

(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.

(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.)

Editorial Notes**AMENDMENTS**

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.

(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

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—

(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 on or after the date of the financial close of an obligation, a fee for a guarantee in an amount that the Secretary determines is sufficient to cover applicable administrative expenses (including any costs associated with third-party consultants engaged by the Secretary).

(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.

(3) Reduction in fee amount

Notwithstanding paragraph (1) and subject to the availability of appropriations, the Secretary may reduce the amount of a fee for a guarantee under this subsection.

(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.

(k) Wage rate requirements

All laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed in whole or in part by a loan guaranteed under this subchapter shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40. With respect to the labor standards in this subsection, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40.

(l) Restructuring of loan guarantees

The Secretary shall consult with the Secretary of the Treasury regarding any restruc-

turing of the terms or conditions of a guarantee issued pursuant to this subchapter, including with respect to any deviations from the financial terms of the guarantee.

(m) Written analysis**(1) Requirement**

The Secretary may not make a guarantee under this subchapter until the Secretary of the Treasury has transmitted to the Secretary, and the Secretary has taken into consideration, a written analysis of the financial terms and conditions of the proposed guarantee.

(2) Transmission

Not later than 30 days after receiving information on a proposed guarantee from the Secretary, the Secretary of the Treasury shall transmit the written analysis of the financial terms and conditions of the proposed guarantee required under paragraph (1) to the Secretary.

(3) Explanation

If the Secretary makes a guarantee the financial terms and conditions of which are not consistent with the written analysis required under this subsection, not later than 30 days after making such guarantee, the Secretary shall submit to the Committee on Energy and Commerce and the Committee on Science, Space, and Technology of the House of Representatives, and the Committee on Energy and Natural Resources of the Senate, a written explanation of any material inconsistencies.

(n) Application status**(1) Request**

If the Secretary does not make a final decision on an application for a guarantee under this subchapter by the date that is 180 days after receipt of the application by the Secretary, the applicant may request, on or after that date and not more than once every 60 days thereafter until a final decision is made, that the Secretary provide to the applicant a response described in paragraph (2).

(2) Response

Not later than 10 days after receiving a request from an applicant under paragraph (1), the Secretary shall provide to the applicant a response that includes—

- (A) a description of the current status of review of the application;
- (B) a summary of any factors that are delaying a final decision on the application, a list of what items are required in order to reach a final decision, citations to authorities stating the reasons why such items are required, and a list of actions the applicant can take to expedite the process; and
- (C) an estimate of when a final decision on the application will be made.

(o) Outreach

In carrying out this subchapter, the Secretary shall—

- (1) provide assistance with the completion of applications for a guarantee under this subchapter;

(2) conduct outreach, including through conferences and online programs, to disseminate information to potential applicants;

(3) conduct outreach to encourage participation of supporting finance institutions and private lenders in eligible projects.

(p) Coordination

In carrying out this subchapter, the Secretary shall coordinate activities under this subchapter with activities of other relevant offices with the Department.

(q) Report

Not later than 2 years after December 27, 2020, and every 3 years thereafter, the Secretary shall submit to Congress a report on the status of applications for, and projects receiving, guarantees under this title, including—

(1) a list of such projects, including the guarantee amount, construction status, and financing partners of each such project;

(2) the status of each such project's loan repayment, including interest paid and future repayment projections;

(3) an estimate of the air pollutant or greenhouse gas emissions avoided or reduced from each such project;

(4) data regarding the number of direct and indirect jobs retained, restored, or created by such projects;

(5) identification of—

(A) technologies deployed by projects that have received guarantees that have subsequently been deployed commercially without guarantees; and

(B) novel technologies that have been deployed by such projects and deployed in the commercial energy market;

(6) the number of new projects projected to receive a guarantee under this subchapter during the next 2 years and the aggregate guarantee amount;

(7) the number of outreach engagements conducted with potential applicants;

(8) the number of applications received and currently pending for each open solicitation; and

(9) any other metrics the Secretary finds appropriate.

(r)¹ Conflicts of interest

For each project selected for a guarantee under this subchapter, the Secretary shall certify that political influence did not impact the selection of the project.

(r)¹ State energy financing institutions

(1) Eligibility

To be eligible for a guarantee under this subchapter, a project receiving financial support or credit enhancements from a State energy financing institution—

(A) shall meet the requirements of section 16513(a)(1) of this title; and

(B) shall not be required to meet the requirements of section 16513(a)(2) of this title.

(2) Partnerships authorized

In carrying out a project receiving a loan guarantee under this subchapter, State energy

financing institutions may enter into partnerships with private entities, Tribal entities, and Alaska Native corporations.

(3) Prohibition on use of appropriated funds

Amounts appropriated to the Department of Energy before November 15, 2021, shall not be available to be used for the cost of loan guarantees for projects receiving financing support or credit enhancements under this subsection.

