

**Comment Listing**  
**U.S. Department of Energy**  
**Loan Programs Office**  
**Draft Renewable Energy and Efficiency Energy Projects Solicitation**  
**July 2014**

**Table 1 – Comment Matrix**

<b>Section</b>	<b>Topic</b>	<b>Commenter Number</b>	<b>Comments</b>
<b>1.</b>	Fees and Costs	<b>9, 28, 29, 33, 35, 36, 39, 43, 45, 47, 48, 49, 52</b>	<b>9b, 28a, 29a, 33a, 33c, 35b, 36a, 39c, 43d, 45e, 45f, 47c, 48f, 49b, 49c, 52a</b>
<b>2.</b>	Technical Eligibility	<b>2, 5, 11, 17, 26, 27, 30, 37, 38, 41, 42, 43, 44, 45, 46, 47, 50, 51, 52</b>	<b>2a, 5a, 11a, 17a, 26a, 26b, 26c, 27a, 30c, 31a, 34b, 37a, 38a, 41a, 41b, 42a, 42b, 42c, 42d, 42e, 42f, 42i, 43a, 43b, 43c, 43e, 44d, 45a, 45b, 45g, 46a, 46b, 46c, 46d, 46e, 47b, 50a, 50b, 50c, 51a, 51b, 51c, 51d, 51e, 52c, 52e</b>
<b>3.</b>	Process Timing	<b>3, 30, 35</b>	<b>3a, 3b, 30a, 35e</b>
<b>4.</b>	Process Guidance	<b>1, 14, 16, 24, 30, 32, 33, 35, 36, 40, 42, 44, 48, 52</b>	<b>1b, 14a, 16a, 16b, 16c, 16d, 16e, 24a, 24b, 24c, 30b, 32b, 33d, 35d, 36b, 40a, 40b, 42h, 44b, 48b, 48e, 48g, 52b, 52d</b>
<b>5.</b>	Loan Authority	<b>18, 29</b>	<b>18a, 29b</b>
<b>6.</b>	Role of the Office of Management and Budget (OMB)	<b>4</b>	<b>4b</b>
<b>7.</b>	Energy Security and Independence	<b>34</b>	<b>34a</b>
<b>8.</b>	Federal Support	<b>47</b>	<b>47a</b>
<b>9.</b>	Prior Experience	<b>45</b>	<b>45c</b>
<b>10.</b>	Davis Bacon Act	<b>47</b>	<b>47d</b>
<b>11.</b>	Statutory Requirements	<b>42</b>	<b>42g</b>
<b>12.</b>	Distributed Energy	<b>48</b>	<b>48c, 48d</b>
<b>13.</b>	Contaminated Lands	<b>44</b>	<b>44a</b>
<b>14.</b>	Environmental Review	<b>44</b>	<b>44c</b>
<b>15.</b>	General Support	<b>9, 13, 48, 49</b>	<b>9a, 13a, 48a, 49a</b>
<b>16.</b>	General Opposition	<b>39</b>	<b>39a</b>
<b>17.</b>	Small Business Related	<b>9, 28, 29, 31, 33, 35, 39, 45</b>	<b>9c, 28b, 29c, 31b, 33b, 35c, 39b, 39d, 45d</b>

**Table 2 – Comment Key**

<b>Commenter Number</b>	<b>Commenter Name</b>	<b>Affiliation</b>	<b>Comments</b>
1	Jason Koman	Green Strategies	<b>1a*, 1b</b>
2	Thomas Edward Fairbairn - CEO	FRIPRO Energy, LLC	<b>2a</b>
3	<u>Paul Maxwell</u> - Director, Energy	Navigant	<b>3a, 3b</b>
4	Alexander Drake, Government Affairs Advisor	Wilson Sonsini Goodrich & Rosati	<b>4a*, 4b</b>
5	Bill Johnson	None stated	<b>5a</b>
6	Erik Green	None stated	<b>6a*</b>
7	James J. Greenberger, Exec Director	National Alliance for Advanced Technology Batteries	<b>7a*</b>
8	Nathan Kron, Director	MCbee Strategic Consulting	<b>8a*</b>
9	David C. Sinclair President	Advanced Hydro Solutions, LLC	<b>9a, 9b, 9c</b>
10	Andrew Paterson	None stated	<b>10a*</b>
11	J.L. Susac	Real Energy & Environment Strategies Group	<b>11a</b>
12	Doug Pfeister	Offshore Wind Development Coalition	<b>12a*</b>
13	Alexander Drake	Wilson Sonsini Goodrich & Rosati	<b>13a</b>
14	David Dupre	Zilkha Biomass Energy	<b>14a</b>
15	James Campbell	USDA Rural Business-Cooperative Service	<b>15a*</b>
16	Gaudencio Labrador	Not stated	<b>16a, 16b, 16c, 16d, 16e</b>
17	Chong Hun Kim	JD Products, LLC	<b>17a</b>
18	Gwendolyn Cheney Rivera Project Development Manager	Anaergia Services	<b>18a</b>
19	Carol L. Babb, Managing Dir. - Renewable Energy	Leidos	<b>19a*</b>

