

**LOAN GUARANTEE
SOLICITATION ANNOUNCEMENT**



**U.S. Department of Energy
Loan Guarantee Program Office**

**FEDERAL LOAN GUARANTEES FOR PROJECTS THAT
EMPLOY INNOVATIVE TECHNOLOGIES IN SUPPORT OF THE
ADVANCED ENERGY INITIATIVE**

Solicitation Number: DE-PS01-06LG00001

OMB Control Number: 1910-5129

Announcement Type: Initial

Issue Date: August 8, 2006
Pre-Application Due Date: November 6, 2006

TABLE OF CONTENTS

PART I - LOAN GUARANTEE SOLICITATION DESCRIPTION 1

 A. GENERAL LOAN GUARANTEE SOLICITATION DESCRIPTION..... 2

 B. PROJECT FINANCE CONSIDERATIONS FOR PRE-APPLICATIONS..... 3

 C. PAYMENT TO DOE OF THE LOAN GUARANTEE SUBSIDY COSTS..... 3

 D. PROJECTS ELIGIBLE FOR PRE-APPLICATIONS 3

PART II – PROCESS FOR OBTAINING A LOAN GUARANTEE..... 5

PART III - ELIGIBILITY INFORMATION 5

 A. ELIGIBLE APPLICANTS AND PROJECTS..... 5

 B. LENDER ELIGIBILITY 5

 C. PROJECT COSTS 5

PART IV – PRE-APPLICATION SUBMISSION REQUIREMENTS 5

 A. ADDRESS TO REQUEST PRE-APPLICATION PACKAGE 5

 B. PRE-APPLICATION SUBMISSION AND DUE DATE..... 5

 C. PRE-APPLICATION AND APPLICATION FEES 6

 D. CONTENT, FORM, AND REVIEW OF PRE-APPLICATION 6

 E. INVITATIONS TO SUBMIT APPLICATIONS FOR A LOAN GUARANTEE..... 7

PART V – APPLICATION REQUIREMENTS 8

 A. CONTENT AND FORM OF APPLICATION (BY INVITATION ONLY)..... 8

 B. APPLICATION SUBMISSION DATES AND TIMES..... 8

 C. APPLICATION REVIEW CRITERIA 8

PART VI – TERM SHEET AND CONDITIONAL COMMITMENT..... 8

 A. TERM SHEET 8

 B. CONDITIONAL COMMITMENT 8

PART VII - QUESTIONS/AGENCY CONTACTS 9

 A. QUESTIONS 9

Agency Contact(s) – Electronic Questions Via IIPS. 9

B. AGENCY CONTACT	9
PART VIII - OTHER INFORMATION.....	9
A. GOVERNMENT RIGHT TO REJECT OR NEGOTIATE.....	9
B. COMMITMENT OF PUBLIC FUNDS	10
C. PROPRIETARY APPLICATION INFORMATION.....	10
APPENDIX A – TITLE XVII – INCENTIVES FOR INNOVATIVE TECHNOLOGY	1
APPENDIX B – LOAN GUARANTEES FOR PROJECTS THAT EMPLOY INNOVATIVE TECHNOLOGIES; GUIDELINES FOR PROPOSALS SUBMITTED IN RESPONSE TO THE FIRST SOLICITATION UNDER TITLE XVII OF THE ENERGY POLICY ACT OF 2005.....	1
APPENDIX C – PRE-APPLICATION FORM.....	1
APPENDIX D – INDUSTRY INTERACTIVE PROCUREMENT SYSTEM (IIPS) 3.5.....	3

Full Announcement

PART I - LOAN GUARANTEE SOLICITATION DESCRIPTION

Preamble

This Solicitation Announcement (“Solicitation”) invites the submission of Pre-Applications seeking Loan Guarantees (“Loan Guarantees”) from the United States Department of Energy (“DOE” or the “Department”) in support of debt financing on projects that promote the President’s Advanced Energy Initiative (“AEI”) and are eligible to receive loan guarantees under Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511-16514) (“Title XVII”) (attached hereto as Appendix A). Neither a procurement action (under Title 48 of the Code of Federal Regulations) nor a financial assistance award (under 10 CFR Part 600) is contemplated by this Solicitation. The AEI is designed to reduce our reliance on vulnerable sources of energy, which will help ensure a growing and prosperous America in the 21st Century. AEI focuses on two vital areas: 1. Changing the way we fuel our vehicles (efficiency, alternative fuels, use of hybrids and hydrogen) and 2. Changing the way we power our homes and businesses (expanding clean coal, nuclear, and renewable resources). For a link to the AEI see, http://www.whitehouse.gov/stateoftheunion/2006/energy/energy_booklet.pdf

By facilitating the employment of new or significantly improved innovative technologies in early commercial projects in the United States, we can meet the principal energy challenges of enhancing energy security, repairing and modernizing our energy infrastructure, promoting energy conservation, and increasing our energy supplies in ways that protect and improve the environment.

This Solicitation for loan guarantees is issued to encourage early commercial projects in the United States that employ new or significantly improved technologies and promote the goals of the AEI. Title XVII authorizes the Secretary of Energy (“Secretary”) to carry out this effort. However, the Department’s ability to enter into any Loan Guarantee Agreement is dependent on obtaining the requisite Congressional appropriation authorization, as required by the Federal Credit Reform Act of 1990 (“FCRA”). This requirement applies even though Title XVII allows for the cost of a loan guarantee, as defined in 2 U.S.C. 661a(5)(C), to be paid by the recipient. The requisite authorization is expected to be provided before the execution of a definitive Loan Guarantee Agreement.

Title XVII defines eligible projects as projects that (1) avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and (2) employ new or significantly improved technologies (as compared to commercial technologies currently in service in the United States) (see Appendix A, Sec. 1703). The focus of this Solicitation is on those technology areas that are in furtherance of the goals of the AEI, as described with greater specificity in Section D of Part I.

This Solicitation is issued in conjunction with today’s issuance of the “Loan Guarantees for Projects that Employ Innovative Technologies; Guidelines for Proposals Submitted in Response to the First Solicitation under Title XVII of the Energy Policy Act of 2005” (the “Guidelines”

attached hereto as Appendix B). Together, this Solicitation and the Guidelines set forth the definitive description of a Loan Guarantee and establish the exclusive process and procedures for obtaining a Loan Guarantee. Capitalized terms not defined in this Solicitation shall have the meanings set forth in the Guidelines.

In the near future, DOE will issue a Notice of Proposed Rulemaking to develop regulations in support of the loan guarantee program. The Department intends to issue future solicitations pursuant to the final regulations developed through the proposed rulemaking. Loan Guarantees under this Solicitation will be issued in accordance with the Guidelines. Any Pre-Applicant for a Loan Guarantee under this Solicitation who does not receive an invitation to submit an Application for a Loan Guarantee or fails to secure a Loan Guarantee may apply to the Department in response to future loan guarantee solicitations. Rejection by the Department of a Loan Guarantee under this Solicitation will be without prejudice to any subsequent DOE review of the project under a subsequent loan guarantee solicitation.

DOE intends to limit the total dollar amount of loan guarantee commitments under this Solicitation to no more than \$2 billion. Commencing with a loan guarantee program of this size will allow DOE to achieve considerable progress in assisting new or significantly improved energy technologies to market while also enabling DOE to gain valuable experience and expertise that it will incorporate in program regulations and apply to future solicitations. DOE recognizes that some project proposals that would otherwise merit full consideration for a Loan Guarantee under these guidelines will, because of DOE's self-imposed ceiling on loan guarantee commitments, have to await full consideration under future solicitations issued under the final regulations. To accommodate concerns of Project Sponsors whose proposals are deferred full consideration because they either exceed or comprise a substantial amount of the total loan guarantee commitments available under the first solicitation, DOE will consider whether such proposals should be afforded expedited consideration under the final regulations, when adopted.

A. GENERAL LOAN GUARANTEE SOLICITATION DESCRIPTION

Title XVII authorizes the Secretary to make Loan Guarantees for projects that "avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued." In this regard, Title XVII identifies ten categories of technologies that, if employed in commercial projects, are potentially eligible for a loan guarantee.

A principal goal of Title XVII is to encourage early commercial use in the United States of new or significantly improved technologies in energy projects that offer the potential to reduce, avoid or sequester air pollutants and anthropogenic greenhouse gas emissions. DOE believes that accelerated commercial use of these new and improved technologies will help sustain economic growth, yield environmental benefits, and produce a more stable and secure energy supply and economy.

In addition to DOE's desire to advance the AEI through this Solicitation, DOE also desires to further the policy goals of Title XVII and, more broadly, those of the Energy Policy Act of 2005 (EPAAct 2005).

B. PROJECT FINANCE CONSIDERATIONS FOR PRE-APPLICATIONS

Potential Loan Guarantees under Title XVII present specific energy project finance considerations that need to be addressed by an Applicant in responding to this Solicitation. For example, Title XVII requires that the guarantee can not be greater than 80 percent of total Project Cost. In addition, the Guidelines set out specific considerations an Applicant should take into account in developing a project financing package for a successful Application. A potential Applicant should review the Discussion of the Guidelines section in the Guidelines concerning the extent of the government's guarantee to the debt participation, secondary market restrictions on stripping of the guaranteed debt, and the nature of equity participation. For additional information relating to the requirements and policy considerations of the Department's loan guarantee program, please refer to the Guidelines.

C. PAYMENT TO DOE OF THE LOAN GUARANTEE SUBSIDY COSTS

Section 1702(b) of EPCA 2005 provides that DOE must receive either an appropriation for the Subsidy Cost of a Loan Guarantee or a cash payment of such cost directly from the Borrower in lieu of the appropriation. The Subsidy Cost is the amount DOE must obligate to cover the estimated long-term cost to the Government of the guaranteed loan as determined under the applicable provisions of FCRA. Applicants should be aware that DOE does not expect to receive specific appropriation amounts from Congress to cover the Subsidy Costs associated with the potential loan guarantees under this Solicitation. Therefore, DOE anticipates that the project(s) approved pursuant to this Solicitation will require the Borrower to directly pay the Subsidy Cost at or before the closing. The Borrower may not finance this payment through a loan made or guaranteed by the Federal government. In accordance with FCRA, DOE must consult and obtain the approval of the Office of Management and Budget for DOE's calculation of the Subsidy Cost of every Loan Guarantee prior to entering into any Loan Guarantee Agreement. DOE must also consult with the Secretary of Treasury on the terms and conditions of the Loan Guarantee Agreement. As part of its Application, the Applicant will be expected to provide an estimate of the Subsidy Cost for the project, and include a description of the methodology used for the calculation including supporting documentation. DOE will provide an estimation of the Subsidy Cost in the Term Sheet and will update its estimate of the amount at the time of the Conditional Commitment. The Applicant must provide updated project financing information and terms and conditions not later than 30 days prior to closing. The final Subsidy Cost will be determined by DOE, subject to review and approval by OMB, just prior to entering into a Loan Guarantee Agreement, based upon updated project information provided by the Applicant.

D. PROJECTS ELIGIBLE FOR PRE-APPLICATIONS

Title XVII authorizes the Secretary to make Loan Guarantees for projects that "avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued." Commercial technology is defined as technology in general use in the marketplace.

This initial Solicitation focuses on projects ready for commercial deployment in the proximate future that are in furtherance of the AEI and, (1) avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and (2) employ new or significantly improved technologies as compared to commercial technologies in service. The only project proposals that DOE will consider in connection with the first Solicitation must employ a technology that fits

within the following categories. The subcategories of examples of project types are non-exclusive; therefore, interested parties may submit project proposals responsive to a particular category even if the technology is not listed as a subcategory. After adopting final regulations, DOE intends to issue additional solicitations covering the full range of eligible projects under Title XVII.

