DOE Offers Financing for US EV and Energy Infrastructure

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U.S. Department of Energy (DOE) loan guarantee and direct lending facilities may be attractive financing options for borrowers who are developing electric vehicle (EV) infrastructure and innovative energy-related technologies and projects, such as offshore wind, transmission, hydrogen, carbon capture and critical minerals. During 2009-2011, the DOE was a go-to lender for the financing of some of the largest projects in the U.S. renewable energy sector, facilitating more than $35 billion in loans, and was widely credited with creating the commercial financing market for those assets.

DOE programs that currently offer financing for EV infrastructure and innovative energy-related technologies and projects include:

- **Advanced Technology Vehicles Manufacturing (ATVM) Loan Program.** $17.7 billion in direct loan authority;
- **Title 17 Innovative Energy (Section 1703) Loan Guarantee Program.** Nearly $24 billion in loan guarantee authority: $8.5 billion for advanced fossil energy, $10.9 billion for advanced nuclear energy and $4.5 billion for renewable energy and efficient energy; and
- **Additional financing authority.** $2 billion under the **Tribal Energy (Partial) Loan Guarantee Program** and $3.25 billion under the **Western Area Power Administration Transmission Infrastructure Program.**

Both the Trump and Biden administrations have supported DOE programs as a means of promoting advanced and innovative technologies.

While the objectives of these programs vary, they have many common elements and some overlap. Certain projects and technologies, such as hydrogen and critical minerals, may be eligible under both the ATVM Loan Program and the Title 17 Innovative Energy Loan Guarantee Program, both of which are outlined below.

ATVM Loan Program

Eligibility. Projects must relate to the manufacture of eligible advanced technology vehicles (ATVs) (*i.e.*, light-duty vehicles that meet or exceed a 25% improvement in fuel efficiency beyond a 2005 model year baseline of comparable vehicles and/or ultra-efficient vehicles that achieve a fuel efficiency of 75 miles per gallon or equivalent using alternative fuels) or components designed for ATVs and installed for the purpose of meeting performance requirements of ATVs. The projects must be located in the U.S., although foreign ownership is allowed. Eligible projects include new facilities and expanded or modernized existing facilities, as well as engineering integration performed in the U.S. There must also be a reasonable prospect of repayment.

Leverage. Up to 80% of eligible costs.

Tenor. The lesser of 25 years or the useful life of a project.

Interest rate. The applicable U.S. Treasury rate for the tenor of the loan, with no credit spread.

DOE fees. No application fee. The borrower must pay the cost of the DOE's advisers and, at closing, a fee of 10 basis points (bps) on the principal amount of the loan. The credit subsidy costs of the loan are satisfied out of congressionally appropriated funds.

Title 17 Innovative Energy Loan Guarantee Program

Eligibility. Projects must:

- deploy new or significantly improved technologies compared to commercial technologies in service in the U.S.;
- avoid, reduce or sequester greenhouse gas emissions or air pollutants;
- be located in the U.S. or its territories (foreign ownership or sponsorship is allowed); and
- have a reasonable prospect of repayment.

Leverage. Up to 80% of eligible costs.

Tenor. The lesser of 30 years or 90% of the useful life of a project.

Fixed interest rate. 100% DOE-guaranteed loans are issued by the Federal Financing Bank (FFB), with an interest rate equal to the applicable U.S. Treasury rate for the loan tenor, plus a 37.5 bps FFB liquidity spread (standard across all Title 17 loans), in addition to the applicable credit-based interest rate spread, ranging from 37.5 to 200 bps (provided that a nationally recognized third-party credit rating agency has assigned the project a rating in the range of AAA to B-).

DOE fees. An application fee of $150,000-$400,000, depending on the loan size, an upfront facility fee calculated on the basis of the loan size and out-of-pocket expenses (such as counsel and consultants) payable by the borrower, but only if the loan achieves financial closing. At closing, the borrower must also pay the credit subsidy cost (or fee) to the extent congressionally appropriated funds are unavailable (see below). After loan closing, the borrower also pays an annual maintenance fee as the DOE Loan Programs Office (LPO) monitors the project through to final repayment.

Provisions Common to the DOE Financing Programs

Loan collateral and priority. Typically, loans are secured by a first-priority lien (at the time the loan is made) on assets of the borrower, though collateral can be shared with other senior lenders.

Applicable legal requirements. Loans and loan guarantees must comply with key laws, including:

- the National Environmental Policy Act, requiring the DOE to consider the environmental effects of proposed actions (possibly through either a categorical exclusion, an environmental assessment or an environmental impact statement);
- the Davis-Bacon Act, which requires the payment of at least prevailing wages and mandates certain recordkeeping; and
- the Cargo Preference Act of 1954, establishing certain requirements for using U.S.-flagged vessels.

Application Process

The application process consists of a pre-application consultation, the formal application process (two-part in the case of the Title 17 Innovative Energy Loan Guarantee Program) and due diligence and term sheet negotiation. If the project receives a conditional commitment, the parties proceed to definitive documentation and closing.

Key Program Issues

Prospect of repayment. To date, the loan and loan guarantee programs have not provided much guidance on what satisfies the "reasonable prospect of repayment" requirement. Many or most of the current loan guarantee projects have long-term offtake agreements with creditworthy parties extending for at least the term of the loan. The Senate-passed Infrastructure Investment and Jobs Act sets out a number of factors for evaluation in determining whether the "reasonable prospect of repayment" criterion is satisfied.

Credit subsidy cost. Federal law requires agencies to estimate the government's cost of extending or guaranteeing credit. Known as the "credit subsidy cost," this equals the net present value of estimated cash flows from the government minus estimated cash flows to the government over the life of the loan, excluding administrative costs. The DOE calculates the credit subsidy cost prior to loan closing using a model provided by the Office of Management and Budget.

Congress has appropriated funds to cover the credit subsidy cost under the ATVM Loan Program and other programs, but only a relatively small amount has been appropriated for the Title 17 Innovative Energy Loan Guarantee Program. Absent congressionally appropriated funds, borrowers under the Title 17 Innovative Energy Loan Guarantee Program are required to pay the non-refundable credit subsidy cost (or fee) prior to or at the time of closing, which poses a challenge, because the final cost of the DOE financing under the program is not fully known until well into the loan process.

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The DOE LPO is authorized to include a risk-based charge on Title 17 Innovative Energy Loan Guarantees, together with the principal and interest on the guaranteed loan, in order to make the DOE's costs consistent with the commercial markets and other federal credit programs. The risk-based charge may reduce the credit subsidy cost by increasing the government's expected inflows, which are considered when calculating the credit subsidy fee amount payable by the borrower. This can reduce the uncertainty surrounding the size of the credit subsidy fee, and thus, the uncertainty about the borrower's total costs under the Title 17 Innovative Energy Loan Guarantee Program.

More Program Changes Are Under Consideration

As noted above, the Senate-passed Infrastructure Investment and Jobs Act proposes to make significant changes in the DOE loan and loan guarantee programs. As Congress considers this infrastructure bill and even larger proposed legislative efforts, other important changes to the ATVM Loan Program, the Title 17 Innovative Energy Loan Guarantee Program and other programs may result.

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