

Department of Energy

§ 609.17

including the Secretary, having an interest in the loan or other debt obligations, to pursue, jointly or severally, to the extent provided in the Loan Guarantee Agreement or other applicable agreement, legal action against the Borrower or other liable parties, for any deficiencies owing on the balance of the Guaranteed Obligations or other debt obligations after application of the proceeds received upon liquidation.

(n) In the event that the Secretary considers it necessary or desirable to protect or further the interest of the United States in connection with the liquidation or sale of, collection from or other realization on the collateral or recovery of deficiencies due under the loan, the Secretary will take such action as may be appropriate under the circumstances.

(o) Nothing in this part precludes the Secretary from purchasing any Holder's or other person's interest in the project upon liquidation or sale of, collection from or other realization on the collateral.

§ 609.16 Perfection of liens and preservation of collateral.

(a) The Loan Guarantee Agreement and other documents related thereto shall provide that:

(1) The Eligible Lender, or DOE in conjunction with the Federal Financing Bank where the loan is funded by the Federal Financing Bank, or other Holder or other agent or servicer will take those actions necessary or appropriate to perfect and maintain liens, as applicable, on assets which are pledged as collateral for the Guaranteed Obligation; and

(2) Upon default by the Borrower, the holder of pledged collateral shall take such actions as the Secretary (subject to any applicable Intercreditor Agreement) may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery from the pledged assets. The Secretary shall reimburse the holder of collateral for reasonable and appropriate expenses incurred in taking actions required by the Secretary (unless otherwise provided in applicable agreements). Except as provided in § 609.15, no party

may waive or relinquish, without the consent of the Secretary, any collateral securing the Guaranteed Obligation to which the United States would be subrogated upon payment under the Loan Guarantee Agreement.

(b) In the event of a default, the Secretary may enter into such contracts as the Secretary (subject to any applicable Intercreditor Agreement) determines are required or appropriate to care for, preserve, protect or maintain the collateral. The cost of such contracts may be charged to the Borrower.

§ 609.17 Audit and access to records.

(a) The Loan Guarantee Agreement and related documents shall provide that:

(1) The Eligible Lender, or DOE in conjunction with the Federal Financing Bank where loans are funded by the Federal Financing Bank or other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, shall keep such records concerning the project as is necessary, including the Pre-Application, Application, Term Sheet, Conditional Commitment, Loan Guarantee Agreement, Credit Agreement, mortgage, note, disbursement requests and supporting documentation, financial statements, audit reports of independent accounting firms, lists of all project assets and non-project assets pledged as security for the Guaranteed Obligations, all off-take and other revenue producing agreements, documentation for all project indebtedness, income tax returns, technology agreements, documentation for all permits and regulatory approvals and all other documents and records relating to the Eligible Project, as determined by the Secretary, to facilitate an effective audit and performance evaluation of the project; and

(2) The Secretary and the Comptroller General, or their duly authorized representatives, shall have access, for the purpose of audit and examination, to any pertinent books, documents, papers and records of the Borrower, Eligible Lender or DOE or other Holder or other party servicing the Guaranteed Obligation, as applicable. Such inspection may be made during regular office hours of the Borrower,