Category 1 Biomass

- a) Bioenergy Projects as Described in Section 932(d) of the Energy Policy Act of 2005
- b) Biofuels Production, Distribution and Infrastructure

Category 2 Hydrogen

- a) Hydrogen and Fuel Cell Manufacturing
- b) Hydrogen Energy Systems

Category 3 Solar

- a) Centralized Solar Electricity Generation Facilities
- b) Solar Technology Manufacturing Facilities
- c) Large-Scale Solar Installations

Category 4 Wind & Hydropower

- a) Advanced Wind Power Plant
- b) Wind or Renewables Specific Transmission Lines
- c) Turbine or Component Manufacturing
- d) Testing Facilities for Commercial Wind Turbine Components
- e) Community Wind Power Systems
- f) Hydrokinetic Energy Devices
- g) Hydropower Technology Devices in Existing Impoundments

Category 5 Fossil Energy Coal

- a) Coal to Fischer-Tropsch (FT) Liquids
- b) Integrated Gasification Combined Cycle
- c) Industrial Gasification

Category 6 Carbon Sequestration Practices and Technologies

Category 7 Efficient Electricity Transmission and Delivery and Energy Reliability

- a) Advanced Control, Sensing and Monitoring Systems
- b) Advanced switching, transformer and substation equipment
- c) Distributive On-Site Energy Systems Involving Critical Infrastructure

Category 8 Alternative Fuel Vehicles

- a) Hybrid vehicles or component manufacturing

Category 9 Industrial Energy Efficiency Projects

- a) Private Sector facilities only

Category 10 Pollution Control Equipment

PART II – PROCESS FOR OBTAINING A LOAN GUARANTEE

DOE anticipates awarding Loan Guarantees only through this Solicitation and solely through the following specific steps:

- (i) Applicant submittal of a Pre-Application.
- (ii) DOE invitation to selected Pre-Applicants to submit an Application.
- (iii) DOE issuance of a Term Sheet setting forth the material terms and conditions of a definitive Loan Guarantee Agreement.
- (iv) Execution of a Conditional Commitment.
- (v) Execution of the Loan Guarantee Agreement.

PART III – ELIGIBILITY INFORMATION

A. ELIGIBLE APPLICANTS AND PROJECTS

Eligible applicants include any firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company, or governmental non-Federal entity, that has the authority to enter into, and is seeking, a loan guarantee issued by the Secretary for a loan or other debt obligation of an Eligible Project as the meaning set forth under “Applicants” in Section II, Definitions, of the Guidelines.

Eligible Projects must be of the type of project authorized to receive a loan guarantee under Title XVII and the project must be located in the United States.

B. LENDER ELIGIBILITY

The eligibility requirements of the lenders providing debt financing available to receive the Loan Guarantees is set forth in Section VI, Lender Eligibility, of the Guidelines.

C. PROJECT COSTS

The list of eligible project costs is set forth in Section VII, Project Costs, of the Guidelines.

PART IV – PRE-APPLICATION SUBMISSION REQUIREMENTS

A. ADDRESS TO REQUEST PRE-APPLICATION PACKAGE

Application forms, instructions, and any amendments to the Solicitation will be available electronically through DOE’s Industry Interactive Procurement System (IIPS): <http://e-center.doe.gov> and at DOE’s Loan Guarantee Program Office (LGPO). To access these materials, go to <http://www.lgprogram.energy.gov>.

B. PRE-APPLICATION SUBMISSION AND DUE DATE

Pre-Applications are required to be submitted electronically through DOE’s Industry Interactive Procurement System (IIPS): <http://e-center.doe.gov> and received by November 6, 2006, not later than 5:00 PM Eastern Time. Pre-Applications filed through IIPS after the deadline will not be considered, but may be resubmitted for consideration under future solicitations in accordance with the final regulations. To facilitate DOE review, an original and one copy should be submitted to the LGPO at the address listed below within one week of the IIPS submission.

Director
DOE Loan Guarantee Program Office
1000 Independence Avenue, S.W.
Washington, D.C. 20585-0121
Phone: 202-586-8336

C. PRE-APPLICATION AND APPLICATION FEES

Title XVII, and Section 1702(h) in particular, afford DOE discretion with respect to how it imposes fees to cover applicable administrative costs. For this first Solicitation, DOE has elected not to impose such fees in connection with the Pre-Application stage. In effect, this means that Project Sponsors who submit Pre-Applications and are denied further consideration will not be charged any fees for expenses incurred by DOE in reviewing their Pre-Application materials. For project proposals that progress to the Application stage, the invitation to submit an Application that DOE will send to Project Sponsors will specify whether DOE is charging an Application fee, and the amount of any such fee. The other administrative fees that DOE will collect in connection with the first Solicitation will be from Borrowers who enter into a Conditional Commitment, for an amount sufficient to cover DOE's administrative expenses applicable to that Borrower's Pre-Application, Application, Term Sheet, Conditional Commitment, the Loan Guarantee Agreement, and subsequent monitoring and servicing expenses. Loan Guarantee Agreements may specify additional fee requirements under the terms of the loan guarantee. With respect to future solicitations, DOE may decide to assess a Pre-Application and/or an Application fee. DOE will revisit this issue in the forthcoming regulations that DOE will propose for public comment later this year.

D. CONTENT, FORM, AND REVIEW OF PRE-APPLICATION

Pre-Applications must be typed, single-spaced, must not exceed a total page limit of 100 pages for the entire Pre-Application submission, including all attachments, charts, graphs, etc.; and must also adhere to a format consisting of standard 8.5" x 11" paper with 1" margins (top, bottom, left, and right) with font not smaller than Times New Roman 11 point font. In addition to submission of the hard copies to the LPGO, the Pre-Application must be submitted electronically through DOE's Industry Interactive Procurement System (IIPS): <http://e-center.doe.gov>. Instructions on how to register for IIPS, submit a Pre-Application, and other related topics are located on the web site at <http://e-center.doe.gov> by clicking on the Help button. Also more information about using IIPS may be found in Appendix D of this Solicitation.

IIPS Proposal Preparation Instructions

(a) General –

All pages of each part of a proposal shall be numbered, and identified with the name of the offeror, the date, and the solicitation number to the extent practicable.

Proposal files are to be formatted in any of the following applications: Adobe Acrobat PDF, Word, WordPerfect or Excel.

(b) Overall Arrangement of Proposal

- (1) In IIPS, the overall proposal shall consist of 3 volumes, individually entitled as stated below. Each volume will be submitted as a separate file. Multiple electronic files may be submitted for each volume; however, each file must clearly identify the volume with which it is associated.

legal agreement. Organizations whose Pre-Applications are denied will be advised as promptly as possible in writing. This notice will explain why the Applicant was not invited to submit an Application for a loan guarantee under the Guidelines.

PART V – APPLICATION REQUIREMENTS

A. CONTENT AND FORM OF APPLICATION (BY INVITATION ONLY)

Applicants, in response to the invitation to submit an application for a Loan Guarantee, must meet all requirements specified in Title XVII, this Solicitation, and the Guidelines. DOE will be expecting that the information and documentation requested in Part III.F. of the Guidelines will conform substantially with that produced during the course of an arm's length commercially negotiated project or commercial financing. The maturity, balance sheet, and experience of the project sponsors; the credit rating of the Lenders and the off-take counterparties; and the scope and breadth of the security package supporting the loan are additional important factors that will influence a favorable review of the Application.

B. APPLICATION SUBMISSION DATES AND TIMES

Applications shall be accepted on an invitation-only basis. Application submission instructions will be provided in the invitation to submit an Application for a Loan Guarantee.

C. APPLICATION REVIEW CRITERIA

DOE's evaluation of an Application will consist of a critical examination of the quality of the responses to the information requested from the Applicant under Part III.F. and Part IV of the Guidelines, as well as any information subsequently requested in meetings with the Applicant. DOE may utilize independent consultants in all aspects of the evaluation process.

PART VI – TERM SHEET AND CONDITIONAL COMMITMENT

A. TERM SHEET

If the Credit Review Board approves an Application for a Loan Guarantee, DOE will notify the Borrower and Lender in writing and provide them with a copy of a proposed Term Sheet that sets forth the general terms and conditions under which DOE may issue a Loan Guarantee. A Term Sheet does not constitute a commitment by DOE to issue a Loan Guarantee. The proposed terms and conditions of a Term Sheet are subject to negotiation. DOE will promptly notify the Applicant, in writing, of any DOE decision not to finalize a Term Sheet.

B. CONDITIONAL COMMITMENT

Upon conclusion of the negotiation of the Term Sheet, and subject to consultation with the Secretary of the Treasury, the Term Sheet may be converted to a Conditional Commitment if both the Applicant and DOE agree. The Term Sheet becomes a Conditional Commitment if, and only if, both DOE and Applicant agree to the proposed terms and conditions in the Term Sheet.

Subsequent to entering into a Conditional Commitment, and upon agreement as to the detailed terms and conditions contained in the Loan Guarantee Agreement and other related documents, as well as availability of authority provided in an appropriations act for this Solicitation, the Credit Review Board will set a closing date. No loan or other debt obligations will be guaranteed by DOE until the Loan Guarantee Agreement and all related closing documents are executed.

The Conditional Commitment will form the basis of the Loan Guarantee Agreement, if and only if, all terms are satisfactory to the Secretary, in consultation with the Secretary of the Treasury, and only after all parties agree to the time and terms of the closing.

PART VII – QUESTIONS/AGENCY CONTACTS

A. QUESTIONS

Questions relating to the registration process, system requirements, how an Application form works, or the submittal process may be directed to the LGPO at the following email address: lgprogram@hq.doe.gov.

Agency Contact(s) – Electronic Questions Via IIPS.

Questions regarding the content of the Solicitation should be submitted to the LGPO at the email address listed above. If submitted through the “Submit Question” feature of the DOE Industry Interactive Procurement System (IIPS) at <http://e-center.doe.gov>, it will be forwarded to the LGPO for answer rather than through a posting on IIPS. DOE intends to review all questions submitted and, to the extent practicable, respond through issuance of “Answers to Frequently Asked Questions.” DOE will respond to questions not susceptible of such treatment on an ad hoc basis.

B. AGENCY CONTACT

All communications with the Department shall be directed to:

Director
DOE Loan Guarantee Program Office
1000 Independence Avenue, S.W.
Washington, D.C. 20585-0121
Phone: 202-586-8336

With a copy to:

Warren Belmar
Deputy General Counsel for Energy Policy
Office of the General Counsel
1000 Independence Avenue, S.W.
Washington, D.C. 20585-0121

PART VIII – OTHER INFORMATION

A. GOVERNMENT RIGHT TO REJECT OR NEGOTIATE

DOE reserves the right, without qualification, to reject any or all Applications received in response to this Solicitation and to select any Application, in whole or in part, as a basis for negotiation.

B. COMMITMENT OF PUBLIC FUNDS

No binding commitment, agreement, obligation, or right of any kind may be assumed or enforced by any Applicant against DOE other than in accordance with an executed Loan Guarantee Agreement, as executed by the appropriate DOE authorizing official.

C. PROPRIETARY APPLICATION INFORMATION

Patentable ideas, trade secrets, proprietary, or confidential commercial or financial information, disclosure of which may harm the Applicant, should be included in an Application only when such information is necessary to convey an understanding of the proposed project. The use and disclosure of such data may be restricted, provided the Applicant includes the following legend on the first page of the project narrative and specifies the pages of the Application which are to be restricted:

“The data contained in pages _____ of this Application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this Application, DOE shall have the right to use or disclose the data herein to the extent provided in the award. This restriction does not limit the government’s right to use or disclose data obtained without restriction from any source, including the applicant.”

To protect such data, each line or paragraph on the pages containing such data must be specifically identified and marked with a legend similar to the following:

“The following contains proprietary information that (name of applicant) requests not be released to persons outside the Government, except for purposes of review and evaluation.”

