

**U.S. Department of Energy
Supporting Statement
Loan Programs Office
OMB Control Number: 1910-5134
10 CFR Part 690**

“Loan Guarantees for Projects That Employ Innovative Technologies”

This supporting statement provides additional information regarding the Department of Energy (DOE) request for revision of a previously approved information collection by the Loan Programs Office (LPO).

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

Approval of this Information Collection Request (ICR) is being requested to effectively manage LPO funds and ensure the Department meets public transparency and accountability standards.

Title XVII of the Energy Policy Act of 2005 (EPAAct 2005) (42 U.S.C. 16511-16514) authorizes the Secretary of Energy, after consultation with the Secretary of the Treasury, to make loan guarantees for specified projects. This information is needed to obtain from applicants the information that needs to be included in their applications for a loan guarantee.

This information collection is also necessitated by requirements and requests for timely information on program activities to the Office of Management and Budget (OMB), Congress and the public.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information collected will be and has been used by DOE to plan, manage, and evaluate its loan guarantee program. The information will be and has been used to answer congressional, budget and public inquiries. Additionally, the collection helps the LPO to manage its funds and make projections as to risks.

The information collected will be and has been used to determine applicant eligibility for loan guarantees, to evaluate applications received, and to protect the government’s financial interests.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic

submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

LPO requires that applications be submitted in electronic format through LPO's electronic application portal, which can be found at <http://apps.loanprograms.energy.gov>. Information that was formerly collected using an agency form (DOE Form No. 540.2) will be collected by text fields. Other information will be collected by uploading it electronically through the application portal. This means of collecting information was adopted to make submitting, retrieving, and using the information easier and cheaper, reducing the hour burden and the cost burden.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

DOE does not collect similar information for any projects to which it provides financial support. Companies that sponsor projects that may be eligible for loan guarantees will develop similar information as they seek debt financing and equity investment. These companies will be able to use much of this information in preparing Applications, thus reducing the burden on respondents.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

Most eligible projects will be larger than those that small businesses usually undertake. Nevertheless, LPO has taken steps to increase the attractiveness of the program to smaller businesses. The process of requiring a two-part application is designed, in part, to enable LPO to screen interested projects and provide an early indication of projects' eligibility for a loan guarantee under this program. LPO substantially reduced the Part I fee from the level of fee previously required (in the hundreds of thousands of dollars) to \$50,000 to make it more economical for smaller businesses to apply. LPO will use Part I of the application to screen for project eligibility and readiness to proceed, before inviting an applicant to submit Part II of the application. Thus, by allowing LPO to engage in an initial review of project proposals, the two-part application may reduce the paperwork burden for small and larger businesses alike, or at least lessen the burden of a subsequent full application. Additionally, LPO substantially reduced the Part II fee from the level of fee previously required (\$925,000) to a variable fee based on the dollar amount of the financing. Applicants requesting an amount that does not exceed \$150,000,000 as the principal amount of the Guaranteed Obligation pay \$100,000. Applicants requesting an amount that exceeds \$150,000,000 as the principal amount of the Guaranteed Obligation pay \$350,000. In order to allow newer entities, or even start-ups, to participate in the program, LPO allows applicants that are not able to provide a description of two full years of their experience in projects of similar scope to provide evidence of their expertise in an alternative description.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If the information is not collected, DOE will be unable to implement Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511-16514).

Additionally, if the information is not collected, DOE will be unable to effectively respond to congressional, budget and general public inquiries about LPO program activity.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. (a) requiring respondents to report information to the agency more often than quarterly; (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies of any document; (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to product valid and reliable results that can be generalized to the universe of study; (f) requiring the use of statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in stature of regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

There are no special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. The collection is consistent with OMB guidelines.

LPO notes that because the projects seeking loan guarantees become eligible only if they employ new or innovative technologies, the applicants may submit proprietary trade secrets from time to time in order to justify the extension of a loan guarantee by DOE. LPO can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data.

frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

Notice of Proposed Rulemaking published in the Federal Register on October 3, 2016, Volume 81, Number 191, Page 67924.

Public Comments on the NOPR and DOE's Responses

A. Competition with Potential Future Applications

Public comment: One commenter requests clarification and revision of the proposed changes reflected in Section 609.5(a) to the competitive process for evaluating completed Applications which would require completed Applications to be evaluated against potential projects that may become the subject of an Application.

