



Department of Energy  
Washington, DC 20585

February 16, 2018

Dear Tribal Leader,

The U.S. Department of Energy is pleased to inform you that it is developing a program to increase the capacity of the commercial lending market for tribal energy development activities, through the issuance of partial loan guarantees.

Authorized pursuant to Title XXVI of the Energy Policy Act of 1992, as amended (25 USC Section 3502(c)), the Tribal Energy Loan Guarantee Program (TELGP) is being designed by the Loan Programs Office in consultation with the Office of Indian Energy Policy and Programs. The Department plans to launch TELGP in the coming months through the issuance of a solicitation or other invitation for proposals embodying the terms and conditions described in the attached summary introduction (the TELGP Introduction), among others. As noted in the TELGP Introduction, the Department is particularly interested in the size and types of energy development projects that may be candidates for TELGP loan guarantees, as well as the tribal benefits the Department should consider in evaluating applications under TELGP.

The Department is pleased to announce that it is seeking input from interested American Indian and Alaska Native tribes and corporations on the terms of TELGP outlined in the TELGP Introduction and the particular matters described above. The Loan Programs Office will have representatives at **the National Center for American Indian Enterprise Development's Reservation Economic Summit (RES) in Las Vegas, NV March 5-8, 2018**, for presentations and listening sessions, so attendees can hear directly from such personnel about the current status and plans for the program and may offer their input there, in person.

The introductory presentation by the Loan Programs Office leadership, followed by a listening session, will be held on Wednesday, March 7, 2018 at 1:45pm, at the RES conference. **The listening session is open to all attendees of the conference, but please RSVP by email to [TELGP@HQ.DOE.gov](mailto:TELGP@HQ.DOE.gov) if you plan to attend.** Also, the Loan Programs Office will have a private room at the conference on Tuesday and Wednesday, where one-on-one discussions can take place, schedule permitting. Meetings will start on the hour and last no more than 50 minutes to allow for time to transition to the next meeting. **If you are interested in scheduling an appointment for a one-on-one discussion, you can send an email to [TELGP@HQ.DOE.gov](mailto:TELGP@HQ.DOE.gov) with your request and some suggested times.**

Whether or not you attend the RES conference, the Department encourages you to provide written comments on the attached TELGP Introduction. Comments will be accepted until April 30, 2018 and can be submitted by email to [TELGP@HQ.DOE.gov](mailto:TELGP@HQ.DOE.gov). When emailing, please indicate whether you are sending an RSVP, a request for a one-on-one meeting, or written comments.

Sincerely,

John Sneed  
Executive Director  
Loan Programs Office

Carole Plowfield  
Acting Director  
Office of Indian Energy Policy and Programs

## Introduction to U.S. Department of Energy's Tribal Energy Loan Guarantee Program

February 16, 2018

The United States Department of Energy (DOE) is seeking tribal input on DOE's Tribal Energy Loan Guarantee Program (TELGP). TELGP was originally authorized pursuant to the Energy Policy Act of 1992 ((25 USC Section 3502(c)), and renewed interest in the program and Congressional appropriations mean that DOE may begin to solicit applications for TELGP loan guarantees this fiscal year.

Under TELGP, DOE would offer partial loan guarantees for loans made by eligible lenders to Indian tribes for energy development. DOE is authorized to issue guarantees for eligible projects in an aggregate amount of up to \$2 billion; DOE has been appropriated \$8,500,000 for the costs of such loan guarantees, known as "credit subsidy cost." **Notably, "energy development" is not restricted to a type of technology or project location under TELGP, so TELGP has the potential to benefit a very wide range of projects in which Indian tribes may participate.**

On behalf of DOE, the program is being designed by the Loan Programs Office (LPO), in consultation with the Office of Indian Energy Policy and Programs (IE). LPO envisions TELGP primarily as a partnership between eligible lenders and DOE, rather than a replacement of existing debt markets, that will increase the availability of debt financing for tribes' energy development projects. Specifically, under TELGP, the lender would be a commercial bank or other non-federal lender with suitable experience and capabilities, rather than the federal government, and DOE would partially guarantee repayment of an eligible loan made by such lender.