APPENDIX A – TITLE XVII – INCENTIVES FOR INNOVATIVE TECHNOLOGY

SEC. 1701. DEFINITIONS.

In this title:

(1) COMMERCIAL TECHNOLOGY.—

(A) IN GENERAL.—The term “commercial technology” means a technology in general use in the commercial marketplace.

(B) INCLUSIONS.—The term “commercial technology” does not include a technology solely by use of the technology in a demonstration project funded by the Department.

(2) COST.—The term “cost” has the meaning given the term “cost of a loan guarantee” within the meaning of section 502(5)(C) of the Federal Credit Reform Act of 1990 (2 U.S.C.661a(5)(C)).

(3) ELIGIBLE PROJECT.—The term “eligible project” means a project described in section 1703.

(4) GUARANTEE.—

(A) IN GENERAL.—The term “guarantee” has the meaning given the term “loan guarantee” in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(B) INCLUSION.—The term “guarantee” includes a loan guarantee commitment (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)).

(5) OBLIGATION.—The term “obligation” means the loan or other debt obligation that is guaranteed under this section.

SEC. 1702. TERMS AND CONDITIONS.

(a) IN GENERAL.—Except for division C of Public Law 108–324, the Secretary shall make guarantees under this or any other Act for projects on such terms and conditions as the Secretary determines, after consultation with the Secretary of the Treasury, only in accordance with this section.

(b) SPECIFIC APPROPRIATION OR CONTRIBUTION.—No guarantee shall be made unless—

(1) an appropriation for the cost has been made; or H. R. 6—525

(2) the Secretary has received from the borrower a payment in full for the cost of the obligation and deposited the payment into the Treasury.

(c) AMOUNT.—Unless otherwise provided by law, a guarantee by the Secretary shall not exceed an amount equal to 80 percent of the project cost of the facility that is the subject of the guarantee, as estimated at the time at which the guarantee is issued.

(d) REPAYMENT.—

(1) IN GENERAL.—No guarantee shall be made unless the Secretary determines that there is reasonable prospect of repayment of the principal and interest on the obligation by the borrower.

(2) AMOUNT.—No guarantee shall be made unless the Secretary determines that the amount of the obligation (when combined with amounts available to the borrower from other sources) will be sufficient to carry out the project.

(3) SUBORDINATION.—The obligation shall be subject to the condition that the obligation is not subordinate to other financing.

(e) INTEREST RATE.—An obligation shall bear interest at a rate that does not exceed a level that the Secretary determines appropriate, taking into account the prevailing rate of interest in the private sector for similar loans and risks.

(f) TERM.—The term of an obligation shall require full repayment over a period not to exceed the lesser of—

(1) 30 years; or

(2) 90 percent of the projected useful life of the physical asset to be financed by the obligation (as determined by the Secretary).

(g) DEFAULTS.—

(1) PAYMENT BY SECRETARY.—

(A) IN GENERAL.—If a borrower defaults on the obligation (as defined in regulations promulgated by the Secretary and specified in the guarantee contract), the holder of the guarantee shall have the right to demand payment of the unpaid amount from the Secretary.

(B) PAYMENT REQUIRED.—Within such period as may be specified in the guarantee or related agreements, the Secretary shall pay to the holder of the guarantee the unpaid interest on, and unpaid principal of the obligation as to which the borrower has defaulted, unless the Secretary finds that there was no default by the borrower in the payment of interest or principal or that the default has been remedied.

(C) FORBEARANCE.—Nothing in this subsection precludes any forbearance by the holder of the obligation for the benefit of the borrower which may be agreed upon by the parties to the obligation and approved by the Secretary.

(2) SUBROGATION.—

(A) IN GENERAL.—If the Secretary makes a payment under paragraph (1), the Secretary shall be subrogated to the rights of the recipient of the payment as specified in the guarantee or related agreements including, where appropriate, the authority (notwithstanding any other provision of law) to—H. R. 6—526

(i) complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to such guarantee or related agreements; or

(ii) permit the borrower, pursuant to an agreement with the Secretary, to continue to pursue the purposes of the project if the Secretary determines this to be in the public interest.

(B) SUPERIORITY OF RIGHTS.—The rights of the Secretary, with respect to any property acquired pursuant to a guarantee or related agreements, shall be superior to the rights of any other person with respect to the property.

(C) TERMS AND CONDITIONS.—A guarantee agreement shall include such detailed terms and conditions as the Secretary determines appropriate to—

- (i) protect the interests of the United States in the case of default; and
- (ii) have available all the patents and technology necessary for any person selected, including the Secretary, to complete and operate the project.

(3) PAYMENT OF PRINCIPAL AND INTEREST BY SECRETARY.—

With respect to any obligation guaranteed under this section, the Secretary may enter into a contract to pay, and pay, holders of the obligation, for and on behalf of the borrower, from funds appropriated for that purpose, the principal and interest payments which become due and payable on the unpaid balance of the obligation if the Secretary finds that—

- (A)(i) the borrower is unable to meet the payments and is not in default;
 - (ii) it is in the public interest to permit the borrower to continue to pursue the purposes of the project; and
 - (iii) the probable net benefit to the Federal Government in paying the principal and interest will be greater than that which would result in the event of a default;
- (B) the amount of the payment that the Secretary is authorized to pay shall be no greater than the amount of principal and interest that the borrower is obligated to pay under the agreement being guaranteed; and
- (C) the borrower agrees to reimburse the Secretary for the payment (including interest) on terms and conditions that are satisfactory to the Secretary.

(4) ACTION BY ATTORNEY GENERAL.—

(A) NOTIFICATION.—If the borrower defaults on an obligation, the Secretary shall notify the Attorney General of the default.

(B) RECOVERY.—On notification, the Attorney General shall take such action as is appropriate to recover the unpaid principal and interest due from—

- (i) such assets of the defaulting borrower as are associated with the obligation; or
- (ii) any other security pledged to secure the obligation.

(h) FEES.—

(1) IN GENERAL.—The Secretary shall charge and collect fees for guarantees in amounts the Secretary determines are sufficient to cover applicable administrative expenses.

(2) AVAILABILITY.—Fees collected under this subsection shall—

- (A) be deposited by the Secretary into the Treasury; and
- (B) remain available until expended, subject to such other conditions as are contained in annual appropriations Acts.

(i) RECORDS; AUDITS.—

(1) IN GENERAL.—A recipient of a guarantee shall keep such records and other pertinent documents as the Secretary shall prescribe by regulation, including such records as the Secretary may require to facilitate an effective audit.

(2) ACCESS.—The Secretary and the Comptroller General of the United States, or their duly authorized representatives, shall have access, for the purpose of audit, to the records and other pertinent documents.

(j) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all guarantees issued under this section with respect to principal and interest.

SEC. 1703. ELIGIBLE PROJECTS.

(a) IN GENERAL.—The Secretary may make guarantees under this section only for projects that—

(1) avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and

(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.

(b) CATEGORIES.—Projects from the following categories shall be eligible for a guarantee under this section:

(1) Renewable energy systems.

(2) Advanced fossil energy technology (including coal gasification meeting the criteria in subsection (d)).

(3) Hydrogen fuel cell technology for residential, industrial, or transportation applications.

(4) Advanced nuclear energy facilities.

(5) Carbon capture and sequestration practices and technologies, including agricultural and forestry practices that store and sequester carbon.

(6) Efficient electrical generation, transmission, and distribution technologies.

(7) Efficient end-use energy technologies.

(8) Production facilities for fuel efficient vehicles, including hybrid and advanced diesel vehicles.

(9) Pollution control equipment.

(10) Refineries, meaning facilities at which crude oil is refined into gasoline.

(c) GASIFICATION PROJECTS.—The Secretary may make guarantees for the following gasification projects:

(1) INTEGRATED GASIFICATION COMBINED CYCLE PROJECTS.— Integrated gasification combined cycle plants meeting the emission levels under subsection (d), including—

(A) projects for the generation of electricity—

(i) for which, during the term of the guarantee—

(I) coal, biomass, petroleum coke, or a combination of coal, biomass, and petroleum coke will account for at least 65 percent of annual heat input; and (H.R. 6-528)

(II) electricity will account for at least 65 percent of net useful annual energy output;

(ii) that have a design that is determined by the Secretary to be capable of accommodating the equipment likely to be necessary to capture the carbon dioxide that would otherwise be emitted in flue gas from the plant;

(iii) that have an assured revenue stream that covers project capital and operating costs (including servicing all debt obligations covered by the guarantee) that is approved by the Secretary and the relevant State public utility commission; and

(iv) on which construction commences not later than the date that is 3 years after the date of the issuance of the guarantee;

(B) a project to produce energy from coal (of not more than 13,000 Btu/lb and mined in the western United States) using appropriate advanced integrated gasification combined cycle technology that minimizes and offers the potential to sequester carbon dioxide emissions and that—

(i) may include repowering of existing facilities;

(ii) may be built in stages;

(iii) shall have a combined output of at least 100 megawatts;

(iv) shall be located in a western State at an altitude greater than 4,000 feet; and

(v) shall demonstrate the ability to use coal with an energy content of not more than 9,000 Btu/lb;

(C) a project located in a taconite-producing region of the United States that is entitled under the law of the State in which the plant is located to enter into a long-term contract approved by a State public utility commission to sell at least 450 megawatts of output to a utility;

(D) facilities that—

(i) generate one or more hydrogen-rich and carbon monoxide-rich product streams from the gasification of coal or coal waste; and

(ii) use those streams to facilitate the production of ultra clean premium fuels through the Fischer-Tropsch process; and

(E) a project to produce energy and clean fuels, using appropriate coal liquefaction technology, from Western bituminous or subbituminous coal, that—

(i) is owned by a State government; and

(ii) may include tribal and private coal resources.

(2) INDUSTRIAL GASIFICATION PROJECTS.—Facilities that gasify coal, biomass, or petroleum coke in any combination to produce synthesis gas for use as a fuel or feedstock and for which electricity accounts for less than 65 percent of the useful energy output of the facility.

(3) **PETROLEUM COKE GASIFICATION PROJECTS.**—The Secretary is encouraged to make loan guarantees under this title available for petroleum coke gasification projects. H. R. 6—529

(4) **LIQUEFACTION PROJECT.**—Notwithstanding any other provision of law, funds awarded under the clean coal power initiative under subtitle A of title IV for coal-to-oil liquefaction projects may be used to finance the cost of loan guarantees for projects awarded such funds.

(d) **EMISSION LEVELS.**—In addition to any other applicable Federal or State emission limitation requirements, a project shall attain at least—

(1) total sulfur dioxide emissions in flue gas from the project that do not exceed 0.05 lb/MMBtu;

(2) a 90-percent removal rate (including any fuel pretreatment) of mercury from the coal-derived gas, and any other fuel, combusted by the project;

(3) total nitrogen oxide emissions in the flue gas from the project that do not exceed 0.08 lb/MMBtu; and

(4) total particulate emissions in the flue gas from the project that do not exceed 0.01 lb/MMBtu.

(e) **QUALIFICATION OF FACILITIES RECEIVING TAX CREDITS.**— A project that receives tax credits for clean coal technology shall not be disqualified from receiving a guarantee under this title.

SEC. 1704. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—There are authorized to be appropriated such sums as are necessary to provide the cost of guarantees under this title.

(b) **USE OF OTHER APPROPRIATED FUNDS.**—The Department may use amounts awarded under the clean coal power initiative under subtitle A of title IV to carry out the project described in section 1703(c)(1)(C), on the request of the recipient of such award, for a loan guarantee, to the extent that the amounts have not yet been disbursed to, or have been repaid by, the recipient.