The commenter is concerned that the proposed change will delay the Application process and put otherwise qualified projects in "limbo" while the DOE awaits the filing of Applications that may be filed on projects that may be more qualified than Applications that the DOE then has available for review with the possible effect of a longer and more opaque process, fewer projects that would be able to withstand the additional timing delays, and greater market uncertainty about the DOE loan guarantee program.

DOE Response: DOE notes that applications are reviewed against all other applications filed within the same round. For that reason DOE does not believe the proposed change would delay the application process or put otherwise qualified projects in "limbo." Nevertheless, DOE agrees that the proposed change could cause a more opaque process and market uncertainty. The proposal to consider potential future Applications is inconsistent with competing filed Applications against all other Applications filed within the same round. For those reasons DOE has decided to withdraw the proposed change to the competitive process which would allow consideration of potential projects during the competition.

B. Risk-Based Charge

Public comments: Both commenters requested clarification regarding the "Risk-based-charge" which they believe is duplicative of other existing fees and urges the DOE not to impose this additional fee on recipients of the DOE's Title XVII loan guarantees. One commenter pointed out that the Title XVII loan guarantee program currently charges two fees to compensate DOE for the credit risk it assumes. First, it charges a "Credit Based Interest Rate Spread" for Title XVII based on the credit rating of the Applicant's project. Second, DOE charges a Credit Subsidy Fee to directly compensate the United

States for the specific credit risks of the Applicant's project. The commenter requested clarification that the reference to a "Risk-based charge" means the Credit Based Interest Rate Spread for Title XVII and is not intending to impose a new fee and to increase the interest rate spreads beyond the current spreads.

DOE Response: Section 1702(e) of Title XVII imposes a statutory obligation on the Secretary to establish interest rates that "[do] 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." The proposal expressly authorizes DOE to impose a Risk-Based Charge which, taking into account all interest and interest-related costs, is intended to put DOE in line with the commercial markets and other federal credit programs. Thus, the Risk-Based Charge will be used only to the extent the aggregate of other interest-related charges do not sufficiently reflect creditworthiness or specific risks arising from individual transactions. The Risk-Based Charge, while distinct from the fee for the Credit Subsidy Cost, may incidentally affect that fee by increasing expected inflows to the United States that are considered in calculating the amount of the fee. In that respect, taking into account the time value of money, the Risk-Based Charge can be viewed as affecting the time of payment rather than the amount of payment based on the creditworthiness of the borrower and the expectations regarding probability of repayment. After factoring in the Risk-Based Charge, DOE does not expect the present value of the interest amounts expected to be paid by the borrower as the cost of the loan should to be significantly different than the interest amounts that would be paid without the Risk-Based Charge.

C. Section 609.8(c)(2) and section 609.8(c)(3)

Public comment: One commenter requested clarification of what it views as an apparent inconsistency between Section 609.8 (c)(2) and Section 609.8 (c)(3) of the proposed rule because Section 609.8 (c)(2) appears to require expressly that the guaranteed and nonguaranteed portions of a loan partially guaranteed by DOE be repaid pro rata, and on the same amortization schedule. Section 609.8 (c)(3) appears to the commenter to provide for exceptions to this requirement under certain conditions.

Further, the commenter requested that DOE modify Section 609.8 to allow for commercial co-lenders to provide mini-perm structured loan facilities which would have the same amortization schedule as the guaranteed portion of the facility but with a shorter loan tenor and a related refinancing requirement at maturity of the mini-perm facility. DOE Response: DOE does not view Section 609.8(c)(2) and section 609.8(c)(3) as inconsistent. Section 609.8(c)(2) deals with the guaranteed and nonguaranteed portions of loans partially guaranteed by DOE. Section 609.8(c)(3) deals with financing or credit arrangements that are not guaranteed by DOE.

The commenter's request for a shorter loan tenor in connection with certain commercial loan products is similar to a comment and request DOE received and responded to in 2009. See Public Comments on the 2009 NOPR and DOE's Responses, 74 Fed Reg. 63,546 (Dec 4, 2009), I.I.C. Shorter Amortization of Non-Guaranteed Obligations. In

2009, DOE made adjustments, retained by the proposed rulemaking and subject to the same conditions set forth in the current rule, to permit shorter or faster amortization schedules for project-related financing or other credit arrangements not guaranteed by DOE.

DOE has carefully reviewed the issue and has determined that the response in 2009 was appropriate to address the concern while at the same time protecting the interests of the United States. For that reason DOE has determined that no change in the existing language of the final rule is warranted.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

No payment or gift to respondents is being proposed under this information collection.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The information and materials DOE requirements from an applicant for the applicant to demonstrate compliance with the information collection requirements of 10 CFR Part 609 do not include and request for personally identifiable information.