20	Olayinka Kolawole	U.S. Department of Energy SunShot Initiative	<b>20a*</b>
21	Maureen Walsh	American Biogas Council	<b>21a*</b>
22	Gregory Smith	OFFER SUN	<b>22a*</b>
23	Rina Singh	Biotechnology Industry Organization	<b>23a*</b>
24	Bill Newman	HC Project Advisors, LLC	<b>24a, 24b, 24c</b>
25	James J. Greenberger, Exec Director	National Alliance for Advanced Technology Batteries	<b>25a*</b>
26	Emily McGlynn	The Earth Partners	<b>26a, 26b, 26c</b>
27	Jacques Beaudry- Losique	Algenol Biofuels	<b>27a</b>
28	Tom Faust	Redwood Renewables	<b>28a, 28b</b>
29	Jesse Peterson	EOS Energy Storage	<b>29a, 29b, 29c</b>
30	Maxine Pierson Executive Vice President	KLEANGAS Green Day Technologies , Inc	<b>30a, 30b, 30c</b>
31	Tom Faust	Redwood Renewables	<b>31a, 31b</b>
32	William Campbell	Seasoned Energy Management	<b>32a*, 32b</b>
33	Wes Bolsen	Cool Planet Energy Systems	<b>33a, 33b, 33c, 33d, 33e</b>
34	Markus E. Beck, Chief Technology Officer	SivaPower	<b>34a, 34b</b>
35	Norman Bishop Senior VP Hydroelectric and Renewable Energy	Knight Piésold and Co.	<b>35a*, 35b, 35c, 35d, 35e</b>
36	Kurt Johnson, President	Colorado Small Hydro Association	<b>36a, 36b</b>
37	Brown Ayres	Ayres Green Energy Group	<b>37a</b>
38	Jessica Brooks Deputy Director	US Industrial Pellet Association	<b>38a</b>
39	Tom Faust	Redwood Renewables	<b>39a, 39b, 39c, 39d</b>
40	Beatriz Ariza   Analyst	Taylor-DeJongh	<b>40a, 40b</b>
41	Nancy LaPlaca	None stated	<b>41a, 41b</b>
42	Mary S. Booth, Director	Partnership for Policy Integrity	<b>42a, 42b, 42c, 42d, 42e, 42f, 42g, 42h, 42i</b>
43	Jeff White CFO	Virent Inc	<b>43a, 43b, 43c, 43d, 43e</b>
44	Adam Klinger	US Environmental Protection Agency (EPA), Office of Solid Waste and Emergency Response	<b>44a, 44b, 44c, 44d</b>

45	Maureen Walsh	American Biogas Council (ABC)	<b>45a, 45b, 45c, 45d, 45e, 45f, 45g</b>
46	Laura Haight Senior Environmental Associate	New York Public Interest Research Group (NYPIRG)	<b>46a, 46b, 46c, 46d, 46e</b>
47	Jeff Manternach CFO	Red Rock Biofuels (RRB) LLC	<b>47a, 47b, 47c, 47d</b>
48	Polly Shaw, VP- Government Affairs	SunEdison	<b>48a, 48b, 48c, 48d, 48e, 48f, 48g</b>
49	Kenny Key Vice President, General Counsel	Interra Energy, Inc.	<b>49a, 49b, 49c</b>
50	Leah Kelly, Attorney	Environmental Integrity Project	<b>50a, 50b, 50c</b>
51	Mike Ewall, Founder & Director	Energy Justice Network	<b>51a, 51b, 51c, 51d, 51e</b>
52	Taite McDonald	Wilson Sonsini Goodrich & Rosati	<b>52a, 52b, 52c, 52d, 52e</b>

\*These comments were deemed purely administrative.

## **1. Fees and Costs**

**a. Commenters: 9, 28, 29, 33, 35, 36, 39, 43, 45, 47, 48, 49, 52**

**b. Comments: 9b, 28a, 29a, 33a & c, 35b, 36a, 39c, 43d, 45e, 47c, 48f, 49b, 49c, 52a**

**One commenter** (McDonald) supported the proposed fee structure for Part I applications under the Renewable Energy and Efficient Energy (REEE) Solicitation. **One commenter** (Faust) suggested that no fees should be collected while **one commenter** (Peterson) wanted to know if start-ups had to pay a Part I fee. **Five Commenters** (Bishop, Johnson, Manternach, Shaw, and Key) felt that the proposed fees were excessive in general, especially for smaller projects, and could discourage applications. **One commenter** (Walsh) suggested that the fees to pay for independent engineering and legal services be captured in the application fee and that the Department of Energy (DOE) justify the need for these services for projects under a certain size.

**One commenter** (Bolsen) suggested Part II fees be paid at closing and that credit subsidy fees be told to applicants early on. **Two commenters** (Sinclair and White) raised concerns that there was a uniform \$500,000 annual portfolio maintenance fee set regardless of the size of the loan guarantee which had a disproportional negative affect on smaller projects.

