

Department of Energy: Loan Guarantee Program Overview



Title XVII of the Energy Policy Act of 2005 authorized the Department of Energy (DOE) Loan Guarantee Program to provide loan guarantees for innovative technologies. To qualify for the program, projects must “avoid, reduce or sequester air pollutants or greenhouse gases; employ new or significantly improved technologies and provide a reasonable prospect of repayment.” While the program was intended for emerging energy technologies, mature industries like coal and nuclear are eligible as well. In October 2007, DOE issued a *final rule*, or regulations detailing the processes and parameters of the program.¹ In December 2009, DOE amended this rule, changing the terms for taxpayers’ recoupment of assets in the event of project default.²

Although the program has been authorized since 2005, it wasn’t until late 2009 that the program distributed the first finalized loan guarantee. In September 2009, DOE awarded a \$535 million loan guarantee to Solyndra, a solar energy company in California.^{3,4} This project ran into financial trouble in after closing a plant at the end of 2010 due to unexpected cost overruns.⁵ Then in September 2011, the company went bankrupt after spending \$528 million of its loan guarantee.⁶ The company was under investigation by the FBI and House Energy and Commerce Committee for 18 months. It is currently unclear how much of the loan guarantee taxpayers will ultimately lose. Since the first loan, DOE has offered conditional commitments or final loans for 30 projects valued at more than \$30 billion, with roughly a third (\$8.3 billion) on one nuclear project.⁷

With \$34 billion in loan guarantee authority still available, taxpayers have a considerable stake in the successes or defaults of DOE’s Title XVII program. Under the current structure of the program there are several significant taxpayer concerns, including the massive scope of the program, uncertain costs associated with Title XVII, the weakening of taxpayer rights in the event of default, and the unclear administration of loans, among others.

Loan Guarantee Funding History

Currently, the loan guarantee program has a \$34 billion volume cap available for loan guarantees. The first \$4 billion was authorized in the FY 2007 Continuing Resolution.⁸ Then in 2008, the Omnibus Appropriations bill provided an additional \$38.5 billion for the program, earmarking it for specific technologies including nuclear facilities, coal gasification, coal power generation with carbon capture and storage, and renewable energy and transmission projects.⁹ The FY 2009 Omnibus mirrored the FY 2008 legislation, and added \$8.5 billion for the renewable energy portion of the loan guarantee program.¹⁰ With this addition and the existing FY 2007 allotment for loan guarantees, the program then had a \$51 billion budget cap. In the 2011 Continuing Resolution, previously allocated renewable authority was rescinded and replaced with \$170 million in direct appropriations to pay for credit subsidy costs for renewable projects (see Table 1). The \$170 million appropriation is limited to supporting \$1.183 billion in loans. All but \$4 billion of the program’s \$34 billion in existing loan guarantee authority is designated for specific energy technologies (see Table 2).¹¹

Table 1: Increasing Cap on Volume of Loan Guarantees in 07-11 Appropriations Bills

<i>Legislation</i>	<i>Amount</i>
2007 Continuing Resolution ¹²	\$4,000,000,000
2008 Omnibus ¹³	\$38,500,000,000
2009 Omnibus ¹⁴	\$47,00,000,000 ¹
2011 Continuing Resolution	-\$17,000,000,000 ²
Total Loan Guarantee Program Authority	\$34,000,000,000

Table 2: Loan Guarantee Project Breakouts for \$34 billion Cap¹⁵

<i>Recipient Technology</i>	<i>Current Allotment</i>
Nuclear Power Facilities	\$18,500,000,000
Renewable and/or Energy Efficient Systems Manufacturing and Distributed Energy Generation, Transmission and Distribution	\$1,500,000,000
Front-end Nuclear Fuel Cycle ³	\$ 4,000,000,000
Coal-based Power Generation and Industrial Gasification ¹⁶	\$ 6,000,000,000
Advanced Coal Gasification	\$ 2,000,000,000
Unallocated by Congress	\$2,000,000,000

Table 3: Direct Appropriations for Credit Subsidy Cost

<i>Legislation</i>	<i>Amount</i>
American Recovery and Reinvestment Act Credit Subsidy Payments Available as of March 2011	\$2,400,000,000
2011 Continuing Resolution for 1703 Renewable Projects	\$170,000,000

Loan Guarantee Commitments

Of the authority currently available for loan guarantees, \$15.1 billion in loan guarantees have been finalized and an additional \$15 billion has been committed. Although none of the \$18.5 billion in loan guarantees available to the nuclear industry has been finalized, the President's FY 2012 budget proposal included an additional \$36 billion in new loan guarantee authority for nuclear reactor projects.¹⁷