**APPENDIX B – LOAN GUARANTEES FOR PROJECTS THAT EMPLOY
INNOVATIVE TECHNOLOGIES; GUIDELINES FOR PROPOSALS SUBMITTED IN
RESPONSE TO THE FIRST SOLICITATION UNDER TITLE XVII OF THE ENERGY
POLICY ACT OF 2005**

6450-01-P

DEPARTMENT OF ENERGY

**Loan Guarantees for Projects that Employ Innovative Technologies; Guidelines for
Proposals Submitted in Response to the First Solicitation**

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE publishes policy guidelines that DOE intends to use in connection with the first solicitation of proposals for a loan guarantee for Eligible Projects under Title XVII of the Energy Policy Act of 2005 that are expected to contribute to the goals of the President's Advanced Energy Initiative.

EFFECTIVE DATE: The guidelines in this Notice are effective August 8, 2006.

FOR FURTHER INFORMATION CONTACT:

Director
DOE Loan Guarantee Program Office
1000 Independence Avenue, S.W.
Washington, D.C. 20585-0121
Phone: 202-586-8336
Email: lgprogram@hq.doe.gov

With a copy to:
Warren Belmar
Deputy General Counsel for Energy Policy
Office of the General Counsel
1000 Independence Avenue, S.W.
Washington, D.C. 20585-0121

SUPPLEMENTARY INFORMATION:

Introduction

Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511-16514) authorizes the Secretary of Energy, after consultation with the Secretary of the Treasury, to make loan guarantees for projects that “avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.” Commercial technology is defined as a technology in general use in the marketplace. More specifically, Title XVII identifies ten discrete categories of projects that are eligible for a loan guarantee, including those that employ:

1. Renewable energy systems;
2. Advanced fossil energy technology (including coal gasification meeting the criteria in subsection 1703(d));
3. Hydrogen fuel cell technology for residential, industrial, or transportation applications;
4. Advanced nuclear energy facilities;
5. Carbon capture and sequestration practices and technologies, including agricultural and forestry practices that store and sequester carbon;
6. Efficient electrical generation, transmission, and distribution technologies;
7. Efficient end-use energy technologies;
8. Production facilities for fuel efficient vehicles, including hybrid and advanced diesel vehicles;
9. Pollution control equipment; and
10. Refineries, meaning facilities at which crude oil is refined into gasoline.

A principal purpose of the Title XVII loan guarantee program is to encourage early commercial use in the United States of new or significantly improved technologies in energy projects. DOE's loan guarantee program is not intended for technologies in research and development. Indeed as section 1702(d) requires a "reasonable prospect of payment" of any loan or debt obligation issued to a project, technologies for project proposals should be mature enough to assure dependable commercial operations and generate sufficient revenues, and not solely a demonstration project (i.e., a project designated to demonstrate feasibility of a technology on any scale). DOE believes that accelerated commercial use of these new or improved technologies will help to sustain economic growth, yield environmental benefits, and produce a more stable and secure energy supply.

Today, DOE begins implementation of Title XVII with two actions. First, DOE publishes guidelines in the nature of a general statement of policy that DOE intends to apply **only** to the first solicitation of projects. Second, DOE makes available the first solicitation for Pre-Applications for Federal Loan Guarantees for Projects that Employ Innovative Energy Technologies by posting it on the internet at: <http://www.LGProgram.energy.gov/>. Neither a procurement action (under Title 48 of the Code of Federal Regulations) nor a financial assistance award (under 10 CFR Part 600) is contemplated by these guidelines and the solicitation. As further described in the solicitation, interested parties are being asked to file an initial Pre-Application for review by DOE. If the Pre-Application meets the suggested requirements of these guidelines, DOE may invite the interested party to submit a comprehensive Application.

DOE anticipates receiving a significant volume of interest in the loan guarantee program, and therefore plans to issue multiple solicitations, following adoption of final regulations within the next year, that will cover the broad array of eligible projects under Title XVII. Applicants

who respond to the solicitation but are not approved for a loan guarantee may submit a new or revised proposal in response to future solicitations under the final regulations DOE plans to adopt. DOE does not intend to review Pre-Applications or approve loan guarantees for any proposal that is outside the scope and does not conform with the specific requirements of the initial solicitation. Likewise, only comprehensive applications submitted by interested parties that were invited by DOE to submit a comprehensive application for a Title XVII loan guarantee as a result of the initial solicitation will be considered for a loan guarantee.

While most provisions of today's guidelines are not legally binding, please note that some provisions of these guidelines are based on non-discretionary provisions of law in Title XVII and under the Federal Credit Reform Act of 1990, 2 U.S.C. 661 et seq. ("FCRA"). For example, section 1702(f) of Title XVII specifically limits the term of the loan guarantee by stating that "the term of an obligation shall require full repayment over a period not to exceed the lesser of (i) 30 years or (ii) 90 percent of the projected useful life of the physical asset to be financed by the obligation (as determined by the Secretary)." Hence, Applicants should provide a detailed analysis of the expected and generally accepted life cycle of the primary technology and project facility that is the focus of the financing as DOE cannot issue a guarantee that will extend beyond 90 percent of such life cycle or a 30-year term, whichever is shorter.

Moreover, FCRA requires that Congress must authorize Federal loan guarantees in an appropriations act in advance of the execution of a final binding loan guarantee agreement. See 2 U.S.C. 661c(b). This requirement applies even though Title XVII allows for the cost of a loan guarantee, as defined in 2 U.S.C. 661a(5)(C), to be paid by the recipient, see 42 U.S.C. 16512(b)(2), and even though today's guidelines provide for a Conditional Commitment that will precede the execution of a final binding Loan Guarantee Agreement. As a result, DOE is

currently restricted only to reviewing Pre-Applications and Applications and entering into Conditional Commitments until it obtains the requisite authorization in an appropriations act. DOE may not enter into a binding Loan Guarantee Agreement or issue any loan guarantees until this appropriations authority has been granted.

Discussion of the Guidelines

In this portion of the **SUPPLEMENTARY INFORMATION**, DOE highlights key provisions and, as appropriate, explains the basis for them.

For the first solicitation, these guidelines set forth the type of information that interested parties are expected to include in a Pre-Application and, if invited by DOE, the type of information that Applicants should additionally include in an Application. Information is also provided in these guidelines as to the determining factors that DOE expects to apply in its review of project proposals. DOE intends to evaluate each Pre-Application and Application taking into consideration, among other things, the requirements and conditions contained in the solicitation, the criteria specified under Title XVII to identify Eligible Projects, the project's ability to optimize the probability of repayment of Guaranteed Obligations, and how the project furthers the goals of the President's Advanced Energy Initiative.¹ Please note that even if a Pre-Application or Application contains all of the information specified in these guidelines, DOE retains the right, in its sole discretion, to inform any Applicant that their project proposal has been denied further review.

¹ One factor that warrants mentioning here is that a proposed project should be constructed and operated in the United States. DOE believes that the environmental benefits and deployment of new and/or enhanced technologies associated with projects should reside within the United States. In such circumstances it will be easier for DOE to monitor the project, ensure repayment of guaranteed debt in accordance with section 1702(d), and enforce its rights in the event of default.

The guidelines, in accordance with Section 1702(c), provide that any loan guarantee issued by DOE may not exceed 80 percent of total Project Costs. Section VII of the guidelines generally defines Project Costs as those that are necessary, reasonable, and directly related to the design, construction, and startup of a project. Conversely, excluded costs which are also described with greater specificity in Section VII of the guidelines include initial research and development costs and operating costs after the facility has been constructed.

In addition, DOE notes that the Subsidy Cost of the loan guarantee, as well as fees paid for by the Borrower for the Administrative Cost of Issuing a Loan Guarantee, are excluded from Project Costs. As defined in 2 U.S.C. 661a(5)(C), the Subsidy Cost is not a tangible cost associated with the financing or construction of the project facility. Rather, it constitutes the expected long-term liability to the Federal government in issuing the loan guarantee. In addition, DOE believes that it would be undesirable to allow Borrowers to count the Subsidy Cost (including the financing cost of a Borrower paid Subsidy Cost) as a Project Cost, whether funded by an appropriation or by payment made by the Borrower. To do so could have the effect of including the Subsidy Cost as an allowable cost under the loan guarantee, and thus put the Federal government at risk for up to 80 percent of its Subsidy Cost requirement. Additionally, the Borrower paid Subsidy Cost can not be paid from the proceeds of federally guaranteed or funded debt. For similar reasons, fees required under Section 1702(h) of the Act to cover DOE's administrative expenses are also disallowed from Project Costs, thereby ensuring that the loan guarantee does not place the Federal government at risk for up to 80% of these statutorily required fees.

Consistent with section 1702(b), the guidelines specify that DOE must receive either an appropriation for the Subsidy Cost or payment of that cost by the Borrower. No funds have been

appropriated for the Subsidy Cost of loan guarantees; therefore DOE anticipates that the project(s) approved pursuant to the first solicitation will require the Borrower to pay this cost. The guidelines specify that a Project Sponsor should include an estimate of the Subsidy Cost in an Application. In accordance with 2 U.S.C. 661b(a), DOE will then perform its own independent calculation of the Subsidy Cost and will consult and obtain the approval of the Office of Management and Budget for this computation prior to entering into any Loan Guarantee Agreement. DOE will also consult with the Secretary of Treasury prior to entering into any Loan Guarantee Agreement. The Applicant will be required to provide updated project financing information and terms and conditions not later than 30 days prior to closing, should any of the terms of the project financing or project terms change between Conditional Commitment and the Loan Guarantee Agreement.

In addition to the Subsidy Cost, section 1702(h) also requires DOE to collect fees to cover the administrative expenses of issuing loan guarantees. The guidelines specify that DOE will collect fees for administrative expenses as provided for in the Conditional Commitment, as well as additional fees during the term of a loan guarantee. These fees will consist of the administrative expenses that DOE incurs during:

- (i) The evaluation of the Pre-Application and Application;
- (ii) The offering, negotiation, and closing of a loan guarantee; and
- (iii) The servicing of the loan guarantee and monitoring the progress of a project.

Title XVII, and section 1702(h) in particular, afford DOE discretion with respect to how it imposes fees to cover applicable administrative costs. For this first solicitation, DOE has elected not to impose such fees in connection with the Pre-Application stage. In effect, this means that Project Sponsors who submit Pre-Applications and are denied further consideration

will not be charged any fees for expenses incurred by DOE in reviewing their Pre-Application materials. For project proposals that progress to the Application stage, the invitation to submit an Application that DOE will send to Project Sponsors will specify whether DOE is charging an Application fee, and the amount of any such fee. In addition to the Application fee that DOE may assess, the other administrative fees that DOE will collect in connection with the first solicitation will be from Borrowers who enter into a Conditional Commitment, in an amount sufficient to cover DOE's administrative expenses applicable to that Borrower's Pre-Application, Application, Term Sheet, Conditional Commitment, the Loan Guarantee Agreement, and subsequent monitoring and servicing expenses. With respect to future solicitations, DOE may decide to assess a Pre-Application and/or an Application fee. DOE will revisit this issue in the forthcoming regulations that DOE will propose for public comment later this year.

As for the financing structure of proposed projects, Title XVII does not impose any specific limitations, other than the guarantee "shall not exceed an amount equal to 80 percent of the project cost of the facility that is the subject of the guarantee as estimated at the time at which the guarantee is issued." 42 U.S.C. 16512(c). However, section 1702(d)(1) provides: "No guarantee shall be made unless the Secretary determines that there is reasonable prospect of repayment of the principal and interest on the obligation by the borrower." 42 U.S.C. 16512(d)(1). DOE believes this statutory provision requires DOE to make repayment of debt a very high priority of the loan guarantee program and authorizes DOE to adopt policies that ensure that Borrowers and Lenders have a similar motivation and use their best efforts to ensure repayment. Thus, DOE would prefer to limit the financial risk to the Federal government from the first loan guarantees issued under Title XVII as DOE gains valuable experience and expertise with these financial and commercial arrangements. This intention is bolstered by the mandate of Section 1702(g)(2)(B), which requires that "with respect to any property acquired pursuant to a

guarantee or related agreements, [the Secretary] shall be superior to the rights of any other person with respect to the property.” This statutory provision requires DOE to possess a first lien priority in the assets of the project and other collateral security pledged. Because DOE is not permitted by Title XVII to adopt a pari passu financing structure, any holders of non-guaranteed debt have a subordinate claim to DOE in the event of default, and will not be able to recover on their debt until DOE’s claim is paid in full.

