Chu, significantly expands and improves the DOE Loan Guarantee Program. In addition to the \$6 billion expansion of the available funds, the Recovery Act expands the program beyond “projects that employ innovative technologies” to include commercial technology projects for renewable energy systems and electric power transmission systems if the project will commence construction no later than September 20, 2011. The expansion includes the following categories of projects: (i) renewable energy systems, including incremental hydropower, that generate electricity or thermal energy, and facilities that manufacture related components; (ii) electric power transmission systems, including upgrading and reconducting projects; and (iii) leading edge biofuel projects that will use technologies performing at the pilot or demonstration scale that the Secretary of Energy determines are likely to become commercial technologies and will produce transportation fuels that substantially reduce life-cycle greenhouse gas emissions compared to other transportation fuels. These changes are meant to help provide immediate stimulus through support of projects that are relatively close to construction, as well as to encourage smart grid and next generation transportation fuels projects.

A number of administrative changes are also envisioned. The Recovery Act doubled funding for the DOE to administer the program, which will allow for additional staffing. Secretary Chu has committed to reduce the amount of paperwork involved in the application process. He has set out an aggressive timetable in which he plans to offer loan guarantees under the DOE’s previous loan guarantee program by late April or early May, begin offering loan guarantees under the Recovery Act provisions by early summer, and disperse 70 percent of the investment from the Recovery Act by the end of 2010. Applications will be reviewed on a rolling basis, rather than on a timetable that holds applications until a solicitation deadline is reached.

Additional information concerning the DOE’s Loan Guarantee Program will become available as the DOE makes additional announcements concerning its implementation priorities and the appropriations requirements are finalized by Congress. For inquiries regarding this Alert, or information regarding other DOE programs supporting renewable energy, please contact [David I. Bloom](#) at +1 202 263 3204, [Robert H. Edwards, Jr.](#), at +1 202 263 3044 or [Barry N. Machlin](#) at +1 312 701 8574.

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