### **Answer:**

The Department received a number of comments related to fees and other costs incurred by the applicant or borrower. In general, the Department is required to charge and collect fees for loan guarantees in amounts sufficient to cover applicable administrative expenses under Title XVII of the Energy Policy Act of 2005. The fees included in the solicitation reflect that statutory obligation.

A number of comments on this topic encouraged the Department to eliminate application fees entirely or delay the cost of application fees until closing in order to ease the burden on applicants. The Department appreciates these comments and has structured the fees under this solicitation to address this in a number of ways. First, it includes reduced Part II application fees for smaller loan guarantee applications and shifts a greater proportion of the fees to financial close. However, since there are significant costs associated with processing applications and there is no guarantee of financial close, it is important that the Department assess application fees and collect them at the relevant period of application review.

DOE intends to use the appropriated credit subsidy in a manner that is fair and equal for all applicants. The objective manner in which the appropriated credit subsidy will be allocated is described in the solicitation.

In addition, several comments raised concerns that there was a uniform \$500,000 annual portfolio maintenance fee set regardless of the size of the loan guarantee. The annual portfolio maintenance fee is not uniform and is determined by the Department in the loan guarantee documents based upon the requirements of the specific project. The solicitation has been modified to clarify this issue.

## **2. Technical Eligibility**

- Several comments regarded specific technologies:

**Commenters: 2, 11, 17, 27, 30, 31, 34, 43, 44, 45, 47, 52**

**Comments: 2a, 11a, 17a, 27a, 30c, 31a, 34b, 43a-c & e, 44d, 45a-b & g, 47b, 52c**

**One commenter** (Fairbairn) asked if atmospheric electron particle beams would be applicable. A **second commenter** (Susac) asked if smart grid projects qualify. A **third commenter** (Kim) asked if projects that generate electricity from the ocean wave kinetic energy were eligible. A **fourth commenter** (Beaudry-Losique) asked about eligibility of 2<sup>nd</sup> or 3<sup>rd</sup> generation ethanol from non-food sources, making reference to a company that produces a slate of 85% advanced ethanol from algae through a photosynthetic pathway and 15% drop-in fuels. A **fifth commenter** (Pierson) asked if wood and RDF (Refuse Derived Fuel) pellets would be eligible. A **sixth commenter** (Faust) suggested greater emphasis on solar manufacturing. A **seventh commenter** (Beck) suggested a focus on long-term U.S. domestic job creation along the full value chain of clean energy technologies. An **eighth commenter** (White) encouraged DOE to accept projects that dedicate plant production capacity to the production of products that displace equivalent petroleum derived materials. A **ninth commenter** (Klinger) encouraged DOE to consider the development of projects on contaminated lands, landfills, or mining sites. A **tenth commenter** (Walsh) suggested that (a) biogas systems that use anaerobic digestion fit squarely within the goal of the proposed solicitation, (b) eligibility of biogas projects should be expanded to include methane from farms and municipal solid waste to renewable fuels, and (c) was very encouraged to see anaerobic digestions included as one of the eligible technologies. An **eleventh commenter** (Manternach) provided input on the reasons biorefinery applicant borrowers have had difficulty obtaining commercial loans and expressed their belief that the proposed solicitation could provide critical funds. A **twelfth commenter** (McDonald) believes that the solicitation should be extended to identify renewable chemical projects as “Catalytic Projects” (and they provide several reasons).

- Several comments recommended that some waste-to-energy technologies should not be considered:

**Commenters: 5, 41, 42, 46, 50, 51**

**Comments: 5a, 41a-b, 42a-f & i, 46a-e, 50a-c, 51a-d**

**One commenter** (Johnson) recommended that drop-in biofuels or “waste-to-energy” shouldn’t be considered “renewable energy” and should be removed from the solicitation. A **second commenter** (LaPlaca) stated that “burning trash is NOT clean energy”. A **third commenter** (Booth) stated that waste-to-energy should be eliminated from the solicitation, adding that based on their work characterizing greenhouse gas (GHG) and pollutant emissions from the biomass power industry, they are confident that there is not now, nor will there be in the foreseeable future, new scalable technology that burns or gasifies biomass and waste that is deserving of government support as “clean” and climate-friendly. The Department received comment that it should eliminate incentives for combustion-based technologies under the loan guarantee program. Under this

solicitation, there is not an incentive for combustion-based technologies and all eligible technologies are treated equally. Eligible technologies, including both combustion and non-combustion technologies, are defined by statute in Section 1703 of Title XVII of the Energy Policy Act of 2005. A **fourth commenter** (Haight) objects to the inclusion of thermal technologies, such as mass-burn incineration, gasification, pyrolysis, and plasma arc incineration; chemical technologies, such as hydrolysis; and biological/mechanical processes, such as anaerobic digestion for mixed MSW in this solicitation for the purposes of converting MSW to energy as MSW is not a renewable fuel source because most of the materials in the waste stream come from nonrenewable resources, and garbage incineration does not avoid, reduce or sequester anthropogenic emissions of GHGs, in fact it is more polluting than coal on a per megawatt basis. A **fifth commenter** (Kelly) urges the DOE not to treat “municipal solid waste to electricity” projects utilizing combustion as renewable energy sources because these facilities produce significant amounts of air pollution, including toxics. A **sixth commenter** (Ewall) objects to the inclusion of “waste-to-energy,” including trash and biomass incineration, and the burning of toxic landfill gases, ethanol, and other biofuels claiming they are climate and community-damaging technologies and pollute more than burning coal and further claims that these technologies are not new or innovative, as required under the statute.

