

## Status Update – Department of Energy Title XVII Loan Guarantee Program

The September 30, 2011, expiration date for the Department of Energy (DOE) Section 1705 Loan Guarantee Program is approaching. DOE has accelerated its review and negotiation of loan guarantees and continues to announce Conditional Commitments for additional projects. The usefulness of the Title XVII Loan Guarantee Program (which includes both Section 1705 and Section 1703 Programs) for projects that are on “hold” or have not yet applied is in doubt, however, due to a lack of funding and congressional support.

**Background and History.** Title XVII of the Energy Policy Act of 2005 authorizes DOE to guarantee loans for up to 80 percent of total project costs for eligible projects. Specifically, Section 1703 of Title XVII provided over \$40 billion of loan guarantee authority for DOE to guarantee projects in (i) nuclear energy, (ii) fossil energy, and (iii) energy efficiency, renewable energy, and advanced transmission and distribution projects. As a condition to issuing a loan guarantee, however, Title XVII required DOE to obtain an appropriation from Congress for the Credit Subsidy Cost (the CSC)<sup>1</sup> of issuing a loan guarantee, or otherwise obtain a deposit from the borrower in the amount of the CSC.


The American Recovery and Reinvestment Act of 2009 (ARRA) included two short-term improvements to the Title XVII Loan Guarantee Program:

- First, ARRA added Section 1705 to Title XVII, which authorizes DOE to guarantee loans for renewable energy systems, leading-edge biofuels projects, and electric power transmission systems, regardless of whether such projects employ “new or significantly improved technology,” provided that the project commences construction and reaches financial close by September 30, 2011 (the Section 1705 Program); and
- Second, ARRA appropriated \$6 billion for the CSC of loan guarantees issued pursuant to Section 1705.

Prior to the ARRA, DOE was only authorized to provide loan guarantees pursuant to Section 1703 of Title XVII, which, among other things, requires that projects employ “new or significantly improved technology” (the Section 1703 Program). Furthermore, without the appropriation of the CSC, borrowers were responsible for full and upfront payment of the CSC upon closing, which could be a significant percentage of the loan amount. Under Section 1703 and prior to the ARRA, DOE issued a total of five

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<sup>1</sup> The Credit Subsidy Cost is the net present value of the estimated long-term cost to the U.S. government of a loan guarantee, as determined under the applicable provisions of the Federal Credit Reform Act of 1990. In other words, it is the “premium” paid to the government in return for its guarantee.



solicitations for various types of projects, although not a single project advanced to financial close. Once CSC funds were appropriated through the ARRA and based on its authority pursuant to Section 1705, DOE issued four additional solicitations for applications for loan guarantees:


- A solicitation for renewable energy, advanced transmission, and biofuels projects that employ “new or significantly improved technology” (e.g., qualify for the 1703 Program) where, for projects that also qualified for the Section 1705 Program (i.e., commence construction and reach financial closing by September 30, 2011, and fall within the categories of *Renewable Energy Systems, Leading Edge Biofuels, or Advanced Transmission & Distribution Project*),<sup>2</sup> the CSC would be covered by ARRA funds;
- A solicitation for commercial transmission projects that commence construction by September 30, 2011, with the CSC covered by ARRA funds;
- A solicitation for commercial renewable energy projects that commence construction by September 30, 2011, under which a qualified lender applies to DOE for a loan guarantee (the Financial Institutions Partnership Program, or FIPP); and
- A solicitation for projects that manufacture commercial renewable energy systems and components that commence construction by September 30, 2011, with the CSC covered by ARRA.

As a result of prior delays in the implementation of the Section 1703 Program and later the Section 1705 Program, the \$6 billion in CSC funding quickly became a target for offsetting other programs. Of the initial \$6 billion ARRA appropriation, \$2 billion was reallocated to the “cash for clunkers” program in August 2009 and an additional \$1.5 billion was reallocated as part of a teachers and Medicaid package in August 2010, leaving a total of \$2.5 billion to cover the CSC of loan guarantees pursuant to the Section 1705 Program.

As of this writing, 29 conditional commitments have been issued, of which 11 have closed, but with limited funds to cover the CSC and little time to negotiate loan guarantees before the September 30, 2011, deadline, DOE acknowledged it had more projects in its pipeline than it could realistically process, or even fund. In May 2011, DOE issued letters to all applicants still under consideration for loan guarantees pursuant to the Section 1705 Program, notifying them whether their project was selected to advance in the inter-agency review process, whether they were being placed “on hold,” or whether they were rejected.

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<sup>2</sup> DOE allowed eligible projects that applied under previous solicitations, which provided that the borrower must pay the CSC, to be rolled into this solicitation, which provides that ARRA funds cover the CSC if the project qualifies for the Section 1705 Program.



**Opportunities After September 30, 2011.** While DOE’s authority under the Section 1705 Program expires on September 30, 2011, authority under the Section 1703 Program continues, meaning that DOE will still be authorized to provide loan guarantees for projects that employ “new or significantly improved technology.”

In April, the 2011 Continuing Resolution (CR) appropriated \$170 million to pay the CSC for Section 1703 projects that use renewable energy or efficient end-use energy technologies. This appropriation, assuming a CSC of approximately 20 percent, could support an additional \$850 million in loan guarantees. The CR specified that this funding is also available to projects that applied under the Section 1705 Program prior to February 24, 2011. In practice, this appropriation might therefore also be used to fund a few Section 1705 projects that failed to meet the September 30, 2011, deadline.

DOE has not indicated when it anticipates reconsidering applications that were placed on hold in May, or whether it will solicit new applications for projects, and is instead focused on closing as many Section 1705 loan guarantees as possible before the September 30, 2011, deadline.

Without further congressional action, DOE has limited authority to provide additional loan guarantees pursuant to the Section 1703 Program, where the requirement that borrowers pay the CSC lessens the appeal of the program to most companies. President Obama’s Fiscal Year (FY) 2012 Budget Request included a \$200 million request for CSC funding for Section 1703 loans. This level of requested funding would support an estimated \$1 to \$2 billion in loan guarantees to support energy efficiency and renewable energy activities. The House Appropriations Committee’s FY 2012 Energy and Water Appropriations Bill, approved by the House on June 15, 2011, contains a mark for \$160 million in CSC and places a variety of restrictions on the Title XVII Loan Guarantee Program. The Senate’s review and subsequent mark for the FY 2012 budget has not yet taken place and will be another determining factor in the future of the DOE Title XVII Loan Guarantee Program.

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