Typically, this type of loan guarantee program would require that the tribe seeking financing apply to an eligible lender, which in turn would apply to DOE for the partial guarantee, rather than having the proposed borrower apply directly to DOE. LPO is continuing to consider, and is interested in feedback from tribes and their lenders, how well this typical structure and sequence will suit the needs of tribal borrowers and lending markets.

LPO has experience in administering similar loan programs in partnership with commercial lenders, including the Financial Institution Partnership Program (FIPP), which was authorized under the Recovery Act. Under FIPP, DOE closed on the partial guarantee of over \$4 billion in loans between November 2010 and September 2011, adding over 1,880 MW of capacity in solar, geothermal and wind generation projects. With your input, LPO hopes to tailor its upcoming TELGP announcement to make a significant impact on the debt market for tribes engaging in energy development activities. LPO is particularly interested in input from you on the size and type of tribes' energy development projects and activities that should be considered eligible, and the tribal benefits that should be considered, in evaluating applications for loan guarantees under the TELGP program described below.

### Key Terms of TELGP

*Based on the statutory authority as well as LPO's experience in implementing loan guarantee programs, LPO anticipates that TELGP loan guarantees will be offered consistent with the following terms and conditions, among others.*

**Applicant; Eligible Lender.** Because TELGP is a DOE-lender partnership, applications for loan guarantees must be made by an eligible lender, based on a loan application from an "eligible borrower," as described below. Any such lender, who may be a commercial bank, other financial institution or a tribe,

will be expected to demonstrate experience and capability to evaluate, underwrite and negotiate energy development loans, similar to the proposed loan with its tribal customers, and should only apply for a guarantee if the proposed loan satisfies its own requirements.

**Eligible Borrower.** All loans guaranteed under TELGP must be made to eligible Indian tribes or entities, including Alaska Native village or regional or village corporations, which are recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians,<sup>1</sup> or their wholly-owned entities with appropriate legal authority. Such loans may be made to eligible borrowers for their own energy development projects as well as energy development projects partially-owned by non-tribal participants. (See “Eligible Projects” below). In cases where eligible borrowers are participating in joint ventures to undertake energy development projects, the borrower may contribute loan proceeds to meet a portion of its required equity contributions to the joint venture.

**Eligible Projects.** The term “energy development,” as used in TELGP, clearly includes projects or activities to provide or expand electricity services on Indian land, such as generation, transmission, or energy storage projects, and LPO believes that TELGP may be ideally suited for these kinds of projects. While TELGP does not require the use of particular technology in eligible projects, LPO expects that projects that can benefit from TELGP will primarily employ commercial technology, rather than unproven technology.

LPO believes that energy development may also be understood to encompass drilling, mining, refining and/or the production of biofuels or chemicals, among other projects, that commercially develop energy resources available on Indian lands, and district heating and cooling projects, among others, which facilitate delivery, expand availability or optimize utilization of energy or energy services on tribal land.

Even more broadly, LPO does not understand TELGP to require that energy development activities be conducted, or that projects be built, exclusively on Indian lands. For this reason, LPO is open to considering projects involving energy development that are located partly or even wholly outside Indian lands but which nonetheless benefit the participating Indian tribe. Hypothetically, eligible projects could include generation projects serving both non-tribal customers and residents of Indian lands, wherever constructed; transmission projects facilitating the sale of electricity generated on Indian land to outside markets; and even transmission projects across Indian lands, connecting outside generation to outside markets, where no tribal customers are served. At its broadest, energy development may even be understood to include projects in which the tribal borrower participates, as an investor, but which bear no other direct relationship to the tribe or Indian lands.

Given the potential breadth of projects that may be found to be eligible under TELGP, LPO is particularly interested in input from Indian tribes on both the range of energy development activities in which tribal participation could be beneficial to the tribal borrower, as well as they types of tribal benefits that LPO should consider in evaluating applications under TELGP.

**Minimum Size of Projects/Loans.** Based on the expected costs to the applicant and borrower of participating in TELGP (see “Fees and Costs” below), LPO believes that the program may not be beneficial for very small loans or projects, applying individually. LPO believes that in some cases it may be possible

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<sup>1</sup> 25 U.S.C. § 5304(e).

for lenders to obtain TELGP guarantees for a portfolio of loans to be made to borrowers made for similar individual projects, such as distributed generation portfolios.