However, the President's FY2013 budget proposal rescinded this request and only included \$30 million for administrative costs and no additional loan guarantee authority.¹⁸

Title XVII: Section 1703

When first authorized, the loan guarantee program only provided loan guarantees under Section 1703 of Title XVII of the Energy Policy Act of 2005. Until the 2011 Continuing Resolution, loan guarantees issued under Section 1703 of the program have been self-pay, meaning the industry is required to pay

¹ The 2009 Omnibus added \$8.5 billion to the \$38.5 billion previously appropriated and removed the expiration, making it available until expended.

² Of the \$18.5 billion allocation for renewable projects, the Continuing Resolution rescinds all but \$1.5 billion, \$317 million of which has already been allocated to specific projects.

³ Congress allocated \$2 billion to front end Nuclear Fuel Cycle; DOE allocated another \$2 billion to front end Nuclear Fuel Cycle from the original \$4 billion in the FY 2007 Continuing Resolution

the subsidy cost, or cost of the default risk, to the federal government for granting the loan guarantee. The percentage of the loan required to be paid by companies to cover the default risk is determined by the Office of Management and Budget, DOE, and Treasury and is not been publicly disclosed for any individual projects. Approximately \$34 billion has been authorized for self-pay loan guarantees and the authority has no expiration date.

So far, four projects have received conditional commitments under Section 1703, including \$8.3 billion for a nuclear plant in Georgia and \$2 billion for a uranium enrichment project in Idaho, but no loan guarantees have yet been finalized. The 2011 Continuing Resolution made \$170 million in direct appropriations available to pay for the credit subsidy cost for renewable energy projects under this section.

Title XVII: Section 1705

The American Recovery and Reinvestment Act of 2009 (ARRA) created a new program of loan guarantees under the original statute in the 2005 Energy Bill, known as Section 1705. Title XVII Loan guarantees provided through section 1705 had to be committed by September 30, 2011, the end of the fiscal year. In its two years, the program awarded more than \$15 billion through 1705.¹⁹ This section had no budget authority cap, but was instead limited by the number of projects whose appropriated credit subsidy funds could be paid for with available appropriations. Under the ARRA, \$6 billion in credit subsidies for renewable energy and electric power transmission projects was appropriated to cover approximately \$60 billion in projects.²⁰ Some of these funds were used by Congress to offset the cost of other legislation and there was a total of about \$2.4 billion for credit subsidies under 1705.²¹ Since the DOE does not disclose how much the credit subsidy costs for each project, it is unclear how much of that money was used to fund the \$15 billion in projects loaned through the program.

2011 Appropriations

In the 112th Congress, the 1703 program has again been the target of more funding from Congress and the president. In the House, the Energy and Water Appropriations Bill does not increase the loan authority for any technology areas, but gives another \$160 million for credit subsidy payments for renewable and energy efficiency projects. Both the Senate Energy and Water Appropriations Bill and the administration requested \$200 million in credit subsidy payment, but the administration also requested a \$36 billion increase in nuclear loan authority. The House and Senate have tentatively agreed to a continuing resolution to fund the government through mid-November, and no increased authority or appropriations have yet been passed for the program.²² The House attempted to cut \$100 million in credit subsidy payments from the 1705 program as part of a Continuing Resolution, only a few days before the money expired, but that legislation failed to pass through the Senate.

Future Taxpayer Risks

Despite taxpayer risks, two of President Obama's past three budget proposals have requested an increase in nuclear loan authority by \$36 billion and appropriated more money for credit subsidy costs for renewable projects. Because of the size of these nuclear reactor projects, taxpayers stand to lose more on these than any other Title XVII loan guarantee.

This dramatic funding increase would come before program accountability and management can be analyzed. In addition, if Congress moves forward on a proposal to create an even less accountable financing mechanism, such as the Clean Energy Deployment Administration (CEDA) to administer loan

guarantees as the Senate Committee on Energy and Natural Resources passed out of committee in early 2011, current problems with Title XVII would be amplified, jeopardizing billions more taxpayer dollars than the current program.

Congress must face the reality that loan guarantees are anything but “free money.” Putting the full faith and credit of the U.S. government behind costly, risky projects that the private sector won’t finance is fiscally reckless. In many cases, these guarantees would be backing projects that are not even ready to move forward because they have unreliable cost projections, significant design flaws, and will likely encounter severe construction delays. Expanding the loan guarantee program or making it even less accountable in a proposed Clean Energy Deployment Administration will not stimulate job growth or effectively promote clean energy development—but instead will do little more than pad the pockets of established industries at the taxpayers’ expense.