To harmonize and balance the twin goals of issuing loan guarantees to encourage early commercial use of new or significantly improved technologies in Eligible Projects while limiting the financial exposure of the Federal government, DOE’s first solicitation expresses a preference that DOE not guarantee more than 80 percent of the total face value of any single debt instrument. Under no circumstance does DOE intend to guarantee 100 percent of the loan. Accordingly, if a Borrower seeks a loan guarantee for more than 80 percent of the face value of the underlying debt obligation, DOE’s review of the project proposal to determine whether to approve a loan guarantee for such amount will be predicated on the sufficiency of evidence presented by the Borrower in support of a higher guarantee percentage.² DOE notes however, that higher guarantee percentages will lead to higher Subsidy Costs.

For similar reasons of increasing the probability of repayment, in reviewing project proposals, DOE intends to consider whether Project Sponsors will make a significant financial commitment to the project. In addition, DOE intends to consider whether a Project Sponsor will rely upon other government assistance (e.g., financial assistance, tax credits, other loan guarantees) to support financing, construction, or operation of the project. DOE does not intend

² DOE does not have a preference as to whether non-Projects Costs, as defined in Section VII of these guidelines, are financed with debt or equity, as long as DOE maintains a first lien priority in the assets of the project and other collateral pledged as security.

to disqualify project proposals that employ other forms of Federal and non-Federal government assistance, but in reviewing proposals, DOE will take into account how much equity will be invested and the extent of the financial risk borne by the Project Sponsor.³

In connection with any loan guaranteed by DOE that may be syndicated, traded, or otherwise sold on the secondary market, DOE will require that the guaranteed portion and non-guaranteed portion of the debt instrument are resold on a pro-rata basis. The guaranteed portion of the debt may not be “stripped” from the non-guaranteed portion, i.e. sold separately as an instrument fully guaranteed by the Federal government.

In further support of DOE’s objective to ensure full repayment of debt, DOE expects that participating Lenders will have to meet certain eligibility requirements, as described in greater detail in Section VI of these guidelines. These criteria are intended to ensure that the Lender has the financial wherewithal and appropriate experience and expertise to meet its fiduciary obligations in connection with the debt guaranteed by DOE. DOE expects that the Lender and other appropriate parties will exercise a high level of care and diligence in the establishment and enforcement of the conditions precedent to all loan disbursements and Borrower covenants, as provided for in the loan agreement or related documents, throughout the term of the loan. Moreover, DOE also expects each Lender to diligently perform its duties in the servicing and collection of the loan as well as in ensuring that the collateral package securing the loan remains uncompromised. The Lender will also be expected to provide regular, periodic financial reports on the status and condition of the loan, consistent with the terms of the Loan Guarantee Agreement. The Lender is required to promptly notify DOE if it becomes aware of any

³ Since the guidelines are not substantive regulations, DOE will not reject project proposals solely on the basis of the guidelines. However, Applicants are advised of their heavy burden of justification if they seek to persuade DOE

problems or irregularities concerning the project or the ability of the Borrower to make payment on the loan or other debt obligations.

In addition to the other measures described above limiting the Federal government's risk exposure, commitments to guarantee loans will not exceed a face value of \$2 billion, in the aggregate, under the first solicitation. Commencing with a loan guarantee program of this size will allow DOE to achieve considerable progress in assisting new or significantly improved energy technologies to market while also enabling DOE to gain valuable experience and expertise that it will incorporate in program regulations and apply to future solicitations. DOE recognizes that some project proposals that would otherwise merit full consideration for a loan guarantee under these guidelines will, because of DOE's self-imposed ceiling on loan guarantee commitments, have to await full consideration under future solicitations issued under the final regulations. To accommodate concerns of Project Sponsors whose proposals are deferred full consideration because they either exceed or comprise a substantial amount of the total loan guarantee commitments available under the first solicitation, DOE will consider whether such proposals should be afforded expedited consideration under the final regulations, when adopted.

Finally, please note that the solicitation issued in conjunction with these guidelines addresses many important aspects of the application process, including the relevant period of time during which Pre-Applications for loan guarantees may be filed. Because each project will be unique and each loan guarantee potentially subjects the Federal government to significant financial liability, DOE plans to engage in a rigorous review of a proposed project before determining that it may be eligible for a loan guarantee or subsequently approving and issuing a loan guarantee.

to accept risk in excess of the outer boundaries of what the guidelines indicate to be preferable.

National Environmental Policy Act (NEPA)

Through the issuance of these guidelines DOE is making no decision relative to the approval of a loan guarantee for a particular proposed project. DOE has therefore determined that publication of the policy guidelines is covered under the Categorical Exclusion found at paragraph A.6 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required at this time. However, appropriate NEPA project review will be conducted prior to execution of a Loan Guarantee Agreement.

Review Under the Paperwork Reduction Act

These guidelines provide that Pre-Applications submitted to DOE in response to the solicitation and Applications, if invited by DOE, should contain certain information. This collection of information must be approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and the procedures implementing that Act, 5 CFR 1320.1 et seq. DOE is requesting emergency processing of the Paperwork Reduction Act Submission for this collection of information pursuant to 5 CFR § 1320.13. DOE is requesting that OMB approve the collection of information prior to the issuance of the solicitation. This emergency collection will be valid for 180 days. Shortly after OMB's approval of the emergency collection, DOE will issue a notice seeking public comment on the information collection and will submit the proposed collection of information to OMB for approval pursuant to 44 U.S.C. 3507(a). An agency may not conduct or sponsor, and a person is

not required to respond to a collection of information unless it displays a currently valid OMB control number.

Issued in Washington, DC on August 8, 2006.

James T. Campbell
Acting Chief Financial Officer

**Loan Guarantees for Projects that Employ Innovative Technologies; Guidelines for
Proposals Submitted in Response to First Solicitation under Title XVII of the Energy
Policy Act of 2005**

I. Purpose

These guidelines set forth goals and procedures that the Department of Energy (“DOE”) intends to use for receiving, evaluating, and, after consultation with the Secretary of the Treasury, approving applications for loan guarantees to support Eligible Projects under Title XVII of the Energy Policy Act of 2005.

II. Definitions

As used in these guidelines:

A. “Act” means Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511-16514).

B. “Administrative Cost of Issuing a Loan Guarantee” means the combined total of all of the administrative expenses that DOE incurs during:

1. The evaluation of a Pre-Application and an Application for a loan guarantee;
2. The offering, negotiation, and closing of a loan guarantee; and
3. The servicing of the loan guarantee and monitoring the progress of a project benefiting from a loan guarantee issued by DOE.

Payment of the Administrative Cost of Issuing a Loan Guarantee, which is required to be collected by DOE under section 1702(h) of the Act, is wholly distinct and separate from payment of the Subsidy Cost.

C. “Applicant” means any firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company, or governmental non-Federal entity, that has the authority to enter into, and is seeking, a loan guarantee issued by the Secretary for a loan or other debt obligation of an Eligible Project under the Act.

D. “Application” means a written submission in response to a DOE invitation to apply for a loan guarantee that DOE will solicit from Applicant after reviewing and approving a completed Pre-Application, and which should include the items listed in Section III.F. of these guidelines.

E. “Borrower” means any project company or entity that enters into a loan or other debt obligation for an Eligible Project.

F. “Commercial Technology” means a technology in general use in the commercial marketplace, but does not include a technology solely by use of such technology in a demonstration project funded by DOE.

- G. “Conditional Commitment” means a Term Sheet offered by DOE and accepted by the Applicant, with the understanding of the parties that the Applicant thereafter satisfies all specified and precedent funding obligations, and all other contractual, statutory, regulatory or other requirements.
- H. “Credit Review Board” means a board created by DOE in accordance with Office of Management and Budget (OMB) Circular A-129 to oversee the loan guarantee program and approve loan guarantees for individual projects.
- I. “Eligible Project” means a project located in the United States that meets the applicable requirements of section 1703 of the Act.
- J. “Guaranteed Obligations” mean loans or other debt obligations that the Secretary guarantees under a Loan Guarantee Agreement.
- K. “Holder” means any individual or legal entity that has lawfully succeeded in due course to all or part of the rights, title, and interest in a Guaranteed Obligation.
- L. “Lender” or “Eligible Lender” means any individual or legal entity, approved by DOE, formed for the purpose of, or engaged in the business of, lending money, including, but not limited to, commercial banks, savings and loan institutions, insurance companies, factoring companies, investment banks, institutional investors, venture capital investment companies, trusts, or other entities designated as trustees or agents acting on behalf of bondholders or other lenders.
- M. “Loan Guarantee Agreement” means a written agreement that, when entered into by a Borrower, a Lender and the Secretary pursuant to the Act after satisfaction of the conditions precedent specified in the Conditional Commitment and any other applicable contractual, statutory, and regulatory requirements, establishes the obligation of the Secretary to guarantee payment of principal and interest on specified loans or other debt

obligations of a Borrower to the Lender subject to the terms and conditions specified in the Loan Guarantee Agreement. The term “Loan Guarantee Agreement” has the same meaning as a “loan guarantee commitment” (as defined in section 502(4) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)).

N. “Project Costs,” as described with greater specificity in Section VII of these guidelines, means the estimated sum of the amounts to be expended or accrued by Borrower for costs that are necessary, reasonable, and directly related to the design, construction, and startup of an Eligible Project.

O. “Project Sponsor” means any individual, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company or the like that assumes substantial responsibility for the development, financing, and structuring of a project eligible for a loan guarantee and owns or controls the Applicant.

P. “Pre-Application” means a written submission in response to a solicitation that broadly describes the project proposal, including the proposed role of a loan guarantee in the project and the eligibility of the project to receive a loan guarantee under the Act, and includes the items listed in Section III.C. of these guidelines.

Q. “Secretary” means the Secretary of Energy or designee.

R. “Subsidy Cost” has the meaning given the term “cost of a loan guarantee” within the meaning of section 502(5)(C) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(C)). The “Subsidy Cost” represents the net present value, at the time when the guaranteed loan or other debt obligation is disbursed, of the expected liability to the Federal government from issuing the loan guarantee, inclusive of estimated payments to be made by the Federal government, such as default payments, and estimated payments to be made to the Federal government such as recoveries. The Subsidy Cost amount is

required by section 1702(b) of the Act to be funded either by an appropriation or by payment by Borrower. Payment of the Subsidy Cost is wholly distinct and separate from payment of the Administrative Cost of Issuing a Loan Guarantee.

S. “Term Sheet” means an offering document issued by DOE that specifies the general terms and conditions under which DOE anticipates it may guarantee payment of principal and accrued interest on specified loans or other debt obligations of a Borrower in connection with an Eligible Project. A Term Sheet is not a Loan Guarantee Agreement and imposes no obligation on the Secretary to execute a Loan Guarantee Agreement.

III. Loan Guarantee Application Process

A. In conjunction with these guidelines, DOE is issuing a solicitation announcement to solicit the submission by Project Sponsors of Pre-Applications for loan guarantees for projects that employ innovative technologies. The guidelines will apply to this first solicitation; all future solicitations will be issued pursuant to program regulations that DOE will promulgate at a later time.

B. The solicitation announcement issued in conjunction with these guidelines contains, among other things, the following information:

1. A brief description of the Eligible Projects for which loan guarantee applications are solicited;
2. The place and time for Pre-Application submission;
3. The name and address of the DOE representative whom potential applicants may contact to receive further information and a copy of the solicitation; and
4. The form, format and page limits applicable to the submission of a Pre-Application.