- There were numerous miscellaneous eligibility questions/comments:

**Commenters: 26, 38**

**Comments: 26a, 26b, 26c, 38a**

**One commenter** (McGlynn) requests recognition of advanced, low-cost biomass supply chains as a critical component in large scale deployment of Drop-In Biofuels, recommends that biomass supplied projects that have important break-through business models that address these barriers (e.g., utilization of marginal, degraded, and underutilized land, harness waste biomass from land restoration projects; ability to sign long-term contracts with landowners) should be prioritized. A **second commenter** (Brooks) asks if the program would be applicable to assist with startup costs of wood pellet production facilities and port infrastructure.

**Answer:**

Two requirements of section 1703 of Title XVII of the Energy Policy Act of 2005, among others, are that the project use new or significantly improved energy-related technologies and to GHG emissions reductions. As stated in section II.A.2 of the solicitation, all projects, independent of eligibility requirements stipulated in section II.A.1, must satisfy these requirements to be deemed eligible for a Loan Guarantee.

The Loan Programs Office (LPO) further clarifies, for the avoidance of doubt, that the listing of illustrative types of eligible projects in section II.B of the solicitation lists technologies that may or may not be eligible, dependent on the project structure, loan application, and subsequent technical review. Inclusion of a particular technology or project in the illustrative list, as several comments requested, does not assure that a project employing such technology is eligible.

Ultimately, the project’s loan application is responsible for demonstrating satisfaction of all eligibility criteria subject to LPO review and assessment.

LPO intends the definition of new or significantly improved technologies in the solicitation to conform to the regulations at 10 Code of Federal Regulations (CFR) Part 609, which provides the following relevant terms:

“*New or Significantly Improved Technology* means a technology concerned with the production, consumption, or transportation of energy and that is not a Commercial Technology, and that has either:

- (1) Only recently been developed, discovered, or learned; or
- (2) Involves or constitutes one or more meaningful and important improvements in productivity or value, in comparison to Commercial Technologies in use in the United States at the time the Term Sheet is issued”; and

“*Commercial Technology* means a technology in general use in the commercial marketplace in the United States at the time the Term Sheet is issued by DOE. A technology is in general use if it has been installed in and is being used in three or more commercial projects in the United States in the same general application as in the proposed project, and has been in operation in each such commercial project for a period of at least five years...” (10 CFR §609.2).

Project applications should demonstrate that a new or significantly improved technology based on these terms is being proposed.

LPO further emphasizes that it will look favorably on Eligible Projects that have a catalytic effect on the commercial deployment of future renewable energy projects and/or efficient energy projects that replicate or extend the innovative feature of the eligible project (Section II.B). The Eligible Projects listed on the sample list of potential types of Eligible Projects in Section II.B of the solicitation have been determined to have such a catalytic effect. In response to several comments requesting inclusion of, or exclusion of, various types of eligible projects, LPO notes that the listed examples are not intended to be, and are not, exclusive or limiting, and that the scope of the solicitation is intended to be broad. In this regard, LPO reiterates that any such project will only be deemed eligible if it satisfies section II.A of the solicitation which includes, among other requirements, satisfaction of all of the requirements of Title XVII of the Energy Policy Act of 2005. LPO will determine the eligibility of each application on a case-by-case basis, subject to the aforementioned requirements.

- Greenhouse Gas Emissions

**Commenter: 51, 52**

**Comment: 51e, 52e**

**One commenter** (Ewall) urges DOE to set objective, science-based standards for what “greenhouse gas reduction” means including a defensible, objective standard with a baseline for what a “reduction” in GHGs must be compared to. They suggest:

- For electricity producing facilities, no technologies with GHG emissions per unit of energy higher than coal or higher than the system average should be eligible.
- For biofuels projects, no fuels that emit more GHGs than petroleum should be permitted.

A **second commenter** (McDonald) seeks clarification to understand how commodity based/biofuels project-specific projects will be scored in terms of GHG reductions, and stated their belief that the current structure of the DOE Loan Guarantee Program, namely the current one-size-fits-all financial and credit review criteria, will make it difficult for the program to finance biofuels projects who must sell in a spot market.

**Answer:**

The solicitation requires that each project “avoids, reduces, or sequesters anthropogenic emission of greenhouse gases” in order to be eligible, consistent with the requirement of Title XVII. To determine whether or not each a project meets this requirement, LPO intends to conduct a Life Cycle Assessment (LCA) of each project’s GHG impact. LCA is a proven and industry-accepted practice of quantifying the full environmental impact of a product or process, and assessing that environmental impact relative to a baseline.