(Pub. L. 109–58, title XVII, §1702, Aug. 8, 2005, 119 Stat. 1117; Pub. L. 111–85, title III, §310, Oct. 28, 2009, 123 Stat. 2873; Pub. L. 112–74, div. B, title III, §305(1), Dec. 23, 2011, 125 Stat. 877; Pub. L. 116–260, div. Z, title IX, §9010(a), Dec. 27, 2020, 134 Stat. 2603; Pub. L. 117–58, div. D, title IV, §40401(a)(1), (3), (c)(2), Nov. 15, 2021, 135 Stat. 1033, 1034, 1037.)

Editorial Notes

REFERENCES IN TEXT

Division C of Public Law 108–324, referred to in subsec. (a), is division C of Pub. L. 108–324, Oct. 13, 2004, 118 Stat. 1255, known as the Alaska Natural Gas Pipeline Act, which is classified principally to chapter 15D (§720 et seq.) of Title 15, Commerce and Trade. For complete classification of division C to the Code, see Short Title note set out under section 720 of Title 15 and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (k), is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2021—Subsec. (a). Pub. L. 117–58, §40401(c)(2)(A), inserted “, including projects receiving financial support or credit enhancements from a State energy financing institution,” after “for projects”.

Subsec. (d)(1). Pub. L. 117–58, §40401(a)(1), substituted “Requirement” for “In general” in par. heading, designated existing provisions as subpar. (A), inserted subpar. heading, and added subpar. (B).

Subsec. (d)(1)(A). Pub. L. 117–58, §40401(c)(2)(B), inserted “, including a guarantee for a project receiving financial support or credit enhancements from a State energy financing institution,” after “No guarantee”.

Subsec. (r). Pub. L. 117–58, §40401(c)(2)(C), added subsec. (r) relating to State energy financing institutions.

Pub. L. 117–58, §40401(a)(3), added subsec. (r) relating to conflicts of interest.

2020—Subsec. (b). Pub. L. 116–260, §9010(a)(1), amended subsec. (b) generally. Prior to amendment, text read as follows: “No guarantee shall be made unless—

“(A) an appropriation for the cost of the guarantee has been made;

“(B) 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

“(C) a combination of one or more appropriations under subparagraph (A) and one or more payments from the borrower under subparagraph (B) has been made that is sufficient to cover the cost of the guarantee.”

Subsec. (d)(3). Pub. L. 116–260, §9010(a)(2), substituted “, including any reorganization, restructuring, or termination thereof, shall not at any time be subordinate” for “is not subordinate”.

Subsec. (h)(1). Pub. L. 116–260, §9010(a)(3)(A), amended par. (1) generally. Prior to amendment, text read as follows: “The Secretary shall charge and collect fees for guarantees in amounts the Secretary determines are sufficient to cover applicable administrative expenses.”

Subsec. (h)(3). Pub. L. 116–260, §9010(a)(3)(B), added par. (3).

Subsecs. (l) to (q). Pub. L. 116–260, §9010(a)(4), added subsecs. (l) to (q).

2011—Subsec. (b). Pub. L. 112–74 added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: “No guarantee shall be made unless—

¹ So in original. Two subsecs. (r) have been enacted.

“(1) an appropriation for the cost has been made; or
 “(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.”
 2009—Subsec. (k). Pub. L. 111-85 added subsec. (k).

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.

§ 16513. Eligible projects

(a) In general

The Secretary may make guarantees under this section only for projects that—

- (1) avoid, reduce, utilize, 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, including projects that employ elements of commercial technologies in combination with new or significantly improved technologies.

(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, including manufacturing of nuclear supply components for advanced nuclear reactors.
- (5) Carbon capture, utilization, and sequestration practices and technologies, including—
 - (A) agricultural and forestry practices that store and sequester carbon; and
 - (B) synthetic technologies to remove carbon from the air and oceans.
- (6) Efficient electrical generation, transmission, and distribution technologies.
- (7) Efficient end-use energy technologies.
- (8) Production facilities for the manufacture of fuel efficient vehicles or parts of those vehicles, including electric drive vehicles and advanced diesel vehicles.
- (9) Pollution control equipment.
- (10) Refineries, meaning facilities at which crude oil is refined into gasoline.
- (11) Energy storage technologies for residential, industrial, transportation, and power generation applications.
- (12) Technologies or processes for reducing greenhouse gas emissions from industrial applications, including iron, steel, cement, and ammonia production, hydrogen production, and the generation of high-temperature heat.
- (13) Projects that increase the domestically produced supply of critical minerals (as defined in section 1606(a) of title 30), including

through the production, processing, manufacturing, recycling, or fabrication of mineral alternatives.

(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

(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