C. In response to the solicitation, interested parties are invited to submit Pre-Applications to DOE. Pre-Applications should meet all requirements specified in the solicitation; DOE does not intend to review or approve loan guarantees for proposals that do not meet the requirements provided for in the solicitation. In addition, the Pre-Application should contain the following information and documentation:

1. A completed Pre-Application form signed by an individual with full authority to bind the Project Sponsor;
2. A business plan including an overview of the proposed project including:
 - a) A description of the Project Sponsors, including their experience in project investment, development, construction, operation and maintenance;
 - b) A description of the technology to be utilized, including its commercial applications and social uses, the owners or controllers of the intellectual property incorporated in and utilized by such technology, and its manufacturer(s), and licensees, if any, of the technology authorized to make the technology available in the United States, and whether and how the technology is or will be made available in the United States for further commercial use;
 - c) The estimated amount of the total Project Costs (including escalation and contingencies);
 - d) The timeframe required for construction and commissioning of the facility; and
 - e) A description of the primary off-take or revenue-generating agreement(s) that will primarily provide financial support for the project.

3. A financing plan overview describing the amount of equity to be invested and the sources of such equity, the amount of the total debt obligations to be incurred and the funding sources of all such debt, the anticipated guarantee percentage of the Government-guaranteed debt, and a financial model detailing the investments and the cash flows generated from the project over the project life-cycle;
4. An explanation of what impact the loan guarantee will have on the interest rate, debt term, and overall financing structure for the project;
5. A copy of a commitment letter from an Eligible Lender expressing its commitment to provide the required debt financing necessary to construct and fully commission the project subject to commercially reasonable conditions governing disbursement commonly included in arm's length debt financing arrangements for projects and loan amounts similar to the proposed project;
6. A copy of the equity commitment letter(s) from each of the Project Sponsors and a description of the sources for such equity;
7. An overview of how the project will comply with the eligibility requirements under section 1703 of the Act;
8. An outline of the potential environmental impacts of the project and how these impacts will be mitigated;
9. A description of the anticipated air pollution and greenhouse gas reduction benefits;
10. A description of how the proposed project advances the President's Advanced Energy Initiative; and
11. An executive summary briefly encapsulating the key project features and attributes.

D. In reviewing completed Pre-Applications, DOE intends to utilize the criteria referenced in the Act, the solicitation, and these guidelines.⁴ In addition, prior to a comprehensive evaluation, an initial review of the Pre-Applications will be performed to determine the following:

1. The proposal is for an Eligible Project; and
2. The submission contains the information requested by the solicitation.

If a Pre-Application fails to meet these requirements, it may be deemed non-responsive and eliminated from further review. As part of the subsequent and more comprehensive Pre-Application review, DOE may conduct an independent review of the financial capability of an Applicant (including personal credit information of the principal(s) if there is insufficient information to assess the financial capability of the organization).

In addition, DOE may ask for additional information during the review process and may request one or more meetings with the Project Sponsor(s).

E. After reviewing a completed Pre-Application, DOE will provide a written response to the Project Sponsor.⁵ In this response, DOE will do one of two things. DOE will either invite an Applicant to submit a comprehensive Application for a loan guarantee and specify the amount of the Application fee that DOE has decided to assess, if any, or DOE will advise the Project Sponsor that the project proposal is ineligible for further consideration in the review process under the guidelines. Project Sponsors whose proposals are denied further review will not be barred from re-submitting an updated or

⁴ While these factors are designed for review of Pre-Applications, DOE intends to use these factors, as appropriate, in reviewing Applications as well.

⁵ While DOE intends to review Applicant's written submission, neither the Pre-Application nor any written or other feedback that DOE may provide in response to the Pre-Application is intended to obviate the need for an Application. In addition, any response that DOE may provide to a Pre-Application or subsequent Application does not obligate DOE to issue a loan guarantee for a project; only a duly executed Loan Guarantee Agreement may contractually obligate DOE to guarantee any loan or other debt obligations.

revised project proposal in response to future solicitations under the final regulations to be adopted by DOE.

F. In response to an invitation to submit an Application, interested Applicants are expected to meet all requirements specified in the invitation, the solicitation and these guidelines. DOE will be expecting that the information and documentation requested, as well as the substance and content of such documentation required for the Application, will conform substantially with that produced during the course of an arm's length commercially negotiated project or commercial financing. The maturity, balance sheet and experience of the Project Sponsors, the credit rating of the Lenders and the off-take counterparties, and the scope and breadth of the security package supporting the loan are additional important factors that DOE will consider in its review of an Application.⁶ An Application should include, among other things, the following information and materials:

1. A completed Application form signed by an individual with full authority to bind Applicant;
2. Payment of the Application fee, if any;
3. A detailed description of all material amendments, modifications, and additions made to the information and documentation provided in the Pre-Application, including any changes in the proposed project's financing structure or terms;
4. A description of the nature and scope of the proposed project, including key milestones, location of the project, identification and commercial feasibility of the new or significantly improved technology(ies) to be employed in the project, how

⁶ Additional factors that DOE expects to consider when reviewing Applications are described in Section IV of these guidelines.

Applicant intends to employ such technology(ies) in the project, and how the Applicant or others intend to assure the further commercial availability of the technology(ies) in the United States;

5. A detailed explanation of how the proposed project qualifies as an Eligible Project;

6. A detailed estimate for the total Project Costs (including escalation and contingencies), together with a description of the methodology and assumptions used;

7. An estimate of the amount of the Subsidy Cost for the project, including a description of the methodology used for this calculation and any supporting documentation;

8. A detailed description of the construction contractor(s) and equipment supplier(s), construction schedules for the project including major activity and cost milestones as well as the performance guarantees, performance bonds, liquidated damages provisions, and equipment warranties to be provided;

9. A detailed description of the operations and maintenance provider(s), the plant operating plan, estimated staffing requirements, parts inventory, major maintenance schedule, estimated annual downtime, and performance guarantees and related liquidated damage provisions, if any;

10. A description of the management plan of operations that Applicant will employ in carrying out the project, and information concerning the management experience of each officer or key person associated with the project;

11. A detailed description of the project decommissioning, deconstruction and disposal plan and the anticipated costs associated therewith;

12. An analysis of the market for the product(s) to be produced by the project, including relevant economics justifying the analysis, and copies of any contractual agreements for the sale of these products or assurance of the revenues to be generated from sale of these products;
13. A detailed description of the overall financial plan for the proposed project, including all sources of funding, equity, and debt, and the liability of parties associated with the project over the lifetime of the requested loan guarantee;
14. A copy of all loan documents that Borrower and Lender will sign if the Application for a loan guarantee is approved, containing all of the terms and conditions of the loan or other debt obligations to be guaranteed, including the proposed amount of the loan, interest charges, repayment position, principal repayment schedule, fees, pre-payment and late payment penalties, and cure rights;
15. A copy of all material agreements, whether entered into or proposed, relevant to the investment, construction and commissioning of the project;
16. A copy of the financial closing checklist for the equity and debt;
17. Applicant's business plan on which the project is based and project pro forma statements for the proposed life of the loan guarantee, including income statements, balance sheets, and cash flows. All such statements should include assumptions made in their preparation and the range of revenue, operating cost, and credit assumptions considered;
18. Financial statements for the past three (3) years that have been audited by an independent certified public accountant, including all associated notes, as well as interim financial statements and notes for the current fiscal year, of Applicant and

parties relevant to Applicant's financial backing, together with business and financial interests of principal organizations, if appropriate, such as parent and subsidiary corporations or partners of Applicant;

19. A copy of all legal opinions, engineering reports, and other material reports, analysis, and reviews related to the project;

20. Credit history of Applicant and, if appropriate, any party who owns or controls a five percent or greater interest in the project or the Applicant;

21. A preliminary credit assessment for the project without a loan guarantee from a nationally recognized rating agency;

22. A list of all project-related applications filed and approvals issued by Federal, state, and local government agencies for permits and authorizations to site, construct, and operate the project. If still outstanding, the Application should contain an estimated date of completion for any required filings and approvals;

23. A report containing an analysis of the potential environmental impacts of the project that will enable DOE to assess whether the project will comply with all applicable environmental requirements and how and to what measurable extent the project avoids, reduces, or sequesters air pollutants or anthropogenic emissions of greenhouse gases, including how Borrower intends to verify those benefits;

24. A listing of assets associated, or to be associated, with the project and any other asset that will serve as collateral for the guaranteed loan and assure repayment of the loans and other debt obligations of the project, including appropriate data as to the value and useful life of any physical assets and a description of any other associated security and its value. With respect to any

ownership interest in a real property asset described above or any pledged asset that is not part of the project, an appraisal should be performed by state licensed or certified appraisers that is consistent with the “Uniform Standards of Professional Appraisal Practice,” promulgated by the Appraisal Standards Board of the Appraisal Foundation;

25. An analysis demonstrating that at the time of the Application, there is a reasonable prospect that Borrower will be able to repay the loan or other debt obligation to be guaranteed (including interest) according to its terms, and a complete description of the operational and financial assumptions on which this demonstration is based;

26. Written affirmation from an officer of the Lender confirming that Lender is an Eligible Lender in good standing with DOE’s and other agencies’ loan guarantee programs; and

27. Such other information requested in the solicitation or invitation to submit an Application necessary for a complete assessment of the loan guarantee application for the project.

G. Following Applicant’s submission of an Application, DOE will review the Application based on the factors mentioned in subsection F of Section III and Section IV of the guidelines. If the Credit Review Board determines that a project may be suitable for a loan guarantee, because, among other things, it qualifies as an Eligible Project, there exists a reasonable expectation of payment based on the materials provided in the Application, and the proposed project will advance the President’s Advanced Energy Initiative, DOE may notify the Borrower and Lender in writing and provide them with a copy of a proposed Term Sheet. In the event that DOE reviews an Application and

decides not to proceed further with the issuance of a proposed Term Sheet, DOE will inform Applicant in writing the reason(s) for the denial.

H. Concurrent with the review process described above, DOE will consult with the U.S. Department of Treasury regarding the terms and conditions of the potential loan guarantee and will work with OMB to determine the Subsidy Cost for a potential loan guarantee based on the particular set of terms and conditions associated with the project. OMB will ultimately review and approve the final determination of the Subsidy Cost.

I. Subsequent to any negotiations and revisions of the proposed Term Sheet including the Subsidy Cost in accordance with subsection H of Section III of the guidelines, the Term Sheet becomes a Conditional Commitment if, and only if, both DOE and Applicant agree to the proposed terms and conditions and sign the Term Sheet. Among other things, the Conditional Commitment will specify the required payment of fees for the Administrative Cost of Issuing a Loan Guarantee. Subsequent to entering into a Conditional Commitment, and upon agreement as to the detailed terms and conditions to be contained in the Loan Guarantee Agreement and other related documents, as well as availability of authority provided in an appropriations act for the loan guarantee, and fulfillment of other applicable statutory, regulatory, or other requirements, the Credit Review Board will set a closing date. DOE will enter into a Loan Guarantee Agreement with an Applicant that satisfies the specified conditions precedent if and only if all funding and other contractual, statutory and regulatory requirements have been satisfied.

J. Prior to the closing date, the Secretary will ensure that:

1. Pursuant to section 1702(b) of the Act, Congress has made an appropriation for the Subsidy Cost of the loan guarantee, or that the Secretary will receive payment in full from the Borrower as part of the closing and Congress has

provided sufficient additional authority in an appropriations act;

2. Pursuant to section 1702(h) of the Act, and in accordance with Section V.R. of these guidelines, the Secretary has received from Borrower payment of a fee for DOE's Administrative Cost of Issuing a Loan Guarantee or will receive payment of the fee as part of the closing;
3. The Director of OMB has reviewed and approved DOE's calculation of the Subsidy Cost of the loan guarantee;
4. The Secretary of the Treasury has been consulted as to the terms and conditions of the Loan Guarantee Agreement;
5. The Loan Guarantee Agreement and related documents contain all terms and conditions the Secretary deems reasonable and necessary to protect the interests of the United States; and
6. All conditions precedent specified in the Conditional Commitment have either been satisfied or waived by the Secretary and all other applicable contractual, statutory, and regulatory requirements have been satisfied.