LPO will use a “cradle-to-grave” approach in conducting each LCA, referring to the assessment of emissions pertaining to the extraction of raw materials from the earth, raw material transport, the facility or project, product transportation and distribution, and product end use. LPO has consulted extensively with LCA experts from the National Energy Technology Laboratory’s (NETL) Energy Analysis Division and referred to International Organization for Standardization (ISO) 14040 (“Life cycle assessment – Principles and framework”) and ISO 14044 (“Life cycle assessment – Requirements and guidelines”) standards in developing an approach to assessing the GHG impact of proposed projects. This approach intends to conform to industry accepted standards and methodologies for conducting LCA analyses. The procedures and guidelines set forth in these standards are widely used in industry and the federal government to conduct similar analyses and inform decision-making.

LPO will develop and release a guidance document to define the methodologies, data requirements, and major assumptions for all LCAs to be conducted under the scope of the renewable energy and energy efficiency solicitation. This guidance document is intended to provide a well-defined and transparent set of rules by which applicants can expect to be analyzed. Some of the major assumptions to be addressed are described further herein.

DOE is required to ensure a reasonable prospect of repayment. Nevertheless, we encourage applicants to be creative when proposing solutions to market barriers, such as the difficulty in predicting the price of selling biofuels in spot markets.

- LPO Portfolio Information

**Commenter: 37**

**Comment: 37a**

One commenter (Ayres) asked for information on biofuels plants that have been authorized for financing.

**Answer:**

Information on the portfolio of LPO projects can be found on LPO's web page: <http://energy.gov/lpo/projects>.

**3. Process Timing**

- a. Commenters: 3, 30, 33, 35
- b. Comments: 3a, 3b, 30a, 33d, 35e

Three commenters asked that DOE provide clarity on the schedule and timing for the REEE Solicitation. **The first commenter** (Maxwell) wanted to know the schedule for finalizing the solicitation and the likely due dates for parts I and II. The **second commenter** (Pierson) also wanted to know when the application periods begin. The **third commenter** (Bolsen) commented on the timing of conditional commitment period stating that it should be from six to no longer than 12 months. A **fourth commenter** (Bishop) stated that the industry needs to close loans within a short time (e.g., 3 to 6 months) from the time of application.

**Answer:**

DOE issued the final solicitation on July 3, 2014. DOE scheduled multiple rounds of application due dates that are set forth in the final solicitation. In regards to closing within a short time, it is important to understand that the due diligence of energy projects using an innovative technology takes time. While LPO appreciates the need for expediency, the Secretary of Energy cannot offer a loan guarantee until all material facts have been confirmed, and it is not possible to commit to a conditional commitment period of less than 12 months due to the complexity of some of the applications received. Timely review of projects is important for DOE. All projects must go through the same due diligence and negotiation process; however, applicants that have well developed projects will be able to move through the process faster than those applicants who do not have as well developed projects.

**4. Process Guidance**

- a. Commenters: 1, 14, 16, 24, 30, 32, 33, 35, 36, 40, 42, 44, 48, 52
- b. Comments: 1b, 14a, 16a, 16b, 16c, 16d, 16e, 24a, 24b, 24c, 30b, 32b, 33e, 35d, 36b, 40a, 40b, 42h, 44b, 48b, 48e, 48g, 52b, 52d

**One commenter** (Koman) wanted to know if there was a maximum limit to the loan guarantee. **One commenter** (Dupre) wanted to know how to calculate the application fee, facility fee, maintenance fee and credit subsidy fee. **One commenter** (Labrador) felt that the government has no right to reject and must accept and be obligated to finance all applications submitted for unique technologies.

**One commenter** (Bolsen) stated that the structure of biofuel loans needs to be different than wind or solar projects due to the nature of not having long-term fixed price off-take agreements and suggested using feedstock and off-take contracts based on indices or formulas. A **second commenter** (Shaw) encouraged LPO to provide more explanation regarding what off-take

requirements must be final at the time of application, and to support applications that provide line of sight to off-take contracts.

**One commenter** (Shaw) offered comments on the allocation of the remaining funds that are used to pay credit subsidy costs.

**One commenter** (Newman) wanted to know if Section 1703 loans could be financed through the Federal Financing Bank, and if so, what is the current interest rate on such loans guaranteed by the federal government. This commenter also wanted to know the website that posts interest rate on loans on a daily basis.

**One commenter** (Booth) expressed a concern that DOE's loan process keeps information on hazardous air pollution secret from the public citing the use of redacted application materials obtained through FOIA as evidence.

**One commenter** (Bishop) stated that there did not appear to be any fast track provisions included in the draft solicitation to give prospective applicants some assurance of success.

**One commenter** (K. Johnson) suggested that DOE look at the Colorado Water Conservation Board providing 2% loan funds as a precedent for a national program.

**One commenter** (Shaw) encouraged LPO to be supportive of 5-year full stop standstill period for payment and non-payment defaults with extended notice and cures.

**One commenter** (McDonald) expressed concern as to what level of weighting the various policy factors in Section IV. G. will have for a project being reviewed, and felt it necessary that potential applicants should have a greater understanding of how projects will be reviewed given timeline-to-market and overall technical readiness. They suggested that further detail regarding the level of importance for each of the policy factors and how applicants will be reviewed is needed to adequately understand the application process.