This information collection provides the following assurance of confidentiality to respondents, under the Freedom of Information Act (5 U.S.C. 552):

“Patentable ideas, trade secrets, proprietary and confidential commercial or financial information, disclosure of which may harm the Applicant, should be included in an Application only to the extent that such information is necessary to convey an understanding of the proposed project or facility. The use and disclosure of such data may be restricted, provided the Applicant specifically identifies and marks such data in accordance with 10 CFR 600.15 described below:

1. Upload the following legend on a separate page in response to Section B of Part I and/or Section A of Part II of the Application, respectively (be sure to specify the section number(s) from the Application that contain(s) such data): “Applicant hereby certifies that Section(s) [___] of this Application may contain trade secrets or commercial or financial information that is privileged or confidential and is exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance the loan guarantee agreement, if any, entered in response to this Application. If this Applicant is issued a loan guarantee under Title XVII of the Energy Policy Act of 2005, as amended, as a result of, or in connection with, the submission of this Application, DOE shall have the right to use or disclose the data contained herein, other than such data that have been properly declared in the loan guarantee agreement to be trade secrets or commercial or financial information that is privileged or confidential and is exempt from public disclosure.”

2. Include the following legend on the first or cover page of each document or electronic file submitted that contains such data (be sure to specify the page numbers from such document or electronic file that contains such data): “Notice of Restriction on Disclosure and Use of Data Pages [____] of this document may contain trade secrets or commercial or financial information that is privileged or confidential and is exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with a financial assistance or loan agreement between the submitter and the Government. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.”

3. Include the following legend on each page containing trade secrets or commercial or financial information that is privileged or confidential: “May contain trade secrets or commercial or financial information that is privileged or confidential and exempt from public disclosure.”

4. In addition, each line or paragraph containing trade secrets or commercial or financial information that is privileged or confidential must be marked with brackets or other clear identification, such as highlighting.”

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No questions of a personally sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private are included in this information collection. The information collected is of a programmatic, technical, and financial nature. As a condition of the receipt of program assistance, respondents must provide total disclosure of income data, debts, and assets, and history of business dealings that may be considered sensitive. Respondents interviewed indicated no problems or concerns with providing the information requested by this collection. They understand the necessity due to the nature of the assistance and realize this is standard practice when requesting credit assistance. Disclosure is governed by the Privacy Act and the Freedom of Information Act.

12. Provide estimates of the hour burden of the collection of information.

The responses that are required in this information collection include quite complex technical and financial information, including information regarding innovative technologies and financial models. Accordingly, the estimate of hour burden of the information collection is as follows:

Total number of unduplicated respondents: 100

Reports filed per person: 1

Total annual responses: 100
Total annual burden hours: 13,000 hours

Average Burden

Per Collection: 130 hours
Per Applicant: 130 hours

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

The estimate of the total annual cost burden for this collection is broken out into two parts including: (1) the cost associated with the hourly burden of the information collection and (2) the start-up cost associated with the application fees.

Cost Estimate Associated with Hourly Burden

The estimate of cost for the hour burden of the information collection is \$25,000 per applicant. Assuming 100 applicants per year, the total information collection burden is estimated to be \$25,000,000. A breakout estimating the various components of this estimated cost (e.g. collecting data, compiling information, reviewing, submitting, legal review), which takes into account the assumed salaries of the positions that would be required to prepare the application (e.g. clerical, engineer, legal) is:

ESTIMATED COST BURDEN TO RESPONDENTS			
FUNCTION	RATE	HOURS	TOTAL COST
Collection Information	\$75	40	\$3,000
Compiling Information	\$75	40	\$3,000
Management Review	\$250	20	\$5,000
Legal Review	\$625	20	\$12,500
Submitting Information	\$50	10	\$500
General Expenses*	N/A	N/A	<u>\$1,000</u>
TOTAL			\$25,000

* General Expenses include supplies, delivery charges, mailing, copying, telecommunications, etc.

Cost Estimate Associated with Start-Up

In addition, as detailed below in item 14, there are additional start-up costs associated with this collection including a fee of \$50,000, payable to DOE when the initial application is submitted, and an additional application fee of \$350,000 payable to DOE when the remainder of the application is submitted, for a total application fee of \$400,000. Again, assuming 100 applicants per year, the total estimated start-up costs associated with the collection is \$40,000,000.