IV. Evaluation of Applications

In evaluating Applications invited for submission, DOE plans to consider the following factors⁷:

- A. Whether the Application is complete, signed by the appropriate entity or entities with the authority to bind the Project Sponsor and other relevant parties to the agreement, and

⁷ While these factors are designed for review of Applications, DOE intends to use these factors, as appropriate, in reviewing Pre-Applications as well.

complies with the eligibility requirements stated in the Act, these guidelines, and the solicitation;

B. Whether the Application contains sufficient information, including a detailed description of the nature and scope of the project and the nature, scope, and risk coverage of the loan guarantee sought, to enable DOE to perform a thorough assessment of the project;

C. Whether and to what measurable extent the project avoids, reduces, or sequesters air pollutants or anthropogenic emissions of greenhouse gases;

D. Whether the new or significantly improved technology to be employed in the project, as compared to commercial technologies in service in the United States at the time the guarantee is issued, is ready to be employed commercially in the United States, can yield a commercially viable product(s) in the use proposed in the project, and is or will be available for further commercial use in the United States;

E. Whether the project will advance the goals of the President's Advanced Energy Initiative;

F. Whether the requested amount of the loan guarantee is reasonable relative to the nature and scope of the project;

G. The extent to which Project Costs are funded by guaranteed debt;

H. The extent to which Applicant and other principals involved in the project have made a significant equity commitment to the project;

I. Whether the project will be ready for full deployment and operations in the proximate future;

J. Whether there is sufficient evidence that Applicant will initiate and complete the project in a timely, efficient, and acceptable manner;

- K. Whether and/or to what extent Applicant will rely upon other Federal and non-Federal governmental assistance (grants, tax credits, other loan guarantees, etc.) to support the financing and construction and/or operation of the project;
- L. Whether there is reasonable assurance that the project is economically feasible and will produce sufficient revenues to service the project's debt obligations over the life of the loan guarantee and assure timely repayment of guaranteed loans and other debt obligations;
- M. Whether the collateral, warranties, and other assurance of repayment described in the Application provide adequate safeguard to the Federal government in the event of default;
- N. Whether Applicant possesses the capacity and expertise to successfully operate the project, based on factors such as financial soundness, management organization, and the nature and extent of corporate and personnel experience;
- O. Whether the project will comply with all applicable laws and regulations, including all applicable environmental statutes and regulations;
- P. Whether the levels of market, regulatory, legal, financial, technological, and other risks associated with the project are appropriate for a loan guarantee provided by DOE;
- Q. Whether the entity issuing the loan or other debt obligation subject to the loan guarantee is an Eligible Lender; and
- R. Such other criteria that the Secretary and the Credit Review Board deem relevant in evaluating the merits of an Application.

V. Findings by the Secretary

Prior to the issuance by DOE of a loan guarantee, the Secretary should ensure that Applicant satisfies the following requirements and conditions (some or all of which should be specified in the Loan Guarantee Agreement):

- A. The project qualifies as an Eligible Project under the Act;
- B. The project will be constructed and operated in the United States and the technology is or is likely to be available in the United States for further commercial application;
- C. The debt guaranteed by DOE is limited to no more than 80 percent of total Project Costs;
- D. The amount of the loan guarantee does not exceed 80 percent of the total face value of the loan or other debt obligation of the project, or provides sufficient evidence to support a guarantee exceeding 80 percent (but in no event 100 percent);
- E. Applicant and other principals involved in the project have made a significant equity investment;
- F. The prospective Borrower is obligated to make full repayment of the guaranteed loan over a period of up to the lesser of 30 years or 90 percent of the projected useful life of the project's major physical assets, as calculated in accordance with generally accepted accounting principles and practices;
- G. The loan guarantee does not finance, either directly or indirectly, a federally tax-exempt obligation. Accordingly, the loan guarantee may not be used for a federally tax-exempt obligation or serve as collateral to secure a tax-exempt obligation;
- H. The guaranteed portion of a loan must not be separated from or "stripped" from the non-guaranteed portion of the loan and resold in the secondary debt market;

- I. The amount of the loan guaranteed, when combined with other funds committed to the project, will be sufficient to carry out the project, including adequate contingency funds;
- J. There is a reasonable prospect of repayment by Borrower of the principal and interest of the Guaranteed Obligations;
- K. The prospective Borrower has pledged project assets and other collateral or surety, including non project-related assets, as determined by the Secretary to be necessary as assurance for the repayment of the loan;
- L. The Loan Guarantee Agreement and related documents include detailed terms and conditions as appropriate to protect the interests of the United States in the case of default, including ensuring availability of all the intellectual property rights, technical data including software, and physical assets necessary for any person selected, including, but not limited to, the Secretary, to complete and operate the defaulting project;
- M. The Borrower's interest rate on the guaranteed loan is determined by the Secretary to be reasonable, taking into account the range of interest rates prevailing in the private sector for similar Federal government guaranteed obligations of comparable risk;
- N. The guaranteed loan is not subordinate to any loan or other debt obligation for the project not part of the Guaranteed Obligations and is in a first lien position regarding all assets of the project and all collateral security pledged;
- O. There is satisfactory evidence that Borrower is willing, competent, and capable of performing the terms and conditions of the loan or other debt obligation and the loan guarantee;

P. The Lender is not a Federal entity, possesses sufficient financial wherewithal and expertise, and will exercise the requisite standard of care as deemed necessary by the Secretary and stated in DOE's lender eligibility criteria in Section VI of these guidelines;

Q. Lender or other parties servicing the loan and monitoring the project should be satisfactory to the Secretary. In addition, the Secretary will need to find that the Lender and other appropriate parties will exercise a high level of care and diligence in the establishment and enforcement of the conditions precedent to all loan disbursements and the Borrower covenants throughout the term of the loan and that each Lender will be required to diligently perform its duties in the servicing and collection of the loan as well as in ensuring that the collateral package securing the loan remains uncompromised. The Lender will also provide annual or more frequent periodic financial reports on the status and condition of the loan, and is required to promptly notify DOE if it becomes aware of any problems or irregularities concerning the project or the ability of the Borrower to make payment on the loan or other debt obligations. Even though DOE will rely on Lender (or other servicer) to service and monitor the loan with utmost care and expertise, Lender's responsibilities with regard to the loan are separate from DOE's own monitoring and review of the loan and the project;

R. As specified in the Conditional Commitment, the prospective Borrower makes payment of the fee for the Administrative Cost of Issuing a Loan Guarantee pursuant to section 1702(h) of the Act. While covering the other costs included in the Administrative Cost of Issuing a Loan Guarantee, this payment will not include the servicing and monitoring costs identified in Section II.B. of these guidelines. These latter costs will be assessed in accordance with the Loan Guarantee Agreement which will require payment of administrative fees to the Federal government by Borrower, either directly or through

the Lender, periodically thereafter for the duration of the loan guarantee. DOE intends to use all of the fees mentioned above to defray administrative expenses associated with issuing and monitoring loan guarantees;

S. If Borrower is to make payment in full for the Subsidy Cost of the loan guarantee pursuant to section 1702(b)(2) of the Act, such payment must be received by the Secretary prior to, or at the time of, closing;

T. DOE representatives have access to the project site at all reasonable times in order to monitor the performance of the project;

U. DOE and Borrower have reached an agreement as to what project information will be made available to DOE and which project information will be made publicly available;

V. The prospective Borrower has filed applications for or obtained any required regulatory approvals for the project and is in compliance with all Federal and state regulatory requirements;

W. Applicant has no delinquent Federal debt, including tax liabilities, unless the delinquency has been resolved with the appropriate Federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996; and

X. The Loan Guarantee Agreement contains such other terms and conditions as the Secretary deems reasonable and necessary to protect the interests of the United States.

VI. Lender Eligibility

Lenders associated with a project should meet the following requirements:

A. The Lender is a “non-Federal qualified institutional buyer,” as defined in 17 CFR 230.144A(a), including qualified retirement plans and governmental plans;

- B. The Lender is not a party debarred or suspended from participation in a Federal government contract (under 48 CFR 9.4) or participation in a non-procurement activity (under a set of uniform regulations implemented in agency regulations for numerous agencies, including DOE, at 10 CFR 1036);
- C. The Lender is not delinquent on any Federal debt or loan;
- D. The Lender is duly organized and legally authorized to enter into the transaction;
- E. The Lender is able to demonstrate experience in originating and servicing loans for commercial deals similar in size and scope with the project under consideration; and
- F. The Lender is able to demonstrate experience or capability as the lead lender or underwriter of other energy related projects.

VII. Project Costs

A. In conjunction with the Secretary's determination of the Project Costs associated with the issuance of a loan guarantee, Applicant should record such costs in accordance with generally accepted accounting principles and practices. Applicant should calculate the sum of reasonable and customary costs that it has paid and expects to pay, and which are directly related to the project, to estimate the total sum of Project Costs. Project Costs may include, but are not limited to:

1. Costs of acquisition, lease or rental of real property, including engineering fees, surveys, title insurance, recording fees, and legal fees incurred in connection with land acquisition, lease or rental, site improvements, site restoration, access roads, and fencing;
2. Engineering, architectural, legal and bond fees, and insurance paid in connection with construction of the facility; and materials, labor, services, travel

- and transportation for facility construction, startup, and tests;
3. Equipment purchase and startup testing;
 4. Costs to provide equipment, facilities, and services related to safety and environmental protection;
 5. Financial and legal services costs, including other professional services and fees necessary to obtain required licenses and permits and to prepare environmental reports and data;
 6. Interest costs and other normal charges affixed by lenders;
 7. Necessary and appropriate insurance and bonds of all types;
 8. Costs of startup, commissioning and shakedown;
 9. Costs of obtaining licenses to intellectual property necessary to design, construct, and operate the project; and
 10. Other necessary and reasonable costs approved by the Secretary.

B. Applicant should not record the following costs as Project Costs associated with the loan guarantee:

1. Fees and commissions charged to Borrower, including finder fees, for obtaining Federal funds;
2. Parent corporation's general and administrative expenses, and non-project related parent corporation assessments, including organizational expenses;
3. Goodwill, franchise, trade, or brand name costs;
4. Dividends and profit sharing to stockholders, employees, and officers;
5. Research, development, and demonstration costs of readying the energy technology for employment in a commercial project;
6. Costs that are excessive or are not directly required to carry out the project, as

determined by the Secretary;

7. Administrative Cost of Issuing a Loan Guarantee paid by the Borrower;
8. The Subsidy Cost of the loan guarantee; and
9. Operating expenses incurred after startup, commissioning and shakedown.

VIII. Principal and Interest Assistance Contract

With respect to any Guaranteed Obligation, the Secretary may enter into a contract to pay Holders, for and on behalf of Borrower, from funds appropriated for that purpose, the principal and interest charges that become due and payable on the unpaid balance of the Guaranteed Obligation, if the Secretary finds that:

- A. Borrower is unable to meet the payments and is not in default;
- B. Borrower will, and is financially able to, continue to make the scheduled payments on the remaining portion of the principal and interest due under the non-guaranteed portion of the debt obligation, or an arrangement, approved by the Secretary, has otherwise been agreed to avoid an impending payment default;
- C. It is in the public interest to permit Borrower to continue to pursue the purposes of the project;
- D. In paying the principal and interest, the Federal government expects a probable net benefit greater than it would receive in the event of a default;
- E. The payment authorized is no greater than the amount of principal and interest that Borrower is obligated to pay under the agreement being guaranteed; and
- F. Borrower agrees to reimburse the Secretary for the payment (including interest) on terms and conditions that are satisfactory to the Secretary and executes all written contracts required by the Secretary for such purpose.