**Two commenters** (Labrador and McDonald) had a concern that co-lending was either a requirement or if it becomes the pathway for the DOE Loan Guarantee Program that it will undermine the very basis for the Program itself and severely reduce the number of eligible applicants. The second commenter believes that co-lending should only be provided as a potential avenue for applicants to pursue, rather than a requirement or expectation of an applicant, and should not negatively affect scoring. Understanding what expectation DOE Loan Guarantee Program may have for co-lending, particularly for large projects, is of high importance.

**One commenter** (Pierson) asked how DOE will select participating lenders.

**One commenter** (W. Campbell) asked whether DOE encourages other federal agencies to be involved in loan guarantee projects.

**One commenter** (Ariza) asked if DOE will be handling applications in-house, and if not, if DOE is planning on putting out a bid for the review of loan guarantee applications to the list of previous loan guarantee financial advisors?

**One commenter** (Klinger) suggested that another policy factor should be included under Section IV.G. that could read “Assess the extent to which the identified project site or sites involves the use of contaminated lands, landfills, or mine sites with greater weight being given to sites whose locations are on such contaminated lands, landfills, and mine sites.”

**Answer:**

DOE does not have a statutory or regulatory dollar limit of loan authority for a single project. The amount of a loan guarantee is only limited by the loan authority stated in the solicitation.

A description of the fees, costs, and expenses payable by the applicant is outlined in the solicitation. The Credit Subsidy cost is calculated by DOE in consultation with the Office of Management and Budget (OMB) and is unique to each project. It is primarily influenced by two key variables: 1) Probability of default; and 2) The potential “recovery” after default.

Title XVII has several eligibility requirements, including but not limited to the requirement that only projects as to which DOE has concluded that there is a reasonable prospect of repayment be financed. Thus, DOE does not have the authority to accept every applicant submitted for a unique technology.

Section 1703 loans can be financed through the Federal Financing Bank. The interest rate on any Guaranteed Obligation, must be appropriate, taking into account the range of interest rates prevailing in the private sector for similar obligations of comparable risk (from 10 CFR §609.1(12)), as determined by DOE, after consultation with the Treasury Department. Interest rates for DOE guaranteed loans are not posted online.

DOE is creating an application portal for submission of applications. The application portal has been designed to be user friendly and will allow the user to work on its application, save its work, revise its work, and proofread its work prior to submission. DOE expects that the information requested in the initial section of Part I of the application will be entered directly into the text fields provided in the application portal. DOE expects that the information requested for all other sections of Part I of the application and the information requested for all sections of Part II of the application will be provided in Adobe PDF or Microsoft Excel documents uploaded through the application portal. DOE has professionals from multiple disciplines reviewing the application portal, with the goal of providing clear and detailed instructions regarding how to use the application portal.

Information submitted by potential borrowers in their application for a loan or loan guarantee generally is not disclosed to the public, except pursuant to a FOIA request, due to the extensive amount of business confidential information contained therein. Whenever a document submitted to DOE contains information which may be exempt from public disclosure, it will be handled in accordance with the procedures in 10 CFR §1004.11. Following completion of the National Environmental Policy Act (NEPA) review process for a proposed project, the NEPA document prepared, which includes information on emissions of all pollutants, is made public through posting on LPO’s website (<http://energy.gov/lpo/about-us/environmental-compliance>). No attempt is made by DOE to keep any environmentally relevant information secret.

Timely review of projects is important for DOE. All projects must go through the same due diligence and negotiation process; however, applicants that have well developed projects will be

able to move through the process faster than those applicants who do not have as well developed projects.

In regards to comments requesting the structuring of loans for biofuels differently from other types of renewables and asking DOE to provide more explanation regarding what offtake requirements must be final at the time of application; LPO is required to ensure a reasonable prospect of repayment. As part of our assessment of this criterion, LPO analyzes a project's feedstock arrangements and its ability to generate sufficient cash flow to service a borrower's debt obligations over the life of a loan guarantee. As part of our assessment of the criterion of ensuring a reasonable prospect of repayment, LPO analyzes a project's feedstock arrangements and its ability to generate sufficient cash flow to service a borrower's debt obligations over the life of a loan guarantee. A project is not required to have long term, fixed price, take-or-pay contracts but it is required to provide a financing structure from which LPO can conclude that there is a reasonable prospect of repayment. Per the solicitation, applicants must demonstrate the ability to predictably generate sufficient cash flow to service the borrower's debt obligations over the life of the loan guarantee. Predictability in terms of volumes and pricing is important for both inputs and output. As with any lender, the more certainty there is about the likely cash flows for a project, the easier it is for a lender to conduct due diligence on a project.

There are no "fast-track" provisions contemplated for this solicitation. All applications follow the same review process outlined in the solicitation.

DOE intends to use the appropriated subsidy in a manner that is fair and equitable for all applicants. The objective manner in which the appropriated credit subsidy will be allocated is described in the solicitation.