Accordingly, the total estimated annual cost including both the costs associated with the hourly burden of the information collection and the cost of the application fees, the information collection is estimated to cost \$425,000 per applicant or \$42,500,000 in total costs for 100 applicants per year.

14. Provide estimates of annualized costs to the Federal government.

The estimated cost incurred by LPO of a full application is estimated to be \$400,000, based on the cost of employees that process the applications, including the average employee salary, benefits, and miscellaneous expenses as determined by the LPO Director for Strategic Initiatives. Assuming 100 applicants per year, the total estimated cost to the federal government is \$40,000,000. The estimate was produced by reference to the most recent LPO application process, the LPO administrative budget required to administer Section 1703. LPO applied the administrative budget across the applications received, with applications weighted more heavily as they moved forward in the review, underwriting, and closing process. LPO's expectation and assumption, supported by its administrative budget analysis, was that the Part I review takes less time than Part II review process, which, in turn, takes less time than the continued due diligence/term sheet negotiation, document drafting, and closing.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

DOE codified a number of reporting requirements for loan guarantee applicants in the final rule; however, there is no burden change associated with these changes as the program had consistently been requesting this information in the past and the burden for these requirements was included in the baseline estimate. The baseline hour and cost burdens were estimated after several years of experience with the program. When the baseline burdens were estimated, the information that is now expressly required in the regulatory text was included in the estimate, even though it was not expressly mentioned in the previous information collection request, because the program was consistently requesting that information. As a consequence, no new burden has been created by express inclusion of the requests for information, as mentioned below. The changes to the information collection request do not change the practice, and therefore do not change the hour and cost burdens for that information as the time and cost related to such information collection was already included in the baseline. The changes make the actual practice more transparent to potential applicants as well as providing clear legal authority to request the information, but they do not change the cost and hour burdens.

The information that is being collected pursuant to this information collection request is information the applicants necessarily have in their possession. The burden estimate for the information collection request is based on the estimated time it will take to organize and assemble responses. The burden estimate considers the time it will take to pull together, organize, and upload all of the information requested as part of an application. The applicants have the information available before it is requested by the Loan

Programs Office. Before making an application to the Loan Programs Office (the response to the information collection request) the applicants will have used the information in some form for the purposes of securing other lenders and raising equity.

Section 609.4(a) of the information collection request requires applicants to provide any updates to previously submitted materials, but that requirement is not new. For all solicitations applicants have been required to provide updates to previously submitted materials. Section 609.4(a) includes the requirement for updating to provide transparency and clear legal authority to request updates. Likewise, although section 609.4(c)(9) now explicitly requires applicants to submit construction contracts, under all of the solicitations applicants have had the obligation to provide construction planning updates and descriptions of contracts. Section 609.4(c)(9) makes it clear that in addition to planning updates the contract itself must be provided when it is available. Since neither 609.4(a) nor section 609.4(c)(9) impose requirements not previously imposed and accounted for in the baseline, there is no program change or adjustment reported in Items 13 or 14 of the OMB Form 83-I.

Section 609.4(c)(13) does not impose a new information collection requirement. That section provides clarification that the product produced by a project may include, among other things, electricity or chemicals. Each applicant already had the obligation to provide a market analysis regarding the project's product and the time required to comply with that obligation was already included in the baseline.

Section 609.4(c)(18) now specifies that all certifications and letters to management in financial statements must be submitted. This does not impose any new burden on the applicant other than the de minimus requirement associated with copying that if the financial statements include certifications and letters to management (which typically financial statements will include), those certifications must be included as part of the financial statements.

The relatively minor reduced requirements in 609.4(c)(26)-(29) were deleted as unnecessary. The time required to provide the information collected pursuant to those requirements is sufficiently minor that the overall information collection burden should not be affected.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

There will be no collections of information whose results will be published for statistical use. The information collected is not intended to be published. No complex analytical techniques will be employed. There will not be a report on the information LPO collects, other than quarterly and annual reporting on the progress of the loan guarantee program as a whole. DOE could commence issuing loan guarantees under the program at some

unspecified date during FY 2016. Loan guarantees issued under the program will be in effect as long as the debt they support continues to be in effect, which could be 15 years or more.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The OMB control number, OMB expiration date, and burden disclosure statement will be included on all forms and instructions, including the electronic forms found on DOE's application portal.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

There are no exceptions to the certification statement in item 19.