**Reasonable Prospect of Loan Repayment.** TELGP guarantees will only be available for loans that are determined to have a reasonable prospect of repayment. Eligible projects will be expected to have, whether structured on a project finance or a corporate finance basis, a credit rating from a nationally recognized rating agency of at least a credit rating equivalent of 'BB' from Standard & Poor's or Fitch or 'Ba2' from Moody's, as evaluated without the benefit of any DOE guarantee or any other credit support which would not be available to DOE.

**Maximum Guarantee Percentage.** While DOE is authorized to guarantee up to 90% of the unpaid principal and interest of an eligible loan, DOE may determine a lower guaranteed percentage is appropriate in relation to a particular application. Such determination would be based on DOE's determination of the appropriate risk sharing ratio with the lender applicant and in the interest of making DOE's guarantee authority more widely available.

**Equity Requirement.** DOE expects that borrowers will make a significant equity contribution, in the form of cash, in the proposed project. The required equity percentage will be determined on a case-by-case basis and depend among other factors on financial capabilities of the borrower and other project participants and the overall risk of the proposed projects. Typically, equity excludes the proceeds from any non-guaranteed portion of the TELGP loan or other debt, as well as funds received by the Borrower through other forms of government support.

**Financing Structure, Interest Rates.** LPO expects that each lender-applicant will structure debt financing so as to optimize the borrower's access to private debt capital and achieve the lowest possible cost of funds for an eligible project. LPO expects that most if not all loans guaranteed under TELGP will be "traditional" senior secured debt, structured in accordance with customary market terms applicable to a high quality, limited or non-recourse, long-term, energy project finance transaction. DOE may also guarantee corporate (full recourse) loans to credit-worthy borrowers for application to eligible projects. In the typical financing structure, the borrower's equity interests in the project, and all real and personal property associated with the project would be required to be pledged in favor of DOE to the extent permitted under applicable law.

Co-lending structures are encouraged. Loans guaranteed under TELGP may be divided into two or more loans or tranches which accrue interest at fixed rates or floating rates, which have different tenors or amortization schedules, or which carry different prepayment rights. However, no more than 90% of any such loan or tranche may be covered by the TELGP guarantee, and DOE must determine all interest rates to be reasonable.

**Fees and Costs.** In general, based on current appropriations, LPO expects that all third-party advisory and similar costs incurred by DOE in connection with the evaluation, negotiation and closing of a TELGP guarantee, as well as the administration of the loan guarantee after closing, will be borne by the borrower or the lender applicant (as they may negotiate between themselves). Certain third party costs borne by the borrower in connection with the loan and guarantee may be financeable as project costs under TELGP.

LPO also expects to establish fees to defer some of the internal costs that may be incurred by DOE in connection with a TELGP application. Such fees would be imposed in stages so that the initial cost to apply to TELGP IS not prohibitive, and fees would increase as the application progresses through LPO's process.

For example, LPO expects to impose an application fee based on the size of the loan guarantee requested; a small portion of such fee would be payable with the submission of the part one application and the remainder would be payable with the submission of the part two application, only if such application were deemed initially eligible. Applications submitted without payment of the relevant fee would not be reviewed.

LPO envisions that an additional fee, known as a facility fee, based on a percentage of the guaranteed loan, would be payable by the applicant at subsequent stages of the application process, including the execution of a term sheet and the closing of the loan. Finally, LPO may also charge an annual maintenance fee to defer the internal administrative expense of servicing and monitoring the loan guarantee, during the construction, startup, commissioning and operational phases of a project. The size of such fee would be determined at the closing of the loan guarantee.

**Certain Federal Requirements.** The National Environmental Policy Act (NEPA) requires Federal agencies to consider the potential environmental impacts of their proposed actions. The TELGP application process will be designed to provide DOE the information it requires to conduct an appropriate level of NEPA review in relation to the proposed loan guarantee. Prospective borrowers and lenders are also advised to consider the applicability of other federal requirements with respect to the construction of projects benefiting from federally guaranteed loans, including the Davis-Bacon Act, the Cargo Preference Act, and the extent to which exemptions may be available for the particular activities proposed. Where applicable, such requirements can in some cases significantly increase certain costs of constructing a project.