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¹ U.S. Department of Energy. “DOE Announces Final Rule on Loan Guarantee Program.” October 4, 2007.
<http://www.lgprogram.energy.gov/press/100407.pdf>

² U.S. Department of Energy. “Department of Energy Issues Final Rule on Loan Guarantees”. December 7, 2009.
<http://www.lgprogram.energy.gov/press/FR-12709.pdf>

³ U.S. Department of Energy. “Vice President Biden Announces Finalized \$535 Million Loan Guarantee for Solyndra.” September 4, 2009.
<http://www.lgprogram.energy.gov/press/090409.pdf>

⁴ U.S. Department of Energy. “Obama Administration Offers \$59 Million in Conditional Loan Guarantees to Beacon Power and Nordic Windpower, Inc.” July 2, 2009. <http://www.lgprogram.energy.gov/press/070209.pdf>

⁵ Reuters, “This is Make or Break Year for Solyndra,” February 18, 2011.
<http://www.reuters.com/article/2011/02/18/idUS328954443520110218>

⁶ Matthew Wald, “Solar Firm Aided by Federal Loans Shuts Doors,” *New York Times*, August 31, 2011.
<http://www.nytimes.com/2011/09/01/business/energy-environment/solyndra-solar-firm-aided-by-federal-loans-shuts-doors.html?ref=solyndra>

⁷ U.S. Department of Energy Loan Programs Office. “The Financing Force Behind America’s Clean Energy Economy.”
http://lpo.energy.gov/?page_id=45

⁸ Library of Congress. “Status of Appropriations Legislation for Fiscal Year 2007.” December 7, 2009.
<http://thomas.loc.gov/home/approp/app07.html>

⁹ Library of Congress. “Status of Appropriations Legislation for Fiscal Year 2008.” December 7, 2009.
<http://thomas.loc.gov/home/approp/app08.html>

¹⁰ Library of Congress. “Status of Appropriations Legislation for Fiscal Year 2009.” December 7, 2009.
<http://thomas.loc.gov/home/approp/app09.html>

¹¹ U.S. Department of Energy. “Loan Guarantees for Projects that Employ Innovative Technologies.” November 30, 2009.
<http://www.lgprogram.energy.gov/FR-1703-Dec4.pdf>

¹² Library of Congress. “Status of Appropriations Legislation for Fiscal Year 2007.” December 7, 2009.
<http://thomas.loc.gov/home/approp/app07.html>

¹³ The \$38.5 billion in loan guarantee funding provided in the 2008 omnibus expired but the 2009 Omnibus reallocated this budget authority with no time limitation

¹⁴ The 2009 Omnibus renewed the spending provisions provided in the 2008 Omnibus and added an additional \$8.5 billion

¹⁵ U.S. Department of Energy. “Loan Guarantees for Projects that Employ Innovative Technologies.” November 30, 2009.
<http://www.lgprogram.energy.gov/FR-1703-Dec4.pdf>

¹⁶ “\$6,000,000,000 of loan guarantees are for coal based power generation and industrial gasification activities at retrofitted and new facilities that incorporate carbon capture and sequestration or other beneficial uses of carbon”

¹⁷ Office of Management and Budget. “Fact Sheets: Department of Energy.” February 1, 2010.
<http://www.gpoaccess.gov/usbudget/fy11/pdf/budget/energy.pdf>

¹⁸ *Office of Management and Budget*, “The President’s Budget for Fiscal Year 2013.” <http://www.whitehouse.gov/omb/budget>

¹⁹ Government Accountability Office. “Further Actions Are Needed to Improve Tracking and Review of Applications.” March 2012.
<http://www.gao.gov/assets/590/589210.pdf>

²⁰ U.S. Department of Energy. “Recovery Act Loan and Loan Guarantee Programs.” Retrieved February 5, 2010.
<http://www.energy.gov/recovery/lgprogram.htm>

²¹ From remarks by Jonathon Silver, “Hearing on the Fiscal Year 2012 Budget Request for Loan Guarantee Programs and the Advanced Research Programs Agency—Energy,” House Appropriations Subcommittee on Energy and Water Development Committee, March 31, 2011.

²² Office of Management and Budget. "Fact Sheets: Department of Energy." February, 2011.
<http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/energy.pdf>