In regards to the request for LPO to support a 5-year full stop standstill period for payment and non-payment defaults, subject to the requirements of Title XVII, DOE negotiates contractual remedies on a transaction by transaction basis and will consider appropriate contractual remedies, including remedies proposed by the Borrower, for any particular deal, based on all of the facts and circumstances known at the time documents are negotiated.

The Policy Factors in Section IV.G. are not individually weighted but will be considered as a whole by DOE during review of applications received.

Co-lending, is not a requirement. DOE will look favorably upon co-lending.

Lenders are selected by the applicant but must meet LPO requirements for an "eligible lender" as defined in 10 CFR Part 609.

LPO does not encourage other federal agencies to be involved in projects that apply to the program. LPO will, however, coordinate certain activities as necessary with other federal agencies.

DOE will be handling loan guarantee applications in-house.

## **5. Loan Authority**

**a. Commenters: 18, 29**

**b. Comments: 18a, 29b**

**One commenter** (Rivera) requested to know what the maximum percent of total capital can be guaranteed under the solicitation. A **second commenter** (Peterson) wanted to know if there was a minimum project size required to be considered eligible.

**Answer:**

DOE does not have a statutory or regulatory dollar limit of loan authority for a single project. However, as stated in Section IV.C of the solicitation, “[t]he use of partial guarantees and/or co-lenders will be viewed favorably by DOE.” There is no minimum project size requirement under the REEE Solicitation.

**6. The Role of OMB**

**a. Commenters: 4**

**b. Comments: 4b**

**One commenter** (Drake) noted the importance of OMB in setting credit subsidy costs and providing overall evaluation of a project and suggested that any guidance on OMB’s perspective would be of interest to potential applicants.

**Answer:**

DOE acknowledges the importance of OMB in setting credit subsidy costs, and has incorporated OMB review and approval of credit subsidy costs into the regulations controlling loan guarantee agreements (see 10 CFR §609.9).

**7. Energy Security and Independence**

**a. Commenters: 34**

**b. Comments: 34a**

**One commenter** (Beck) noted that a key concern to the US economy should be energy security and independence in addition to reducing carbon dioxide (CO<sub>2</sub>) emissions.

**Answer:**

The eligibility criteria for loan guarantees issued under this solicitation are authorized by Section 1703 of Title XVII of the Energy Policy Act of 2005. The statute defines an eligible project as one that meets the relevant technology category, is located in the United States, avoids, reduces, or sequesters air pollutants or anthropogenic emissions of GHGs, and employs new or significantly improved technologies as compared to the commercial technologies employed in the United States at the time the guarantee is issued.

**8. Federal Support**

**a. Commenters: 47**

**b. Comments: 47a**

**One commenter** (Manternach) expressed the concern that the proposed restriction in the draft solicitation regarding Prior Federal Funding is overly restrictive and will seemingly block his organization, and other recipients of earlier Phase 1 funding awards under the “Advanced Drop-

In Bio Fuels Production Project,” Solicitation Number: FOA-12-15-PKM, pursuant to Title III of the Defense Production Act of 1950, as amended (“DPA Drop-in Biofuels Funding Program”), from applying into the DOE Section 1703 Loan Guarantee Program under this draft solicitation, if issued in final form.

**Answer:**

The limitation regarding DOE's inability to issue loan guarantees using funds appropriated under the 2009 Appropriations Act and the 2011 Appropriations Act for projects that will benefit directly or indirectly from certain other forms of federal support is contained in the 2009 Appropriations Act and the 2011 Appropriations Act. DOE is not authorized to use funds appropriated pursuant to those Acts to issue loan guarantees for projects that will benefit directly or indirectly from certain other forms of federal support.

**9. Prior Experience**

- a. Commenters: 45**
- b. Comments: 45c**

**One commenter** (Walsh) requested DOE to reconsider the requirement that the applicant has operated and maintained a similar project for two years prior to application.

**Answer:**

Applicants that are not able to include examples of two projects in their description of current and previous experience in the Renewable Energy Projects or Efficient Energy Projects sector should provide a detailed description of the facts that they believe are sufficient to demonstrate to DOE that they have the necessary expertise. DOE will determine, in its sole and final judgment, whether the experience described shows sufficient expertise.

**10. Davis Bacon Act**

- a. Commenters: 47**
- b. Comments: 47d**

**One commenter** (Manternach) felt that increased labor costs due to the Davis-Bacon Act (DBA) are prohibitive and that DOE should either abolish the DBA requirements in the 1703 Program, scale the DBA requirements depending on the size of the project, and/or apply the requirements only to portions of the project using federal financing for construction.

**Answer:**

Section 1702(k) of Title XVII (section 16512(k) of volume 42 of the United States Code), requires that 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 Title XVII 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, the Davis-Bacon Act. DOE is required to comply with section 1702(k) of Title XVII and does not have the authority to abolish this requirement, scale this requirement, or apply the requirement only to portions of the project using federal financing for construction.