#### Application Process

**TELGP Announcement.** LPO expects to issue a solicitation or other form of opportunity notice announcing TELGP, which will contain instructions for applicants as well as a description of how LPO will process and evaluate applications, negotiate and close on loan guarantees, and manage its portfolio of TELGP loan guarantees. The application process is expected to seek lender-applicants rather than direct applications by borrowers. However, LPO will also consider offering pre-application meetings with prospective borrowers, with or without their prospective lenders, to the extent resources permit, in order to provide preliminary assessments of the suitability of TELGP for specific projects.

**Application and Evaluation.** LPO expects that proposals for loan guarantees will be evaluated in two phases. In the first phase, LPO would evaluate a summary level description of the project and its creditworthiness, project eligibility, financing strategy and compliance of the proposed funding plan with the objectives and parameters of the TELGP solicitation, progress to date in critical path activities and schedules and readiness to proceed and commence construction, as well as the lender's qualifications as an "Eligible Lender." After an initial eligibility assessment in such phase, LPO may invite the lender-applicant to submit a more comprehensive application package, which would be expected to include at minimum all of the information, including plans, contracts and other documents, used by the prospective lender to evaluate the proposed loan and project, and which would reasonably be expected to be needed by DOE in making such a decision with respect to the proposed loan guarantee. Evaluation factors, to be set forth in the solicitation or opportunity notice, are expected to include programmatic considerations, creditworthiness, and the ability of the applicant to successfully execute the proposed financing plan, among others. LPO expects that programmatic considerations will include the likely direct and indirect benefits to one or more Indian tribes, including beneficial impacts on the availability of debt financing for energy

development activities of the borrower and other Indian tribes. Based on tribal input in the TELGP program design, LPO hopes to understand the full range of tribal benefits it should consider prior to issuing the solicitation or other form of opportunity notice.

Because LPO expects to receive applications for loan guarantees that exceed its available resources (either for the cost of the loan guarantee or for the administrative costs of processing such evaluations), DOE is likely to give consideration to the relative merit of proposals at each stage, as determined by LPO in its discretion, including their apparent readiness to proceed and other factors, when prioritizing its review and processing of applications.

**Engagement of outside advisors.** Following a favorable determination based on the two-phase review application process described above, LPO, in consultation with the borrower and lenders, will commence more extensive due diligence and the negotiation of transaction terms. Such process generally requires the engagement of outside counsel and other experts to advise LPO, the expenses of which would be expected to be paid by the borrower.

**Issuance of a Conditional Commitment and Closing of the Loan Guarantee.** Following a period of continued due diligence and evaluation, and receipt of necessary internal and external approvals, DOE may offer a term sheet indicating the terms on which it would be willing to partially guarantee a proposed loan, and may execute a commitment to issue such loan guarantee on certain terms and conditions. Upon DOE's determination that such terms and conditions are satisfied (provided the commitment has not previously expired or been terminated), including the negotiation and execution of final documentation required by the commitment, DOE would be bound to provide the loan guarantee through the execution of a loan guarantee agreement.

At the closing of the loan guarantee, the cost of the loan guarantee, as contemplated by the Federal Credit Reform Act of 1990 (FCRA), must be paid. DOE would pay such cost (the "credit subsidy cost"), to the extent of the remaining appropriation available. In the event such appropriated amounts are insufficient, the Borrower would be required to pay the credit subsidy cost.

Launch of TELGP, Effect of this Notice.

As noted in the introduction, while LPO has had great success in the administration of its FIPP program, LPO is considering how well the typical lender-government partnership required by a partial loan guarantees program will suit the needs of tribal borrowers and lending markets. DOE is also providing this introduction for the purposes of obtaining important tribal input on the likely size and types of tribes' energy development projects and activities that should be considered eligible, and the tribal benefits that should be considered, in evaluating applications for loan guarantees under the TELGP program described below.

The results of this outreach are expected to be considered in the design of the TELGP program, to the extent consistent with statutory, regulatory and other programmatic imperatives, including the key terms and conditions described above. While LPO believes that the terms and conditions described above are the most important considerations for the design of the TELGP program, they are not exclusive. Moreover, the terms and conditions described in this introduction are not an offer and do not bind DOE in any way. DOE reserves the right to update this introduction as it deems appropriate during the consultation process, and, if issued, the terms and conditions of a TELGP solicitation will supersede those described herein for all purposes.