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client alert

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December 2009

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DOE Rule Change To Loan Guarantee Program

The DOE may now guarantee loans to innovative energy projects with multiple investors, differing ownership interests, or financing from other lenders.

On Monday, December 7, the Department of Energy ("DOE") announced an important change to the structure of its Loan Guarantee Program, under which the Federal Government will guarantee loans to companies deploying new or significantly improved technologies that reduce air pollutants and greenhouse gas emissions. Under the revised rule, the DOE will now guarantee loans that are not superior in priority to other equity interests or other secured debts.

Under the previous rule, loans guaranteed through this program were required to have the first lien against all project assets. As borrowers will typically rely on multiple sources of debt financing or multiple equity participants to support the capital needs for projects that are capital-intensive energy infrastructure or manufacturing facilities, this rule change will open the loan guarantee program to a wide range of new participants.

DOE Loan Guarantee Program

The Energy Policy Act of 2005 authorized the DOE to guarantee loans that support early commercial use of advanced technologies. The program helps finance the utilization of these technologies, though not finance the research and development of these technologies. The loan guarantees are available to any company looking to employ energy technologies related to:

- biomass
- hydrogen
- solar
- wind
- hydropower
- clean coal
- carbon sequestration
- electricity transmission
- alternative fuel vehicles
- energy efficiency projects
- pollution control

New Rule Opportunity for Many New Borrowers

The DOE originally read the statute governing the loan guarantee program as requiring a first lien on assets associated with projects receiving loan guarantees. Responding to pressure from the borrowing community, the DOE has now reevaluated its interpretation and found "its original reading of the statute was in tension with the financing structure of many commercial transactions in the energy sector." Under the revised rule, the required collateral for a loan guarantee will be set at the discretion of the Secretary and the DOE can look to factors like the balance sheet of a project sponsor.

The DOE can now issue guarantees for loans made to a wider range of projects including those that are owned by multiple investors with different ownership interests as well as those projects that receive financing from other lenders. Energy Secretary Steven Chu explained that the DOE hopes that "[t]his much needed change will provide greater flexibility to the Loan Guarantee Program and help us support more projects at a better value to taxpayers."

In practice, the types of projects supported by the loan guarantee program rely on multiple sources of funding because of scale, which often requires multiple investors with different capacity to make use of incentives like tax credits and accelerated depreciation and different risk management profiles. This revised rule recognizes some of the financial structuring challenges in this market and allows the DOE to be more flexible in applying the loan program to a wider range of projects.

New Applications for Loan Guarantees

The DOE is preparing to accept and evaluate several new rounds of applications for loan guarantees. The upcoming deadlines for initial applications are:

1. December 23, 2009
2. February 18, 2010
3. April 22, 2010
4. June 24, 2010

5. August 24, 2010

For additional information regarding the loan guarantees, program requirements, and assistance with applications, please contact Elias Hinckley. He may be reached at ehinckley@venable.com or 202.344.4639.

Additional information regarding eligibility for financing under the DOE program can also be found in Venable's Energy Alert, **New Loan Guarantee Funding for Renewable Energy Projects**.

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