## **11. Statutory Requirements**

- a. Commenters: 42**
- b. Comments: 42g**

**One commenter** (Booth) noted that the mandated emission levels under DOE's loan program allow too much pollution.

### **Answer:**

The Department received a comment regarding concerns that emissions requirements in Section 1703(d) of the Energy Policy Act of 2005 should be more stringent. The statute governs the loan guarantee authority issued under this solicitation and cannot be modified by the solicitation itself.

## **12. Distributed Energy**

- a. Commenters: 48**
- b. Comments: 48c, 48d**

**One commenter** (Shaw) encouraged LPO to be supportive of applications that incorporate a portfolio of bundled distributed generation sites, as long as the application is in accordance with the five technology areas outlined in the solicitation. The same commenter also noted that the application fees and timeline make the process particularly difficult for small, distributed projects and supported a streamlined process for distributed projects.

### **Answer:**

Generally, a project is restricted to one location within the United States. However, DOE may consider an application for a project using a particular technology that is situated in two or more locations. For example, if the activities in two separate locations are integral components of a unitary plan and important to the viability of the project, DOE may support the project. An applicant proposing more than one location for a project must justify its approach in a reasonable manner.

Timely review of all projects is important for DOE. All projects must go through the same due diligence process; there is no provision for a streamlined process for distributed projects under this solicitation. All applications will be required to follow the same application and review process outlined in the solicitation. DOE has observed that applicants with well-developed projects move through the process faster than those applicants who do not have as well-developed projects.

## **13. Contaminated Lands**

- a. Commenters: 44**
- b. Comments: 44a**

**One Commenter** (Klinger) suggested that DOE should encourage the development of projects on contaminated lands, landfills, or mining sites. This inclusion would enhance and coordinate the goals of both DOE and the Environmental Protection Agency (EPA).

**Answer:**

The solicitation relates to projects that “employ innovative and renewable or efficient energy technologies that avoid, reduce, or sequester anthropogenic emissions of greenhouse gases” regardless of where in the United States the project is located. Nothing precludes an applicant from locating its project on contaminated or brownfield lands so long as the necessary safeguards are factored into their financial projections and business model, and the applicant can demonstrate compliance with all applicable laws, including environmental laws and health and safety laws.

**14. Environmental Review**

- a. Commenters: 44**
- b. Comments: 44c**

**One commenter** (Klinger) suggested that the solicitation be modified to highlight existing DOE procedures and mechanisms under the National Environmental Policy Act (NEPA) that may provide incentives to applicants to locate renewable energy projects on contaminated lands, landfills, or mine sites.

**Answer:**

Attachment B to the solicitation is included to give applicants the necessary guidance on what information to provide in Part II of their application for the purposes of determining the level of environmental review required. Attachment B does not provide guidance on where to site proposed project facilities. When an applicant has been invited to submit a Part II application, the site for project activities should already be identified. Nothing precludes an applicant from selecting a brownfield site subsequent to Part II submittal, but its choice of sites is a business decision that will have a bearing on the project’s technical feasibility and financial viability.

**15. General Support**

- a. Commenters: 9, 13, 48, 49**
- b. Comments: 9a, 13a, 48a, 49a**

**Four commenters** (Sinclair, Drake, Shaw, and Key) expressed that they were pleased that DOE was supporting renewable energy and energy efficiency.

**Answer:**

The Department received a number of comments supporting the issuance of the REEE Solicitation and one comment opposing the issuance. DOE considered these comments.

**16. General Opposition.**

- a. Commenters: 39**

**b. Comments: 39a**

**One commenter** (Faust) expressed displeasure with the draft solicitation as it seemed to be a repeat of the 2009 renewable energy solicitation.

**Answer:**

The solicitation is not intended to be, and is not, a repeat of the 2009 renewable energy solicitation.

**17. Small Business Related**

**a. Commenters: 9, 16, 28, 29, 31, 33, 35, 39, 45**

**b. Comments: 9c, 16c, 28b, 29c, 31b, 33b, 35c, 39b, 39d, 45d**

**Six commenters** (Sinclair, Peterson, Faust, Bolsen, Bishop, and Walsh) expressed their belief that the fees were too high for small businesses and urged DOE to reduce or eliminate fees for small businesses or to provide some flexibility in the fees structure. **One Commenter** (Faust) requested that DOE have a set aside for companies with under 200 employees. **One Commenter** (Labrador) requested the removal of the co-funding requirement for small or start-up businesses.

**Answer:**

The Department received a number of comments regarding issues related to small businesses. These included concerns regarding the cost and types of fees, the requirement to pay the credit subsidy cost at the issuance of the loan guarantee, the absence of dedicated funds for small businesses, and other issues.

Under Title XVII of the Energy Policy Act of 2005, the Department is required to charge and collect fees for loan guarantees in amounts sufficient to cover applicable administrative expenses. Since the costs of administering the Section 1703 loan guarantee program apply equally whether the applicant is a small business or not, the Department is unable to waive fees for small businesses. However, the Department chose to lower fees for applicants requesting smaller loans under this solicitation in an effort to respond to concerns from smaller projects regarding the relative cost of the fees to the overall level of project debt.