IX. Full Faith and Credit

As specified in the Act, the United States pledges its full faith and credit to the payment of all Guaranteed Obligations with respect to principal and interest under the terms and conditions of the Loan Guarantee Agreement.

X. Default/Audit

As required by sections 1702(g)(1)(A) and 1702(i)(1) of the Act, DOE in the near future will issue regulations pertaining to default and audit requirements that will apply to any loan guarantee issued, and Loan Agreement executed, by DOE.

APPENDIX C – PRE-APPLICATION FORM

OMB Control Number: 1910-5129

The form below is for illustrative purposes only. The fillable pdf form is available by clicking the "pre-application form" link on DOE's Industry Interactive Procurement System website.

FORM APPROVED
OMB NO.1910-5129

U.S. Department of Energy Loan Guarantee Pre-Application

DOE's Loan Guarantee Program Office invites you to submit a Pre-Application for a DOE Loan Guarantee. Should the Pre-Application meet the criteria suggested in the Guidelines, DOE may invite you to submit an Application. After filling out this form, please print two copies. Next, click on the "Submit by Email" button above to submit this data electronically. Select "Other" to save this data in an electronic format. Email this file to the Loan Guarantee Program Office at lgprogram@hq.doe.gov. Upload supporting documentation using DOE's Industry Interactive Procurement System (<http://e-center.doe.gov>) and submit one original and one paper copy to the address below. It is highly recommended that all hard copies be sent via Express Mail. Please note your Pre-Application should not exceed 100 pages. For more information please visit our website at <http://www.lgprogram.energy.gov>.

Mail All Paper Copies to:
 Director
 U.S. DOE Loan Guarantee Program Office
 1000 Independence Ave. SW
 Washington, DC 20585-0121

If you need assistance or have any questions about the Pre-Application please contact the Loan Guarantee Program Office at (202) 586-8336 or email us at lgprogram@hq.doe.gov.
PRE-APPLICATION DUE DATE:
NOVEMBER 6, 2006 - 5:00 PM EST

GENERAL INFORMATION

Organization Name

Contact Last Name First Name Position/Title

Phone Number (digits only, no spaces) Fax Number (digits only, no spaces)

Address

City State 9 Digit Zip Code

Email Federal Taxpayer ID DUNS Number

Project Location - City State 9 Digit Zip Code County

PROJECT SPONSORS (ASSET HOLDERS)						
Organization Name	Contact/Phone	Address	City	State	Zip Code	Country
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

SUMMARY OF LOAN GUARANTEE REQUEST

Requested Period of Guarantee	<input type="text"/> yrs	Total Project Cost*	\$ <input type="text"/>
Guaranteed % of Loan Instrument	<input type="text"/> %	Proposed Guaranteed Amt*	\$ <input type="text"/>
Debt to Equity Ratio	<input type="text"/> : <input type="text"/>		

* Please indicate dollars in millions

CATEGORY OF PROJECT

Please refer to Part I Section D of the Solicitation to determine the appropriate category number of your project. For example, you would insert a check mark on the third line in the far right column for a photovoltaic manufacturing project. If your project does not fit in any of the prescribed categories, please check the "Other" line in the right box.

Category	Description	Check Appropriate Box
1	Biomass	<input type="checkbox"/>
2	Hydrogen	<input type="checkbox"/>
3	Solar	<input type="checkbox"/>
4	Wind and Hydropower	<input type="checkbox"/>
5	Advanced Fossil Energy Coal	<input type="checkbox"/>
6	Carbon Sequestration Practices and Technologies	<input type="checkbox"/>
7	Electricity Delivery and Energy Reliability	<input type="checkbox"/>
8	Alternative Fuel Vehicles	<input type="checkbox"/>
9	Industrial Energy Efficiency Projects	<input type="checkbox"/>
10	Pollution Control Equipment	<input type="checkbox"/>

CERTIFICATION

The undersigned certifies that the data and information submitted and the representations made in this Pre-Application and any attachments to this Pre-Application are true and correct, to the best of the Applicant's knowledge and belief after due diligence, and that the Applicant has not omitted any material facts.

The undersigned further certifies to having full authority to bind the Applicant.

Applicant (Organization Name) _____

Name and Title of Applicant's Authorized Officer _____

Date

Signature of Authorized Officer _____

APPENDIX D – INDUSTRY INTERACTIVE PROCUREMENT SYSTEM (IIPS) 3.5

FOR HELP, CONTACT THE IIPS HELP DESK AT 1-800-683-0751 (SELECT OPTION1)

OR AT IIPS_HELPDESK@E-CENTER.DOE.GOV

1. Locate Announcement/Amendments

- Go to the IIPS website at <http://e-center.doe.gov>
- Click on “Browse Opportunities” and scroll down to view DOE Financial Assistance Opportunities (Viewing “Program Office” is recommended.) Click on the “Browse Financial Asst.” button OR Click on the “Login” button if you are already registered. Click on the radio button that says “IIPS - Financial Assistance” and click on the “Login” button again. Enter User Name and Password. Click on any of the options for viewing the Funding Opportunity Announcement, whichever is easiest for you to locate the Announcement. (Viewing by “Program Office” is recommended.)
- Click on the folder (or blue arrow depending on your server) next to the “Loan Guarantee Program”
- Locate and click on the Announcement number to view the “Financial Assistance Opportunity.”
- Scroll to the bottom of the page, where you will find the attached announcement, under “Full Announcement & Other Files.”

2. View Announcement Messages/Amendments

- Click on the folder next to the Announcement number to view amendments and announcement messages.

3. IIPS Registration

An Applicant only has to register once on IIPS. This registration is permanent and is used for all IIPS submissions. If the Applicant has already registered, it is unnecessary to register again. If an Applicant has not previously registered, it is encouraged to register in IIPS at least 14 days prior to the Announcement closing date. To register:

- Go to the IIPS website at <http://e-center.doe.gov>.
- Click on the “Register” button.
- Click on the radio button next to, “Check this box for IIPS” and then click on the “Proceed to Form” button.
- Read the “Notice of Disclaimer” and click on “I Accept” if you are in agreement. (Clicking on “I Decline” will return you to the main registration page.)
- Complete the Registration Form. Also print this page, which contains your password, for future reference.
- Click on “Submit Registration.” Applicants will receive a confirmation of receipt of registration.
- Applicants will also receive an email confirming successful registration. If an Applicant does not receive this email confirmation within one business day, contact the IIPS Help Desk.

4. Join Mailing List

It is highly recommended that Applicants join the mailing list, to receive announcement messages.

- To do so, follow the direction in item 1. Locate Announcement, and then click on the “Join Mailing List” button, enter the required information, and submit.
- After an Applicant has joined the mailing list, the Applicant will receive an email each time an announcement message is posted.
- However, the Applicant should visit the announcement page periodically to ensure receipt of the latest information.

5. Electronic Submission

Pre-Applications must be submitted in accordance with the instructions in the announcement.

6. Electronic Signature

Pre-Applications submitted through IIPS constitute submission of electronically signed Pre-applications. The name of the authorized organizational representative (i.e., the administrative official, who, on behalf of the proposing organization, is authorized to commit the Applicant to the conduct of a project) must be typed in the signature block on the form to be accepted as an electronic signature.

7. Submit Pre-Application

Applicants are strongly encouraged to submit Pre-Applications at least 48 hours prior to the deadline for submissions to ensure timely submission and allow time to resolve any possible transmission problems. To submit a Pre-Application, follow these steps:

Step 1 – Prepare Pre-Application

- All required files necessary for a complete Pre-Application package should be prepared in accordance with the instructions in the announcement prior to starting the transmission process. Applicants should submit the entire package in one IIPS session (do not logoff before all the files are attached).

Step 2 – Create Pre-Application

- Enter the IIPS website at <http://e-center.doe.gov>.
- Click on the “Login” button.
- Click on the radio button that says, “IIPS - Financial Assistance” and click on “Login” button again.
- Enter your user name (as shown on your registration email confirmation) and password. Note: These are case sensitive.
- Click on any of the options for viewing the Announcement (Opportunity), whichever is easiest for you to locate the announcement. (Viewing “Program Office” is recommended.)
- Click on the folder (or blue arrow) next to the Loan Guarantee Program.
- Locate the Announcement for which you are applying and click on it.

- Click on the “Create Application” button and complete the information on the Pre-Application Cover Page. In order for DOE to accurately identify each Pre-Application, Applicants must enter a unique project title in the “Subject” line.
- Click on “Continue”.

Step 3 – Attach Pre-Application

- Click on “Attach Application”.
- Scroll to the bottom of the page and attach each file in the corresponding block on the page, and then click on “Submit.” Up to 10 files may be attached. Keep file sizes to a minimum to ensure a shorter transmission time. Be patient while your files upload.
- IIPS will provide a “Submission Confirmation” with a tracking number, please print this page for your records

Once the Applicant begins the "Create Application" process, there will be a record created in IIPS. Therefore, Applicants must verify that duplicate Pre-Applications were not inadvertently created in IIPS. If a duplicate was created, follow the steps outlined in Appendix B, Item 9.a.

In the event that two or more Pre-Applications are received from the same Applicant with the same unique project title, only the Pre-Application with the LATEST transmission start time will be considered for review. The Pre-Application must be received on time.

8. Multiple Pre-Applications for Unique Projects

An Applicant may submit more than one Pre-Application under the same announcement; however, each Pre-Application must be uniquely titled. For each Pre-Application, the Applicant is required to follow the instructions in “Submit Application.” Each Pre-Application must be complete and shall not rely upon another Pre-Application as submission of the required documents.

9. Deletion of Pre-Applications

- a. To delete a Pre-Application (including all files) from IIPS:

To delete or withdraw a Pre-Application or a Pre-Application file, contact the IIPS Help Desk requesting the Pre-Application to be removed. The following information is required when requesting to have a Pre-Application deleted:

- Registered User’s Name as well as User Name of requestor (if different)
- Email address of the registered user as well as requester (if different)
- Company/University Name
- Complete Announcement Number
- Complete Proposal Tracking Number
- Date Submitted (optional)

In addition, if a Pre-Application is deleted after the closing date, inform the Contract Specialist shown on the announcement, via email.

- b. To submit a revised Pre-Application:

After the Help Desk has removed the requested Pre-Application, follow the steps in "Submit Application" to submit a revised Pre-Application (i.e. cover page and all required files).

c. To submit a revised file:

After the Help Desk has removed the requested file from your Pre-Application:

- Locate the announcement.
- Click on the yellow folder next to the announcement number.
- Click on the cover page of your submission, click on the "Attach Application" link, and attach the revised file. Files received past the due date will not be reviewed.

10. IIPS Questions

View the "IIPS Frequently Asked Questions" by clicking on the "Help" button and scrolling to the bottom of the page. You may also contact the IIPS Help Desk at 1-800-683-0751 (select Option 1) or at IIPS_HelpDesk@e-center.doe.gov for questions regarding the operation of IIPS.

11. Questions on the Content of the Announcement

Questions regarding the content of the Solicitation should be submitted to the Loan Guarantee Program Office at the following email address: lgprogram@hq.doe.gov. If submitted through the "Submit Question" feature of IIPS, the question will be forwarded to the LGPO for answer rather than through a posting on IIPS. DOE intends to review all questions submitted and, to the extent practicable, respond through issuance of "Answers to Frequently Asked Questions." DOE will respond to questions not susceptible of such treatment on an ad hoc basis.

12. IIPS Resources

IIPS User Guide

This is an A-Z IIPS User Guide--anything and everything the Applicant would ever want to know about IIPS. This user guide can be found at: <http://e-center.doe.gov/doebiz.nsf/Help?OpenForm> by scrolling to the bottom of the page.