

(c) Requirements

An applicant for a loan guarantee under this section may provide assurances, satisfactory to the Secretary, that—

- (1) the project design has been validated through the operation of a continuous process facility;
- (2) the project has been subject to a full technical review;
- (3) the project, with the loan guarantee, is economically viable; and
- (4) there is a reasonable assurance of repayment of the guaranteed loan.

(d) Limitations**(1) Maximum guarantee**

Except as provided in paragraph (2), a loan guarantee under this section—

- (A) may be issued for up to 80 percent of the estimated cost of a project; but
- (B) shall not exceed \$50,000,000 for any 1 project.

(2) Additional guarantees**(A) In general**

The Secretary may issue additional loan guarantees for a project to cover—

- (i) up to 80 percent of the excess of actual project costs; but
- (ii) not to exceed 15 percent of the amount of the original loan guarantee.

(B) Principal and interest

Subject to subparagraph (A), the Secretary shall guarantee 100 percent of the principal and interest of a loan guarantee made under subparagraph (A).

(Pub. L. 109-58, title XV, §1516, Aug. 8, 2005, 119 Stat. 1091.)

Editorial Notes

REFERENCES IN TEXT

Title XIV, referred to in subsec. (a), is title XIV of Pub. L. 109-58, Aug. 8, 2005, 119 Stat. 1061, which enacted subchapter XIII of this chapter and section 13557 of this title.

SUBCHAPTER XV—INCENTIVES FOR
INNOVATIVE TECHNOLOGIES**§ 16511. Definitions**

In this subchapter:

(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 661a(5)(C) of title 2.

(3) Eligible project

The term “eligible project” means a project described in section 16513 of this title.

(4) Guarantee**(A) In general**

The term “guarantee” has the meaning given the term “loan guarantee” in section 661a of title 2, except that a loan guarantee may guarantee any debt obligation of a non-Federal borrower to any Eligible Lender (as defined in section 609.2 of title 10, Code of Federal Regulations).

(B) Inclusion

The term “guarantee” includes a loan guarantee commitment (as defined in section 661a of title 2).

(5) Obligation

The term “obligation” means the loan or other debt obligation that is guaranteed under this section.

(6) State

The term “State” has the meaning given the term in section 6802 of this title.

(7) State energy financing institution**(A) In general**

The term “State energy financing institution” means a quasi-independent entity or an entity within a State agency or financing authority established by a State—

- (i) to provide financing support or credit enhancements, including loan guarantees and loan loss reserves, for eligible projects; and
- (ii) to create liquid markets for eligible projects, including warehousing and securitization, or take other steps to reduce financial barriers to the deployment of existing and new eligible projects.

(B) Inclusion

The term “State energy financing institution” includes an entity or organization established to achieve the purposes described in clauses (i) and (ii) of subparagraph (A) by an Indian Tribal entity or an Alaska Native Corporation.

(Pub. L. 109-58, title XVII, §1701, Aug. 8, 2005, 119 Stat. 1117; Pub. L. 117-58, div. D, title IV, §40401(c)(1), Nov. 15, 2021, 135 Stat. 1037; Pub. L. 117-169, title V, §50141(e), Aug. 16, 2022, 136 Stat. 2043.)

Editorial Notes

AMENDMENTS

2022—Par. (4)(A). Pub. L. 117-169 inserted “, except that a loan guarantee may guarantee any debt obligation of a non-Federal borrower to any Eligible Lender (as defined in section 609.2 of title 10, Code of Federal Regulations)” before period at end.

2021—Pars. (6), (7). Pub. L. 117-58 added pars. (6) and (7).

Statutory Notes and Related Subsidiaries

WAGE RATE REQUIREMENTS

For provisions relating to rates of wages to be paid to laborers and mechanics on projects for construction, alteration, or repair work funded under div. D or an amendment by div. D of Pub. L. 117-58, including authority of Secretary of Labor, see section 18851 of this title.

§ 16512. Terms and conditions**(a) In general**

Except for division C of Public Law 108-324 [15 U.S.C. 720 et seq.], the Secretary shall make guarantees under this or any other Act for projects, including projects receiving financial support or credit enhancements from a State energy financing institution, 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**(1) In general**

Except as provided in paragraph (2), the cost of a guarantee shall be paid by the Secretary using an appropriation made for the cost of the guarantee, subject to the availability of such an appropriation.

(2) Insufficient appropriations

If sufficient appropriated funds to pay the cost of a guarantee are not available, then the guarantee shall not be made unless—

(A) the Secretary has received from the borrower a payment in full for the cost of the guarantee and deposited the payment into the Treasury; or

(B) a combination of one or more appropriations and one or more payments from the borrower under this subsection has been made that is sufficient to cover the cost of the guarantee.

(3) Source of payments

The source of a payment received from a borrower under subparagraph (A) or (B) of paragraph (2) may not be a loan or other debt obligation that is made or guaranteed by the Federal Government.

(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) Requirement****(A) In general**

No guarantee, including a guarantee for a project receiving financial support or credit enhancements from a State energy financing institution, 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.

(B) Reasonable prospect of repayment

The Secretary shall base a determination of whether there is reasonable prospect of repayment under subparagraph (A) on a comprehensive evaluation of whether the borrower has a reasonable prospect of repaying the guaranteed obligation for the eligible project, including, as applicable, an evaluation of—

(i) the strength of the contractual terms of the eligible project (if commercially reasonably available);

(ii) the forecast of noncontractual cash flows supported by market projections from reputable sources, as determined by the Secretary;

(iii) cash sweeps and other structure enhancements;

(iv) the projected financial strength of the borrower—

(I) at the time of loan close; and

(II) throughout the loan term after the project is completed;

(v) the financial strength of the investors and strategic partners of the borrower, if applicable; and

(vi) other financial metrics and analyses that are relied on by the private lending community and nationally recognized credit rating agencies, as determined appropriate by the Secretary.

(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, including any reorganization, restructuring, or termination thereof, shall not at any time be 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